

Limited Scope Agreement

for

Professional Design Services

Project Name
Project Number



**Facilities Operations
and Development**

TABLE OF CONTENTS

ARTICLE I. RESPONSIBILITIES OF ASSOCIATE 3

ARTICLE II. SCOPE OF ASSOCIATE’S BASIC SERVICES 6

ARTICLE III. RESERVED 6

ARTICLE IV. RESPONSIBILITIES OF THE OWNER 6

ARTICLE V. COMPENSATION..... 7

ARTICLE VI. INSURANCE AND INDEMNIFICATION 8

ARTICLE VII. DISPUTE RESOLUTION PROVISIONS 10

ARTICLE VIII. TERMINATION AND REMEDIES..... 10

ARTICLE IX. MISCELLANEOUS PROVISIONS..... 11

LIMITED SCOPE AGREEMENT
FOR
PROFESSIONAL DESIGN SERVICES

This Agreement for Professional Design Services (this “Agreement”), by and between The Ohio State University (the “Owner”) whose contact person shall be the Project Manager designated below or successor and **(Design Professional)** (the “Associate”) whose contact person and address are set forth below.

WHEREAS, The Owner is operating under Chapters 123 and 153 of the Ohio Revised Code and it is the intention of the Owner, in the exercise of its powers as set forth in Sections 153.65 through 153.71, both inclusive, of the Ohio Revised Code to obtain professional design services on behalf of the Institution named below for the following project (the “Project”):

Project Name <div style="background-color: yellow; width: 100px; height: 15px; margin: 5px 0;"></div> <p style="text-align: center;">Owner</p> The Ohio State University Project Manager: xx 400 Central Classroom Building 2009 Millikin Road Columbus OH 43210 Phone xx Fax xx E-mail xx	Project Number <div style="background-color: yellow; width: 100px; height: 15px; margin: 5px 0;"></div> <p style="text-align: center;">Associate</p> Associate: Contact: Address: Phone: Fax: E-mail:
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WHEREAS, funds for the Project have been provided by **(list the source of funds)**; and

WHEREAS, unless adjusted as provided herein, all fees and reimbursable expenses payable to the Associate under this Agreement will not exceed **(Architect Cap Fee)**; and

WHEREAS, the Associate desires, and is capable and licensed, to provide professional design services for the Project;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Owner and the Associate agree as follows:

ARTICLE I. RESPONSIBILITIES OF ASSOCIATE

1.1 Associate’s Services

1.1.1 Scope of Services; Applicable Law. The Associate shall provide professional design services, including without limitation services customarily furnished in accordance with generally accepted architectural or engineering services, for the Project in accordance with the terms of this Agreement. The Associate shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable state rules and regulations, any applicable federal and local statutes, ordinances,

rules and regulations, the applicable Announcement issued pursuant to Section 153.67 of the Ohio Revised Code (the “Announcement”), the Associate’s Technical Proposal for the Project (the “Technical Proposal”) and the Owner’s Standards of Design, if any.

1.1.2 Construction Budget. The total amount available for the construction of the Project is **(Amount)** (the “Construction Budget”). The Owner shall provide written notice to the Associate of any change in the Construction Budget. It is recognized that the Associate and the Owner do not have control over the cost of labor, materials or equipment, over Contractors’ methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Associate cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the Associate.

1.1.3 Timeliness; Standard of Care. The Associate shall perform the Associate’s services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the Owner.

1.1.4 Design Schedule. Within thirty (30) days after the execution hereof, the Associate shall submit for approval by the Owner a Design Schedule for the performance of the Associate’s services which shall include allowances for reasonable periods of time required for the review and approval of items by the Owner and for approvals of governmental authorities having jurisdiction over the Project. Unless the Owner notifies the Associate of objections to the Design Schedule within thirty (30) days of receipt thereof, the Owner shall be deemed to have approved the Design Schedule. The Associate shall coordinate the Design Schedule with the Project Schedule. The Design Schedule, when approved by the Owner, shall not be exceeded by the Associate without notice and adjustment of the Design Schedule approved by the Owner.

1.1.5 Personnel. The identities of the principal persons, and the extent of their participation in performing the Associate’s services set forth as in the Technical Proposal, shall not be altered without the written consent of the Owner.

1.1.6 Non-Discrimination. The Associate represents that the Associate is in compliance with all applicable equal employment opportunity requirements under law, if required by Section 153.59 of the Ohio Revised Code or any other applicable state or federal law.

1.1.7 Consultants. The Associate may provide services through one or more consultants employed by the Associate (the “Consultants”), provided, however, the Associate shall remain responsible to the Owner for all duties and obligations of the Associate under this Agreement. Unless waived or otherwise modified in writing by the Owner upon written request of the Associate, no Consultant shall be retained upon terms inconsistent with this Agreement. The identity of any Consultant, and the extent of such Consultant’s participation in performing the Associate’s services set forth as in the Technical Proposal, shall not be altered without the consent of the Owner.

1.1.8 Drug-Free Workplace. The Associate shall make a good faith effort to ensure that no employee of the Associate will purchase, transfer, use or possess or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Project. Except for the term “employee,” terms in this Subparagraph are used as defined in Rule 123:1-76 of the Ohio Administrative Code.

1.1.9 Ethics. The Associate represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

1.1.10 Ohio Services. Unless otherwise authorized by the Owner, the Associate's services shall be performed within the State.

1.1.11 Limitation of Authority. The Associate shall not have any authority to bind the Owner for the payment of any costs or expenses without the express written approval of the Owner. The Associate shall have authority to act on behalf of the Owner only to the extent provided herein or in the Standard Conditions of Contract for Construction (the "Standard Conditions"). The Associate's authority to act on behalf of the Owner shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

1.1.12 Approval or Disapproval of Associate's Work. The Owner shall have the right to reasonably disapprove any portion of the Associate's work on the Project, including, without limitation, any design work or documents or Drawings prepared by the Associate. In the event that any of the Associate's work is disapproved by the Owner, the Associate shall proceed, when requested by the Owner, with revisions to the work, documents or Drawings prepared or performed to attempt to satisfy the objections. The Associate acknowledges that any review or approval by the Owner of any work, documents or Drawings prepared or performed by the Associate pursuant to this Agreement shall not relieve the Associate of the Associate's responsibility to properly and timely perform such work and prepare such documents and Drawings.

1.1.13. EDGE Business Development Program Participation. The Associate shall support the Encouraging Diversity Growth and Equity (EDGE) Business Development Program, (ref. Section 123.152 of the Ohio Revised Code, enacted by Am. H.B. 95, 125th General Assembly), by seeking and maintaining to the extent reasonable and appropriate, participation by properly certified EDGE Business Enterprise businesses for the project and within the Associate's agreement for the project.

1.1.13.1 Upon the Owner's request, the Associate shall provide its policy(ies) regarding its support of EDGE, and the procedures the Associates has used in good faith to obtain or attempted to obtain the EDGE-certified business participation goal percentage approved by the Owner and indicated in the Request for Qualifications or the Request for Proposal, or both. In the absence of the Owner's request for the policy(ies) and procedures, the Associate shall provide them as a part of its response to the Owner's Request For Fee Proposal and they also shall become a part of this Agreement by attachment or by reference.

1.1.13.2 The Associate shall document and certify the actual percentage of the Associate's final fee, inclusive of all Basic Services, Additional Services, and Reimbursable Expenses, that it paid to certified EDGE Business Enterprises. The Associate shall submit such documentation and certification with its request for final payment and at other intervals as may be required by the Owner.

1.1.14 Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA). The Associate shall complete the DMA form provided by the Department of Public Safety, (ref. Section 2909.33(C) of the Ohio Revised Code, enacted by Am. S.B. 9, 126th General Assembly), to certify that it does not provide material assistance to any organization on the United States Department of State's terrorist exclusion list. The certified form shall be submitted as an attachment to this Agreement for Professional Design Services.

ARTICLE II. SCOPE OF ASSOCIATE'S BASIC SERVICES

2.1 General

2.1.1 Services to be provided by the Associate are indicated in the Scope of Work attached as Exhibit 1 and incorporated herein).

ARTICLE III. RESERVED

ARTICLE IV. RESPONSIBILITIES OF THE OWNER

4.1 Required Actions. The Owner shall review, approve or take such actions as are required of them by this Agreement, the Contract Documents and applicable law in a reasonable and timely manner.

4.2 Instructions to Contractors. All instructions of the Owner to Contractor shall be through, or in consultation with, the Associate.

4.3 Owner's Requirements. The Owner shall provide full information regarding its requirements for the Project including without limitation the Program of Requirements, design and construction standards and work rules which shall set forth the Owner's use, design, time and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment and systems and site requirements.

4.4 Owner's Representative. The Owner shall designate an Owner's Representative, i.e. a person authorized to act on the Owner's behalf with respect to the Project to the extent provided in the Contract Documents.

4.5 Site Description. If reasonably requested by the Associate as necessary for the Project, the Owner shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and complete data pertaining to existing building, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths. The Associate shall be entitled to rely upon the accuracy and completeness of information provided by the Owner under this Paragraph.

4.6 Notice to Associate. If the Owner observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt notice thereof shall be given to the Associate. **(Note - this section will only be used if the scope of services includes construction administration.)**

4.7 Legal Representation. The Owner shall not be responsible to provide, or pay for, any legal representation of the Associate.

ARTICLE V. COMPENSATION

5.1 Direct Personnel Expense. Direct Personnel Expense shall mean the portion of direct salaries and wages of all personnel of the Associate or any Consultants, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pensions, profit sharing and similar benefits related to their time devoted to the Project.

5.2 Reimbursable Expenses

5.2.1 Definition. Reimbursable Expenses means actual expenditures incurred by the Associate or its Consultants in the interest of the Project approved by the Owner for reproduction of Construction Documents for distribution to Bidders, building permits, soil or other testing or special inspections and, if requested by the Owner, Project Professional Liability Insurance and reformatting Project Record Submittals to a computer medium different than a computer medium used by the Associate. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Subparagraph 9.5.2.

5.2.2 Limits. The Associate shall use its best efforts to minimize Reimbursable Expenses. In all events, total Reimbursable Expenses shall not exceed (amount), without the written approval of the Owner and an amendment in accordance with Subparagraph 9.5.2. Reimbursable Expenses for the following items shall not exceed the respective amounts and will not be reimbursed without itemized receipts:

Item	Amount

5.3 Basis of Compensation

5.3.1 Basic Fee. For Basic Services provided by the Associate and all Consultants, the Owner shall pay the Associate a Basic Fee in accordance with Paragraph 5.4 hereof in the amount of (amount). A change in the Basic Fee may be made only by an amendment in accordance with Subparagraph 9.5.2.

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5.3.2 Extent of Basic Fee. The Associate’s Basic Fee includes all compensation for Basic Services, including without limitation, for salaries or other compensation of the Associate’s employees at the principal office, branch offices and the field office, general operating expenses of the Associate’s principal office, branch offices and the field office, any part of the Associate’s capital expenses, including interest on the Associate’s capital employed for the Project, overhead or expenses of any kind, except Reimbursable Expenses, any costs incurred due to the negligence of the Associate, the Associate’s general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

5.4 Method and Terms of Payment

5.4.1 Basic Fee. Payment of the Basic Fee shall be made monthly in proportion to services completed. Payments for Basic Services shall be based upon a properly completed Associate's Pay Request and shall be made within the applicable time limits provided by Section 126.30 of the Ohio Revised Code.

5.4.2 Additional Fees, Reimbursable Expenses. Payments of Fees for Additional Services in accordance with Subparagraph 5.3.2 and for Reimbursable Expenses as set forth in Paragraph 5.2 shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed Associate's Pay Request.

5.4.3 Payments by Associate. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Associate shall pay all portions thereof due to Consultants and to persons who provided items the expenses of which are Reimbursable Expenses.

5.4.4 Compensation for Extension of Project Time. If the Associate notifies the Owner not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 1.1.3 that such time for completion is reasonably expected to be exceeded by more than ten percent (10%) through no fault of the Associate, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the Owner and the Associate. If, as a result of such negotiation, the Owner agrees that the Associate shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 8.5.2 before the Associate renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Associate and the Owner.

ARTICLE VI. INSURANCE AND INDEMNIFICATION

6.1 Insurance

6.1.1 Casualty Insurance. Except when a modification is requested in writing by the Associate and approved in writing by the Owner, the Associate shall carry and maintain at the Associate's cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement:

- a. Workers' Compensation and employer's liability insurance to the full extent as required by applicable law;
- b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
 - i. General Aggregate Limit:
\$2,000,000 each occurrence;
 - ii. Each Occurrence Limit:
\$1,000,000 each occurrence; and

- c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.

6.1.2 Intentionally left blank.

6.1.3 Professional Liability Insurance. The Associate shall maintain insurance to protect against claims arising from the performance of the Associate's services caused by any negligent acts, errors or omissions for which the Associate is legally liable ("Professional Liability Insurance"). Except when a waiver is approved by the Owner upon written request of the Associate, such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim and in the annual aggregate. The Associate shall keep such insurance in effect for so long as the Associate may be held liable for its performance of services for the Project. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the Associate commenced to perform services relating to the Project. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports. ~~The Owner shall be named as an additional insured under the policy.~~

6.1.4 Certificates. The Associate shall provide the Owner with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days' prior written notice to the Owner.

6.2 Indemnification

6.2.1 Indemnification by Associate Generally. To the fullest extent permitted by law, the Associate shall and does agree to indemnify and hold harmless the Owner and their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by or result from performance of the Associate's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, but (c) only to the extent they are caused by any negligent acts, errors or omissions of the Associate, anyone directly or indirectly employed by the Associate or anyone for whose acts the Associate is legally liable. This Subparagraph is intended to be, and shall be construed as consistent with, and not in conflict with, Section 2305.31 of the Ohio Revised Code.

6.2.2 Intellectual Property Indemnification. To the fullest extent permitted by law, the Associate shall and does agree to indemnify and hold harmless the Owner and their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Associate, anyone directly or indirectly employed by the Associate or anyone for whose acts the Associate is legally liable. The Associate shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the Owner.

ARTICLE VII. DISPUTE RESOLUTION PROVISIONS

7.1 Mediation. Instead of, or in addition to, the procedures set forth below, the Owner and the Associate may, by written agreement, submit any claims, requests, disputes or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.

7.2 Notice and Filing of Requests. Any request by the Associate for additional fees or expenses shall be made in writing to the Owner and filed prior to payment of the final 5% of the Basic Fee. Failure of the Associate to timely make such a request shall constitute a waiver by the Associate of any request for such fees and expenses.

7.3 Request Information. In every written request filed pursuant to Paragraph 7.2, the Associate shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

7.4 Meeting with Owner. If the Associate files a written request with the Owner pursuant to Paragraph 7.2, the Owner shall, within thirty (30) days of receipt of the request, schedule a meeting in an effort to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting shall be attended by persons expressly and fully authorized to resolve the request on behalf of the Associate.

7.5 Performance. The Associate shall proceed with the Associate's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Associate and the Owner in writing. The Owner shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute in accordance with this Paragraph.

ARTICLE VIII. TERMINATION AND REMEDIES

8.1 Termination of Agreement

8.1.1 Means of Termination. This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the Associate shall not terminate this Agreement for non-payment if the Owner initiates the payment process within ten (10) days of receipt of the Associate's written notice to terminate. This Agreement may be terminated by the Owner without cause upon fifteen (15) days written notice to the Associate. This Agreement may be terminated at any time upon the mutual consent of the Owner and the Associate.

8.1.2 Associate's Remedies Upon Termination by Owner Without Cause or Termination by Associate. In the event of a termination which is not due to the failure of the Associate to perform in accordance with the terms of this Agreement, the Associate shall be compensated for all Basic Services performed together with Reimbursable Expenses incurred prior to the termination date.

8.1.3 Associate's Remedies Upon Termination by Owner for Cause. In the event of a termination which is due to the failure of the Associate to perform in accordance with the terms of this Agreement, the

Associate shall be compensated only for Basic Services performed and paid for prior to the termination date together with Additional Services completely performed prior to the termination date. In such event, the Associate shall be reimbursed only for Reimbursable Expenses incurred prior to the date of the notice of termination, unless the Owner consents in writing to the payment of Reimbursable Expenses incurred after that date.

8.1.4 Associate's Remedies Upon Termination by Mutual Consent. In the event of a termination upon the mutual consent of the Owner and the Associate, any compensation for Basic Services or for Additional Services or payment of Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to such termination.

8.1.5 Post-Termination Matters. If the Owner and the Associate agree that any services are to be performed for the Project by the Associate after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Reimbursable Expenses related to such services shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to the commencement of such services. Such amendment and any relevant provisions of this Agreement shall survive termination of this Agreement.

8.2 Remedies

8.2.1 Cumulative Remedies. No remedy conferred upon the Owner by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the Owner shall be cumulative and shall be in addition to any other remedy given to the Owner hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Associate by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Associate shall be cumulative and shall be in addition to any other remedy given to the Associate hereunder or now or hereafter existing.

8.2.2 Remedies Not Waived. No delay, omission or forbearance to exercise any right, power or remedy accruing to the Owner or the Associate hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised from time to time and as often as deemed expedient.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 Ownership and Use of Documents

9.1.1 Property of Owner. Drawings, Specifications and other documents prepared by, or with the cooperation of, the Associate or any Consultant pursuant to this Agreement are the property of the Owner whether or not the Project for which they are prepared is commenced or completed. The Associate or Consultant, as applicable, may retain copies, including reproducible copies of such Drawings, Specifications and other documents for information and reference. Such Drawings, Specifications or other documents may be used by the Owner or others employed by the Owner for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without compensation to the Associate or Consultant. Unless the Project is a prototype, such Drawings, Specifications or other documents shall not be used by the Owner, or be given or sold by the Owner to be used by others, on other projects except by agreement in writing and with agreed upon

appropriate compensation to the Associate or Consultant, as applicable. If an event occurs for which the Associate or Consultant may be liable, the Owner shall notify the Associate or Consultant of such event as soon as practical after such event and shall provide access to the Project to the Associate or Consultant and their representatives. This Subparagraph shall survive termination of this Agreement.

9.1.2 Associate's Intellectual Property. All inventions, patents, design patents and computer programs acquired or developed by the Associate in connection with or relation to the Project shall remain the property of the Associate and shall be protected by the Owner from use by others except by agreement in writing with appropriate and agreed upon compensation to the Associate.

9.2 Public Relations. Prior to completion of the Project, any public relations or publicity about the Project shall be solely within the control and with the consent of the Owner.

9.3 Records. The records of all of the Associate's Direct Personnel Costs, Reimbursable Expenses and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner at all times and shall be maintained for seven (7) years after Final Acceptance of the Project. All other records kept by the Associate related to the Project shall be available to the Owner at all times and shall be maintained for six (6) years after Final Acceptance of the Project Owner.

9.4 Successors and Assigns. The Owner and the Associate each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement. The Associate shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the Owner.

9.5 Extent of Agreement

9.5.1 Entire Agreement. This Agreement and the Contract Documents represent the entire and integrated agreement between the Owner and the Associate and supersede all prior negotiations, representations or agreements, either written or oral.

9.5.2 Amendments. This Agreement may be amended only by an amendment signed by both the Associate and the Owner.

9.5.3 Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.5.4 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

9.5.5 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement, the Technical Proposal or this Agreement, the provisions of the Contract Documents shall prevail.

9.5.6 Conditions to Validity. None of the rights, duties and obligations contained in this Agreement shall be binding on any party until all legal requirements have been complied with, including without limitation that the Director of Budget and Management of the State first certifies that there is a balance in

the appropriation not already obligated to pay existing obligations, as required by Section 126.07, Ohio Revised Code, all necessary funds are available from the applicable state agencies or instrumentalities and, when required, the expenditure of such funds is approved by the Controlling Board of the State of Ohio or other applicable approving body. In addition, if federal funds are to be used to pay fees and expenses under this Agreement, none of the rights, duties and obligations contained in this Agreement shall be binding on any party until the Owner notifies the Associate in writing that such funds are available from the Owner's source.

9.6 Governing Law

9.6.1 Law of Ohio. This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction and the State of Ohio shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.

9.6.2 Capitalized Terms. Capitalized terms in this Agreement shall have the same meaning as those in the Standard Conditions, unless otherwise defined herein or unless another meaning is indicated by the context.

9.7 Assignment of Antitrust Claims. Each party to this Agreement recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the Owner. Therefore, the following assignment is made:

Intending to be legally bound, the Associate, acting herein by and through the person signing this Agreement on its behalf as a duly authorized agent, hereby assigns, sells, conveys and transfers to the Owner any and all right, title and interest in and to any and all claims and causes of action which the Associate may now have or hereafter acquire under the antitrust laws of the United States of America or the State, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by, or rendered to, the Owner pursuant to this Agreement, and EXCEPT as to any claims or causes of action which result from antitrust violations commencing after the price is established under this Agreement and which are not passed on to the Owner by any means. In addition, the Associate warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and State antitrust claims and causes of action to the Owner, subject to the proviso and exception stated above. The provisions of this Subparagraph shall become effective at the time the Owner executes its concurrence to this Agreement without further acknowledgement by any of the parties.

9.8 Notices

9.8.1 Addresses. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be given if delivered in person to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at or mailed by registered or certified mail, postage prepaid, to the appropriate following address:

If to the Owner	If to the Associate
The Ohio State University Facilities Operations and Development 400 Central Classroom Building 2009 Millikin Road Columbus, Ohio 43210	

9.8.2 Additional Notices. A copy of all notices, certificates, requests or other communications to the Owner shall be sent to the Project Manager.

9.8.3 Facsimiles. For convenience of communication only, notices, certificates, requests or other communications hereunder of fewer than ten (10) pages, except requests for payment, may be sent by facsimile transmission to the Owner at (614) 292-2539 and to the Associate at (fax number). Notices, certificates, requests or other communications sent by facsimile transmission shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.8.1. Requests for payment may be sent to the Owner by facsimile transmission only upon specific direction from the Owner.

9.8.4 Emergencies. In the event of an emergency involving the Project, including, without limitation, a fatality, serious injury, fire, collapse, flood, utility or power loss to occupied facilities, explosion, or environmental damage, the Associate shall immediately notify the Owner by telephone.

9.8.5 Change of Address. The Owner or the Associate may, by notice give hereunder, designate any further or different addresses, telephone numbers or facsimile numbers to which subsequent notices, certificates, requests or communications shall be sent.

9.9 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

9.10 The Contractor warrants that it is not subject to an “unresolved” finding for recovery under O.R.C. 9.24. If the warranty is deemed to be false, the Agreement is void *ab initio* and the Contractor must immediately repay to the Owner any funds paid under this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

(“Associate”)

By _____ xx
Company _____
Name _____ xx
Print _____
Name _____ xx
Title _____ xx
Date _____ xx

This agreement is hereby approved on _____.

(“Owner”)

By _____
Name Jeff Kaplan
Senior Vice President for Administration and Planning
Title and Special Assistant to the President

The Ohio State University

By _____
Name Christopher M. Culley
Title Vice President & General Counsel
Date _____