

This Professional Service Provider Agreement ("Agreement"), entered into on _____, 20____ by and between Rutgers, The State University of New Jersey ("Rutgers") and _____ ("Service Provider").

Scope of Services

name: _____

Service Provider agrees to perform the services described in Exhibit A, Scope of Work ("Services").

Payment

Conditioned upon Service Provider's performance of the Services in accordance with this Agreement, Rutgers will pay Service Provider the amounts defined in Exhibit A as the Fees. The Fees specified in Exhibit A represent Rutgers' total financial commitment to Service Provider for all Services and deliverables, applicable taxes, and other obligations under this Agreement. Rutgers is not subject to any sales or use taxes and such taxes will not be included in the Fees charged by Service Provider. Service Provider will provide invoices directly to the Project Director identified in Exhibit A. Undisputed invoices will be paid within 45 days of receipt of invoice to the Service Provider.

Term

The term of this Agreement is from 2/1, 2018 to 2/1, 2021, unless otherwise terminated in accordance with this Agreement. Services may not begin nor payment authorized prior to execution of this Agreement by an authorized signatory in Rutgers University Procurement Services.

Termination

Rutgers may terminate this Agreement in whole or in part at any time without cause upon at least 15 days written notice to Service Provider. If, this Agreement is a subcontract (with Rutgers being the contractor to another party, and Service Provider being Rutgers' subcontractor), then Rutgers may immediately terminate this Agreement upon written notice to Service Provider if the prime contract is terminated for any reason.

Rutgers may terminate this Agreement upon at least 10 days written notice to Service Provider, for Service Provider's breach of this Agreement, unless during such notice period, Service Provider fully cures the breach to Rutgers reasonable satisfaction.

Service Provider may terminate this Agreement upon at least 30 days written notice to Rutgers, for Rutgers' failure to pay any undisputed amounts then due, unless during such notice period Rutgers fully cures the breach.

If Rutgers terminates this Agreement without cause, Rutgers will promptly pay Service Provider for its Services performed through the effective date of termination, in accordance with the terms of this Agreement.

In the event of any termination, or at any time upon Rutgers' request, Service Provider will: (i) immediately return to Rutgers any Rutgers proprietary materials and information in Service Provider's possession or control, including, without limitation all Rutgers Confidential Information and any deliverables then under development; and (ii) at Rutgers' request, cooperate with Rutgers in the transition of the work performed under this Agreement to Rutgers or its designee.

Any provisions of this Agreement (including, but not limited to, confidentiality and indemnity obligations) that by their nature extend beyond termination will remain in effect in accordance with their terms.

Performance of Services

Service Provider will perform the Services in a timely manner and in accordance with any project schedule set forth in Exhibit A. The parties agree that "time is of the essence" with respect to Service Provider's performance.

Service Provider will assign qualified and experienced personnel to perform the Services. Where Exhibit A identifies specific Service Provider personnel, these individuals will remain assigned to provide the Services throughout the term of this Agreement, in accordance with their roles and responsibilities identified in Exhibit A, unless otherwise approved in writing by Rutgers. If Rutgers objects to the manner of performance of any Service Provider personnel (including any third party contractors or agents of Service Provider), Service Provider will promptly take all necessary actions to rectify the objections, including, if requested by Rutgers, the prompt removal of the individual from the provision of Services to Rutgers. If it becomes necessary to replace any personnel, Service Provider will provide as a replacement a

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person with equivalent or better qualifications, as approved by Rutgers (such approval not to be unreasonably withheld).

Rutgers will have a reasonable opportunity (not to exceed 30 days, unless otherwise specified in Exhibit A) to review all deliverables or Services provided to Rutgers under this Agreement. If Rutgers informs Service Provider of a deficiency in the deliverables or Services, Service Provider will promptly make corrections and re-submit them to Rutgers for review and approval. Service Provider will not charge Rutgers for the time and expense in making corrections to deliverables that fail to comply with the requirements of this Agreement. If Service Provider is not able to timely make all appropriate corrections, Rutgers may elect to terminate this Agreement, in which event Service Provider will promptly refund any amounts previously paid by Rutgers for work not performed in accordance with this Agreement. Nothing in this clause will excuse Service Provider from meeting any delivery or project schedule set forth in Exhibit A.

Service Provider will provide timely and complete status and other reasonable reports to the Rutgers Project Director at least once each month or as otherwise required by Exhibit A. Status reports will identify anticipated or actual project delays or issues in reasonable detail. If Service Provider believes that Rutgers is failing to perform any activity or obligation that will delay or interfere with Service Provider's performance of this Agreement, Service Provider will promptly, notify the Rutgers Project Director in writing, and will cooperate with Rutgers efforts to resolve the matter. Rutgers' failure to perform any activity or obligation will not excuse Service Provider's delay or nonperformance, unless Service Provider provides timely notice to Rutgers in accordance with this Agreement.

Service Provider will perform the Services in accordance with all applicable laws, rules and regulations, including equal employment opportunity and import and export control laws and regulations. If Services are funded through a government grant or contract, Service Provider will comply with all laws, regulations, standards, and rules applicable to such grant or contract, as if they were fully set forth in this Agreement.

Indemnification

Service Provider will indemnify, hold harmless and defend Rutgers, its governors, officers, faculty, students, agents, and employees against any and all damages, suits, actions, claims, liabilities, losses, judgments, costs and expenses arising out of or relating to (i) any personal or bodily injury (including death) or property damage caused by Service Provider's negligent, willful, or unlawful acts or omissions or breach of this Agreement, (ii) breach of Service Provider's confidentiality obligations, or (iii) an infringement or misappropriation of any third party intellectual property or proprietary rights (including, without limitation, trademark, trade secret, copyright or patent) by the Services or Work Product.

Insurance- Omitted

Ownership Rights- Revised

Service Provider may incorporate or develop processes, works of authorship whether or not fixed in a tangible medium of expression and other information and know-how in the course of delivering the Services (collectively hereinafter "Work Product") either alone or in conjunction with any other person or entity during the term of this agreement.

Service Provider will retain ownership of its pre-existing and proprietary materials and of intellectual property that may be incorporated into the Work Product. Service Provider hereby grants Rutgers a perpetual, irrevocable, royalty-free, worldwide right and license to freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on the Work Product or otherwise provided to Rutgers, in the course of performing the Services, but solely for the purpose of instruction in the "Uniform Construction Code Continuing Education Program." Rutgers shall not distribute the Work Product or any portion(s) thereof outside the University for any purposes without prior written consent of the Service Provider.

Warranties

Rutgers and Service Provider hereby represent and warrant that (i) each party has the legal capacity to execute and perform this Agreement; and (ii) that this Agreement is not fully executed until the issuance of a Rutgers Purchase Order to Service Provider.

Service Provider represents and warrants (i) that it is not debarred, suspended, proposed for debarment, declared ineligible; (ii) that the execution and performance of this Agreement by Service Provider does not, and will not, violate or conflict with the terms of any existing agreement or understanding to which Service Provider is a party; (iii) that the

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execution and performance of this Agreement by Service Provider does not, and will not, violate or conflict with any law, rule, regulation, judgment or order of any court or other adjudicative entity binding on Service Provider; (iv) that Service Provider knows of no reason why Service Provider is in any way (physically, legally or otherwise) precluded from performing the obligations under this Agreement in accordance with its terms; and (v) that it does not have any non-disclosure, confidentiality, non-competition or other similar obligations to any current or former employer or any other person or entity, concerning proprietary, secret or confidential information used in this Agreement

Service Provider shall not disclose to Rutgers or induce Rutgers to use any proprietary, secret or confidential information or material belonging to others, including any current or former employers or persons with whom Service Provider has had a consulting arrangement.

In addition, Service Provider warrants that it will perform the Services (i) in a diligent and highly professional manner, (ii) in accordance with applicable law; and (iii) through experienced individuals qualified to perform the Services. Service Provider will obtain all required governmental and third-party licenses, approvals, and permits appropriate for the provision of Services and deliverables.

Further, Service Provider warrants that all deliverables will be developed in accordance with the quality standards of the applicable industry, and will meet in all respects the requirements set forth in Exhibit A and this Agreement. Without limitation, Service Provider warrants, to the extent applicable, that the deliverables will operate fully and correctly on the hardware and operating system and in conjunction with other software programs with which they are intended to operate and interface.

Service Provider warrants that there exists no actual, potential or appearance of conflict between Service Provider and Rutgers. Furthermore, Service Provider represents that it has not offered (and will not offer during the term of this Agreement) any compensation, reward, gift, favor, service, outside employment, reimbursement of expenses, loan, ownership interest, or anything else of value, to any officer, employee, or faculty member of Rutgers as an inducement to enter into or renew this Agreement. Service Provider will notify Rutgers in writing of any change in conditions that might give the appearance of a conflict of interest.

Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. 1320a-7b(b) ("Anti-kickback Statute"), or the federal "Stark Law," set forth at U.S.C. 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement.

Where the sale of goods and services hereunder requires compliance with any state or federal anti-kickback statute, and/or any federal or state anti-referral law, including the "Stark Law", Supplier certifies that it has received a copy of the RBHS Code of Conduct and Rutgers' Stark Law and Anti-Kickback Statute Policies and Procedures. The RBHS Code of Conduct is available at <http://rbhs.rutgers.edu/complweb/code/conduct.pdf>. Rutgers' Stark Law and Anti-Kickback Statute Policies and Procedures are available at <http://policies.rutgers.edu/10027-currentpdf> <http://policies.rutgers.edu/10024-currentpdf> <http://policies.rutgers.edu/10021-currentpdf>.

Each party shall ensure that its individuals providing service under the agreement who meet the definition of "Covered Persons" (as such term is defined in the "Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and the University of Medicine and Dentistry of New Jersey", as amended by a letter agreement dated May 1, 2013 between OIG and Rutgers, available at https://ethics.umdny.edu/mtrxprod/documents/CIA_agree_RU_UMDNJ.pdf) shall comply with RBHS's Compliance Program, including the training related to the Anti-Kickback Statute and the Stark Law.

The warranties set forth in this Agreement are exclusive, and neither party makes any other warranty, express or implied, including and implied warranties of merchantability and fitness for a particular use.

Remedies

Service Provider acknowledges that Rutgers will be irreparably harmed if Service Provider's obligations hereunder are not specifically enforced and that Rutgers would not have an adequate remedy at law in the event of an actual or threatened violation by Service Provider of its obligations hereunder. Therefore, Service Provider agrees and consents

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that Rutgers shall be entitled to an injunction, including preliminary, or any appropriate decree of specific performance for any actual or threatened violation or breaches by Service Provider or any agent of Service Provider, without the posting of any bond, and such other relief as may be just and proper, including the right to recover all losses or damages suffered by Rutgers resulting from any such breach or threatened breach. Service Provider further agrees that, in such event, Service Provider shall reimburse Rutgers for its attorneys' fees and costs. In the event Rutgers applies to seal any papers produced or filed in any judicial proceedings to preserve confidentiality, Service Provider specifically agrees not to oppose such application and to use its best efforts to join such application.

Relationship of the Parties

Service Provider is an independent contractor, and nothing in this Agreement constitutes the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

Furthermore, Service Provider and its employees or agents, are not, and shall not be considered, employees of Rutgers. Service Provider acknowledges full responsibility for compliance with all Federal, State, and City tax regulations regarding taxes that may accrue for the Services, including expenses, if any, paid to Service Provider as a result of services rendered to Rutgers. Further, Rutgers will not provide any medical, health, insurance or similar plans or workers' compensation or any other benefit whatsoever to Service Provider, its agents or employees.

Service Provider has no actual authority, nor shall the Service Provider give the impression of having apparent authority, to bind or represent Rutgers with regard to any third parties.

Confidential Information

Service Provider will treat as confidential all data, records, accounts, and other information regarding Rutgers and its affiliates that become known to Service Provider or is generated by Service Provider through its activities hereunder, including information regarding Rutgers and its affiliates' operations, policies, procedures, faculty, employees, students, information technology systems, and financial information and plans ("Rutgers Confidential Information"). Rutgers Confidential Information includes the Services and deliverables. Service Provider's confidentiality obligations include establishing and maintaining appropriate safeguards, procedures, and systems to avoid the unauthorized destruction, loss, alteration, access to, or disclosure of any Rutgers Confidential Information, in accordance with the standards of the applicable industry and as otherwise required by applicable law.

Rutgers will treat as confidential all of Service Provider's proprietary methodologies, software and materials that Service Provider provides to Rutgers hereunder and which are marked "Confidential" or "Proprietary" ("Service Provider Confidential Information"). In no event will Service Provider Confidential Information be deemed to include any Rutgers Confidential Information.

During and after the term of this Agreement, neither party will use nor disclose the other party's Confidential Information, except for the purpose of providing, receiving or using the Services in accordance with this Agreement, or as may be required by law, regulation or court order. Service Provider will obtain from all subcontractors and agents authorized to perform the Services under this Agreement a signed written statement agreeing to the confidentiality provisions herein.

The obligations of confidentiality under this Section do not apply to any information to the extent it: (i) was known to the receiving party prior to such party's receipt of or access to that information under this Agreement, (ii) was or becomes a matter of public information or publicly available through no act or failure to act on the part of the receiving party, (iii) is acquired from a third party entitled to disclose the information without obligation of confidentiality, or (iv) is developed independently and without use of the disclosing party's Confidential Information.

Except as otherwise required by applicable laws or regulations, including but not limited to, the New Jersey Open Public Records Act, the parties agree to, and to cause their respective affiliates to, keep confidential all non-public information relating to this Agreement.

Use of Name

Service Provider will not use the name, insignia, or symbols of Rutgers, its faculties or departments, or any variations or combination thereof, or the name of any governors, faculty member, other employee, or student of Rutgers for any purpose whatsoever without Rutgers' prior written consent.

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Access to Records-Revised

Rutgers shall have full access to records, including, but not limited to financial records, in connection with this Agreement.

Notices

All progress reports to be delivered to the Rutgers Project Director as outlined in Exhibit A.

All other written notices regarding this Agreement shall be addressed to the Authorized Purchasing Buyer at Rutgers and addressed as follows:

Rutgers, The State University of New Jersey
University Procurement Services
Liberty Plaza
335 George Street, 2nd Fl.
New Brunswick, NJ 08903
(732) 235-9024 (FAX)

All written notices to be delivered to Service Provider shall be addressed to:

Either party may change its addressee or other information by providing written notice thereof to the other party.

Miscellaneous Terms and Conditions

Service Provider agrees that, during its engagement by Rutgers and for a period of twelve (12) months thereafter, it will not and will not attempt to, directly or indirectly, influence, solicit or canvass, any employee of Rutgers, to work for Service Provider or any individual, partnership, firm, corporation, or other entity associated with Service Provider.

Service Provider, during the period of this Agreement, shall not, without prior written consent of Rutgers, enter into any arrangement that will conflict with the task undertaken pursuant to this Agreement.

Service Provider shall not assign, delegate or subcontract any of the work or services covered by this Agreement, nor shall any interest in this Agreement be assigned or transferred, without prior written approval of Rutgers.

Rutgers is an equal opportunity employer and federal contractor or subcontractor. Consequently, Rutgers and the Supplier (and its subcontractors, if any) agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. 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, sexual orientation, gender identity, or national origin. 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, sexual orientation, gender identity, national origin, protected veteran status or disability. Rutgers and the Supplier (and its subcontractors, if any) also agree that, as applicable, they will abide by the requirements of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., the Civil Rights Act of 1964, Title VII, 42 U.S.C.A. § 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C.A. § 621 et seq., the Americans with Disabilities Act, 42 U.S.C.A § 12101 et seq., Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973, Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws, and all other laws guaranteeing equal employment.

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If this Agreement is for \$50,000 or greater, and is for a goods or service contract as defined by N.J.A.A 17:27 Exhibit A is incorporated herein by reference. If this Agreement is for \$50,000 or greater, and is a construction contract as defined by N.J.S.A. 17:27 Exhibit B is incorporated herein by reference.

Supplier is required to provide Rutgers with a copy of either a federally approved Affirmative Action program or a certificate of Employment Information Report. If neither form is available the Supplier must provide a copy of the completed AA 302 or AA201 form. Certificates must be mailed to University Procurement Services, Rutgers, The State University of New Jersey, Attn: Affirmative Action Administrator, 3 Rutgers Plaza, ASB III, 2nd Floor, New Brunswick, NJ 08901.

If this Agreement is funded by the federal government, Service Provider is required to comply with all applicable federal laws, which are hereby incorporated by reference as if they were set forth herein, including, but not limited to all laws, regulations and rules. Procurements made with federal funds are subject to compliance with the standards and requirements as set for in 2CFR, Part 215, OMB Circular A-133, Paragraph 5. All procurement requirements contained in the above Circular are incorporated herein by reference.

If this Agreement is funded from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Service Provider is required to comply with all applicable laws, hereby incorporated by references as if they were set forth herein including, but not limited to the Davis-Bacon Act and Buy American Act.

This Agreement shall be construed in accordance with the laws of the state of New Jersey. The parties agree that any and all disputes arising out of this Agreement shall be filed and heard in the New Jersey Superior Court, Middlesex County or the United States District Court for the District of New Jersey, and the parties hereto consent to the jurisdiction of said courts.

This Agreement shall not confer any rights or remedies upon any third-party other than the parties to this Agreement and their respective successors and permitted assigns.

If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition and the validity and enforceability of all the remaining provisions shall not be affected thereby.

The failure of either party to exercise any of its rights under this agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

This Agreement constitutes the entire understanding between Rutgers and Service Provider. This Agreement shall not be binding unless executed in writing by Rutgers and Service Provider and accompanied by the issuance of a Rutgers Purchase Order. Any amendment must be made in writing, signed by both parties, and evidenced with the issuance of a Change Order. Any variance from or addition to the terms and conditions of this Agreement in any present or future invoice or other document delivered by Service Provider will be void and of no effect unless agreed to in writing by an authorized representative of Rutgers.

Acceptance by Service Provider of the Terms of this Service Provider Agreement and Agreement to Perform Such Services if authorized by Purchasing:

SERVICE PROVIDER:

Name:

Title:

Date:

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Acknowledgment of Project Director and Dean, director or Vice President that the Project Director is requesting University Procurement Services to authorize performance of these services under the terms and conditions of this Service Provider Agreement:

PROJECT DIRECTOR:

DEAN, VICE PRESIDENT, DIRECTOR:

Name:

Name:

Title:

Title:

Date:

Date:

**Approval of Service Provider Agreement and authorization to Service Provider to commence work;
UNIVERSITY PROCUREMENT SERVICES**

Name:

Title:

Date:

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**EXHIBIT A
SCOPE OF WORK**

The service to be performed under the RFP #R2018-2216 is the training in the Uniform Construction Code Continuing Education Program. Its purpose is to provide licensed and/or certified code officials in the State of New Jersey with knowledge and skills necessary to implement and enforce the requirements of the state building and housing codes, pursuant to the statutory authority of N.J.S.A 52:27D-124.1. Successful bidders in the Uniform Construction Code Continuing Education Program must have the required knowledge, education, training and special expertise in the Uniform Construction Code in the State of New Jersey. They must be industry professionals and/or certified inspectors who remain current on newly adopted rules, regulations, statutes and best practices.

The responsibility of the bidders who are selected as a result of an RFP selection process includes teaching 5 or 10-hour seminar(s) in the Uniform Construction Code continuing education program. Topics of the seminars are outlined in the RFP. The content of each seminar is fully developed by the bidders based on their existing knowledge and experience prior to the program. Successful bidders must also supply lesson plans, training manuals, audio/visual presentation and/or supplemental materials based on their knowledge and experience. Additionally, the successful bidders are expected to have the prerequisite instructional skills

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