

DRAFT AIA® Document B102™ - 2017

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)[Revised October 2018]

BETWEEN the Engineer's client identified as the Owner:
(Name, address and other information)

«Case Western Reserve University»
«10900 Euclid Avenue»
«Cleveland, Ohio 44106-7228»

and the Engineer:
(Name, address and other information)

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for the following (hereinafter referred to as "the Project"):
(Insert information related to types of services, location, facilities, or other descriptive information as appropriate.)

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The Owner and Engineer agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 ENGINEER'S RESPONSIBILITIES

§ 1.1 The Engineer shall provide the following professional services:

(Describe the scope of the Engineer's services or identify an exhibit or scope of services document setting forth the Engineer's services and incorporated into this document in Section 9.2.)

«As defined in AIA Document B201-2007 Standard Form of Engineer's Services as modified by the Owner.»

§ 1.1.1 The Engineer represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 1.2 The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by Engineers practicing in the same or similar locality under the same or similar circumstances for similar projects. The Engineer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.3 The Engineer identifies the following representative authorized to act on behalf of the Engineer with respect to the Project.

(List name, address, and other contact information.)

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§ 1.4 Except with the Owner's knowledge and consent, the Engineer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Engineer's professional judgment with respect to this Project.

§ 1.5 The Engineer shall maintain the following insurance at its own cost with an A.M. Best rating of "A-VII" or better for the duration of this Agreement (or such longer period as may be required below):

§ 1.5.1 Comprehensive General Liability including contractual and public liability coverage, and naming Owner, and other parties reasonably requested by Owner, as additional insured, in not less than the following amounts:

- (i) Bodily injury: \$1,000,000.00 each person and \$1,000,000.00 aggregate
- (ii) Property Damage: \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate

§ 1.5.2 Comprehensive Automobile Liability Insurance covering owned, non-owned and leased vehicles with limits of:

- (i) Bodily injury: \$1,000,000.00 each person and \$1,000,000.00 each occurrence
- (ii) Property Damage: \$1,000,000.00 each occurrence

§ 1.5.3 The Engineer may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 1.5.1 and 1.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 1.5.4 Workers' Compensation to the full extent as required by applicable laws.

§ 1.5.5 Employers' Liability with policy limits not less than «one million» (\$«\$1,000,000») each accident, «one million» (\$«\$1,000,000») each employee, and «one million» (\$«\$1,000,000») policy limit.

§ 1.5.6 Professional Liability shall have minimum limits of \$1,000,000.00 for each claim and \$2,000,000.00 annual aggregate and shall have a deductible not in excess of \$25,000 and shall keep issuance in effect for at least ten years after completion of Services, provided that such coverage is reasonably available in the marketplace at commercially affordable premiums. If professional liability insurance is written on a claims-made basis, such insurance shall have retroactive date that is no later than the date on this Agreement and shall include a supplemental extended reporting period provision.

§ 1.5.7 Umbrella excess liability in an amount of not less than \$1,000,000.00.

§ 1.5.8 Additional Insured Obligations. If requested by the Owner, to the fullest extent permitted by law, the Engineer shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, and other parties reasonably requested by Owner, as an additional insured for claims caused in whole or in part by the Engineer's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 1.5.9 The Engineer shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.5.

§ 1.6 Indemnification/Limitation of Liability. In addition to any liability or obligation of the Engineer to the Owner that may exist under any other provision of this Agreement or by statute of otherwise, the Engineer shall be liable to and will hold harmless, indemnify and defend the Owner from and against any and all damages, costs, claims (including attorney's fees) or liabilities which the Owner may sustain as a result of:

- (a) any infringement of any copyright, patent or other property right resulting from the use or adoption of any designs, plans, drawings or specifications furnished by the Engineer;
- (b) any negligent or wrongful act of the Engineer, its agents, servants, employees, officers or contractors;
or
- (c) any claim made by employees of the Engineer.

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project.

§ 2.2 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Engineer's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.
(List name, address, and other contact information.)

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§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the Engineer. Upon the Engineer's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Engineer in this Agreement, or authorize the Engineer to furnish them as an Additional Service, when the Engineer requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 2.4 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 2.5 The Owner shall provide prompt written notice to the Engineer if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Engineer's Instruments of Service; provided, however, that Owner's failure to comply with this Section 2.5 shall not be deemed a waiver of or otherwise negatively impact, any claim that Owner may have.

§ 2.6 Within 15 days after receipt of a written request from the Engineer, the Owner shall furnish the requested information as necessary and relevant for the Engineer to evaluate, give notice of, or enforce lien rights.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Engineer and the Owner warrant that in transmitting and/or assigning Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 3.2 The Engineer hereby assigns to the Owner all of the Engineer's right, title, and interest in and to the plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by the Engineer, including any and all electronic versions of the foregoing (collectively, the "Instruments of Service"), and all such Instruments of Service shall be the exclusive property of the Owner, including, without limitation, the right to use same or any part of them on any other project of the Owner's without additional compensation to the Engineer. The Engineer shall cause each of its consultants to execute any separate instrument necessary to effect such assignment completely. Without limiting the generality of the foregoing, the parties acknowledge and agree that the Instruments of Service include the Schematic Design Documents, the Design Documents and the Construction Documents. The Engineer shall maintain file copies of those documents, drawings and/or other products as required by law or the standards of professional practice. In the case of future reuse of the Construction Documents by the Owner, the Engineer's name and seal shall be removed, and the Engineer shall not be liable to the Owner, or third parties in connection with their reuse. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Engineer and the Engineer's consultants.

§ 3.3 The Owner hereby grants to the Engineer a royalty-free, non-exclusive, worldwide license to use standards, conventions, and details of the design in the Construction Documents, provided that use of the standards, conventions, and details in any other single project shall not in the aggregate result in the use of the entire design in the Construction Documents or a major part of the design in the Construction Documents.

§ 3.3.1 Intentionally Omitted.

§ 3.4 Intentionally Omitted.

§ 3.5 Except as otherwise stated in Section 3.3, the provisions of this Article 3 shall survive the termination of this Agreement.

ARTICLE 4 CLAIMS AND DISPUTES

§ 4.1 General

§ 4.1.1 Intentionally Omitted.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Engineer waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction, as modified by Owner, attached hereto as Exhibit A. The Owner or the Engineer, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 4.1.3 Intentionally Omitted.

§ 4.2 Dispute Mediation – Waived Mediation

§ 4.2.1 Notwithstanding anything to the contrary contained in this Agreement, claims shall not be subject to mediation as a condition precedent to formal dispute resolution.

§ 4.2.2 Intentionally Omitted.

§ 4.2.3 Intentionally Omitted.

§ 4.2.4 Intentionally Omitted.

§ 4.2.5 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be determined in accordance with the provisions of this Article 4.

§ 4.2.6 **Controversies and Claims Subject to Arbitration.** Any controversy, dispute or claim arising out of or related to this Agreement, or the breach hereof (a "Claim"), shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as modified by this Section 4.2) and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. In any arbitration in which the amount stated in the demand is \$100,000 or less, the American Arbitration Association shall appoint a single arbitrator in accordance with such rules, who shall be a lawyer in a private law firm with ten or more partners. In any such arbitration in which the amount stated in the demand is in excess of \$100,000, or in which the controversy or dispute in question does not involve a liquidated claim, the demand shall include the name of an arbitrator appointed by the claimant. The respondent shall appoint a second arbitrator, and shall notify the parties in writing of such appointment, failing which either party may apply to the American Arbitration Association to appoint such neutral arbitrator. If such neutral arbitrator is appointed by the American Arbitration Association he or she shall be a lawyer in a private law firm with ten or more partners.

§ 4.2.7 **Rules for Arbitration.** If the neutral arbitrator is appointed by the American Arbitration Association, the said Association shall administer the arbitration and its Construction Industry Arbitration Rules shall govern all aspects of the proceeding including the enforcement of any award. If the neutral arbitrator is not appointed by the American Arbitration Association then the panel of arbitrators shall act as the administrator of the arbitration but the Construction Industry Arbitration rules of the Association shall nonetheless govern all aspects of the proceeding, including the enforcement of any award, provided however that the arbitration panel shall have all of the powers and duties conferred on the Association pursuant to said rules. In addition, the following rules shall govern the selection of arbitrators and the proceedings:

§ 4.2.8 **Avoidance of Conflicts of Interest.** Neither party may appoint as an arbitrator an employee, officer or an owner of that party, nor the parent, spouse or child of an employee, officer or owner of that party.

§ 4.2.9 **Ex Parte Communications Prohibited.** After the neutral arbitrator has been appointed, neither party may engage in *ex parte* communication with the arbitrator appointed.

§ 4.2.10 **Contract Performance During Arbitration.** Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing, the parties shall proceed diligently with the performance of their respective obligations under this agreement.

§ 4.2.11 **When Arbitration May be Demanded.** Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the Claim has arisen. In no event shall the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

§ 4.2.12 **Claims and Timely Assertion of Claims.** A party who files a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a claim has matured or been acquired subsequently, the arbitrators may permit amendment.

§ 4.2.13 **Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 4.2.14 **Rights Reserved by the Owner.** Notwithstanding any provision contained in this Section or elsewhere in this Agreement, the Owner reserves the following rights in connection with Claims and disputes between the Owner and the Engineer:

§ 4.2.14.1 The right to institute legal action against the Engineer in any court of competent jurisdiction in lieu of demanding arbitration pursuant to this Section 4.2 in which case the dispute or disputes which are the subject of such action shall be decided by such court, and not by arbitration.

§ 4.2.14.2 The right to obtain from any court of competent jurisdiction a stay of any arbitration instituted by the Engineer, provided that the application for such stay is made before the appointment of the neutral arbitrator in such arbitration, in which case the dispute or disputes which are the subject of such arbitration shall be decided by such court, and not by arbitration.

§ 4.2.14.3 In case the Owner elects to proceed in accordance with Section 4.2.14.1 or 4.2.14.2 above, the word "litigation" shall be deemed to replace the word "arbitration" wherever the latter word appears in this Agreement.

§ 4.2.14.4 Except where such condition is expressly prohibited by law, an award or judgment against the Owner in accordance with the procedure described in this Section 4.2 shall be a condition precedent to the filing by the Engineer or any consultant or agent of any attachment or lien of any nature against the real estate on which the Work is situated or against the Owner's property.

§ 4.3 **Intentionally Omitted.**

§ 4.3.1 Intentionally Omitted.

§ 4.3.1.1 Intentionally Omitted.

§ 4.3.2 Intentionally Omitted.

§ 4.3.3 Intentionally Omitted.

§ 4.3.4 **Consolidation or Joinder**

§ 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 4.3.4.3 The Owner and Engineer grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Engineer under this Agreement.

§ 4.4 The provisions of this Article 4 shall survive the termination of this Agreement.

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 If the Owner fails to make payments to the Engineer in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Engineer's option, cause for suspension of performance of services under this Agreement. If the Engineer elects to suspend services, the Engineer shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Engineer all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Engineer's services. The Engineer's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.2 If the Owner suspends the Project for more than 30 consecutive days, the Engineer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Engineer shall be compensated for expenses incurred in the interruption and resumption of the Engineer's services. The Engineer's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Engineer, the Engineer may terminate this Agreement by giving not less than seven days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Engineer for the Owner's convenience and without cause.

§ 5.6 If the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Engineer terminates this Agreement pursuant to Section 5.3, the Owner shall compensate the Engineer for services performed prior to the date of the notice of termination, together with Reimbursable Expenses then due.

§ 5.7 Intentionally Omitted.

§ 5.8 Intentionally Omitted.

§ 5.9 Intentionally Omitted.

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Engineer as set forth below for services described in Section 1.1, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

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§ 6.2 Reimbursable Expenses are in addition to compensation for the Engineer's professional services and include expenses incurred by the Engineer and the Engineer's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence; approved in advance in writing by the Owner including airfare, hotel, taxis, rental cars, parking and mileage;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;

- .6 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .7 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .8 Other similar Project-related expenditures as mutually agreed upon in advance in writing.

CWRU Reimbursable Guidelines	
Category	Sample Charges
Communications – Postage/Delivery	USPS, FedEx, Courier Services
Communications – Telephone	long-distance charges
Consultant Fees	Consultants' fees and reimbursables (travel expenses, copies, etc.) other than those listed in the AIA Document B102-2007, Standard Form of Engineers Services
In-house Reproduction & Printing	xerox copies, in-house drawing copies
Travel & Lodging	airfare, hotel, taxis, rental cars, parking, mileage (Travel Agent fees excluded)
Vendor Reproduction & Printing	ARC / eBlueprints, copy services

PLEASE NOTE

- .1 Reimbursable expenses shall be reasonable and standard rates for expenses. Travel Agent fees excluded. The Owner will not pay for premium travel, lodging or meals. For example lowest available or coach fare not first class, cab fare not limousine, lodging base room rate not to exceed \$150/night.
- .2 Reimbursable mileage shall be expensed in accordance with the current IRS Standard Business Mileage Rate.
- .3 Reimbursable meals shall not include alcoholic beverages. Reimbursement for meals shall be expensed in accordance with the current USGSA per diem rate for Cleveland, Cuyahoga County, Ohio. All original detailed **itemized** receipts must be included.

§ 6.2.1 For Reimbursable Expenses the compensation shall be the expenses incurred by the Engineer and the Engineer's consultants plus an administrative fee of «zero» percent («0» %) of the expenses incurred. CWRU does not pay for additional mark-ups on services. Charges listed on the invoice should match precisely with supporting documentation. Supporting documentation for all reimbursable costs is required for reimbursement, including all original detailed **itemized** receipts. Reimbursable Expenses must comply with the guidelines contained in this Agreement to be eligible for reimbursement by Owner.

§ 6.2.3 **Engineer's Insurance.** If the types and limits of coverage required in Section 1.5 are in addition to the types and limits the Engineer normally maintains, the Owner shall pay the Engineer for the additional costs incurred by the Engineer for the additional coverages as set forth below:
(Insert the additional coverages the Engineer is required to obtain in order to satisfy the requirements set forth in Section 1.5, and for which the Owner shall reimburse the Engineer.)

« \$0.00 »

§ 6.3 Payments to the Engineer

§ 6.3.1 Initial Payments

§ 6.3.1.1 An initial payment of «zero» (\$ «0») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 6.3.2 Progress Payments

§ 6.3.2.1 Unless otherwise agreed, payments for services shall be made within 45 days of presentation of the Engineer's invoice in proper format with all required backup and information. Each request for payment shall comply with the following:

1. invoices shall be in the Owner's standard format
2. every invoice shall contain the Owner's Purchase Order Number
3. fees for services rendered and reimbursable expenses shall be invoiced within 90 days of being incurred. The Owner shall have no obligation to pay fees for services rendered or reimbursable expenses invoiced past 90 days from the close of the month in which services were performed.

Invoices shall be presented no more frequently than monthly and shall be in proportion to services performed. Amounts unpaid «forty-five» («45») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Engineer. (Insert rate of monthly or annual interest agreed upon.)

per annum Prime Rate at Key Bank, NA

§ 6.3.2.2 The Owner shall not withhold amounts from the Engineer's compensation to impose a penalty or liquidated damages on the Engineer, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Engineer agrees or has been found liable for the amounts in a binding dispute resolution proceeding. Notwithstanding the foregoing, nothing in this provision or anything else in this Agreement shall restrict or prohibit the Owner from withholding payments on amounts due to Engineer due to Engineer's failure to perform its Services in accordance with this Agreement.

§ 6.3.2.3 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 6.3.2.4 Within ten (10) days of the Engineer's receipt of any payment from the Owner, the Engineer shall pay all amounts due and payable to the Engineer's consultants relative to such payment received from the Owner. The Engineer shall require each consultant to pay its respective sub-consultants in a similar manner. Upon the Owner's request, the Engineer shall provide the Owner with evidence satisfactory to the Owner.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the State of Ohio, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.

§ 7.2 Except as separately defined herein, terms in this Agreement shall have the same meaning as those in AIA Document A201™-2007, General Conditions of the Contract for Construction as modified by the Owner and attached hereto as Exhibit A.

§ 7.3 The Owner and Engineer, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Engineer shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Engineer by the Owner prior to the assignment. The Engineer shall execute any and all consents reasonably required to facilitate such assignment.

§ 7.4 If the Owner and Engineer intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions which protocols shall be subject to Owner's approval.

§ 7.4.1 Intentionally Omitted.

§ 7.5 If the Owner requests the Engineer to execute certificates, the proposed language of such certificates shall be submitted to the Engineer for review at least 14 days prior to the requested dates of execution. The Engineer shall not be required to execute certificates that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 7.6 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Engineer.

§ 7.7 Unless otherwise required in this Agreement, the Engineer shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 7.8 The Engineer shall have the right to include photographic or artistic representations of the design of the Project among the Engineer's promotional and professional materials. The Engineer shall be given reasonable access to the completed Project to make such representations. However, the Engineer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Engineer in writing of the specific information considered by the Owner to be confidential or proprietary. This Section 7.8 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 5.4.

§ 7.9 If the Engineer or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 7.9.1. This Section 7.9 shall survive the termination of this Agreement.

§ 7.9.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 7.9.

§ 7.10 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

« Engineer shall comply with the terms and conditions of this Agreement, including all relevant Exhibits, and require Engineer's consultants to comply as well. »

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement, and the documents incorporated by reference below and herein, represent the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Engineer.

§ 9.2 This Agreement is comprised of the following documents identified below each of which is incorporated by reference herein:

- .1 AIA Document B102™-2017, Standard Form of Agreement Between Owner and Engineer
- .2 AIA Document B201-2007, Standard Form of Engineer's Services, as modified by the Owner.
- .3 Exhibits:

Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement.)

«**Exhibit A – AIA Document A201-2007, General Conditions as modified by the Owner**
pages 1 thru 52

Exhibit B – Proposal, dated _____, pages 1 thru _____. Such attachment is only for the purpose of describing the scope of services and no other terms or conditions of such Proposal are incorporated by such reference. In the event of any conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall control.

Exhibit C – CWRU Standard Auto CAD Documentation, dated January 2014, pages 1 thru 9

Exhibit D – CWRU Tobacco-Free Policy, dated 7/7/17, page 1 of 1»

- .4 Other documents:

(List other documents, including the Engineer's scope of services document, hereby incorporated into the Agreement.)

« »

This Agreement entered into as of the day and year first written above.

CHANGE NAME ACCORDINGLY

OWNER (Signature)

«Steven M. Campbell, Vice President»
«Campus Planning and Facilities Management»
(Printed name and title)

ENGINEER (Signature)

« »« »
(Printed name, title, and license number, if required)

And by:

John F. Sideras, Sr. Vice President for Finance & CFO
Office of Finance

