

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~~ year.) [Revised October 2018, October 2019, February 2022]

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

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

and the Architect:
(Name, legal status, address and other information)

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

The Owner and Architect agree as follows.

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 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

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

As defined in AIA Document B201-2017 Standard Form of Architect's Services as modified by the Owner.

§ 1.1.1 The Architect 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 Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. ~~circumstances.~~ circumstances for similar projects. The Architect 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 Architect identifies the following representative authorized to act on behalf of the Architect with respect to the Project.

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

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

§ 1.5 The Architect shall maintain the following insurance ~~until termination of this Agreement.~~ until termination of this Agreement. ~~If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 6.2.3 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 ~~Commercial General Liability with policy limits of not less than \$ () for each occurrence and \$ () in the aggregate for bodily injury and property damage.~~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 ~~Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than \$ () per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~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 Architect 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 at statutory limits to the full extent as required by applicable laws.~~

§ 1.5.5 ~~Employers' Liability with policy limits not less than \$ () each accident, \$ () each employee, and \$ () 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 covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than \$ () per claim and \$ () in the aggregate.~~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 ~~**Additional Insured Obligations.** If requested by the Owner, to the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect'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.~~Umbrella excess liability in an amount of not less than \$1,000,000.00.

§ 1.5.8 ~~The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.5.~~**Additional Insured Obligations.** If requested by the Owner, to the fullest extent permitted by law, the Architect 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 Architect'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 Architect 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 Architect to the Owner that may exist under any other provision of this Agreement or by statute or otherwise, the Architect 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 Architect;
- (b) any negligent or wrongful act of the Architect, its agents, servants, employees, officers or contractors;
- or
- (c) any claim made by employees of the Architect.

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, ~~including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.~~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 Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
(List name, address, and other contact information.)



§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect'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 Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect 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 Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. 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 Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect 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 Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights.~~ hereby assigns to the Owner all of the Architect'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 Architect, 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 Architect. The Architect 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 Architect 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 Architect's name and seal shall be removed, and the Architect 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 Architect and the Architect's consultants.

§ 3.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the purposes of evaluating, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 5 and Article 6. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 5.4, the license granted in this Section 3.3 shall terminate. Owner hereby grants to the Architect 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 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1. The terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.4. Intentionally Omitted.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. 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 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1. Intentionally Omitted.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect 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 A201-2017, General Conditions of the Contract for Construction-Construction, as modified by Owner, attached hereto as Exhibit A. The Owner or the Architect, 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 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential

damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.
Intentionally Omitted.

§ 4.2 Dispute Mediation – Waived Mediation

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall Notwithstanding anything to the contrary contained in this Agreement, claims shall not be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding formal dispute resolution.

§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Intentionally Omitted.

§ 4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Intentionally Omitted.

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- Arbitration pursuant to Section 4.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction. 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 Architect:

§ 4.2.14.1 The right to institute legal action against the Architect 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 Architect, 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 Architect 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 Arbitration Intentionally Omitted.

§ 4.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by

the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. Intentionally Omitted.

§ 4.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question. Intentionally Omitted.

§ 4.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. Intentionally Omitted.

§ 4.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. 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 Architect 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 Architect 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 Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect 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 Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.2 If the Owner suspends the ~~Project~~, Project for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect'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 Architect, the Architect 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 Architect 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 Architect terminates this Agreement pursuant to Section 5.3, the Owner shall compensate the Architect for services performed prior to termination, ~~Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.~~ the date of the notice of termination, together with Reimbursable Expenses then due.

§ 5.7 In addition to any amounts paid under Section 5.6, if the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 — Termination Fee:

.2 — Licensing Fee, if the Owner intends to continue using the Architect's Instruments of Service:

Intentionally Omitted.

§ 5.8 Except as otherwise expressly provided herein, this Agreement shall terminate
(Check the appropriate box.)

— One year from the date of commencement of the Architect's services

— One year from the date of Substantial Completion

— Other
(Insert another termination date or refer to a termination provision in an attached document or scope of service.)

If the Owner and Architect do not select a termination date, this Agreement shall terminate one year from the date of commencement of the Architect's services. Intentionally Omitted.

§ 5.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 5.7. Intentionally Omitted.

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect 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.)

§ 6.2 ~~Compensation for Reimbursable Expenses~~ Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect'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
<u>Communications – Postage/Delivery</u>	<u>USPS, FedEx, Courier Services</u>
<u>Communications – Telephone</u>	<u>long-distance charges</u>
<u>Consultant Fees</u>	<u>Consultants’ fees and reimbursables (travel expenses, copies, etc.,) other than those listed in the AIA Document B102-2007, Standard Form of Architects Services</u>
<u>In-house Reproduction & Printing</u>	<u>xerox copies, in-house drawing copies</u>
<u>Travel & Lodging</u>	<u>airfare, hotel, taxis, rental cars, parking, mileage (Travel Agent fees excluded)</u>
<u>Vendor Reproduction & Printing</u>	<u>ARC / eBlueprints, copy services</u>

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 Reimbursable Expenses are in addition to compensation set forth in Section 6.1 and include For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; plus an administrative fee of zero percent (0 %) of the expenses incurred.
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner’s prior written approval, the Architect’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect’s consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures. 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.

§ 6.2.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus █ percent (█ %) of the expenses incurred.

§ 6.2.3 Architect's Insurance. If the types and limits of coverage required in Section 1.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 1.5, and for which the Owner shall reimburse the Architect.)

\$0.00

§ 6.3 Payments to the Architect

§ 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 ~~monthly in proportion to services performed.~~ Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (within 45 days of presentation of the Architect'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 Architect.

(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 Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect 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 Architect due to Architect'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 Architect's receipt of any payment from the Owner, the Architect shall pay all amounts due and payable to the Architect's consultants relative to such payment received from the Owner. The Architect shall require each consultant to pay its respective sub-consultants in a similar manner. Upon the Owner's request, the Architect 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 ~~place where the Project is located, State of Ohio,~~ 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™-2017, ~~General Conditions of the Contract for Construction.~~ A201™-2017, General Conditions of the Contract for Construction as modified by the Owner and attached hereto as Exhibit A.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect 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 Architect by the Owner prior to the assignment. The Architect shall execute any and all consents reasonably required to facilitate such assignment.

~~§ 7.4 The parties shall agree upon protocols governing the transmission and use of~~ If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~ form, they shall endeavor to establish necessary protocols governing such transmissions which protocols shall be subject to Owner's approval.

~~§ 7.4.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~ Intentionally Omitted.

§ 7.5 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. ~~If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution.~~ The Architect shall not be required to execute certificates or consents 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 Architect.

§ 7.7 Unless otherwise required in this Agreement, the Architect 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 Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. ~~The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~ 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 Architect 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.)

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

ARTICLE 9 SCOPE OF THE AGREEMENT

~~§ 9.1 This Agreement represents Agreement, and the documents incorporated by reference below and herein, represent the entire and integrated agreement between the Owner and the Architect 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 Architect.~~

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

- ~~.1 AIA Document B102™-2017, Standard Form of Agreement Between Owner and Architect~~
- ~~.2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: B201-2017, Standard Form of Architect's Services, as modified by the Owner.~~
- ~~.3 Exhibits:~~

~~(Insert the date of the E203-2013 incorporated into this Agreement.) Other Exhibits incorporated into this Agreement:~~

- ~~.3 Exhibits:~~

~~(Check the appropriate box for any (Clearly identify any other exhibits incorporated into this Agreement.)~~

~~AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below: Exhibit A – AIA Document A201-2017, General Conditions as modified by the Owner pages 1 thru 54~~

~~(Insert the date of the E204-2017 incorporated into this Agreement.)~~

~~Other Exhibits incorporated into this Agreement: 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.~~

~~(Clearly identify any other exhibits incorporated into this Agreement.) 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 Architect's scope of services document, hereby incorporated into the Agreement.)~~

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

OWNER *(Signature)*

Peter M. Poulos, Vice President & General Counsel
Office of General Counsel

(Printed name and title)

ARCHITECT *(Signature)*

[Redacted]
(Printed name, title, and license number, if required)

And by:

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

[Redacted]

