

# State of Rhode Island Version of AIA® Document B102™ – 2017

## *Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services - Owner and DESIGN AGENT Edition*



# COMPARATIVE

NOTE: This comparative version of AIA Document B102–2017 shows additions and deletions to standard AIA content by the State of Rhode Island. Additions to AIA Document B102–2017 are underlined (addition); deletions are stricken (~~deletion~~). Publication of this modified version of AIA Document B102–2017 does not imply the American Institute of Architects' endorsement of any modification by the State of Rhode Island.

# State of Rhode Island Version of AIA Document B102™ – 2017

## **Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services - Owner and DESIGN AGENT Edition**

AGREEMENT made as of the      day of      in the year  
(In words, indicate day, month and year.)

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

State of Rhode Island, acting by and through the Department of  
Administration, Division of Purchases, on behalf of the User Agency  
One Capitol Hill, Second Floor  
Providence, Rhode Island 02908-5855  
401-578-8100 (telephone); 401-574-8387 (facsimile)  
[www.ridop.ri.gov](http://www.ridop.ri.gov)

~~and the Architect:~~  
on behalf of the User Agency:  
(Name, legal status, address, telephone and facsimile numbers, and website)

**THIS COMPARATIVE DOCUMENT IS FOR REFERENCE PURPOSES  
ONLY AND IS NOT FOR USE.**

and the Design Agent:  
(Name, legal status, address, telephone and facsimile numbers, and website 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.)



This comparative version of AIA Document B102–2017 is modified by the State of Rhode Island. Publication of this version of AIA Document B102 does not imply the American Institute of Architects' endorsement of any modification by the State of Rhode Island.

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

The Owner and ~~Architect~~Design Agent agree as follows.

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**ARTICLE 1 ARCHITECT'S DESIGN AGENT'S RESPONSIBILITIES**

§ 1.1 The ~~Architect~~Design Agent shall provide: (i) the services set forth in the Solicitation issued by the Owner, if any; and (ii) the following professional services:  
(Describe the scope of the ~~Architect's~~Design Agent's services or identify an exhibit or scope of services document setting forth the ~~Architect's~~Design Agent's services and incorporated into this document in Section 9.2.)

§ 1.1.1 The ~~Architect~~Design Agent represents that it is properly licensed in the ~~jurisdiction where the Project is located~~State of Rhode Island to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals. No part of the professional services shall be performed by subconsultants or subcontractors without the Owner's prior written consent.

§ 1.2 The ~~Architect~~Design Agent shall perform its services consistent with the professional skill and care ordinarily provided by ~~architects~~Design Agents practicing in the same or similar locality under the same or similar circumstances. The ~~Architect~~Design Agent shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.2.1 The Design Agent shall manage the Design Agent's services, consult with the Owner and the User Agency, research applicable design criteria, communicate with members of the Project team, and report progress to the Owner and the User Agency on a regular basis and as requested from time to time by the Owner and the User Agency. The Design Agent shall facilitate, attend, and supervise all Project meetings and record and distribute all meeting minutes.

§ 1.2.2 The Design Agent shall: (i) review with the Owner and the User Agency all changes in the Work proposed by the Contractor; and (ii) advise the Owner and the User Agency regarding their scope, cost, and adjustment in time.

§ 1.3 The ~~Architect~~Design Agent identifies the following representative authorized to act on behalf of the ~~Architect~~Design Agent with respect to the Project.  
(List name, title, address, and other contact information for the preferred methods of contact.)

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

§ 1.5 The ~~Architect~~Design Agent shall maintain the following types and limits of insurance 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., unless different amounts have been specified in the Solicitation:~~

§ 1.5.1 Commercial General Liability (including broad-form contractual liability and completed operations) with policy limits of not less than ~~—(\$—)\$1,000,000~~ for each occurrence and ~~—(\$—) in the aggregate for projects for~~ bodily injury and property damage.

§ 1.5.2 Commercial Automobile Liability covering vehicles owned, hired, and non-owned vehicles used, by the ~~Architect~~Design Agent with policy limits of not less than ~~—(\$—) per accident \$1,000,000 combined single limit and aggregate~~ 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.

§ 1.5.3 The ~~Architect~~Design Agent may achieve the required limits and coverage for Commercial General Liability and Commercial 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.

§ 1.5.5 ~~Deleted. Employers' Liability with policy limits not less than —(\$—) each accident, —(\$—) each employee, and (\$—) policy limit.~~

§ 1.5.6 Professional Liability covering bodily injury and property damage due to the Design Agent's negligent acts, errors and omissions in the performance of professional services with policy limits of not less than ~~—(\$—) per claim and —(\$—) in the aggregate \$2,000,000 per claim and in the aggregate, maintained during the term of this Agreement and for a period of 5 years after the Final Completion of any and all of the Design Agent's Basic and Additional Services under this Agreement. Any retroactive date or prior acts exclusions to which such coverage is subject shall predate the date on which services hereunder are commenced and the date of this Agreement.~~

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

§ 1.5.8 ~~The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.5. The Design Agent shall provide the Owner and the User Agency, on an annual basis for the duration of this Agreement and from time to time upon request, with a copy of a policy endorsement and certificates of insurance that name the State of Rhode Island and the User Agency as "certificate holders" and as "additional insureds" and that otherwise evidences compliance with the requirements of this Section 2.5. The certificate of insurance must state that 30 working days' advance notice of cancellation, nonrenewal, or material change (together with a copy of the materially changed policy or endorsement) in coverage will be sent to: Rhode Island Department of Administration, Division of Purchases, One Capitol Hill, Providence, Rhode Island 02908-5855, fax # (401) 574-8387, and must reference the Project and this Agreement. Material changes that are not acceptable to the Owner may result in termination by the Owner pursuant to Section 9.4. All policies, endorsements, and certificates of insurance must include the following language: Coverage is primary and noncontributory. Subrogation is waived for the additional insured.~~

## 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.~~

§ 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 Design Agent's~~ submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the ~~Architect's Design Agent's~~ services. *(List name, title address, and other contact information for the preferred methods of contact.)*

~~§ 2.2.1 The User Agency identifies the following representative authorized to act on the User Agency's behalf with respect to the Project. The User Agency shall render decisions and approve the Design Agent's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Design Agent's services. (List name, title address, and other contact information for the preferred methods of contact.)~~

§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the ~~Architect Design Agent~~. Upon the ~~Architect's Design Agent'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 Design Agent~~ in this Agreement, or authorize the ~~Architect Design Agent~~ to furnish them as an Additional Service, when the ~~Architect Design Agent~~ 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 If necessary for the Design Agent to perform its services under this Agreement, 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 Design Agent~~ if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the ~~Architect's Design Agent's~~ Instruments of Service.

§ 2.6 ~~Deleted. 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 Design Agent~~ and the Owner warrant that in transmitting 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 Design Agent~~ and the ~~Architect's Design Agent'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. 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 Design Agent~~ and the ~~Architect's Design Agent's~~ consultants.



**§ 3.3** ~~The Architect~~ Upon execution of this Agreement, the Design Agent grants to the Owner a nonexclusive perpetual license to use the ~~Architect's~~ Design Agent's Instruments of Service, including electronic or digital documents, solely and exclusively for the purposes of evaluating, constructing, using, maintaining, altering and adding to the Project, and shall have and retain all rights to use and reproduce them for the production and maintenance of the Work described therein, 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~~ Design Agent shall obtain similar nonexclusive licenses from the ~~Architect's~~ Design Agent's consultants consistent with this Agreement. These Instruments of Service shall be conveyed to the Owner in their original operative, editable, electronic form in order to allow the Owner's integration of the data into the Owner's or User Agency's facilities management database. 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~~ Design Agent rightfully terminates this Agreement for cause as provided in Section 5.4, the license granted in this Section 3.3 shall terminate.

**§ 3.3.1** Upon full payment of all sums due the Design Agent under this Agreement, all of the original Drawings, Specifications, and electronic data prepared by the Design Agent for the Project shall, without further action by the Design Agent, become the property of the Owner. In the event the Owner uses or others use the Instruments of Service without retaining, directly or indirectly, the authors of the Instruments of Service, the Owner releases the ~~Architect~~ Design Agent and ~~Architect's~~ Design Agent'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.

**§ 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~~ Design Agent. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the ~~Architect~~ Design Agent and the ~~Architect's~~ Design Agent's consultants.

**§ 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~~ Design Agent 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. The Design Agent waives all claims and causes of action not commenced in accordance with this Section 4.1.1.

**§ 4.1.2** To the extent damages are covered by property insurance, the Owner and ~~Architect~~ Design Agent 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. The Owner or the Architect, as appropriate, as modified by the Owner. The Design Agent 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~~ Design Agent 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 the termination of this Agreement, except as specifically provided in Section 5.7.

**§ 4.1.4** To the fullest extent permitted by law, the Design Agent shall indemnify and hold harmless the Owner, the User Agency, and the State of Rhode Island in accordance with State of Rhode Island General Conditions of Purchase Regulation, 220-RICR-30-00-13.21.

§ 4.1.4.1 Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section 4.1.4 includes, without limitation, all judgments, liabilities, damages, losses, claims, demands, and actions on account of bodily injury, death, or property loss to a person or entity indemnified hereunder or any other persons or entities, whether based upon statutory (including, without limitation, workers compensation), contractual, tort, or other liability of any person or entity so indemnified.

§ 4.1.4.2 The remedies set forth herein shall not deprive any person indemnified hereunder of any other indemnity action, right, or remedy otherwise available to any such person or entity at common law or otherwise.

§ 4.1.4.3 The Design Agent will include the indemnity set forth in this Section 4.1.4 without modification, in each Subcontract with any Subconsultant or Subcontractor.

§ 4.1.4.4 Notwithstanding any other language in the Contract Documents to the contrary, the indemnity hereunder shall survive Final Completion of the Work and final payment under this Agreement and shall survive any termination of this Agreement.

§ 4.1.5 The Owner shall have the right to deduct from any payments due to the Design Agent the amount of any unpaid obligations owed to the State of Rhode Island by the Design Agent, including without limitation, any and all unpaid taxes, the amount of any claim against the Design Agent arising out of this Agreement, or any amount on account of any other reason permitted by applicable law.

## **§ 4.2 Mediation Dispute Resolution**

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall 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 dispute resolution. Claims shall be referred to the Initial Decision Maker for initial decision. The Purchasing Agent appointed pursuant to the provisions of the "State Purchases Act," R.I. Gen. Laws § 37-2-1 et seq., will serve as the Initial Decision Maker in accordance with the provisions of the State Purchases Act, State of Rhode Island Procurement Regulations, and this Section 4.2.1. An initial decision shall be required as a condition precedent to binding dispute resolution pursuant to Section 4.3.1 of any Claim arising prior to the date final payment is due.

§ 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. For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 4.2.1, and prior to the implementation of the binding dispute resolution procedures set forth in Section 4.3.1, the Design Agent shall have the option to pursue mediation, exercisable by written notice to the Owner within 30 calendar days of an Initial Decision. In the event of the exercise of such option by the Design Agent, the Owner and the Design Agent shall attempt to select a mediator, and in the event that the Owner and the Design Agent cannot agree on a mediator, either party may apply in writing to the Presiding Justice of the Providence County Superior Court, with a copy to the other, with a request for the court to appoint a mediator, and the costs of the mediator shall be borne equally by both parties.

§ 4.2.3 Deleted. 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.

§ 4.2.4 Deleted. 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.

#### **§ 4.3 Arbitration Binding Dispute Resolution**

**§ 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. For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 4.2.1, or mediation at the option of the Design Agent pursuant to Section 4.2.2, the method of binding dispute resolution shall be determined in accordance with the provisions of the “Public Works Arbitration Act,” R.I. Gen. Laws §§ 37-16-1 et seq.

**§ 4.3.1.1 Deleted.** 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.

**§ 4.3.2 Deleted.** 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.

**§ 4.3.3 Deleted.** 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.

#### **§ 4.3.4 Consolidation or Joinder Deleted.**

**§ 4.3.4.1 Deleted.** 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 Deleted.** 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 Deleted.** 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 ArchitectDesign Agent in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect'sDesign Agent's option, cause for suspension of performance of services under this Agreement. If the ArchitectDesign Agent elects to suspend services, the ArchitectDesign Agent shall give seven7 working days' written notice to the Owner before suspending services. In the event of a suspension of services, the ArchitectDesign Agent 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 ArchitectDesign Agent all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect'sDesign Agent's services. The Architect'sDesign Agent's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.2 The Owner may suspend the Project as provided in this Agreement, the State Purchases Act, R.I. Gen. Laws §§ 37-2-1 et seq., the State of Rhode Island Procurement Regulations, or other applicable law. If the Owner suspends the Project, the ArchitectDesign Agent shall be compensated for services performed prior to notice of such suspension. WhenIf and 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'sDesign Agent'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 working days for reasons other than the fault of the ArchitectDesign Agent, the ArchitectDesign Agent may terminate this Agreement by giving not less than seven7 working days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven7 working 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 ArchitectDesign Agent for the Owner's convenience and without cause. The Owner may also terminate this Agreement: (i) in the event of the unavailability of appropriated funds; (ii) in the absence of a determination of continued need; or (iii) as otherwise provided in the State Purchases Act, R.I. Gen. Laws §§ 37-2-1 et seq., the State of Rhode Island Procurement Regulations, or other applicable law.

§ 5.6 If the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the ArchitectDesign Agent terminates this Agreement pursuant to Section 5.3, the Owner shall compensate the ArchitectDesign Agent for services performed prior to termination, and Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 5.7 Deleted. 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:

§ 5.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Final Completion.

*(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.

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

## ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect Design Agent 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

§ 6.2.1 Reimbursable Expenses are in addition to compensation set forth in Section 6.1 and include expenses incurred by the Architect Design Agent and the Architect's Design Agent's consultants directly related to the Project, as follows:

1. ~~Transportation and authorized out-of-town travel and subsistence; authorized transportation and authorized out-of-town travel and subsistence, except for travel to and from the Design Agent's offices or the Consultant's offices, to meet with the Owner, the User Agency, or to visit the Project site; travel reimbursable expenses are subject to the limitations established from time to time for state employees by the Rhode Island Department of Administration Office of Accounts and Control;~~
2. ~~Deleted.~~ Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
3. ~~Permitting~~ permitting and other fees required by authorities having jurisdiction over the Project;
4. ~~Printing~~ authorized additional printing, reproductions, and plots, provided to the Owner and/or Contractor(s) for review, bidding, and construction administration and standard form documents provided to the Owner and/or Contractor;
5. ~~Postage~~ authorized postage, handling and delivery;
6. ~~Expense~~ expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
7. ~~Renderings~~ renderings, physical models, mock-ups, professional photography, and presentation materials in excess of those required by the Solicitation, if any and requested in writing by the Owner ~~or required~~ for the Project;
8. ~~Deleted.~~ 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~~ all taxes levied on professional services and on reimbursable expenses;
10. ~~Site~~ authorized site office expenses;
11. ~~Registration~~ 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~~ other similar authorized Project-related expenditures.

§ 6.2.2 For Reimbursable Expenses the compensation shall be the exact expenses incurred by the Architect Design Agent and the Architect's Design Agent's consultants ~~plus~~ percent (—%) of the expenses incurred.

**§ 6.2.3 Architect's Insurance. Deleted.** 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.)*

## § 6.3 Payments to the ~~Architect~~Design Agent

### § 6.3.1 Initial Payments

**§ 6.3.1.1** ~~An~~No initial payment of ~~(\$—)~~ 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—(—) 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 not later than the 30<sup>th</sup> working day following written approval by the Owner of the Design Agent's invoice. No interest shall be due or payable on account of any payment due or unpaid except in accordance with the provisions of "Prompt Payment by Department of Administration," R.I. Gen. Laws §§ 42-11.1-1 et seq.~~

*(Insert rate of monthly or annual interest agreed upon.)*

%

**§ 6.3.2.2** The Owner shall not withhold amounts from the ~~Architect's~~Design Agent's compensation to impose a penalty or liquidated damages on the ~~Architect~~Design Agent, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the ~~Architect~~Design Agent agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

**§ 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 upon reasonable notice.~~

**§ 6.3.2.4** Within 10 working days of receipt of any progress payment from the Owner, the Design Agent must pay its Subconsultants and Subcontractors the full amount included for each such Subconsultant and Subcontractor reflected in the Design Agent's invoice for payment.

**§ 6.3.2.5** Retainage in the amount of five (5%) percent of any amount otherwise due the Design Agent hereunder, excluding reimbursable expenses, shall be retained until the close-out of the Project.

**§ 6.3.2.5** The Owner may, at its sole option, issue joint checks to the Design Agent and to any Subconsultant or Subcontractor or material or equipment suppliers to whom the Design Agent failed to make payment for Work properly performed or material and equipment suitably delivered.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

**§ 7.1** This Agreement shall be governed by the law of the place where the Project is located, 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. This Agreement is subject to, and governed by, the laws of the State of Rhode Island, including all procurement statutes and regulations (available at [www.ridop.ri.gov](http://www.ridop.ri.gov)), and applicable federal and local law, all of which are incorporated into this Agreement by this reference. In the event of any conflict between this Agreement, or among this Agreement and the Contract Documents, or any Contract Documents and any provision of the State of Rhode Island Procurement Regulations and/or any other provision of the Rhode Island General Laws, the State of Rhode Island Procurement Regulations and the Rhode Island General Laws shall control. The Design Agent hereby consents to and confers exclusive personal jurisdiction upon the courts of the state of Rhode Island and of the federal government sitting within this state. In the event of any conflicts or discrepancies among the Contract Documents, the provisions of the Contract Documents will be interpreted in the order of priority set forth in in State of Rhode Island General Conditions of Purchase Regulation, 220-RICR-30-00-13.4(B). This Agreement is considered part

~~of the Purchase Order and therefore is ranked in the Order of Precedence with the Purchase Order, 220-RICR-30-00-13.4(B)(4).~~

§ 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, as modified by the Owner.

§ 7.3 The Owner and ArchitectDesign Agent, 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; provided, however, that the Design Agent may not assign its rights nor delegate its responsibilities under this Agreement without the Owner's prior written consent.~~

§ 7.4 The parties shall agree upon protocols governing the transmission and use of 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.~~

§ 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.

§ 7.5 If the Owner requests the ArchitectDesign Agent to execute certificates, the proposed language of such certificates shall be submitted to the ArchitectDesign Agent for review ~~at least 14 days~~ a reasonable time 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.~~

§ 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. The User Agency is a disclosed third-party beneficiary of this Agreement and shall have all of the rights and benefits to which such a party is entitled hereunder. Nothing contained in this Agreement shall create any other contractual relationship with, or a cause of action in favor of, a third party against the Owner, User Agency, or Design Agent.~~

§ 7.7 Unless otherwise required in this Agreement, the ArchitectDesign Agent 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 ArchitectDesign Agent shall have the right to include photographic or artistic representations of the design of the Project among the Architect'sDesign Agent's promotional and professional materials. The ArchitectDesign Agent shall be given reasonable access to the completed Project to make such representations. However, the Architect'sDesign Agent'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 ArchitectDesign Agent 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 ArchitectDesign Agent 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.

**§ 7.11** ~~The Owner is the State of Rhode Island, acting by and through its Department of Administration Division of Purchases, and therefore, pursuant to the provisions of R.I. Gen. Laws § 34-28-31, liens against the Project are not enforceable.~~

#### **ARTICLE 8 SPECIAL TERMS AND CONDITIONS Deleted.**

Special terms and conditions that modify this Agreement are as follows:  
(Include other terms and conditions applicable to this Agreement.)

#### **ARTICLE 9 SCOPE OF THE AGREEMENT**

**§ 9.1** This Agreement represents the entire and integrated agreement between the Owner and the ArchitectDesign Agent 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 ArchitectDesign Agent.

**§ 9.2** This Agreement is comprised of the following documents identified below:

- .1 The Purchase Order issued by the Owner
- .2 Solicitation # \_\_\_\_\_ issued by the Owner, including without limitation, the Invitation to Bid, the Instructions to Bidders, the Specifications and Drawings, any Addenda, and the Bid Checklist (with applicable forms)
- .13 AIA Document B102™–2017, Standard Form Agreement Between Owner and ArchitectDesign Agent, as modified by the Owner.
- .24 AIA Document A201®–2017, General Conditions of the Contract for Construction, as modified by the Owner, if any.  
E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203–2013 incorporated into this Agreement.)
- .35 Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement.)
  - ☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204–2017 incorporated into this Agreement.)
  - ☐ Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement.)
- Cost Proposal Exhibit
- .4 Other documents:  
(List other documents, including the Architect's Design Agent's scope of services document, hereby incorporated into the Agreement.)

The Design Agent's Response to the Solicitation, including without limitation, the Bidder Certification Cover Form, the Technical Proposal, and the Cost Proposal.



THIS COMPARATIVE DOCUMENT IS FOR REFERENCE PURPOSES ONLY AND IS NOT FOR USE.

The person signing for the Design Agent represents that he or she has been duly authorized to execute this Agreement on behalf of the Design Agent.

This Agreement entered into as of the day and year first written above; provided, however, that this Agreement shall not become a valid, binding, and enforceable contract unless and until the Owner shall have issued a Purchase Order.

**THE STATE OF RHODE ISLAND, acting by  
and through its Department of Administration,  
Division of Purchases**

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**ARCHITECTDESIGN AGENT** (Signature)

\_\_\_\_\_  
(Printed name, title, and license number, if required)

Comparative