

 **AIA**[®] Document A195[™] – 2008

Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery

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

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

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

for the following Project:
(Name, location and detailed description)

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

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

This document is not intended for use in competitive bidding.

AIA Document A295[™]–2008, General Conditions of the Agreement for Integrated Project Delivery, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Contractor agree as follows.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 THE WORK OF THIS CONTRACT

§ 1.1 The Contractor shall fully execute the Work described in the GMP Documents, except as specifically indicated in the GMP Documents to be the responsibility of others. The GMP Documents are defined in Article 1 of AIA Document A295™–2008, General Conditions Document of the Contract for Integrated Project Delivery, which is incorporated herein by reference.

§ 1.2 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A295–2008.

§ 1.3 ADDITIONAL SERVICES PRIOR TO THE ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 1.3.1 Prior to the establishment of the Guaranteed Maximum Price, the Contractor may provide Additional Services after execution of this Agreement without invalidating this Agreement. Except for services required due to the fault of the Contractor, any Services provided in accordance with this Section 1.3 shall entitle the Contractor to compensation pursuant to Section 4.1.2.

§ 1.3.2 Upon recognizing the need to perform the following Additional Services prior to the establishment of the Guaranteed Maximum Price, the Contractor shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Contractor shall not proceed to provide the following services until the Contractor receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information set forth in A295–2008, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or Budget for the Work, or procurement method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or sustainability certification programs;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner;
- .5 Preparing digital data, in a format other than previously agreed to, for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation for, and attendance at, a public presentation, meeting or hearing other than those required under A295–2008; or

- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Contractor is party thereto.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner's responsibilities are as set forth in the accompanying A295–2008.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Contractor 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. If the Owner and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 The Contractor and the Contractor's Subcontractors 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 Contractor and the Contractor's Subcontractors.

§ 3.3 Upon execution of this Agreement, the Contractor grants to the Owner a nonexclusive license to use the Contractor's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Contractor shall obtain similar nonexclusive licenses from the Contractor's Subcontractors consistent with this Agreement. The license granted under this section permits the Owner to authorize the Architect and the Architect's consultants, 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 for the Project. If the Contractor rightfully terminates this Agreement for cause as provided in Section 7.1.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Contractor and Subcontractor(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 Contractor and its Subcontractors 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 Article 7.

§ 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 Contractor. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Contractor and Contractor's Subcontractors and consultants.

ARTICLE 4 COMPENSATION

§ 4.1 SERVICES PROVIDED PRIOR TO ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 4.1.1 For the Contractor's performance of services set forth in A295–2008 prior to the establishment of the Guaranteed Maximum Price (Pre-GMP Services), the Owner shall pay the Contractor as follows:

(Insert amount of, or basis for, compensation for Pre-GMP Services or indicate the exhibit in which compensation is provided for.)

§ 4.1.2 For Additional Services that may arise prior to the establishment of the Guaranteed Maximum Price, including those under Section 1.3, the Owner shall compensate the Contractor as follows:

(Insert amount of, or basis for, compensation.)

§ 4.1.3 Compensation for Additional Services of the Contractor's Subcontractors when not included in Section 4.1.2, shall be the amount invoiced to the Contractor plus (), or as otherwise stated below:

§ 4.1.4 The hourly billing rates for services of the Contractor and the Contractor's Subcontractors, if any, are set forth below. The rates shall be adjusted in accordance with the Contractor's and Contractor's Subcontractors' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
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§ 4.1.5 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 4.1.5.1 Reimbursable Expenses are in addition to compensation for the Contractor's Pre-GMP Services and include expenses incurred by the Contractor and the Contractor's Subcontractors 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 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 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses;
- .9 Site office expenses; and
- .10 Other similar Project-related expenditures incurred in performance of Pre-GMP Services.

§ 4.1.5.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Contractor and the Contractor's Subcontractors plus an administrative fee of percent (%) of the expenses incurred.

§ 4.2 SERVICES PROVIDED AFTER ESTABLISHMENT OF THE GMP

§ 4.2.1 For the Contractor's performance of the Work after establishment of the Guaranteed Maximum Price, the Owner shall pay to the Contractor the Contract Sum in current funds. The Contract Sum consists of the Contractor's Fee plus the Cost of the Work as that term is defined in the A195-2008 Guaranteed Maximum Price Amendment to the Standard Form Agreement Between the Owner and Contractor for Integrated Project Delivery (GMP Amendment), the form of which is attached as Exhibit A.

§ 4.2.1.1 Contractor's Fee shall be determined as follows:
(State a lump sum, percentage of the Cost of the Work or other provision for determining the Contractor's Fee.)

§ 4.2.2 Following the Owner and Contractor's acceptance of a Guaranteed Maximum Price pursuant to Section 7.10 of A295-2008, the Owner and Contractor shall execute the GMP Amendment amending this Agreement and setting forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Upon the execution of the GMP Amendment, the Contractor guarantees that the Contract Sum shall not to exceed the Guaranteed Maximum Price, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Contractor shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 4.3 COMPENSATION FOR USE OF CONTRACTOR'S INSTRUMENTS OF SERVICE

If the Owner terminates the Contractor for its convenience under Section 7.1.5 or Section 7.2.4, or the Contractor terminates this Agreement under Section 7.1.3 or Section 7.2.1, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Contractor's Instruments of Service solely for purposes of the Project as follows:

ARTICLE 5 PAYMENTS

§ 5.1 PAYMENTS FOR PRE-GMP SERVICES

§ 5.1.1 An initial payment of _____ Dollars (\$ _____) 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 for Pre-GMP Services.

§ 5.1.2 Unless otherwise agreed, payments for Pre-GMP Services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Contractor'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 Contractor.
(Insert rate of monthly or annual interest agreed upon.)

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

§ 5.2 PROGRESS PAYMENTS FOR CONSTRUCTION SERVICES AFTER GUARANTEED MAXIMUM PRICE ESTABLISHED

§ 5.2.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the GMP Documents.

§ 5.2.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.2.3 Provided that an Application for Payment is received by the Architect not later than the _____ day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the _____ day of the _____ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than (_____) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.2.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.2.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the GMP Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.2.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.2.7 The amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 9.21.3.9 of AIA Document A295-2008;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of _____ percent (_____ %). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 4.2.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of _____ percent (_____ %) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.2.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.23.5 of AIA Document A295-2008.

§ 5.2.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.2.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 5.2.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.3 FINAL PAYMENT

§ 5.3.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 9.25.2.2 of AIA Document A295-2008, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 5.3.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 5.3.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.23.5.1 of the AIA Document A295-2008. The time periods stated in this Section 5.3.2 supersede those stated in Section 9.23.4.1 of the AIA Document A295-2008. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 5.3.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 13.2 of A295-2008. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 5.3.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs reimbursable costs to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 PRIOR TO ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

The Owner and Contractor shall resolve any claim or cause of action arising out of or relating to the Contractor's Pre-GMP Services pursuant to the mediation and arbitration provisions set forth in Sections 13.3 and 13.4 of A295-2008.

§ 6.2 AFTER ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 6.2.1 Any Claim arising out of or relating to the Project after establishment of the Guaranteed Maximum Price shall be subject to the terms and conditions set forth in Article 13 of the A295-2008 in its entirety.

§ 6.2.2 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 13.2 of AIA Document A295-2008, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 TERMINATION OR SUSPENSION PRIOR TO ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 7.1.1 If the Owner fails to make payments to the Contractor for Pre-GMP Services in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Contractor's option, cause for suspension of performance of services under this Agreement. If the Contractor elects to suspend services, the Contractor shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Contractor shall have no liability to the Owner for delay or damage caused the

Owner because of such suspension of services. Before resuming services, the Contractor shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Contractor's services. The Contractor's compensation for the remaining Pre-GMP Phase services and the time schedules shall be equitably adjusted.

§ 7.1.2 If the Owner suspends the Project, the Contractor shall be compensated for Pre-GMP Services performed prior to notice of such suspension. When the Project is resumed, the Contractor shall be compensated for expenses incurred in the interruption and resumption of the Contractor's services. The Contractor's compensation for the remaining Pre-GMP Services and the time schedules shall be equitably adjusted.

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

§ 7.1.4 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.

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

§ 7.1.6 In the event of termination not the fault of the Contractor, the Contractor shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 7.1.7.

§ 7.1.7 Termination Expenses are in addition to compensation for the Contractor's Pre-GMP Services and include expenses directly attributable to termination for which the Contractor is not otherwise compensated, plus an amount for the Contractor's anticipated profit on the value of the Pre-GMP Services not performed by the Contractor.

§ 7.1.8 The Owner's rights to use the Contractor's Instruments of Service in the event of a termination of this Agreement are set forth Article 3 and Section 4.3 of this Agreement as well as the A295-2008 General Conditions of the IPD Agreements.

§ 7.2 TERMINATION OR SUSPENSION AFTER ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

§ 7.2.1 TERMINATION BY THE CONTRACTOR

§ 7.2.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, sub-Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.23.4.1 of A295-2008, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.2 of A295-2008.

§ 7.2.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, sub-Subcontractor or their agents or employees or any other persons or entities under direct or indirect contract with the Contractor, the Owner causes repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 7.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 7.2.1.3 If one of the reasons described in Section 7.2.1.1 or 7.2.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 7.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations as set forth herein and A295–2008 with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate this Agreement and recover from the Owner as provided in Section 7.2.1.3.

§ 7.2.2 TERMINATION BY THE OWNER FOR CAUSE

§ 7.2.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the GMP Documents.

§ 7.2.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 7.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 7.2.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 7.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 7.2.2.4.1 If the Owner terminates the Contract for cause, the amount, if any, to be paid to the Contractor under Section 7.2.2.4 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.2.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 7.2.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 7.2.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 7.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 7.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 7.2.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 7.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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§ 7.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 7.2.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.2.5 In the event of any termination by the Owner, the Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 This Agreement shall be governed by the law of the place where the Project is located, subject to the Federal Arbitration Act as applicable.

§ 8.2 Terms in this Agreement shall have the same meaning as those in A295-2008.

§ 8.3 The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor 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.

§ 8.4 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 Contractor.

§ 8.5 If the Contractor or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 9 SPECIAL TERMS AND CONDITIONS

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

ARTICLE 10 SCOPE OF THE AGREEMENT

§ 10.1 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

§ 10.2 The following documents comprise the Agreement:

- .1 AIA Document A195–2008, Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery
- .2 AIA Document A295–2008, General Conditions of the Contract for Integrated Project Delivery
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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