



# AIA<sup>®</sup> Document A142<sup>™</sup> – 2014 Exhibit A

## *Terms and Conditions*

for the following PROJECT:  
*(Name and location or address)*

THE DESIGN-BUILDER:  
*(Name, legal status and address)*

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

THE CONTRACTOR:  
*(Name, legal status and address)*

### THE AGREEMENT

This Exhibit is part of the accompanying agreement between the Design-Builder and the Contractor (hereinafter, the Agreement), dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.  
*(In words, indicate day, month and year.)*

### TABLE OF ARTICLES

- A.1 GENERAL PROVISIONS
- A.2 DESIGN-BUILDER
- A.3 CONTRACTOR
- A.4 SUBCONTRACTORS
- A.5 CONSTRUCTION BY DESIGN-BUILDER OR BY SEPARATE CONTRACTORS
- A.6 CHANGES IN THE WORK
- A.7 TIME
- A.8 PAYMENTS AND COMPLETION
- A.9 COPYRIGHTS AND LICENSES
- A.10 PROTECTION OF PERSONS AND PROPERTY
- A.11 INSURANCE AND BONDS
- A.12 UNCOVERING AND CORRECTION OF WORK
- A.13 MISCELLANEOUS PROVISIONS
- A.14 TERMINATION OR SUSPENSION OF THE AGREEMENT
- A.15 CLAIMS AND DISPUTES

## ARTICLE A.1 GENERAL PROVISIONS

### § A.1.1 Basic Definitions

§ A.1.1.1 The Design-Build Documents. The Design-Build Documents form the Design-Build Contract between the Owner and Design-Builder.

§ A.1.1.2 The Contract Documents. The Contract Documents are defined in Section 1.1, and identified in Article 9, of the Agreement.

§ A.1.1.3 Architect. The Architect is the person or entity providing architectural services for or on behalf of the Design-Builder and identified as such in the Agreement. The Architect is referred to throughout the Contract Documents as if singular in number. The Architect shall be lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. The term “Architect” means the Architect or the Architect’s authorized representative.

§ A.1.1.4 The Work. The term “Work” means the construction and services required to fulfill the Contractor’s obligations under the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor. The Work may constitute the whole or a part of the Project.

§ A.1.1.5 The Project. The Project is the total design and construction of which the Work performed under the Contract Documents may be the whole or a part, and which may include design and construction by the Design-Builder and by separate consultants and contractors.

§ A.1.1.6 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, diagrams, and digital models.

§ A.1.1.7 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, workmanship for the Work, and performance of related services.

§ A.1.1.8 Consultant. A Consultant is a person or entity providing professional services for or on behalf of the Design-Builder for all or a portion of the Work, and is referred to throughout the Contract Documents as if singular in number. To the extent required by relevant jurisdictions, the Consultant shall be lawfully licensed to provide the required professional services.

§ A.1.1.9 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by or on behalf of the Design-Builder and the Contractor. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

### § A.1.2 Correlation and Intent of the Contract Documents

§ A.1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ A.1.2.2 Organization of the specifications into divisions, sections and articles, and arrangement of Drawings, shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

### § A.1.3 Compliance with Applicable Laws

If the Contractor believes that implementation of any instruction received from the Design-Builder would cause a violation of any applicable law, statute, ordinance, code, rule, or regulation, the Contractor shall notify the Design-Builder in writing. The Contractor shall not be obligated to perform any act which the Contractor believes will violate any applicable law, statute, ordinance, code, rule, or regulation.

### § A.1.4 Capitalization

Terms capitalized in these Terms and Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

---

**AIA Document A142™–2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects’ legal counsel, [copyright@aia.org](mailto:copyright@aia.org).

## § A.1.5 Interpretation

§ A.1.5.1 In the interest of brevity the Agreement frequently omits modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.5.2 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ A.1.6 If the Design-Builder 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. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

## ARTICLE A.2 DESIGN-BUILDER

### § A.2.1 General

§ A.2.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ A.2.1.2 The Design-Builder shall designate in writing a representative who shall have express authority to bind the Design-Builder with respect to all Project matters requiring the Design-Builder’s approval or authorization. The Design-Builder may also delegate certain responsibilities of the Design-Builder to the Architect or other design professionals. The Design-Builder will notify the Contractor of such delegation in writing. The Design-Builder shall render decisions in a timely manner and in accordance with the Contractor’s schedule submitted to the Design-Builder.

§ A.2.1.3 The Design-Builder shall furnish to the Contractor, within 15 days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ A.2.1.4 The Design-Builder shall cooperate with the Contractor in scheduling and performing the Design-Builder’s Work to avoid conflicts or interference with the Contractor’s Work. Promptly after execution of the Agreement, the Design-Builder shall provide the Contractor copies of the Design-Builder’s construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Contractor to plan and perform the Contractor’s Work. The Design-Builder shall promptly notify the Contractor of subsequent changes in the construction and submittal schedules and additional scheduling details. If the Design-Builder informs the Contractor that it does not intend to develop or provide the schedules identified above, the Contractor shall prepare schedules in accordance with Section A.3.10.

§ A.2.1.5 If the Design-Builder asserts a claim against, or defends a claim by, the Owner which relates to the Work of the Contractor, the Design-Builder shall make available to the Contractor information relating to that portion of the claim which relates to the Work of the Contractor.

### § A.2.2 Information and Services Required of the Design-Builder

§ A.2.2.1 The Design-Builder shall be responsible to provide surveys, if not required by the Contract Documents to be provided by the Contractor, describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site.

§ A.2.2.2 The Design-Builder shall provide, to the extent available to the Design-Builder and if not required by the Contract Documents to be provided by the Contractor, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials or environmental and subsurface conditions; and information regarding the presence of pollutants at the Project site.

§ A.2.2.3 The Design-Builder shall cooperate with the Contractor in securing building and other permits, licenses and inspections for proper execution and completion of the Work.

§ A.2.2.4 The services, information, surveys and reports required to be provided by the Design-Builder under Section A.2.2 shall be furnished at the Design-Builder's expense, and the Contractor shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Contract Documents or to the extent the Design-Builder advises the Contractor to the contrary in writing. In no event shall the Contractor be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ A.2.2.5 If the Design-Builder observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Contract Documents, the Design-Builder shall give prompt written notice thereof to the Contractor.

§ A.2.2.6 Prior to commencement of the Work, the Contractor may request in writing that the Design-Builder provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations to the Design-Builder under the Design-Build Contract. Thereafter, the Contractor may only require such evidence if (1) the Design-Builder fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Design-Builder's ability to make payment when due. The Design-Builder shall furnish the evidence it has available, or has the right to obtain, from the Owner as a condition precedent to continuation of the Work or the portion of the Work affected by a material change. After the Design-Builder furnishes the evidence, the Design-Builder shall notify the Contractor if the Design-Builder becomes aware of a material change in the Owner's financial arrangements.

§ A.2.2.7 The Design-Builder shall communicate through the Contractor with persons or entities employed or retained by the Contractor, unless otherwise directed by the Contractor.

§ A.2.2.8 Unless required by the Contract Documents to be provided by the Contractor, the Design-Builder shall, upon request from the Contractor, furnish the services of geotechnical engineers or other consultants for subsoil, air and water conditions when such services are deemed reasonably necessary by the Contractor to properly carry out the design services, if any, to be provided by the Contractor. In such event, the Contractor shall specify the services required. Such services may include, but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

### § A.2.3 Design-Builder Review and Inspection

§ A.2.3.1 The Design-Builder, including its consultants and representatives, may visit the site. Visits by the Design-Builder shall not be construed to create an obligation on the part of the Design-Builder to make on-site inspections to check the quality or quantity of the Work. The Design-Builder shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section A.3.3.1.

§ A.2.3.2 The Design-Builder shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design-Builder shall not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Contractor.

§ A.2.3.3 The Design-Builder has the authority to reject Work that does not conform to the Contract Documents. The Design-Builder shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design-Builder nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design-Builder to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.4 The Design-Builder shall review and approve or take other appropriate action upon the Contractor's submittals required by the Contract Documents. The Design-Builder's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for ensuring that the submittals are in conformance with the Contract Documents, all of which remain the responsibility of the Contractor as required by the Contract Documents.

§ A.2.3.5 The Design-Builder's review of the Contractor's submittals required by the Contract Documents shall not relieve the Contractor of responsibility for compliance with the Contract Documents.

§ A.2.3.6 The Design-Builder shall determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.3.7 Except for those Sustainable Measures that are the responsibility of the Contractor as required by A.3.1.2, the Design-Builder shall perform those Sustainable Measures identified as the responsibility of the Design-Builder in the Sustainability Plan, if any, including any approved changes.

#### § A.2.4 Design-Builder's Right to Stop Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Design-Builder may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Design-Builder to stop the Work shall not give rise to a duty on the part of the Design-Builder to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section A.5.1.3.

#### § A.2.5 Design-Builder's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Design-Builder to commence and continue correction of such default or neglect with diligence and promptness, the Design-Builder may, without prejudice to other remedies the Design-Builder may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies. If payments due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Design-Builder.

### ARTICLE A.3 CONTRACTOR

#### § A.3.1 General

§ A.3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to act on the Contractor's behalf with respect to the Project. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ A.3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents, including the Sustainable Measures identified as the responsibility of the Contractor in the Contract Documents, if any.

§ A.3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design-Builder, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § A.3.2 Review of Contract Documents and Field Conditions by Contractor

§ A.3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ A.3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Design-Builder pursuant to Section A.2.2.1, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Design-Builder any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Design-Builder may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ A.3.2.2.1 The Contractor shall meet with the Design-Builder to discuss alternatives in the event the Design-Builder recognizes a condition that will affect achievement of a Sustainable Measure or achievement of the Sustainable Objective, if any. If any condition is discovered by, or made known to, the Contractor that will adversely affect the Contractor's achievement of a Sustainable Measure for which the Contractor is responsible pursuant to the Sustainability Plan, the Contractor will promptly provide notice to the Design-Builder and meet with the Design-Builder to discuss alternatives to remedy the condition.

§ A.3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Design-Builder any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Design-Builder may require.

§ A.3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design-Builder issues in response to the Contractor's notices or requests for information pursuant to Sections A.3.2.2 or A.3.2.3, the Contractor shall make Claims as provided in Article A.15. If the Contractor fails to perform the obligations of Sections A.3.2.2 or A.3.2.3, the Contractor shall pay such costs and damages to the Design-Builder as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Design-Builder or the Design-Builder's design professionals for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § A.3.3 Supervision and Construction Procedures

§ A.3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Design-Builder and shall not proceed with that portion of the Work without further written instructions from the Design-Builder. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Design-Builder shall be solely responsible for any loss or damage arising solely from those Design-Builder required means, methods, techniques, sequences or procedures.

§ A.3.3.2 The Contractor shall be responsible to the Design-Builder for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work.

§ A.3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § A.3.4 Labor and Materials

§ A.3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 The Contractor may make substitutions only with the consent of the Design-Builder, after evaluation by the Design-Builder and in accordance with a Change Order.

§ A.3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § A.3.5 Warranty

The Contractor warrants to the Design-Builder that materials and equipment furnished under the Contract Documents will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further

---

**AIA Document A142™-2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, [copyright@aia.org](mailto:copyright@aia.org).

warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor does not warrant or guarantee that the Project will achieve the Sustainable Objective, if any. If required by the Design-Builder, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § A.3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### § A.3.7 Permits, Fees, Notices, and Compliance with Laws

§ A.3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ A.3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ A.3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Design-Builder before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Design-Builder will promptly investigate such conditions and, if the Design-Builder determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Design-Builder determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design-Builder shall promptly notify the Contractor in writing, stating the reasons. If the Contractor disputes the determination or recommendation, it may proceed as provided in Article A.15.

§ A.3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Design-Builder. Upon receipt of such notice, the Design-Builder shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Design-Builder but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article A.15.

#### § A.3.8 Allowances

§ A.3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Design-Builder may direct, but the Contractor shall not be required to employ persons or entities to which the Contractor has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Contractor's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Design-Builder with reasonable promptness.

#### § A.3.9 Superintendent

§ A.3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ A.3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Design-Builder the name and qualifications of a proposed superintendent. The Design-Builder may reply within 14 days to the Contractor in writing stating (1) whether the Design-Builder has reasonable objection to the proposed superintendent or (2) that the Design-Builder requires additional time to review. Failure of the Design-Builder to reply within the 14-day period shall constitute notice of no reasonable objection.

§ A.3.9.3 The Contractor shall not employ a proposed superintendent to whom the Design-Builder has made reasonable and timely objection. The Contractor shall not change the superintendent without the Design-Builder's consent, which shall not unreasonably be withheld or delayed.

#### § A.3.10 Contractor's Construction Schedules

§ A.3.10.1 If the Design-Builder informs the Contractor that it does not intend to develop or provide a construction schedule pursuant to Section A.2.1.4, the Contractor, promptly thereafter, shall prepare and submit for the Design-Builder's information the Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ A.3.10.2 If the Design-Builder informs the Contractor that it does not intend to develop or provide a submittal schedule pursuant to Section A.2.1.4, the Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Design-Builder's approval. The Design-Builder's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Design-Builder reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ A.3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules either prepared by or approved by the Design-Builder.

#### § A.3.11 Documents and Samples at the Site

The Contractor shall maintain at the site for the Design-Builder one copy of the Drawings, Specifications, Addenda, Sustainability Plan, if any, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design-Builder and shall be delivered to the Design-Builder upon completion of the Work as a record of the Work as constructed.

#### § A.3.12 Shop Drawings, Product Data and Samples

§ A.3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.



§ A.3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design-Builder is subject to the limitations of Sections A.2.3.5 and A.3.13.1. Informational submittals upon which the Design-Builder is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Design-Builder without action.

§ A.3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design-Builder Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule prepared or approved by the Design-Builder or, in the absence of a submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Design-Builder or of separate contractors.

§ A.3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Design-Builder that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ A.3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design-Builder.

§ A.3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Design-Builder's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Design-Builder in writing of such deviation at the time of submittal and (1) the Design-Builder has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design-Builder's approval thereof.

§ A.3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design-Builder on previous submittals. In the absence of such written notice the Design-Builder's approval of a resubmission shall not apply to such revisions.

#### § A.3.13 Professional Services Provided by Contractor

§ A.3.13.1 The Contractor shall provide professional services only to the extent specifically required by the Contract Documents for a portion of the Work or if the Contractor otherwise needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Contractor shall satisfy any performance criteria as required by the Contract Documents. The Contractor shall cause such services to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design-Builder.

§ A.3.13.2 The Contractor shall obtain from each of the Contractor's and Subcontractors' design professionals, and shall deliver to the Design-Builder, certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the criteria provided by the Design-Builder, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project, and (b) that the Design-Builder and its design professionals shall be entitled to rely upon the representations and statements contained in such certifications.

§ A.3.13.3 If the Design-Builder requests the Contractor's design professionals to execute certificates other than those required by Section A.3.13.2, the proposed language of the certificates shall be submitted to the design professionals for

review and negotiation at least 14 days prior to the requested dates of execution. The design professionals shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their services. With respect to the certifications provided, the Contractor's design professionals shall certify that to the best of their knowledge, information and belief the documents or services to which such certifications pertain (a) are consistent with the Contract Documents except to the extent specifically agreed upon by the Design-Builder or identified in the certificate, (b) comply with applicable professional practice standards, and (c) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project. The Design-Builder shall be entitled to rely upon the representations and statements contained in such certifications.

#### § A.3.14 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

#### § A.3.15 Cutting and Patching

§ A.3.15.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ A.3.15.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Design-Builder or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Design-Builder or a separate contractor except with written consent of the Design-Builder and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Design-Builder or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

#### § A.3.16 Cleaning Up

§ A.3.16.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Agreement. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from the Project.

§ A.3.16.2 If the Contractor fails to clean up as provided in the Contract Documents, the Design-Builder may do so and the Design-Builder shall be entitled to reimbursement from the Contractor.

#### § A.3.17 Access to Work

The Contractor shall provide the Design-Builder and Owner access to the Work in preparation and progress wherever located.

#### § A.3.18 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Design-Builder, the Design-Builder's consultants, the Owner and the Owner's consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Design Builder, the Design-Builder's consultants, the Architect, or the Owner or Owner's consultants. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Design-Builder. If the Design-Builder receives notice of an alleged violation of a patent or copyright, attributable to the Contractor, the Design-Builder shall give prompt written notice to the Contractor.

#### § A.3.19 Indemnification

§ A.3.19.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Design-Builder; the Architect; the Owner; and the contractors, consultants, agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce

---

**AIA Document A142™-2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.**

other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section A.3.19.

§ A.3.19.2 In claims against any person or entity indemnified under this Section A.3.19 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.19.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE A.4 SUBCONTRACTORS

### § A.4.1 Definitions

§ A.4.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ A.4.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § A.4.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ A.4.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Design-Builder the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Design-Builder will reply within 14 days to the Contractor in writing stating (1) whether or not the Design-Builder has reasonable objection to any such proposed person or entity, or (2) that the Design-Builder requires additional time for review. Failure of the Design-Builder to reply within the 14-day time period shall constitute notice of no reasonable objection.

§ A.4.2.2 The Contractor shall not contract with a proposed person or entity to whom the Design-Builder has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ A.4.2.3 If the Design-Builder has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Design-Builder has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ A.4.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Design-Builder makes reasonable objection to such substitution.

### § A.4.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Design-Builder. Each subcontract agreement shall preserve and protect the rights of the Design-Builder under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Design-Builder. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### § A.4.4 Contingent Assignment of Subcontracts

§ A.4.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Design-Builder provided that

- .1 assignment is effective only after termination of the Contract by the Design-Builder for cause, pursuant to Section A.14.2, and only for those subcontract agreements that the Design-Builder accepts by written notification to the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Design-Builder accepts the assignment of a subcontract agreement, the Design-Builder assumes the Contractor's rights and obligations under the subcontract.

§ A.4.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ A.4.4.3 Upon such assignment to the Design-Builder under this Section A.4.4, the Design-Builder may further assign the subcontract to a successor contractor or other entity. If the Design-Builder assigns the subcontract to a successor contractor or other entity, the Design-Builder shall nevertheless remain legally responsible for all of the successor contractor's or other entity's obligations under the subcontract.

#### ARTICLE A.5 CONSTRUCTION BY DESIGN-BUILDER OR BY SEPARATE CONTRACTORS

##### § A.5.1 Design-Builder's Right to Perform Construction and to Award Separate Contracts

§ A.5.1.1 The Design-Builder and Owner reserve the right to perform construction related to the Project with their own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under terms and conditions identical or substantially similar to those contained in this Exhibit A as well as those in Exhibit B relating to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Design-Builder or Owner, the Contractor shall make a Claim as provided in Article A.15.

§ A.5.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate Design-Builder-Contractor Agreement.

§ A.5.1.3 The Design-Builder shall provide for coordination of the activities of the Design-Builder's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Design-Builder in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Design-Builder until subsequently revised.

§ A.5.1.4 Unless otherwise provided in the Contract Documents, when the Design-Builder performs construction or operations related to the Project with the Design-Builder's own forces, the Design-Builder shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Terms and Conditions of the Contract.

##### § A.5.2 Mutual Responsibility

§ A.5.2.1 The Contractor shall afford the Design-Builder and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ A.5.2.2 If part of the Contractor's Work depends for proper execution or results upon design, construction or operations by the Design-Builder or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, prepare a written report to the Design-Builder identifying apparent discrepancies or defects in the construction or operations by the Design-Builder or separate contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to so report shall constitute an acknowledgment that the Design-Builder's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ A.5.2.3 The Contractor shall reimburse the Design-Builder for costs the Design-Builder incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Design-Builder shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor employed by the Design-Builder or the Owner.

§ A.5.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Design-Builder or separate contractors, as provided in A.10.2.5.

§ A.5.2.5 The Design-Builder and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.15.

#### § A.5.3 Design-Builder's Right to Clean Up

If a dispute arises among the Contractor, separate contractors and the Design-Builder as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Design-Builder may clean up and the Design-Builder shall allocate the cost among those responsible.

### ARTICLE A.6 CHANGES IN THE WORK

#### § A.6.1 General

§ A.6.1.1 Changes in the Work may be accomplished after execution of the Contract Documents, and without invalidating the Contract Documents, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Article A.6 and elsewhere in the Contract Documents.

§ A.6.1.2 A Change Order shall be based upon agreement between the Design-Builder and Contractor. A Construction Change Directive may be issued by the Design-Builder with or without agreement by the Contractor. A minor change in the Work may be issued by the Design-Builder alone.

§ A.6.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or in an order for a minor change in the Work.

#### § A.6.2 Change Orders

§ A.6.2.1 A Change Order is a written instrument signed by the Design-Builder and Contractor stating their agreement upon all of the following:

- .1 A change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### § A.6.3 Construction Change Directives

§ A.6.3.1 A Construction Change Directive is a written order signed by the Design-Builder directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Design-Builder may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.6.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.6.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon.
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section A.6.3.7.

§ A.6.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application

of such unit prices to quantities of Work proposed will cause substantial inequity to the Design-Builder or Contractor, the applicable unit prices shall be equitably adjusted.

§ A.6.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design-Builder of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.6.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.6.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Design-Builder shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section A.6.3.3.3, the Contractor shall keep and present, in such form as the Design-Builder may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section A.6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ A.6.3.8 The amount of credit to be allowed by the Contractor to the Design-Builder for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Design-Builder. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.6.3.9 Pending final determination of the total cost of a Construction Change Directive to the Design-Builder, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Design-Builder shall make an interim determination for purposes of monthly payment for those costs that the Design-Builder determines to be reasonably justified. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Contractor to disagree and assert a Claim in accordance with Article A.15.

§ A.6.3.10 When the Design-Builder and Contractor reach agreement concerning the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and the Design-Builder shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § A.6.4 Minor Changes in the Work

The Design-Builder has the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order and shall be binding on the Contractor.

### ARTICLE A.7 TIME

#### § A.7.1 Definitions

§ A.7.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ A.7.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Design-Builder.

§ A.7.1.3 The date of Substantial Completion is the date acknowledged by the Design-Builder in accordance with Section A.8.7.

§ A.7.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § A.7.2 Progress and Completion

§ A.7.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ A.7.2.2 The Contractor shall not, except by agreement or instruction of the Design-Builder in writing, commence the Work prior to the effective date of insurance required by the Agreement. The Contract Time shall not be adjusted as a result of Contractor's failure to obtain insurance under the Agreement. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Design-Builder, the Contractor shall notify the Design-Builder in writing, not less than five days before commencing the Work, to permit the timely filing of mortgages, mechanic's liens, and other security interests.

§ A.7.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § A.7.3 Delays and Extensions of Time

§ A.7.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Design-Builder or of a separate contractor or other party employed by the Owner or Design-Builder, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Design-Builder pending mediation and binding dispute resolution, or by other causes that the Design-Builder determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Design-Builder may determine.

§ A.7.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.15.1.7.

§ A.7.3.3 This Section A.7.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

### ARTICLE A.8 PAYMENTS AND COMPLETION

#### § A.8.1 Contract Sum

The Contract Sum is stated in the Contract Documents and, including authorized adjustments, is the total amount payable by the Design-Builder to the Contractor for performance of the Work under the Contract Documents.

#### § A.8.2 Schedule of Values

Where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Contractor, prior to the first Application for Payment, shall submit to the Design-Builder a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Design-Builder may require. This schedule, unless objected to by the Design-Builder, shall be used as a basis for reviewing the Contractor's Applications for Payment.

#### § A.8.3 Applications for Payment

§ A.8.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Design-Builder an itemized Application for Payment, prepared in accordance with the current schedule of values if required under Section A.8.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Design-Builder may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ A.8.3.1.1 As provided in Section A.6.3.9, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives or by interim determinations of the Design-Builder, but not yet included in Change Orders.

§ A.8.3.1.2 Applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier or other parties providing services for the Contractor, unless such Work has been performed by others whom the Contractor intends to pay.

§ A.8.3.2 Unless otherwise provided in the Contract Documents, payments shall be made for materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Design-Builder, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Design-Builder to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and Design-Builder's interests and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.8.3.3 The Contractor warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have previously been received from the Design-Builder shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § A.8.4 Decisions to Withhold Payment

§ A.8.4.1 The Design-Builder may withhold approval of a payment in whole or in part to the extent reasonably necessary to protect the Design-Builder due to the Design-Builder's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Contract Documents. If the Design-Builder is unable to approve payment in the amount of the Application, the Design-Builder will notify the Contractor in writing. The Design-Builder may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Design-Builder from loss for which the Contractor is responsible, including loss resulting from acts and omissions, because of the following:

- .1 Defective Work not remedied;
- .2 Third-party claims filed, or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Design-Builder is provided by the Contractor;
- .3 Failure of the Contractor to make payments properly for design services, labor, materials or equipment;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 Damage to the Owner, Design-Builder or a separate contractor;
- .6 Reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 Repeated failure to carry out the Work in accordance with the Contract Documents.

§ A.8.4.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

#### § A.8.5 Progress Payments

§ A.8.5.1 The Contractor shall promptly pay each Subcontractor, within the time period required by applicable law, but in no event more than seven days after receipt of payment from the Design-Builder, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ A.8.5.2 The Design-Builder has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Design-Builder to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Design-Builder shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Design-Builder shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ A.8.5.3 Contractor payments to material suppliers shall be treated in a manner similar to that provided in Sections A.8.5.1 and A.8.5.2.



§ A.8.5.4 A progress payment, or partial or entire use or occupancy of the Project by the Owner or Design-Builder, shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ A.8.5.5 Unless the Contractor provides the Design-Builder with a payment bond in the full penal sum of the Contract Sum, the Contractor shall hold payments received from the Design-Builder for Work properly performed by Subcontractors and suppliers for those Subcontractors or suppliers. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § A.8.6 Failure of Payment

If the Design-Builder does not forward to the Owner for payment the Contractor's Application for Payment as approved by the Design-Builder within seven days after the Design-Builder's receipt from the Contractor, or does not issue payment within seven days after the Design-Builder's receipt from the Owner of approved amounts due to the Contractor, then the Contractor may, upon seven additional days' written notice to the Design-Builder, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

#### § A.8.7 Substantial Completion

§ A.8.7.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ A.8.7.2 When the Contractor considers that the Work, or a portion thereof which the Design-Builder agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design-Builder a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ A.8.7.3 Upon receipt of the Contractor's list, the Design-Builder shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design-Builder's inspection discloses any item, whether or not included on the Contractor's list, which is not substantially complete in accordance with the requirements of the Contract Documents, so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. In such case, the Contractor shall then submit a request for another inspection by the Design-Builder to determine whether the Contractor's Work is substantially complete.

§ A.8.7.4 Prior to substantial completion, the Design-Builder and Contractor shall discuss and determine the parties' obligations to obtain and maintain property insurance following substantial completion.

§ A.8.7.5 When the Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Contract Documents, the Design-Builder shall, upon application by the Contractor, make prompt application to the Owner for payment of such Work in accordance with the requirements of the Contract Documents. Promptly upon receipt by the Design-Builder of payment from the Owner on account of such application, the Design-Builder shall make payment to the Contractor. If a full release of retainage is allowed under the Contract Documents for the Contractor's Work prior to the completion of the entire Project, such payment to the Contractor shall consist of the entire unpaid balance of the Contract Sum less any amount necessary to cover costs of items to be completed or corrected by the Contractor. If the Contract Documents do not allow for a full release of retainage, then such payment shall consist of an amount which, when added to previous payments to the Contractor, will reduce the retainage on the Contractor's substantially completed Work to the same percentage of retainage as that retained on the Design-Builder's Work under the Design-Build Documents, less any amount necessary to cover costs of items to be completed or corrected by the Contractor.

§ A.8.7.6 In the event of a dispute regarding whether the Contractor's Work is substantially complete, the dispute shall be resolved pursuant to Article A.15.

#### § A.8.8 Partial Occupancy or Use

§ A.8.8.1 The Contractor may agree to allow the Owner or Design-Builder to occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to, by endorsement or

---

**AIA Document A142™-2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, [copyright@aia.org](mailto:copyright@aia.org).

otherwise, by the insurer providing property insurance, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Design-Builder and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design-Builder as provided under Section A.8.7.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Design-Builder and Contractor.

§ A.8.8.2 Immediately prior to such partial occupancy or use, the Design-Builder and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.8.8.3 Unless otherwise agreed by the parties, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § A.8.9 Final Completion and Final Payment

§ A.8.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design-Builder shall promptly make such inspection and, when the Design-Builder finds the Work acceptable under the Contract Documents and fully performed, the Design-Builder shall, subject to Section A.8.9.2, promptly make final payment to the Contractor.

§ A.8.9.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder has received payment from the Owner on account of the Contractor's final Application for Payment and until the Contractor submits to the Design-Builder (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Design-Builder or the Owner's property might be responsible or encumbered (less amounts withheld by Design-Builder) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Design-Builder, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by the Design-Builder. If the Contractor or a Subcontractor refuses to furnish a release or waiver required by the Design-Builder, the Contractor may furnish a bond satisfactory to the Owner and Design-Builder to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remain unsatisfied after payments are made, the Contractor shall refund to the Design-Builder all money that the Design-Builder may be liable to pay in connection with the discharge of such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees. If, for any cause which is not the fault of the Contractor, the Design-Builder does not receive timely payment or does not pay the Contractor within seven days after receipt of payment from the Owner, final payment to the Contractor shall be made upon demand.

§ A.8.9.3 If, after the Design-Builder determines that the Contractor's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Contractor or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Design-Builder shall, upon application by the Contractor and the Design-Builder's receipt of payment from the Owner on account of such application, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.8.9.4 The making of final payment shall constitute a waiver of Claims by the Design-Builder except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ A.8.9.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

#### ARTICLE A.9 COPYRIGHTS AND LICENSES

§ A.9.1 The Design Builder and Contractor 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.

##### § A.9.2 Design-Builder's Instruments of Service

§ A.9.2.1 The Design-Builder and the Architect, Consultants and separate contractors shall be deemed the authors and owners of their respective Instruments of Service, including Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractor, Sub-subcontractor, and material or equipment suppliers shall not own or claim a copyright in the Design-Builder's or the Architect's, Consultants' and separate contractors' Instruments of Service. Submission or distribution of Instruments of Service to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design-Builder's or the Architect's, Consultants' and separate contractors' reserved rights.

§ A.9.2.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the Design-Builder's and the Architect's, Consultants' and separate contractors' Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor may retain one record set. The Contractor, Sub-contractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Design-Builder and the Architect, Consultants and separate contractors that produced the Instruments of Service.

##### § A.9.3 Contractor's Instruments of Service

§ A.9.3.1 The Contractor, Subcontractors, and Sub-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, Subcontractors, and Sub-subcontractors.

§ A.9.3.2 Upon execution of the Agreement, the Contractor grants to the Design-Builder a limited, irrevocable, and nonexclusive license to use the Contractor's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Design-Builder substantially performs its obligations, including prompt payment of all sums when due, under the Agreement. The Contractor shall obtain similar limited, irrevocable and nonexclusive licenses from its Subcontractors and Sub-subcontractors. The license granted under this Section A.9.3.2 permits the Design-Builder to authorize the Architect and the Architect's consultants, the Design-Builder's Consultants and separate contractors, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively in performing services or construction for the Project. If the Contractor rightfully terminates as provided in Section A.14.1, the license granted in this Section A.9.3.2 shall terminate, subject to the provisions of Section A.9.3.5.

§ A.9.3.3 Except as otherwise provided in the Contract Documents, in the event that the Contract is terminated prior to completion of the Contractor's Work, the license provided in Section A.9.3.2 shall terminate, the Design-Builder shall not make further reproductions of Contractor's Instruments of Service and the Design-Builder shall return to the Contractor within seven (7) days of termination all originals and reproductions of the Instruments of Service in the Design-Builder's possession or control.

§ A.9.3.3.1 In the event the Design-Builder terminates the Contract for cause pursuant to Section A.14.2, the license provided in Section A.9.3.2 shall terminate and be replaced by a second, limited, irrevocable and nonexclusive license permitting the Design-Builder to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service for the purpose of constructing, using, maintaining, altering and adding to the Project.

§ A.9.3.4 If the Design-Builder alters the Contractor's or its Subcontractors' Instruments of Service without the Contractor's or Subcontractor's written authorization or in the event the Design-Builder uses the Instruments of

Services without retaining the author of the Instruments of Service, the Design-Builder releases the Contractor and the Subcontractors from all claims and causes of action arising from such uses. The Design-Builder, to the extent permitted by law, further agrees to indemnify and hold harmless the Contractor and 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 Design-Builder's alteration or use of the Instruments of Service under this Section A.9.3.4.

§ A.9.3.5 If the agreement between the Owner and Design-Builder is terminated for any reason other than the default of the Owner, or if this Agreement is terminated for cause by the Contractor pursuant to Section A.14.1, the Contractor shall convey and shall require its Subcontractors to convey to the Owner a limited, irrevocable and nonexclusive license to use the Contractor's and Subcontractor's Instruments of Service for the sole purpose of constructing, using, maintaining, altering and adding to the Project, conditioned upon (1) payment to the Contractor of all amounts due to the Contractor and the Subcontractors, and (2) the Contractor's receipt of the Owner's written notice to the Contractor of the Owner's assumption of the Design-Builder's duties and obligations under the Agreement; or if the Owner fails to provide such written notice, (1) payment to the Contractor of all amounts due to the Contractor and the Subcontractors, and (2) the Contractor's receipt of the Owner's written agreement to indemnify and hold harmless the Contractor and 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 alteration or use of the Instruments of Service. The Contractor shall incorporate the requirements of this Section A.9.3.5 in all agreements with its Subcontractors.

## ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

### § A.10.1 Safety Precautions and Programs

The Contractor shall comply with all safety precautions and programs initiated and maintained by the Design-Builder in connection with the Project and the Contractor's performance of the Work. In accordance with such safety precautions and programs, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, the Contractor shall assume the duties and responsibilities set forth in Sections A.10.2 through A.10.4 below.

### § A.10.2 Safety of Persons and Property

§ A.10.2.1 The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Contractor or the Contractor's Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Contractor shall implement, erect and maintain, as required by existing conditions and performance of the Contract Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations, and shall notify the Design-Builder and owners and users of adjacent sites and utilities of the safeguards.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Design-Builder or anyone directly or indirectly employed by the Owner or Design-Builder, or by anyone for whose acts the Owner or Design-Builder may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section A.3.19.

§ A.10.2.6 The Contractor shall designate in writing to the Design-Builder a responsible individual whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Design-Builder.

§ A.10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as cause damage or create an unsafe condition.

§ A.10.2.8 **Injury or Damage to Person or Property.** If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § A.10.3 Hazardous Materials

§ A.10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Design-Builder in writing.

§ A.10.3.2 Upon receipt of the Contractor's written notice, the Design-Builder shall provide written notice to the Owner. If the Design-Builder is responsible for the hazardous material under its agreement with the Owner, the Design Builder shall obtain the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Design-Builder and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ A.10.3.3 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Contractor, Subcontractors, Sub-subcontractors, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ A.10.3.4 The Design-Builder shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such hazardous materials or substances are required by the Contract Documents. The Design-Builder shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ A.10.3.5 The Contractor shall indemnify the Design-Builder for the cost and expense the Design-Builder incurs (1) for remediation of a hazardous material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Design-Builder's fault or negligence.

§ A.10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Design-Builder shall indemnify the Contractor for all cost and expense thereby incurred.

### § A.10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section A.15.1.7 and Article A.6.

## ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 The Design-Builder and Contractor shall purchase and maintain insurance of the types, with limits of liability, containing the endorsements, and subject to the terms and conditions described in AIA Document A142™–2014 Exhibit B, Insurance and Bonds, or elsewhere in the Contract Documents.

§ A.11.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions, described in AIA Document A142–2014 Exhibit B, Insurance and Bonds, or elsewhere in the Contract Documents.

## ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

### § A.12.1 Uncovering of Work

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Contract Documents, it must be uncovered for the Design-Builder's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered that the Design-Builder has not specifically requested to examine prior to its being covered, the Design-Builder may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Design-Builder's expense. If such Work is not in accordance with the Contract Documents, such costs and the costs of correction shall be at the Contractor's expense unless the condition was caused by the Design-Builder or a separate contractor, in which event the Design-Builder shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

### § A.12.2 Correction of Work

§ A.12.2.1 Before or After Substantial Completion of the Contractor's Work. The Contractor shall promptly correct Work rejected by the Design-Builder or failing to conform to the requirements of the Contract Documents, whether discovered before or after the Design-Builder's determination that the Contractor's Work or designated portion thereof is substantially complete and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Design-Builder's costs and expenses made necessary thereby shall be at the Contractor's expense.

### § A.12.2.2 After Substantial Completion of the Contractor's Work

§ A.12.2.2.1 In addition to the Contractor's obligations under Section A.3.5, if, within one year after the date of the Design-Builder's determination that the Contractor's Work or designated portion thereof is substantially complete or after the date for commencement of warranties established under Section A.8.8.1 or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Design-Builder to do so unless the Design-Builder has previously given the Contractor a written acceptance of such condition. The Design-Builder shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Design-Builder fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Design-Builder waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Design-Builder, the Design-Builder may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after the Design-Builder's determination that the Contractor's Work is substantially complete by the period of time between such determination and the actual completion of that Portion of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section A.12.2.

§ A.12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Design-Builder.

§ A.12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Design-Builder or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### § A.12.3 Acceptance of Nonconforming Work

If the Design-Builder prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Design-Builder may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### ARTICLE A.13 MISCELLANEOUS PROVISIONS

#### § A.13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section A.15.4.

#### § A.13.2 Successors and Assigns

§ A.13.2.1 The Design-Builder and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section A.13.2.2, neither Design-Builder nor the Contractor shall assign the Contract Documents without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract Documents.

§ A.13.2.2 If the Owner terminates the Design-Build Contract, the Contractor agrees to an assignment of the Agreement to the Owner upon receipt of written notification from the Owner that the Owner is accepting assignment of the Agreement and assuming the Design-Builder's rights and responsibilities. The Contractor further agrees that upon such an assignment to the Owner, the Owner may further assign the Agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entities' obligations under the Agreement.

#### § A.13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail or by courier services providing proof of delivery to the last business address known to the party giving notice.

#### § A.13.4 Rights and Remedies

§ A.13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Design-Builder or Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### § A.13.5 Tests and Inspections

§ A.13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Design-Builder or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give timely notice of when and where tests and inspections are to be made so that the Design-Builder may be present for such procedures. The Design-Builder shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Design-Builder from delegating their cost to the Contractor.

§ A.13.5.2 If the Design-Builder or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Design-Builder shall in writing instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Design-Builder. The Contractor shall give timely notice to the Design-Builder of when and where tests and

inspections are to be made so that the Design-Builder may be present for such procedures. Costs, except as provided in Section A.13.5.3, shall be at the Design-Builder's expense.

§ A.13.5.3 If procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Contractor's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Design-Builder.

§ A.13.5.5 If the Design-Builder is to observe tests, inspections or approvals required by the Contract Documents, the Design-Builder will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE A.14 TERMINATION OR SUSPENSION OF THE AGREEMENT

### § A.14.1 Termination by the Contractor

§ A.14.1.1 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 which requires all Work to be stopped.
- .2 An act of government, such as a declaration of national emergency which requires all Work to be stopped.
- .3 Because the Design-Builder has not made payment to the Contractor and has not notified the Contractor of the reason for withholding payment as provided in Section A.8.4.1, or because the Owner has not otherwise made payment within the time stated in the Contract Documents.
- .4 The Design-Builder has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section A.2.2.6.

§ A.14.1.2 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 performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Design-Builder as described in Section A.14.3 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.

§ A.14.1.3 If one of the reasons described in Section A.14.1.1 or A.14.1.2 exists, the Contractor may, upon seven days' written notice to the Design-Builder, terminate the Contract and recover from the Design-Builder payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-Subcontractor or their agents or employees or any other persons performing portions of the Work under a contract with the Contractor because the Design-Builder has repeatedly failed to fulfill the Design-Builder's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Design-Builder, terminate the Contract and recover from the Design-Builder as provided in Section A.14.1.3.

### § A.14.2 Termination by the Design-Builder for Cause

§ A.14.2.1 The Design-Builder 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 services, 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 Contract Documents.

§ A.14.2.2 When any of the above reasons exist, the Design-Builder may without prejudice to any other rights or remedies of the Design-Builder 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 the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of Subcontracts pursuant to Section A.4.4; and
- .3 finish the Work by whatever reasonable method the Design-Builder may deem expedient. Upon request of the Contractor, the Design-Builder shall furnish to the Contractor a detailed accounting of the costs incurred by the Design-Builder in finishing the Work.

§ A.14.2.3 When the Design-Builder terminates the Contract for one of the reasons stated in Section A.14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Design-Builder 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 Design-Builder.

#### § A.14.3 Suspension by the Design-Builder for Convenience

§ A.14.3.1 The Design-Builder 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 Design-Builder may determine.

§ A.14.3.2 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 A.14.3.1. 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.

#### § A.14.4 Termination by the Design-Builder for Convenience

§ A.14.4.1 The Design-Builder may, at any time, terminate the Contract for the Design-Builder's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Design-Builder of such termination for the Design-Builder's convenience, the Contractor shall

- .1 cease operations as directed by the Design-Builder in the notice;
- .2 take actions necessary, or that the Design-Builder 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.

§ A.14.4.3 In case of such termination for the Design-Builder'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.

### ARTICLE A.15 CLAIMS AND DISPUTES

#### § A.15.1 Claims

§ A.15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Design-Builder and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.15.1.2 **Time Limits on Claims.** The Design-Builder and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in the Agreement within the time

period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Design-Builder and Contractor waive all claims and causes of action not commenced in accordance with this Section A.15.1.2.

#### § A.15.1.3 Notice of Claims

§ A.15.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Design-Builder or Contractor must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ A.15.1.3.2 **After Final Payment.** After Final Payment, Claims by either the Design-Builder or Contractor that have not otherwise been waived pursuant to Sections A.8.9.4 or A.8.9.5 must be initiated by prompt written notice to the other party. The notice requirement in Section A.15.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section A.15.2.1 shall not apply.

§ A.15.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section A.8.6 and Article A.15, the Contractor shall proceed diligently with performance of the Contract and the Design-Builder shall continue to make payments in accordance with the Contract Documents.

§ A.15.1.5 **Claims for Additional Cost.** If the Contractor intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that forms the basis of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.4.

§ A.15.1.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design-Builder, (2) an order by the Design-Builder to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design-Builder, (4) failure of payment by the Design-Builder, (5) termination of the Contract by the Design-Builder, (6) Design-Builder's suspension or (7) other reasonable grounds, the Contractor shall file a Claim in accordance with this Section A.15.1.

#### § A.15.1.7 Claims for Additional Time

§ A.15.1.7.1 If the Contractor intends to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ A.15.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.15.1.8 **Claims for Consequential Damages.** The Design-Builder and Contractor waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Design-Builder for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.15.1.8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § A.15.2 Initial Decision

§ A.15.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Design-Builder and Contractor arising prior to the date final payment is due, excluding those Claims arising under Sections A.10.3 and A.10.4, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise agreed in writing, the Design-Builder shall render an initial decision on Claims.

## § A.15.2.2 Procedure

§ A.15.2.2.1 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Contractor shall provide a written response to Design-Builder within ten days after receipt of the notice required under Section A.15.1.3.1. Thereafter, the Design-Builder shall take one or more of the following actions within ten days of receiving the Contractor's response: (1) render an initial decision rejecting the Claim in whole or in part, (2) render an initial decision approving the Claim, or (3) suggest a compromise.

§ A.15.2.2.2 Claims Initiated by the Contractor. If the Contractor initiates a Claim, the Design-Builder will take one or more of the following actions within ten days of receipt of the notice required under Section A.15.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Design-Builder lacks sufficient information to evaluate the merits of the Claim.

§ A.15.2.3 In evaluating Claims, the Design-Builder may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Design-Builder in rendering a decision.

§ A.15.2.4 If the Design-Builder requests the Contractor to provide a response to a Claim or to furnish additional supporting data, the Contractor shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Design-Builder when the response or supporting data will be furnished or (3) advise the Design-Builder that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Design-Builder will either reject or approve the Claim in whole or in part.

§ A.15.2.5 The Design-Builder's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the Contractor of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.15.3 and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution under Section 7.1 of the Agreement.

§ A.15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section A.15.2.6.1.

§ A.15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ A.15.2.7 In the event of a Claim against the Contractor, the Design-Builder may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Design-Builder may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

## § A.15.3 Mediation

§ A.15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections A.8.9.4, A.8.9.5, and A.15.1.8, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ A.15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable 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.

§ A.15.3.3 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.

#### § A.15.4 Arbitration

§ A.15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, and 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 the Construction Industry Arbitration Rules in effect on the date of this Agreement. The demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing 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.

§ A.15.4.2 A demand for arbitration may 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 institution of legal or equitable proceedings based on such Claim 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.

§ A.15.4.3 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.

§ A.15.4.4 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § A.15.4.5 Consolidation or Joinder

§ A.15.4.5.1 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).

§ A.15.4.5.2 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.

§ A.15.4.5.3 The Design-Builder and Contractor grant to any person or entity made a party to an arbitration conducted under this Section A.15.4.5, whether by joinder or consolidation, the same rights of joinder and consolidation as the Design-Builder and Contractor under this Agreement.