

Guide for Supplementary Conditions

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INTRODUCTION

Purpose of This Guide

This guide serves two purposes: it provides guidance to assist in preparing the Contract for Construction, and it provides model language that may be used to amend or supplement the Contract for Construction.

AIA Document A201[™]–2007, General Conditions of the Contract for Construction, provides the basic legal framework for the Contract for Construction. Because of variations in the nature of individual projects, requirements of individual owners, and variations in specific legal requirements from locality to locality, a nationally distributed standardized document cannot provide all of the basic requirements which must be included for purposes of bidding or construction. Project-specific information must be included in one of four locations:

- a. in the bidding requirements
- b. in the Owner-Contractor Agreement;
- c. in modifications or supplements to the General Conditions of the Contract for Construction
- d. in the Specifications, particularly in the General Requirements (Division 1).

This Guide provides instructions, suggested model language for project-specific issues, and recommendations for where to place project-specific information.

The information and model language presented in this Guide follows the article and section numbering of A201–2007. However, the guidance and model language presented may be relevant to other AIA agreements. This Guide is not a standard form supplementary conditions document. Model language is sometimes presented in several alternative versions, and some language presented may not be appropriate for a particular project. Because of its flexibility, this Guide is intended to be used as a working tool to help you develop and present in an orderly way the additional information needed as part of the Contract Documents for a specific project.

The Conditions of the Contract are ultimately the Owner's responsibility. But the Architect typically has a contractual duty to assist the Owner in preparing the Contract for Construction, and the Contractor may also serve that role from time to time. This Guide is useful for Owners, Architects and Contractors alike when assembling bidding and proposal information and the various components of the Contract for Construction.

How to Use This Guide

AIA Document A201–2007, General Conditions of the Contract for Construction, is used as the framework to which all of the items discussed in this Guide are related. The numbering in this Guide follows the numbering of the relevant provisions in A201–2007.

Items that are suggested for inclusion in the Instructions to Bidder, i.e., AIA Document A701™–1997; the Agreement between the Owner and Contractor; or the General Requirements (Division 1 of the Specifications; appear in this Guide under the section number of A201–2007 most nearly related to their subject matter.

This Guide assumes that Supplementary Conditions will be assembled as a separate document cross-referenced to the General Conditions. Alternatively, modifications may be made directly in the text of the General Conditions, typically through the use of AIA Contract Documents software.

The Guide is printed in two typefaces. Times New Roman 10-point typeface (example: Architect) indented from the body text of the Guide, is used only for material that is intended as actual model language which may be used for a specific project, and represents material which may be added to, deleted or revised, and then incorporated into the General Conditions or Supplemental Conditions documents. Arial 10-point typeface (example: Owner) is used for explanatory notes and identifies items needing attention.

Since some Owners, notably governmental agencies, require the use of their own standard documents, such as instructions to bidders, general conditions and particular requirements for supplementary conditions, these must be carefully reviewed and correlated with any wording taken from this Guide. This Guide may also be used to modify other General Conditions of the Contract, including the AIA documents listed herein in the Bibliography.

Choice of Location for Contract Provisions

The choice of location for contract provisions is based on the following principles, which have been generally agreed upon by representatives of the various professional societies and associations in the construction industry.

- a. Matters affecting the bidding process but which have no import or effect after the Contract is awarded should be included in the Advertisement or Invitation to Bid, Instructions to Bidders or Supplementary Instructions to Bidders, or elsewhere in the Bidding Requirements.
- b. The essential terms of the Contract, such as the Contract Sum (which is often confidential), definition of the Work, and similar matters are generally included in the Owner-Contractor

Agreement forms.

- c. Matters affecting the basic legal rights and responsibilities of the parties involved in the construction process that are generally applicable to most construction projects have been included in the General Conditions of the Contract.

- d. Matters affecting the basic legal rights and responsibilities of the parties to the Contract that may vary from one project to another, such as insurance limits, or that respond to specific legal constraints in the jurisdiction, such as indemnification, liquidated damages and fiduciary obligations, should be handled in the Supplementary Conditions.
- e. Detailed administrative and procedural requirements (e.g., temporary facilities) should be further specified in the General Requirements (Division 1 of the Specifications). Division 1 expands on certain sections of the broad provisions in the General Conditions and governs the execution of all other sections of the Specifications. Proper use of Division 1 and Supplementary Conditions will avoid conflict, omission and duplication.

This Guide gives the preferred location for all of the items discussed herein. These points are restated here to offer guidance in deciding where to locate other items that may be determined to be necessary for a specific project.

Modifications to the Contract for Construction

Because A201–2007, General Conditions of the Contract for Construction, is coordinated with agreements and other documents the A201 Family of Documents, the complete deletion of a particular provision in the General Conditions should be avoided. Section deletions and re-numbering of sections can play havoc with carefully coordinated internal references and cross references to other agreements.

GUIDANCE AND MODEL LANGUAGE

SUGGESTED INTRODUCTORY PARAGRAPH TO SUPPLEMENTARY CONDITIONS

If Supplementary Conditions will be placed in a separate document, an introductory paragraph to explain their purpose may be helpful, such as:

Model Language:

The following supplements modify AIA Document A201–2007, General Conditions of the Contract for Construction. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

Where A201TMCMA–1992, or A251TM–2007 form the General Conditions, the A201 reference above should substituted as follows:

AIA Document A201TMCMA–1992, General Conditions of the Contract for Construction.

or

AIA Document A251TM–2007, “General Conditions of the Contract for Furniture, Furnishings and Equipment.

Where the General Conditions are those contained in AIA Document A107TM–2007, the reference here should read as follows:

AIA Document A107TM–2007, Standard Form of Agreement Between Owner and Contractor for Construction Projects of Limited Scope

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

Certain corporate clients or governmental agencies may require the use of terms such as “Project Manager,” “Contracting Officer” or others which may have important and necessary connotations, and these terms should be defined here.

§ 1.1.1 If a client requires that the bidding requirements and other documents be included in the Contract Documents, the specific documents should be enumerated in the Agreement between the Owner and Contractor. It may also be advisable to bring this to the attention of Bidders in the Instructions to Bidders.

§ 1.1.4 The Project

If the Work the Contractor will perform does not constitute the total Project, the relationship of the Contractor's Work to that of separate contractors or the Owner should be made clear in the Contract Documents. You may provide general information concerning the relationship of the Contractor's activities to the activities of separate contractors or the Owner's own forces in the General Requirements (Division 1 of the Specifications).

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The AIA General Conditions do not establish a system of precedence among the Contract Documents, but provide that all documents are complementary. In the event of inconsistencies among the Contract Documents, the Architect is to interpret them accordingly. Establishing a fixed order of priority is not recommended because no one document constitutes the best authority on all issues that may arise. The order shown here is suggested for consistency in the event an Owner insists on establishing a precedent. Note that this modification does not establish a precedent between Drawings and Divisions 2 through 49 of the Specifications, which together describe the Work.

Add Section 1.2.1.1 to Section 1.2.1:

Model Language:

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 Modifications.
- .2 The Agreement.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 The Supplementary Conditions.
- .5 The General Conditions of the Contract for Construction.
- .6 Division 1 of the Specifications.
- .7 Drawings and Divisions 2–49 of the Specifications.
- .8 Other documents specifically enumerated in the Agreement as part of the Contract Documents.

In the case of conflicts or discrepancies between Drawings and Divisions 2–49 of the Specifications, or within or among the Contract Documents and not clarified by Addendum, the Architect will determine which takes precedence in accordance with Sections 4.2.11, 4.2.12, and 4.2.13.

ARTICLE 2 OWNER

§ 2.2 Information and Services Required of the Owner

§ 2.2.2 When, after award of the Contract, the Project is subject to a prolonged review or approval process by governmental or other agencies, it is desirable to describe this process and to state (1) whether the Contractor is expected to play any role in the process and (2) the effect this process may be expected to have on the commencement of the Work and the progress schedule.

§ 2.2.3 It may be necessary in some instances to amend or supplement this section to describe more fully the surveys which the Owner will furnish (i.e., metes and bounds only or topographical).

§ 2.2.5 If the Owner will furnish the Contractor more than one copy of the Contract Documents without charge, this should be stated here, with the basis on which the Contractor will be charged for additional sets.

Delete Section 2.2.5 and substitute the following:

Model Language:

§ 2.2.5 The Owner shall furnish the Contractor _____ copies of the Contract Documents. The Contractor may purchase additional copies at the cost of reproduction, postage and handling.

ARTICLE 3 CONTRACTOR

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

In B101™–2007, Section 3.6.4.4 provides for the Architect's review of the Contractor's requests for information. In addition, Section 4.2.2 of B101–2007 provides that the Architect's services in responding to Contractor's requests for information where such information is already available to the Contractor are Additional Services. The following model language may be used to provide consistency between A201 and B101 provisions where the Owner intends to obtain reimbursement from the Contractor for the Architect's review of Contractor's requests for information. Using AIA Document G816™–2004, Request for Information, may mitigate problems associated with such requests.

Add the following Section 3.2.5 to Section 3.2:

Model Language:

§ 3.2.5 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.4 Labor and Materials

§ 3.4.2 The following language may be used in situations where the Owner has agreed to consider substitutions after the Contract has been executed. This section establishes the criteria for submission and evaluation of such substitutions. Such language should be included in the General Requirements (Division 1 of the Specifications) as well as the Supplementary Conditions. Note that when multiple contracts are employed, substitutions may expose the Owner to claims from separate contractors.

Add Section 3.4.2.1 to Section 3.4.2:

Model Language:

§ 3.4.2.1 After the Contract has been executed, the Owner and Architect will consider requests for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications). By making requests for substitutions, the Contractor:

- .1 represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that it will provide the same warranty for the substitution as it would have provided for the product specified;
- .3 certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, except for the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and
- .4 shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

Substitutions proposed by the Contractor must be evaluated by the Architect and, if accepted, may require revision of the Drawings and Specifications. The resulting demands on the Architect's time and other resources may entitle the Architect to an adjustment in compensation, as is the case under Section 4.2.2.5 of AIA Document B101–2007. The following language allows the Owner to pass this expense on to the Contractor. This language should only be used on Projects where the Owner is fully prepared to deal with disputes that may arise from enforcement of this provision—for example, in situations where the Architect evaluates and then rejects the Contractor's proposed substitution. The Owner and Architect should also be prepared to deal with proposed substitutions that benefit the Owner.

Add the following to the end of Section 3.4.2:

Model Language:

§ 3.4.2.2 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for reviewing the Contractor's proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

§ 3.5 Warranty

§ 3.5.1 Note that the terms of the warranty under Section 3.5.1 are separate and distinct from the Contractor's obligation to correct the Work, as required under Section 12.2. Special warranties in the technical sections of the Specifications may also limit or expand obligations under this warranty. It is strongly suggested that Section 3.5.1 only be modified with legal advice.

§ 3.6 Taxes

§ 3.6.1 Certain non-profit organizations may be wholly or partially tax-exempt. Since the degree of tax exemption varies from jurisdiction to jurisdiction, the Owner should provide the exact language for statements concerning tax exemption for inclusion in the Supplementary Conditions.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Where separate contracts are used, list the permits and governmental fees, licenses and inspections each contractor is required to obtain and pay for to avoid duplication or error. In certain circumstances the Owner may elect to obtain the building permit, certain permits may not be required, or the Owner may elect to pay for other fees, and this section should be appropriately modified. Attention should be given to Section 2.2.2 which relates to this issue.

§ 3.8 Allowances

§ 3.8.1 Allowances should be specified in the General Requirements (Division 1 of the Specifications) with appropriate references in the particular sections of the Specifications. If allowances are to be expended by Subcontractors rather than directly by the Contractor (for example, an allowance for the purchase of special light fixtures), the information in the General Requirements (Division 1 of the Specifications) should clarify that the Subcontractor's overhead, profit, handling and other costs are included in the Contract Sum and that the allowance covers only the net cost to the Subcontractor.

In recent years, unanticipated price escalations in construction materials after the contract is executed have caused concern to owners and contractors. If the owner and architect are concerned about facing such price escalations in certain materials, they should identify those materials prior to the bid and provide for them in the bidding requirements as allowances.

§ 3.8.2.2 Note that installation costs for materials purchased under allowances are not included in the allowances. If some allowances are to include installation costs, Section 3.8.2.2 should be modified to indicate that installation costs (and other costs mentioned in § 3.8.2.2) are not included unless so stated in the description of an individual allowance

Renovation projects often require implementation of contractual techniques to manage unknown conditions. Quantity allowances may be established for such conditions and coupled with unit pricing mechanisms that will be triggered in the face of greater or lesser quantities of Work than those anticipated by the quantity allowance. If the potential range of variation is large, the Owner may wish to include overhead and profit in the quantity allowance, but not in the unit price. Since the quantity allowance is an assumed amount of Work in the Contract Sum and the unit price is the amount proposed by the Contractor to perform a greater or lesser increment of Work, the fair overhead and profit percentage for greater quantities is usually different from the percentage applied to lesser quantities of Work. If such conditions exist on a Project, Section 3.8.2.2 may be modified accordingly.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 A detailed description of the Contractor's construction and submittal schedules (CPM, bar graph or other), the process by which they are to be prepared and updated, and the extent of information required should be specified in the General Requirements (Division 1 of the Specifications).

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The documents required here constitute "a record of the Work as constructed" and their function is limited to showing actual changes made in the Work during construction. Specific detailed requirements for recording as-constructed conditions, especially for mechanical and electrical portions of the Work, should be specified in the General Requirements (Division 1 of the Specifications), or in the appropriate section of the Specifications.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.5 Detailed procedures for handling Shop Drawings, Product Data and Samples should be specified in the General Requirements (Division 1 of the Specifications).

§ 3.12.11 Reviewing multiple resubmittals can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under the Owner-Architect agreement (for example, under Section 4.2.3 of AIA Document B101–2007), language such as that shown below may be appropriate.

Add Section 3.12.11 to Section 3.12:

Model Language:

§ 3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and _____ (_____) resubmittals. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect for evaluation of additional resubmittals.

§ 3.13 Use of Site

Detailed requirements may need to be specified in the General Requirements (Division 1 of the Specifications) if an existing building will remain occupied or require access by the public.

§ 3.14. Cutting and Patching

§ 3.14.1 Special requirements for Work involving renovation, remodeling, or historic restoration or other detailed requirements should be specified in Divisions 1–49 of the Specifications.

§ 3.15 Cleaning Up

§ 3.15.1 Detailed requirements for cleaning should be specified in the General Requirements (Division 1 of the Specifications).

§ 3.18 Indemnification

In some jurisdictions statutory requirements may modify this indemnification section or void it completely. The Owner should seek the advice of legal counsel for modifications to this section.

ARTICLE 4 ARCHITECT

§ 4.1 General

Some clients, especially public authorities, may elect to engage the Architect for limited contract administration services or elect to omit contract administrative services from the Architect's scope of services altogether. If this occurs, the architect's services in the General Conditions should be reviewed carefully and correlated with the provisions of the Agreement between Owner and Architect. The parties should be especially alert to the possible delegation of the Architect's duties or authority to someone else, and should specify under this section who will assume each function normally assigned to the Architect. Other provisions of the General Conditions may have to be modified as well. The parties should be aware that any changes to the Architect's services in A201–2007 may conflict with the services described in B101–2007. Pursuant to the terms of the B101, the terms of the A201 are only enforceable to the extent they are consistent with the terms of the B101.

If the Architect's construction administration duties vary from those identified in A201–2007, use the following model language to identify the variations.

Model Language:

§ 4.1.2 The Architect's duties, responsibilities and limitations of authority are modified as follows:
(List or attach as an exhibit.)

§ 4.2.2.1 AIA Document B101–2007 addresses instances when the Architect makes site visits as a result of Contractor actions. The following language may be added for consistency between Section 4.2.2 of A201–2007 and Section 4.3.3 of B101–2007.

Add Section 4.2.2.1 to Section 4.2.2:

Model Language:

§ 4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.7 A201–2007 requires the Architect to perform submittal review in accordance with a submittal schedule that stipulates the turn-around time for Architect's review of submittals, and that the Architect approves. In the absence of an approved submittal schedule, or in anticipation of receiving it, the

parties may wish to stipulate a minimum review period for submittals in conformance with standard office procedures.

The following language may be added as Section 4.2.7.1:

Model Language:

§ 4.2.7.1 In no case will the Architect's review period on any submittal be less than ___ days after receipt of the submittal from the Contractor.

§ 4.2.14 On many projects, especially publicly bid projects, the Owner may wish to expand upon the A201–2007 language regarding review and response to requests for information. AIA Document B101–2007 stipulates the situations where the review of requests for information is considered an Additional Service. Requirements in A201 should be coordinated with Section 4.3.2 of B101–2007.

The following language may be added as Section 4.2.14.1. Note that only one of the “or” clauses relating to the type of form used for requests for information should be included:

Model Language:

§ 4.2.14.1 Contractor's requests for information shall be prepared and submitted in accordance with Division 1 “General Requirements” sections on the form included in the Contract Documents [OR] on AIA Document G716–2004. The Architect will return without action requests for information that do not conform to requirements of the Contract Documents.

ARTICLE 5 SUBCONTRACTORS

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

If the principal Subcontractors are to be identified and selected prior to execution or award of the Contract, this should be set forth in the bidding requirements (e.g., AIA Document A701–1997, *Instructions to Bidders*). If this procedure is followed, it will be necessary to modify Section 5.2 to conform to the stipulations in the bidding requirements. This should be done by a supplement to Section 5.2.1. If the Owner wishes to take sub-bids on certain parts of the Work or to require the Contractor to employ certain Subcontractors or material suppliers of the Owner's choosing, this should be explained in detail in the Instructions to Bidders.

A201 Section 5.2 requires the Contractor to submit a list of Subcontractors “as soon as practicable after award of the Contract.” If the Owner wishes certain Subcontractors to be identified more quickly, a list of those Subcontractors and their submittal dates should be included in the Supplementary Conditions.

If the Owner wishes to review certain proposed manufacturers or fabricators, then this should be explained in the Supplementary Conditions. It is recommended that not more than 60 days be allowed; shorter times may be practicable on smaller projects.

The following language may be added as Section 5.2.5.:

Model Language:

§ 5.2.5 Not later than _____ days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner through the Architect the names of persons or entities proposed as manufacturers or fabricators for certain products, equipment and systems identified in the General Requirements (Division 1 of the Specifications) and, where applicable, the name of the installing Subcontractor.

If, however, the Owner wishes to have an opportunity to both review and reject certain proposed manufacturers or fabricators, then this version of Section 5.2.5 should be added to Section 5.2.

Model Language:

§ 5.2.5 MANUFACTURERS AND FABRICATORS

§ 5.2.5.1 Not later than _____ days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner through the Architect the names of persons or entities proposed as manufacturers or fabricators for certain products, equipment and systems identified in the General Requirements (Division 1 of the Specifications) and, where applicable, the name of the installing Subcontractor. The Architect may reply within 14 days to the Contractor in writing stating 1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or 2) that the Architect requires additional time to review. Failure of the

Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.5.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.5.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected manufacturer or fabricator 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 manufacturer's or fabricator'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.

§ 5.2.5.4 The Contractor shall not substitute a person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.3 If separate contracts are to be awarded, or if the Owner's forces are to perform construction or operations related to the Project, Section 6.1.3 of the General Conditions requires that the Owner coordinate this construction with the Work of the Contractor. The details of this coordination should be set forth in the General Requirements (Division 1 of the Specifications), including the enumeration of those portions of the Work to be provided under this Article, and identification of separate contractors, when known.

ARTICLE 7 CHANGES IN THE WORK

This suggested modification of Section 7.1 applies only to contracts where the basis of payment is a stipulated sum, such as AIA Document A101™–2007. It does not apply to contracts where the basis of payment is the cost of the Work plus a fee, such as AIA Document A102™–2007.

For changes in the Work, overhead and profit may be stated separately or combined but, in either case, should distinguish among:

- a) Amounts paid to the Contractor for Work performed by the Contractor with that Contractor's own forces and amounts paid for materials purchased directly by the Contractor (not through a Subcontractor).
- b) Amounts paid to the Contractor and Subcontractor for Work performed by the Subcontractor with that Subcontractor's own forces or purchased directly by that Subcontractor (not through a Sub-subcontractor).
- c) Amounts paid to the Contractor, Subcontractor and Sub-subcontractor for Work performed by the Sub-subcontractor with that Sub-subcontractor's own forces and amounts paid for material and labor purchased by that Sub-subcontractor.

On some projects it may be desirable to add more specific information concerning items to be considered as part of "cost" as opposed to "overhead." Items that might be defined as one or the other may include costs for preparing Shop Drawings, reserves for future service liability, engineering and estimating costs, added costs for bonds and insurance, and travel and transportation expenses.

Add the following Section 7.1.4 to Section 7.1:

Model Language:

§ 7.1.4 The combined overhead and profit included in the total cost to the Owner for a change in the Work shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, _____ percent of the cost.

- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, _____ percent of the amount due the Subcontractors.
- .3 For each Subcontractor involved, for Work performed by that Subcontractor's own forces, _____ percent of the cost.
- .4 For each Subcontractor involved, for Work performed by the Subcontractor's Sub-subcontractors, _____ percent of the amount due the Sub-subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$_____ be approved without such itemization.

§ 7.3.6 If the amounts to be paid for overhead and profit on changes are to be established in the Contract Documents rather than being negotiated at the time of the changes, the figures to be used should be stated in the Supplementary Conditions.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.4 If there is a requirement or preference to measure time related to the Contract in actual working days rather than calendar days, this section should be modified.

Delete Section 8.1.4 and substitute the following:

Model Language:

§ 8.1.4 The term "day" as used in the Contract Documents shall mean working day, excluding weekends and legal holidays.

Occasionally an Owner will want no Work performed on certain days when Work might normally be carried out (i.e., special religious holidays); it would be appropriate to list these in a supplement to this section.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.2 Schedule of Values

§ 9.2.1 Requirements concerning the format and data required for the schedule of values should be stated in the General Requirements (Division 1 of the Specifications), rather than by inserting language here to modify the General Conditions. A frequent requirement is that the schedule must be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown in such detail as the Architect may require on AIA Document G703™–1992, *Continuation Sheet* for AIA Document G702™–1992, *Application and Certificate for Payment*.

§ 9.3 Applications for Payment

§ 9.3.1 Detailed requirements concerning the format (and notarization, if required) of the Contractor's Application for Payment should be specified in the General Requirements (Division 1 of the Specifications) rather than by inserting language here to modify the General Conditions. A frequent requirement is the use of AIA Document G702–1992, *Application and Certificate for Payment*, and G703–1992, *Continuation Sheet*. Public authorities often have their own forms which must be used. The Architect may reject unauthorized facsimiles of AIA documents G702 and G703 if the following language is used.

Add the following sentence to Section 9.3.1:

Model Language:

The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702™–1992, *Application and Certificate for Payment*, supported by a current authorized edition of AIA Document G703™–1992, *Continuation Sheet*.

The Owner may wish to consider the reduction of retained sums. Various methods for this procedure are set out in OPTIONS A and B which follow. OPTION C is used for constant retainage only.

When reduction in retainage is provided for in the Supplementary Conditions, the Architect should recommend that the Agreement between the Owner and Contractor (for example, in Article 5 of AIA Document A101–2007) incorporate this supplement by reference rather than adding the language to the Agreement. Including this provision in the Supplementary Conditions is preferable because the Agreement is not generally made available to other interested persons, such as affected Subcontractors and material suppliers, but the Supplementary Conditions should be.

OPTION A

Option A provides for progress payments in full to the Contractor after the Work is 50% complete. This method can have the disadvantage of applying retainage unequally to the Subcontracts, requiring full retainage on Work performed during the early stages of construction while the amount of retainage withheld on Work in the later stage of construction may be reduced or perhaps even eliminated. The net effect of this method is a sliding reduction to 50% of the basic retainage at the time of Substantial Completion. This supplement should be coordinated with Section 9.8.5.

Add the following Section 9.3.1.3 to Section 9.3.1:

Model Language:

§ 9.3.1.3 Until the Work is 50 percent complete, the Owner shall pay _____ percent of the amount due the Contractor on account of progress payments. At the time the Work is 50 percent complete and thereafter, the Architect will authorize remaining partial payments to be paid in full.

OPTION B

Option B provides for line item retainage. This method applies retainage and any reduction thereof equally to all phases of the Work. Thus, early finishing Subcontractors (e.g. foundations, structural steel) can have their retained funds reduced when they have satisfactorily performed 50% of their Subcontracts without waiting for the entire Project to be 50% complete. This supplement should be coordinated with Section 9.8.5 because that section requires release of retainage at Substantial Completion.

Add the following Section 9.3.1.3 to Section 9.3.1:

Model Language:

§ 9.3.1.3 Until final payment, the Owner shall pay _____ percent of the amount due the Contractor on account of progress payments. For each Work category shown to be 50 percent or more complete in the Application for Payment, the Architect will, without reduction of previous retainage, certify any remaining progress payments for each Work category to be paid in full.

OPTION C

Option C is used if payment to the Contractor will be made with a constant percentage retained until the date of Substantial Completion. The percentage called for here and that shown in Article 5 of AIA Document A101–2007, Agreement between the Owner and Contractor, must be identical.

Add the following Section 9.3.1.3 to Section 9.3.1:

Model Language:

§ 9.3.1.3 Until Substantial Completion, the Owner shall pay _____ percent of the amount due the Contractor on account of progress payments.

§ 9.3.2 If it is not intended that stored materials and equipment, either on or off the site, will be paid for until incorporated in the Work, this section needs to be modified appropriately. This should also be reflected in the provisions of Article 5 of AIA Document A101–2007, the Agreement between the Owner and Contractor, which must likewise be modified to omit reference to stored materials. In addition, modifications should also be made to Section 11.3.1.4.

§ 9.4 Certificates for Payment

§ 9.4.2 If the Agreement between the Owner and Contractor is other than on a stipulated-sum basis (such as cost-plus-fee where payments are made based on invoices or vouchers submitted to the Architect), this section may be qualified to limit the extent and meaning of the Architect's Certificate for Payment with respect to the progress of the Work.

§ 9.6 Progress Payments

Placing retained funds in an escrow account that earns interest provides a method of compensating the Contractor for money earned but not made available for the Contractor's use. Several government entities have enacted legislation requiring escrow accounts for retainage on public work, but it can be equally appropriate for private projects. Before using this supplement, the Owner's legal counsel must review it for conformance with local laws. An escrow account can be used with all the various methods of retainage recommended above.

Add the following Sections 9.6.8 through 9.6.14 to Section 9.6:

Model Language:

§ 9.6.8 Upon commencement of the Work, an escrow account shall be established in a financial institution chosen by the Contractor and approved by the Owner.

§ 9.6.9 The escrow agreement shall provide that the financial institution will act as escrow agent, will pay interest on funds deposited in such account in accordance with the provisions of the escrow agreement and will disburse funds from the account upon the direction of the Owner as set forth below. Compensation to the escrow agent for establishing and maintaining the escrow account shall be paid from interest accrued in the escrow account.

§ 9.6.10 As each progress payment is made, the retainage with respect to that payment shall be deposited by the Owner in the escrow account.

§ 9.6.11 The interest earned on funds in the account shall accrue for the benefit of the Contractor until the date of Substantial Completion. Interest earned after such date shall accrue for the benefit of the Owner. Cost of compensation to the escrow agent paid out of interest earned shall be borne by the Contractor.

§ 9.6.12 When the Contractor has fulfilled all of the requirements of the Contract providing for reduction of retained funds, the escrow agent shall release to the Contractor one-half of the accrued funds but none of the interest thereon. When the Work has been fully completed in a satisfactory manner and the Architect has issued a final Certificate for Payment, the escrow agent shall pay to the Contractor the full amount of funds remaining in the account, including net balance of the interest paid to the account, but less any interest that may have accrued for the benefit of the Owner, which shall be paid to the Owner.

§ 9.6.13 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, the escrow agent shall make payment to the Contractor as provided in Section 9.10.3.

§ 9.6.14 Sums owed to the Owner by the Contractor may be deducted from payments otherwise due the Contractor pursuant to Article 9.

§ 9.8 Substantial Completion

§ 9.8.1 If designated portions of the Work are to be accepted separately by the Owner, clearly define the limits of the Work to be accepted separately and include other appropriate information in the General Requirements (Division 1 of the Specifications).

§ 9.8.3.1 Multiple reinspections can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under the Owner-Architect agreement (for example, under Section 4.2.3.3 of AIA Document B101-2007), the following language may be appropriate.

Add the following Section 9.8.3.1 to Section 9.8.3:

Model Language:

§ 9.8.3.1 The Architect will perform no more than _____ (_____) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

§ 9.10.1.1 Multiple reinspections can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under the Owner-Architect agreement (for example, under Section 4.2.3.4 of AIA Document B101–2007), the following language may be appropriate.

Add the following Section 9.10.1.1 to Section 9.10.1:

Model Language:

§ 9.10.1.1 The Architect will perform no more than _____ (_____) inspections to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

§ 9.11 Liquidated Damages

The advantage of liquidated damages is the elimination of the documentation required to prove actual damages. Such a provision would normally appear in the Agreement; for example, space is provided in the Agreement between the Owner and Contractor (AIA Document A101–2007) under Article 3, for insertion of appropriate terms and conditions related to liquidated damages. However, it is important for Subcontractors and others to be aware of such a provision; therefore it is not unusual for this requirement to be set out in the Supplementary Conditions.

The language shown here is a suggested guide. It should not be included as Supplementary Conditions without review by the Owner's attorney and concurrence of the Owner. Repetition should be avoided. If the provision is written in the Supplementary Conditions, a cross-reference should appear in Article 3 of the Agreement between the Owner and Contractor. In multiple-prime contracting, the Owner should include appropriate provisions addressing liquidated damages in the multiple prime contracts.

Care must be taken to avoid even the appearance that a provision is used to extract a penalty rather than for liquidated damages. A liquidated damages provision becomes a penalty when an arbitrarily high amount is inserted into the provision to add pressure on the Contractor to complete the Work within the Contract Time. Liquidated damages are enforceable (not considered a penalty) if the amount per day is a reasonable measure of the anticipated harm. If the amount per day is grossly disproportionate to the anticipated harm, or if there is no anticipated harm, the amount may be judged an unenforceable penalty. Penalties in contracts are not generally enforceable for public policy reasons. The few exceptions to this policy are typically made by statutes that grant authority to public entities, such as cities and municipalities.

The suggested liquidated damages provision below assumes substantial completion of the entire Work.

Add the following Section 9.11 to Article 9:

Model Language:

§ 9.11 The Contractor and the Contractor's surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages, and not as a penalty, for each calendar day of delay after the date established for Substantial Completion in the Contract Documents until the Work is substantially complete: _____ Dollars (\$_____)

§ 9.12 Bonus

Below is an example of a bonus provision that may be counterbalanced with a liquidated damages provision such as that shown in Section 9.11. Often such a provision is erroneously referred to as a "penalty bonus" provision. To overcome the public policy objection against penalties in contracts, some believe that a bonus counterpoint will cause a court to look more favorably on a penalty. There is little or no legal precedent to support this proposition of linking a bonus with a penalty.

It is not a recommended practice to employ such a section without specific advice from local legal counsel.

Bonus provisions should be used only when the Owner will obtain a specific benefit if the Contractor completes the construction prior to the time set for Substantial Completion. On occasion the Owner may not desire early completion because of the timing requirements of other commitments, such as mortgage closings or the commencement of tenant leases. The model language below assumes substantial completion of the entire Work.

Add the following Section 9.12 to Article 9:

Model Language:

§ 9.12 The Owner shall pay as a bonus to the Contractor a sum of _____ Dollars (\$_____) for each calendar day preceding the date established for Substantial Completion in the Contract Documents that the Work is determined to be substantially complete by the Architect.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.2 Safety of Persons and Property

§ 10.2.4 In some cases, it may be beneficial for the Owner and Contractor to inform each other of known potential hazards on the site. The Owner and Contractor may be held liable to third parties who are harmed by them, and may therefore wish to take precautions against unauthorized access.

Add the following Section 10.2.4.1 to Section 10.2.4:

Model Language:

§ 10.2.4.1 When use or storage of explosives, or other hazardous materials, substances or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice.

The Contract Documents may require the Contractor to handle materials that under certain circumstances may be designated as hazardous.

Add the following Section 10.2.4.2 to Section 10.2.4:

Model Language:

§ 10.2.4.2 If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner.

§ 10.3 Hazardous Materials

Note that A201–2007 allows an Owner who has knowledge of the existence of materials of the type discussed in Section 10.3.1 to disclose the existence of those materials in the Contract Documents and to require the Contractor to remove or take other action regarding them. If the Owner has made such disclosure, the Contractor is not entitled to stop the Work as described in Section 10.3.1 or to require the Owner to take the actions described in Section 10.3.2.

Disclosure of the existence and location of the material should be made in Division 1 — General Requirements — and, if appropriate, on the Drawings. In addition, supplementary language may be added requiring the Contractor to comply with all applicable statutes in working with such materials including the environmental cleanup of materials that are accidentally disturbed or released into the environment. Coordinate with Article 11 regarding insurance for special hazards or pollutants.

As the Architect is unlikely to be an expert in the removal or other treatment of hazardous materials, it may be appropriate to require the Contractor to engage a licensed laboratory and qualified consultants and subcontractors to perform services mirroring those described in the first four sentences of Section 10.3.2 and to certify that the material or substance has been removed or rendered harmless and any necessary environmental cleanup performed.

ARTICLE 11 INSURANCE AND BONDS

Typically, the Architect is not qualified as an insurance counselor, and the architect's professional liability insurance may not cover providing insurance advice. For that reason, the architect is cautioned not to make recommendations about insurance or approve insurance certificates or policies. It is in the best interests of all parties that insurance matters be placed in the hands of the Owner's insurance counselor. The Owner's insurance counselor must review the Contractor's submittals regarding insurance to determine that the required coverages are in place.

§ 11.1 Contractor's Liability Insurance

§ 11.1.1.1 In some states, some business entities may not be required by statute to carry worker's compensation insurance. Such exempted employers, however, can be required by the Contract

Documents to maintain voluntary compensation coverage. The Owner's insurance advisor should determine whether or not this coverage should be a contract requirement. In most states, an exempted employer, by maintaining such voluntary coverage, is entitled to indemnity from normal tort liability and is not subject to other tort liability to employees for job-related injuries.

In addition to each state having applicable workers' compensation laws, federal and foreign laws may apply to the Contractor's or Subcontractor's employees. Where the Work includes construction involving the following categories, specific coverage may be required: maritime work, longshoremen, harbor work, work at or outside U.S. boundaries, and benefits required by labor union contracts.

Delete the semicolon at the end of Section 11.1.1.1 and add:

Model Language:

, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

§ 11.1.1.2 This requires Employers' Liability Coverage, which is normally afforded as separate coverage under the workers' compensation policy, but evidence of such coverage should be shown on the certificate of insurance. If the modification to Section 11.1.1.1 shown above is used, this modification to Section 11.1.1.2 must be used as well.

Delete the semicolon at the end of Section 11.1.1.2 and add:

Model Language:

or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but required by the Contract Documents to provide the insurance required by that section;

§ 11.1.1.4 There is a difference between the bodily injury coverage required in Section 11.1.1.3 and the personal injury coverage required by this section. Bodily injury is, as its name implies, physical harm to a person, including death, while personal injury includes libel, slander, false arrest and similar wrongs. Both bodily and personal injury coverages are required; hence the need for a careful review of the original insurance certificates by the Owner's insurance counselor.

§ 11.1.1.6 Business Auto Liability Insurance is normally issued as a separate policy. It is generally advisable to have this policy and the Commercial General Liability policy written by the same insurance company to avoid disputes as to which insurer is responsible for a particular loss.

§ 11.1.1.7 Products and Completed Operations insurance is specified to cover claims arising out of or resulting from the Contractor's operations when the injury or damage occurs after the Contractor's Work at the site has been completed, the Project has been put to its intended use and the Contractor is no longer at the site.

§ 11.1.1.8 In some jurisdictions statutory requirements may modify the indemnification section of Section 3.18 or void it completely. The Owner should seek the advice of legal counsel for modifications to Section 3.18 or this Section 11.1.1.8.

§ 11.1.1.9 Some projects or jurisdictions may require special types of coverages. The Owner should seek the advice of insurance counsel for the nature of coverage required. The coverages listed below are common on construction projects:

1. Premises-Operations
2. Independent Contractors' Protective
3. Products-Completed Operations
4. Personal Injury Liability
5. Contractual Liability
6. Personal and Advertising Injury
7. Owned, Non-Owned and Hired Motor Vehicles
8. Excess or Umbrella Liability

§ 11.1.2 The Owner, not the Architect, must establish the amounts and time limits of insurance required by Article 11. The Architect may obtain insurance information from the owner by using AIA Document G612™-2001, Owner's Instructions Regarding the Construction Contract, Insurance and Bonds, and Bidding Procedures. Note that while location, size and potential exposure have bearing on

the limits of coverage for each project, serious injury or loss of life may result in the same amount of damages no matter what the size, cost or location of the project.

Explanatory material about Workers' Compensation is provided in Sections 11.1.1.1 and 11.1.1.2 above.

The Commercial General Liability (CGL) policy combines several coverage aggregates into a single General Aggregate, which is the maximum amount that will be paid under the policy. The General Aggregate may be modified to apply to an individual project, and this endorsement should be called for as shown in the suggested language. Note that the "per project" limit of liability called for in Section 11.1.2.2.2 requires an endorsement amending the standard CGL policy. In some circumstances, this may be difficult to obtain.

If Umbrella or Excess Liability insurance coverage is required over the primary insurance, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella or Excess Liability policies. The following supplements represent sample modifications.

Add the following Sections 11.1.2.1 through 11.1.2.4 to Section 11.1.2:

Model Language:

§ 11.1.2.1 The limits for Worker's Compensation and Employers' Liability insurance shall meet statutory limits mandated by State and Federal Laws. If (1) limits in excess of those required by statute are to be provided, (2) the employer is not statutorily bound to obtain such insurance coverage, or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

§ 11.1.2.2 The limits for Commercial General Liability insurance including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows:

\$ _____ Each Occurrence
\$ _____ General Aggregate
\$ _____ Personal and Advertising Injury
\$ _____ Products-Completed Operations Aggregate

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in AIA Document A201™-2007 under Section 3.18.
- .3 Products and Completed Operations insurance shall be maintained for a minimum period of at least _____ (_____) year(s) after the expiration of the period for correction of Work.

§ 11.1.2.3 Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage: \$ _____ Each Accident

§ 11.1.2.4 Umbrella or Excess Liability coverage:

§ 11.1.3 If a Commercial General Liability form is used for this insurance, ACORD form 25-S is written specifically to list required coverages under those policies.

Add the following sentence to Section 11.1.3:

Model Language:

If this insurance is written on a Commercial General Liability policy form, the certificates shall be ACORD form 25-S, completed and supplemented in accordance with AIA Document G715™-1991, Instruction Sheet and Supplemental Attachment for ACORD Certificate of Insurance 25-S.

§ 11.3 Property Insurance

During preparation of the Supplementary Conditions the Owner's insurance counselor should carefully compare the terms of Section 11.3 with the actual policy form to be purchased to make certain all requirements for property insurance are, or can be, met, and certainly before any major changes in these

requirements are proposed. If modifications are desirable, all other sections and sections of Section 11.3, in addition to the one being changed, should be reviewed and conflicting requirements reconciled. Every effort should be made to obtain the most appropriate protection for the specific project.

This section, as it appears in the General Conditions, requires the Owner to provide property insurance on a “builder’s risk,” all-risk” or “equivalent policy form.” Despite the name, “all-risk” policies may exclude coverage for certain perils. In many cases, these exclusions can be avoided by payment of a higher premium. Section 11.3.1 provides a list of specific perils such as earthquake, flood and windstorm which must be covered, but the list does not include other perils such as war or terrorism. Changes to the list of perils should be made only upon receipt of instructions from the Owner and using language obtained by the Owner from the Owner’s insurance counselor to describe any added perils. The actual policy form referred to as “all-risk” is also called “open perils.”

The supplements suggested in this Guide are in two parts: OPTION A, modifications to Section 11.3 as written; and OPTION B, modifications to Section 11.3 when the Contractor is required to furnish property insurance coverage.

When considering the use of Option B, it is important to consider that, by the terms of Section 9.3.3 of A201 –2007, Work completed and paid for is the property of the Owner and insurance proceeds for such property damaged or destroyed by a covered loss are rightfully the Owner’s. Special consideration should be given to property insurance requirements when the Project involves additions or alterations to existing buildings.

Other exclusions under the property insurance for which waivers may be equally desirable are those that relate to claims based upon the Architect’s professional acts or omissions or to claims based upon the Contractor’s faulty workmanship or materials. Such exclusions are typically standard in most property insurance policies.

The amount for property insurance coverage is established in this section as being equal to the Contract Sum, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis. There may be occasions when an Owner is advised to carry less insurance, in which instance the Contractor must be so advised in the Supplementary Conditions so that the Contractor can include the cost of any additional necessary coverage in the Contract Sum.

As previously noted, A201–2007 requires insurance for physical loss or damage on an “all-risk” or equivalent policy form. Since these policies vary in their exclusions, it is important for the Owner’s insurance counselor to carefully review the policy that may be used to be certain it provides the desired protection. If any of the excluded risks are to be included in the coverage by endorsement, they should be specifically noted here so that the Contractor and Subcontractors will be aware of the extent of the coverage.

An example of when removal of an excluded risk might be necessary is in regard to theft coverage. Most “all-risk” policy forms include coverage for theft of materials and equipment (excluding the Contractor’s own equipment) stored on the site or in transit. However, some policies may restrict the theft protection to property that is an integral part of a building or structure. In this case, the Owner normally can obtain expanded coverage to provide the necessary protection for materials and equipment stored on the site but not yet incorporated in the Work. If the Owner does not obtain this coverage, then the Contractor should be required to obtain an installation floater to make certain the necessary insurance is in effect. If the Project is located in a high crime area, it may not be possible, or financially feasible, to acquire theft insurance.

Certain policy forms prohibit any waiver of the insured’s rights. When this is the case, it is necessary to provide a further endorsement to acknowledge the contractual provision for waiver of subrogation (Section 11.3.7, A201–2007) before any loss occurs.

OPTION A

(When the Owner carries property insurance as required by AIA Document A201–2007)

§ 11.3.1.3 Most property or fire insurance policies are written with a deductible. This section describes how deductibles are to be handled. It is necessary to show amount of deductible per occurrence unless no deductible is, or will be, established in the policy, in which case the added sentence would read, “This property insurance shall be written with no deductibles.” There is no need to identify the voluntary deductibles described in this Section 11.3.1.3 since they will be paid by the Owner in the event of an insured occurrence.

Add the following sentence to Section 11.3.1.3:

Model Language:

This property insurance is written with a deductible of \$ _____ per occurrence with a deductible aggregate of \$ _____.

§ 11.3.1.4 If the Owner does not intend to secure coverage for off-site storage or materials in transit, the Contractor must be advised so that this coverage can be obtained. See also Section 9.3.2.

Delete Section 11.3.1.4 and substitute the following:

Model Language:

§ 11.3.1.4 The Contractor shall at the Contractor's own expense provide insurance coverage for materials stored off the site after written approval of the Owner at the value established in the approval, and also for portions of the Work in transit until such materials are permanently attached to the Work.

The property insurance is to cover the entire Work, which is defined under Section 1.1.3 as including "all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations." The following provision clarifies the Contractor's responsibility to provide insurance coverage for the Contractor's machinery, tools and equipment that remain the property of the Contractor upon completion of the Project.

Add the following Section 11.3.1.6 to Section 11.3.1:

Model Language:

§ 11.3.1.6 The insurance required by Section 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment, which shall be subject to the provisions of Section 11.3.7.

OPTION B

(When the Contractor is required to carry the property insurance)

Because deletion of Sections 11.3 in its entirety and substitution of a simplified single paragraph requiring the Contractor to carry this insurance (a frequent method used to effect this change) results in omission of important statements, it is recommended that Section 11.3 be modified only where appropriate, with the balance of the wording left intact. The following discussion of the sections under Section 11.3 is offered as a guide for use under those circumstances.

Separate contractors other than the designated Contractor should be reminded of the necessity for Inland Marine coverage in the event of the need to insure their materials and equipment in transit. If a Project includes two or more buildings, each under separate contract, and the Owner does not intend to provide a single policy covering all buildings, each separate contractor should be required to carry the property insurance covering that contractor's Work on the Project. Possible areas of duplication of coverage should be assigned to one specific separate contractor. The Owner's insurance counselor should carefully evaluate the possible advantages or disadvantages if separate insurance is being provided by more than one contractor under the above circumstances.

Under certain circumstances, it is possible that the Contractor may be unable to obtain "all-risk" insurance, or would propose providing named-perils property insurance. In this situation, the Owner's insurance counselor would be well-advised to have the Contractor consider supplementing the named-perils property insurance policy with a Difference In Conditions contract (D.I.C.) to make the named-perils policy coverage consistent with the "all-risk" requirement.

If the Owner does not intend to carry the property insurance, the following modifications apply:

Modify the first sentence of Section 11.3.1 as follows: Delete "Unless otherwise provided, the Owner" and substitute "The Contractor." Add the following sentences:

Model Language:

If the Owner is damaged by the failure of the Contractor to purchase and maintain such insurance without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs attributable thereto.

Delete Section 11.3.1.2.

Since the Owner pays the deductible when responsible for property insurance, it may be advisable to modify Section 11.3.1.3 when the Contractor is responsible for purchasing and maintaining the property insurance.

Modify Section 11.3.1.3 by substituting “Contractor” for “Owner.”

Delete Section 11.3.4. Since it relates to the Contractor’s own insurance requirements, this section can be omitted.

Modify Section 11.3.6 by making the following substitutions: (1) in the first sentence, substitute “Contractor” for “Owner” and “Owner” for “Contractor,” and (2) substitute “Owner” for “Contractor” at the end of the last sentence.

Modify Section 11.3.7 by substituting “Contractor” for “Owner” at the end of the first sentence.

Modify Section 11.3.8 by substituting “Contractor” for “Owner” ; except that at the first reference to “Owner” in the first sentence, the word “this” should be substituted for “Owner’s.”

Modify Section 11.3.9 by substituting “Contractor” for “Owner” each time the latter word appears except in the last sentence.

Modify Section 11.3.10 by substituting “Contractor” for “Owner” each time the latter word appears.

§ 11.4 Performance Bond and Payment Bond

The requirements for a Performance Bond and Payment Bond should be noted in the Instructions to Bidders. (See AIA Document A701–1997, Instructions to Bidders.)

The amount of the bonds should be determined by the Owner’s legal counsel.

Delete Section 11.4.1 and substitute the following:

Model Language:

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor’s usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to _____ percent of the Contract Sum.

§ 1.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.2 Correction of Work

§ 12.2.2 Note that the time limit of one year within which the Contractor is obliged to correct the Work may be modified by special warranties required by the Contract Documents. This one-year time limit should not be construed as a limitation of the Contractor’s warranty under Section 3.5.1.

Section 3.6.6.5of AIA Document B101–2007 provides for a meeting to be held with the Owner, Owner’s Designated Representative and the Architect prior to the expiration of one year from the date of Substantial Completion to review facility operations and performance and to make appropriate recommendations. It may be desirable to require the Contractor to attend this meeting, as the recommendations from this meeting may form the basis for the written notice required by Section 12.2.2.1 of A201–2007 of Work that is not in accordance with the Contract Documents.

Add the following Section 12.2.2.4 to Section 12.2.2:

Model Language:

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.5 Tests and Inspections

§ 13.5.1 A201–2007 requires the Owner to pay for tests, inspections or approvals where building codes or applicable laws and regulations prohibit the Owner from delegating their cost to the Contractor. Those to be paid for by the Owner should be identified in the General Requirements (Division 1 of the Specifications). Although the Owner may be responsible for payment, the responsibility for coordinating the timing of tests and inspections remains with the Contractor.

§ 13.6 Interest

Usury laws and requirements under the Federal Truth in Lending Act, similar consumer credit laws at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletion, modification, or other requirements such as written disclosures or waivers.

§ 13.8 Non-Discrimination and Affirmative Action.

The Architect must be alert to provisions of local non-discrimination and affirmative action statutes in force at the Project location. If a supplementary condition is required, it should be added as Section 13.8.

§ 13.9 Moisture Control and Mold Mitigation

If project conditions warrant special mold mitigation measures, a Division 1 section should be created, or Division 1 sections should be edited, to address special procedures and protocols that must be performed. A Moisture Control and Mold Mitigation protocol should be written and included in the Contract Documents, clearly outlining the roles and responsibilities of the Owner and Contractor before, during and after construction.

Pre-construction activities at an existing building may include the Owner providing air monitoring and inspection services to determine if mold exists before the Work is commenced at the site, and remediation of such mold.

Activities required during construction may include the use of a construction drying contractor to "dry out" the building using desiccant dehumidification equipment, special procedures for materials storage and installation sequences, a water emergency response plan to address leaks or flooding during construction, execution of a moisture testing and monitoring program of in-place construction, and use of a third party inspection and testing agency to determine if the Contractor is complying with the special protocols specified in the construction documents for moisture control and mold mitigation. Such activities must be covered in the Contractor's construction schedule which should recognize and accommodate requirements for moisture management at the project site including proper drying out of the work and should specifically establish milestone dates for closing in the building before moisture sensitive work is performed.

Post-construction activities may include proper operation and maintenance of building materials and systems by Owner and execution of water emergency response plan for remediation of leaks and excess moisture. A building maintenance schedule should be included in the contract documents and operation and maintenance instructions for building systems should be clearly stipulated. The Owner should provide third party inspections of maintenance of building envelope for a certain number of months after Substantial Completion to determine Owner compliance with the building maintenance schedule.

Mold coverage on Contractor's Commercial General Liability or Pollution Liability policy is available, but is generally difficult to obtain. If this type of insurance is desired because of project conditions, the Owner should seek the advice of insurance counsel to determine (1) if mold coverage is typically available to Contractors who might work on the project (project location/size/cost considerations), (2) what is the most cost-effective way to procure it (project specific v. practice policy), and (3) who should pay the premium, deductible or other costs associated with such coverage.

If mold coverage is not available, or if a decision is made not to require such coverage on a project, an indemnification or hold harmless clause should be inserted to obligate the Contractor and Subcontractors to indemnify and hold harmless the Owner and Architect if the Contractor's and Subcontractor's faulty workmanship leads to a mold problem. Similarly, an indemnification clause may be included to protect Contractor and Architect in case Owner neglects to maintain and operate the building materials and systems according to maintenance and operation plan and instruction provides in the contract documents. This should include the requirement that the Owner will notify the Architect and Contractor of any leaks within a certain time period.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.4 Many Owners reserve to themselves the right to terminate the Contract for convenience, that is, without cause. Termination for convenience is provided for in A201–2007 and in A107–2007, but not in A105–2007, Agreement Between Owner and Contractor for a Residential or Small Commercial Project.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1.5 Requests for Additional Cost and Extension of Time

On projects where time is especially critical, or where delays are especially likely to occur, the Owner may require added protection in this area. In the language suggested below, Section 15.1.5.3 strengthens the documentation requirements for Claims for additional time, and Section 15.1.5.4 requires the Contractor to demonstrate that the delay was on the critical path. It is advisable to further describe the scheduling, documentation and submittal timing required of the Contractor in Division 1 of the Specifications.

Add the following Sections 15.1.5.3 and 15.1.5.4 to Section 15.1.5:

Model Language:

§ 15.1.5.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§ 15.1.5.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

§ 15.1.6 Claims for Consequential Damages

Under this section, the Owner and Contractor waive consequential damages arising out of the Contract for Construction. Generally, a rule of law known as the economic loss doctrine would bar independent tort claims relating to the Contract. In some states, however, the economic loss doctrine has been weakened or discarded; in that situation the Architect (against whom the Contractor does not waive consequential damages) would be exposed to tort claims by the Contractor for such damages. Where the law of such a state applies, the following language (and, of course, compliance with the stated conditions) is recommended.

Add the following sentence to Section 15.1.6:

Model Language:

If, before expiration of 30 days from the date of execution for this Agreement, the Owner obtains by separate agreement and furnishes to the Contractor a similar mutual waiver of all claims from the Architect against the Contractor for consequential damages which the Architect may incur as a result of any act or omission of the Owner or Contractor, then the waiver of consequential damages by the Owner and Contractor contained in this Section 15.1.6 shall be applicable to claims by the Contractor against the Architect.

§ 15.4 Arbitration

The General Conditions do not require an arbitration to be held in any particular jurisdiction. If it is desired to require that the demand for arbitration be filed with a specific office of the American Arbitration Association and that the arbitration be held in a particular place, unless otherwise mutually agreed, this requirement should be stated in the Supplementary Conditions. These provisions should be reviewed by the Owner's legal counsel, in view of the variance of the rules with respect to such requirements from one jurisdiction to another.

§ 15.4.1 On some projects, the parties may wish to place a dollar limit on Claims subject to arbitration. The rationale for doing this is to make the procedural safeguards of the legal system available for Claims exceeding that specified amount. Possible drawbacks are the costs and delays involved in litigation. If there is to be a dollar limit on Claims subject to arbitration, then in the appropriate section of the applicable Agreement Between Owner and Contractor where the method of binding dispute resolution is to be selected, the parties should so specify the dollar limit of Claims subject to arbitration.