2007 AIA Contract Documents®: Key Issues of Interest To Owners

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In 2007 the American Institute of Architects released almost 40 new or revised AIA Contract Documents, including two new Digital Practice documents and many new or revised documents in the Conventional or "A201" Family. The 2007 release represents the culmination of nearly four years of work. It includes new or revised documents developed from the study and analysis of current industry trends and practices. The 2007 AIA documents were shaped in large part by input received from industry stakeholders, including over a dozen groups representing owners, contractors, designers, subcontractors, insurance and surety companies, and the attorneys who represent those interests.

Following their release, the 1997 AIA documents were criticized by owner's groups as being overly friendly to contractors, and owners asserted that their interests were not adequately represented during the development of the 1997 documents. For the 2007 release the AIA made a deliberate effort to solicit input from owner groups, and received feedback from the American Bar Association Forum on the Construction Industry, Division 12: Owners and Lenders; the Commercial Owners Association of America; and the National Association of State Facilities Administrators.

Discussed more fully below are the following key issues of interest to owners addressed in the 2007 AIA Contract Documents:

- Expanded license for use of the architect's instruments of service
- Express contractual definition of applicable standard of care
- Insurance coverage requirements for architects

- Architect’s indemnity to owners
- Owner as additional insured
- Reasonable restrictions on contractor’s right to demand financing information
- Owner’s right to obtain information regarding payments to subcontractors
- Owner’s right to issue joint checks
- Disclosure requirements for “related party transactions”
- New claim limitations period
- Optional third-party Initial Decision Maker
- Optional binding dispute resolution proceedings
- Liberalized consolidation and joinder provisions

Expanded License for use of Architect’s Instruments of Service

Owners groups criticized the AIA’s 1997 owner-architect agreements for not allowing the owner more liberal use of the architect’s intellectual property (the instruments of service) in the event of a termination of the agreement. The AIA recognized that provisions in AIA agreements written to protect the architect’s ownership rights were confusing and rigid. Those provisions granted the owner a limited license to use the instruments of service only to construct, use or maintain the project. They also required that, following any termination of the agreement, the architect had to be adjudged in default before the owner could use the architect’s instruments of service to complete the project. In 2007 the AIA overhauled these provisions for clarity and added provisions that now allow the owner to have access to the architect’s instruments of service to construct, use, maintain, alter, and add to the project, provided the owner has paid the architect all amounts due. Use of the architect’s instruments of service when the architect is no longer involved, such as following the owner’s termination for convenience or after the project is completed, is without liability to the architect.
(See Appendix A, B101™–2007 § 7.3, § 7.3.1, § 9.8 and § 11.9.)

Express Contractual Definition of the Standard of Care

B101™–2007, Standard Form of Agreement Between Owner and Architect, and the other owner-architect agreements in the A201 family, include a statement of the standard of care pursuant to which the architect's performance will be measured. In large part, this is an entirely new addition to the owner-architect agreements. The AIA's 1997 owner-architect agreements contain only a vague reference to a standard of care, noting that "[t]he Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project."

Generally speaking, like all professionals, an architect must perform its duties consistent with the degree of care and competence generally expected of a reasonably skilled member of the profession. The AIA found, however, that parties often added standard of care language to contracts irrespective of this fact. The AIA also discovered that, in many cases, the general standard of care was misstated. The high occurrence of misstating the standard of care troubled the AIA because it could lead to a general misunderstanding as to the actual standard.

Accordingly, the AIA included a clear and explicit statement of the generally applicable standard of care in its 2007 revisions stating that the architect will perform its services consistent with that level of skill and care ordinarily provided by architects practicing under the same or similar circumstances. (See, e.g. Appendix A, B101–2007 § 2.2.) It is true that from state to state the applicable standard of care may be stated slightly differently, however, the above definition is generally accurate nationwide. Additionally, the definition is sufficiently flexible to adapt to each state's particular standard of care. It is the AIA's intent to provide the owner with a better understanding of the common law standard of care for an architect.

Insurance Coverage Requirements for Architects, Including Errors and Omissions Coverage

Another new addition to the A201 Family is the requirement in the owner-architect agreements that the architect maintain insurance. B101–2007 contains a provision requiring the parties to specify the types and limits of insurance the architect is required to maintain. Where those requirements exceed the types or levels of insurance the architect normally maintains, the owner is required to reimburse the architect for the costs of obtaining such excess insurance. (See Appendix A, B101–2007 § 2.5.) B141™–1997 and B151™–1997 contained a similar requirement that excess insurance the owner required the architect to obtain was a reimbursable expense, however, those documents did not contain an explicit duty on the part of the architect to maintain any minimum levels or types of insurance.

The AIA added this provision after considering a number of factors. Owner's groups demanded that such a provision be added, and many architects requested that a similar provision be added as well. Traditionally, the AIA omitted any provision regarding insurance requirements, based on the understanding that many architects did not carry insurance. In evaluating the status of the current design industry, however, the AIA reconsidered its position. The AIA found that a vast and overwhelming majority of architects already maintain insurance as part of their regular practices. Additionally, the AIA recognized that it was commonplace in today's construction industry for owners to require such a provision in the owner-architect agreement. Accordingly, the inclusion of

this requirement makes B101–2007 consistent with the current business climate, and promotes responsible practice on the part of architects.[1]

Architect's Indemnity to Owners on Large and Complex Projects

Architects in the AIA Large Firm Round Table[2] advised the Document's Committee that on large complex projects, owners were requiring indemnity clauses in their contracts. The AIA added indemnity text to the owner-architect agreement for large or complex projects to provide a standardized indemnity provision. AIA Document B103™–2007, Standard Form of Agreement Between Owner and Architect for a Large or Complex Project, requires that the architect indemnify and hold the owner and the owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of their professional services. The architect's duty to indemnify the owner is limited to the available proceeds of insurance coverage. (See Appendix A, B103–2007, § 8.1.3.)

Owner as Additional Insured for Contractor Operations and Completed Operations

Every edition of A201 since 1911 provided that the contractor procure certain policies of insurance. In 1911, that insurance was referred to as "accident insurance;" today it is called "liability insurance." Regardless of the title, the insurance was, and is,

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[1] B102™–2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, and B103™–2007, Standard Form of Agreement Between Owner and Architect for a Large or Complex Project contain similar insurance provisions.
[2] The AIA Large Firm Round Table is affiliated with the American Institute of Architects. For more information visit www.aia.org/about_lfroundtable.

intended to protect the contractor from claims for bodily injury, death and property damage resulting from the contractor's operations and completed operations at the site.

This requirement to procure insurance was in furtherance of the longstanding policy underlying AIA documents, to place risks which are the subject of insurance on insurance carriers, rather than on the parties to the contract. The insurance requirements of A201 have always been coordinated with the A201 indemnity provisions relating to bodily injury and property damage claims arising from the work. Unfortunately, over the decades, many state legislatures, often at the behest of subcontractor organizations, have created a crazy quilt of laws relating to the enforceability and interpretation of indemnity provisions.

In 1997, the AIA attempted to resolve these issues by requiring a newly created type of insurance policy, called "Project Management Protective Liability Insurance." This insurance brought all participants under a single policy, to deal with claims arising during the work for risks insurable under liability coverages. Unfortunately, this approach failed and few such policies were purchased. In investigating the reason for the failure, the AIA discovered that the industry had developed an alternative approach: the widespread use of "additional insured" endorsements. The AIA found that most owners were requiring contractors to add the owner and architect as "an additional insured" under the contractor's liability policy and that most contractors were doing the same with regard to their subcontractors. The insurance industry had responded by providing such endorsements at little or no additional cost.

The AIA has removed the requirement to provide Project Management Protective Liability Insurance and has replaced it with the solution that the industry developed.

A201™–2007, General Conditions of the Contract for Construction, requires that the contractor add the owner, the architect and the architect's consultants as additional insureds under the contractor's general liability policy for liability arising out of the contractor's negligent acts or omissions during the contractor's operations, and that the owner be added as an additional insured for liability arising out of the contractor's negligent acts or omissions during the contractor's completed operations. (See Appendix A, A201–2007 § 11.1.4.) The required endorsement does *not* require the contractor's insurer to cover claims arising solely out the acts or omissions of the owner or architect. Also, the "professional liability exclusion" contained in virtually all general liability policies will be applicable to claims against design professionals, if the claims arise from the design professional's professional activities, including design. The AIA has considered that the practical effect of this approach may be to cause the indemnity provisions, with the confusing statutory overlays, to become irrelevant to claims covered by the contractor's liability insurance.

Reasonable Restrictions on Contractor's Right to Demand Financing Information Once Construction Begins

Owner groups expressed serious concerns that the contractor's right in A201–1997 to request financial information from the owner, and to stop the work upon making such a request, was too broad and contained the potential for misuse. To address that concern, A201–2007 places some restrictions on the contractor's rights. Importantly, the owner will still be required to provide reasonable evidence that it has made financial arrangements to fulfill its obligations under the contract, and providing such information will remain a condition precedent to commencement or continuation of the work.

However, under A201–2007, once the work commences the contractor can only make such requests if (1) the owner has failed 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 reasonable concerns regarding the owner's ability to make payments when due. (See Appendix A, A201–2007 § 2.2.1.)

Owner's Right to Obtain Information Regarding Payments to Subcontractors

A201–2007 expressly provides the owner greater opportunity to learn of contractor-subcontractor payment problems, and to address a contractor's failure to pay a subcontractor. A201–2007 allows the owner to request written evidence from the contractor that the contractor has properly paid subcontractors. If the contractor fails to furnish such evidence, the owner can contact subcontractors to ascertain whether they have been properly paid. The same is true for payments made to material and equipment suppliers. (See Appendix A, A201–2007 § 9.6.4 and § 9.6.5.)

Owner's Right to Issue Joint Checks

In addition to the owner's right to obtain information about subcontractor payments, A201–2007 allows the owner to issue joint checks if the architect withholds certification for payment as a result of the contractor's failure to make payments properly to subcontractors or to lower tier subcontractors and suppliers. (See Appendix A, A201–2007 § 9.5.3.)

Disclosure Requirements for "Related Party Transactions" in Cost-Plus Contracts

Revisions to A102™–2007 (formerly A111™–1997), Standard Form of Agreement Between Owner and Contractor where the basis for payment is the Cost of the

Work Plus a Fee with a Guaranteed Maximum Price, and A103™–2007 (formerly A114™–2001), Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, require disclosure of "related party transactions." A "related party" includes a parent, subsidiary, affiliate or other entity having common ownership or management with the contractor; entities in which stockholders, or management employees, of the contractor own an interest; any person or entity with the right to control the business or affairs of the contractor; and any member of the immediate family of any such person. If any of the costs to be reimbursed under the cost-plus contracts arise from a transaction between the contractor and a related party, the contractor must notify the owner of the specific nature of the contemplated transaction before the transaction is consummated or the costs are incurred. The owner then has the right to authorize the transaction. If the owner fails to authorize the transaction, the contractor must competitively procure the work, equipment, goods or services from some person or entity other than the related party.[3] (See Appendix A, A102–2007 § 7.8.)

New Claim Limitations Period that Follows State Law and Applies to Owners, Contractors, and Architects

Beginning with the 1987 Edition, A201 contained a "contractual" statute of limitations. The limitations period commenced running upon one of three events: substantial completion, final completion, or the date warranty work was corrected. AIA

[3] Revisions to the cost-plus agreements also add new items to the Cost of the Work including reimbursement of bonuses, profit sharing, incentive compensation, discretionary payments, and self-insurance costs, all with prior approval of the owner. Other revisions clarify how to calculate the costs of rental equipment and items not fully consumed performing the work, and grant the owner audit rights in any cost-plus subcontract. Also, the agreements prompt the contractor and owner to insert any limitations on subcontractors' overhead and profit for changes in the work.

owner-architect agreements included a similar provision, differing in that the third triggering event was the date when the architect substantially completed its services. By tying the running of the time period to a certain date, architects and contractors avoided the uncertainty surrounding the discovery rule, and had the security of knowing a date beyond which they would not be exposed to potential liability.

These contractual limitations periods were successful in those states where the issue was tested; however, they resulted in a perceived unfairness to owners, who viewed the provisions as a substantial and unfair loss of rights in states that follow the discovery rule. Owners groups urged that the AIA follow applicable state laws. Reacting to the perceived inequity to owners, but attempting to balance the interests of architects and contractors that could be exposed indefinitely to liability, the AIA replaced the 1997 text with a provision requiring that causes of action must be commenced within the period specified by applicable law, but in no event more than 10 years after the date of substantial completion of the project. The parties waive all claims not commenced in accordance with the revised text. These provisions apply to claims among owners, architects and contractors. (See Appendix A, A201–2007 § 13.7 and e.g. B101–2007 § 8.1.1.)

Option for the Owner and Contractor to Name Someone Other than the Architect as the Initial Decision Maker

The AIA received many comments about the traditional role of the architect in making initial decisions on claims between the owner and contractor as a condition precedent to mediation, arbitration or litigation. An initial decision on claims can help keep the project moving, and can circumvent protracted negotiations leading nowhere.

Despite its merits, owner groups noted that owners don't particularly like it when architects make decisions against them. Contractors voiced the opinion (not shared by architects) that architects cannot be impartial. Architects, though believing that an architect's initial decision is in the best interest of the project, admitted they do not like being caught in the middle. In order to address these concerns, the AIA brought into the A201 Family a concept it initially developed for the 2004 Design-Build Family, the appointment of a third-party neutral. The 2007 owner-contractor agreements ask the owner and contractor to identify a neutral third-party Initial Decision Maker (IDM). (See Appendix A, A101™–2007 § 6.1.) The architect will act as the IDM if the owner and contractor do not identify someone else. (See Appendix A, A201–2007 § 15.2.1.)

Option to Select a Binding Dispute Resolution Proceeding Other than Arbitration

In A201–2007, as in A201–1997, an initial decision is a condition precedent to mediation, and mediation is a condition precedent to any other form of dispute resolution. However, for the first time in an AIA owner-contractor agreement, 2007 AIA agreements require the owner and contractor to select among arbitration, litigation or some other method of binding dispute resolution for any dispute they cannot settle in mediation. The same requirement is found in the 2007 owner-architect agreements. Both mediation and arbitration, unless the parties agree otherwise, will be administered by the American Arbitration Association. The parties are asked to select the binding dispute resolution procedure through the use of a checkbox similar to the following:

§ 6.2 BINDING DISPUTE RESOLUTION
For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

Liberalized Consolidation and Joinder Provisions if Arbitration is the Chosen Binding Dispute Resolution Procedure

The revised A201–2007 also provides for more liberal consolidation of related arbitration proceedings. This includes the ability of the owner, at its election, to consolidate an arbitration involving itself and the contractor with an arbitration involving itself and the architect or some other person or entity. Similarly, the contractor, at its election, can consolidate an arbitration involving itself and the owner with an arbitration involving itself and a subcontractor or supplier. Parties to arbitrations consolidated in this manner may also consolidate other arbitrations to which they are a party, so the potential exists for all disputes sharing the same common issues to be resolved in one arbitration. Parties may also agree to voluntary joinder, and the AIA has removed the prohibition on the joinder of the architect. (See Appendix A, A201–2007 § 15.4.1 and § 15.4.4, and B101–2007 § 8.3.1 and § 8.3.4.)

If you have any questions about this article or any AIA Contract Document, write to docinfo@aia.org, or call 202.626.7526.

Appendix A
Key terms and Provisions of Interest to Owners

A101™ – 2007

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

§ 6.1 INITIAL DECISION MAKER
The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

A102™ – 2007

Standard Form of Agreement Between Owner and Contractor
where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ 7.8 RELATED PARTY TRANSACTIONS
§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

A201™ – 2007

General Conditions of the Contract for Construction

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner 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

Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6.4 The Owner 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 Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 13.7 TIME LIMITS ON CLAIMS
The Owner 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 final 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 Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 15.2 INITIAL DECISION
§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker 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

Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner’s expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party 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 Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, 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 to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

§ 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.

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A 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.

§ 15.4.4 CONSOLIDATION OR JOINDER
§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

.2 Automobile Liability

.3 Workers' Compensation

.4 Professional Liability

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration

shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

B103™ – 2007

Standard Form of Agreement Between Owner and Architect for a Large or Complex Project

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.