

# TERMS OF SERVICE FOR AIA CONTRACT DOCUMENTS® ONLINE SERVICE (Effective July 6, 2017)

Thank you for choosing the AIA Contract Documents® Online Service, including its associated software system, templates, and forms (collectively, the “ACD Online Service” or “Service”), for your design or construction project. Review these Terms of Service (“Agreement”) thoroughly. This Agreement is a legally-binding agreement between you and the American Institute of Architects (referred to as “AIA,” “we,” “our,” or “us”). By clicking “I accept,” indicating acceptance electronically, or by accessing or using any part of the Service, you acknowledge that you have read this Agreement and agree to it. If you do not agree with any of the terms of this Agreement, you may not use the Service.

## 1. DESCRIPTION OF SERVICE

The ACD Online Service provides an interactive, internet-based platform that lets users create, edit, store, upload, download, share, and sign contracts and other legal forms for their design or construction projects, using the templates and forms accessible through the Service. For more information regarding AIA’s ACD Online Service, please review the summary and description located at <http://www.aiacontracts.org>.

## 2. ACD ONLINE SERVICE LICENSE GRANT

The ACD Online Service, and all associated proprietary and intellectual property rights (including trademarks, service marks, and trade names), are owned by AIA. AIA reserves the right to change or modify the Service, including any components and specifications thereof, in its sole discretion.

AIA provides you and your Authorized Users with a revocable, limited, non-exclusive, and nontransferable license to use and enjoy the benefit of the ACD Online Service for purposes of creating, editing, storing, uploading, downloading, sharing, and signing contracts and other legal forms using your Client Information, in the manner permitted by this Agreement. “Authorized Users” are your individual (and current) employees, contractors, or agents who are permitted by you to access the Service either directly through a named account or by invitation to the Share for Review feature, and who have agreed to abide by this Agreement. The license granted will specify whether you have received a single-user license or a license to authorize use by a particular number of Authorized Users.

You do not acquire any right, title, or interest in or to the Service other than the limited license granted to you by this Agreement. All rights not expressly granted to you are reserved to AIA.

## 3. YOUR CLIENT INFORMATION

Your “Client Information” includes all the data you or your Authorized Users submit, upload, store, or send to or through the ACD Online Service. You retain ownership of any rights that you hold in your Client Information. Your Client Information does not include databases, scores, metrics, or other analytics or derivative work generated by the ACD Online Service or otherwise created by AIA. Your Client Information also does not include data submitted by other users, data obtained from sources other than you, or any publicly available data.

## **4. YOUR PRIVACY**

Any Client Information that you provide to us is subject to our [Privacy and Security Policy for the ACD Online Service](#), which is incorporated in this Agreement and governs our collection and use of your Client Information. By accessing or using the Service, you consent to the collection and use of the Client Information as provided by the Privacy and Security Policy.

As described in our Privacy and Security Policy, we will not share any personally identifiable information that we obtain from you. By using the Service and uploading, submitting, storing, or sending Client Information to or through the Service, you give AIA a limited, non-exclusive, royalty-free, worldwide license to use aggregated and anonymized data from Client Information (“Aggregated Data,”) excluding information contained in draft contracts; to analyze Aggregated Data; to create and publish derivative works from such Aggregated Data; and to perform internally all operations necessary for the creation of such works.

AIA considers Aggregated Data to be the result of that information which has been sanitized through encryption or removal of identifying information from data as a means to protect Client Information, that is then combined with several data sets from which observations are made. Such data is then replaced with summary statistics based on those observations.

For the avoidance of doubt, Aggregated Data shall only include data derived from final ACD documents generated by you, i.e. final agreements. Further, for the avoidance of doubt, the AIA’s generation of Aggregated Data is an automated process through the ACD Online Service software, and the at no point during the generation of Aggregated Data process will AIA staff or agents read, review, or otherwise directly access such data.

AIA will not provide any personally identifiable data you input into the ACD Online Service to third parties for any purpose. For more information about the use and collection of your Client Information, please see the [Privacy and Security Policy](#).

Notwithstanding, in the event the AIA is requested or required, by subpoena, oral deposition, interrogatories, request for production of documents, administrative order or otherwise, to disclose any Client Information, the AIA shall provide you notice of any such request so that you may seek, at your expense, an appropriate protective order. If, in the absence of a protective order, the AIA is compelled by law, in the opinion of its counsel, to disclose any Client Information, the AIA may make such disclosure after notice you.

## 5. YOUR OBLIGATIONS

You must access the ACD Online Service through a registered account using a username and a password, and any additional user authentication mechanism deemed appropriate by the AIA.

By accessing or using the Service, you agree that you will:

- Provide true, accurate and complete registration information and promptly provide any updated information.
- Keep your username and password confidential to prevent unauthorized use of your account. You are responsible for your Authorized Users and assume responsibility for any and all activity occurring through your username and password.
- Promptly notify us if you become aware of any loss or theft of your password or any unauthorized use of your account.
- Provide AIA reasonable cooperation required for use or implementation of the Service.

You agree not to use, nor permit any third party to use, the ACD Online Service in a manner that violates this Agreement or any applicable law or regulation. You and your Authorized Users agree you will not:

- Reproduce, modify, copy, sell, trade, lease, rent, resell, or license the Service.
- Decompile, disassemble, or reverse engineer the Service.
- Market, distribute, display, post, or otherwise make available any part of the Service (including any templates and forms) apart from authorized use of the Service.
- Remove or alter any proprietary watermark or legal notice on any part of the Service (including any templates and forms) indicating that the Service is the property of AIA.
- Interfere with the Service or try to access it using a method other than the interface and the instructions that we provide.
- Use another user's username and password without permission.
- Upload spyware or any other malicious software to the Service.
- Attempt to probe, scan, penetrate, or test the vulnerability of the Service and the related system or network.
- Engage in unauthorized collection or use of personal or confidential information, including phishing, pharming, and harvesting.
- Transmit or otherwise provide any harmful or objectionable content on or through the Service, including content that (1) violates or infringes upon the proprietary and intellectual property rights of others; (2) impersonates another or is fraudulent, unfair, deceptive, threatening, abusive, libelous, defamatory, invasive of privacy or publicity rights, vulgar, obscene, or otherwise unlawful or reasonably objectionable; (3) harms AIA's reputation; or (4) encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any law.

By accessing or using the ACD Online Service, you acknowledge that AIA may, but has no obligation to, monitor any user-provided information or content on the Service. You are solely responsible for the accuracy, completeness, appropriateness, or legality of any content or

information you submit or provide using the ACD Online Service. AIA does not edit, endorse, or approve any such content. AIA assumes no responsibility or liability for any claims that may result directly or indirectly from any third party communications or interactions you establish.

## 6. ACCOUNT SECURITY

This Agreement incorporates by reference AIA's [Privacy and Security Policy for the ACD Online Service](#). We strive to implement and maintain reasonable, commercially acceptable security procedures and practices appropriate to safeguard your Client Information from unauthorized access or use. We cannot, however, guarantee 100% security. You can help keep your Client Information safe by adhering to the User Obligations described above. As part of our effort to safeguard your information, AIA reserves the right to monitor your account activity related to the ACD Online Service (in accordance with applicable law).

## 7. COPYRIGHT; DESIGNATED AGENT FOR NOTIFICATION OF CLAIMS OF INFRINGEMENT

AIA respects the intellectual property of others and asks you to do the same. Consistent with the Digital Millennium Copyright Act of 1998 (DMCA), we will respond to a notice of alleged infringement if the claim complies with the law, includes all of the requirements set forth below, and is properly reported to our Designated Agent. We will document all notices of alleged infringement upon which we decide to take action. If you believe that your copyright has been infringed through another's use of the ACD Online Service, please send to our Designated Agent a written notice of your claim with the following information:

- A signature of a person authorized to act on behalf of the owner of the copyright interest that is allegedly infringed;
- A description, in reasonable detail (including any applicable URL address), of the copyrighted work that you claim has been infringed;
- A description, in reasonable detail, of where the material that you claim is infringing is located on the site controlled by AIA;
- Your name, address, telephone number, and e-mail address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- A statement by you, made under penalty of perjury, that the above information in your written notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.
- **Our Designated Agent:** The American Institute of Architects, Attention: Office of General Counsel, 1735 New York Avenue, NW, Washington, DC 20006.

Upon receipt of a properly reported notice, we will take whatever action we deem appropriate in our sole discretion. We reserve the right to remove, or disable access to material on the Service alleged to be infringing and/or to suspend or terminate your right to access and use the Service. If AIA suspends or terminates your access to the Service, AIA will make a good-faith

attempt (as warranted) to contact the person or entity who posted the content so that they may make counter notification pursuant to applicable laws.

Pursuant to the DMCA, counter notifications may be sent to the AIA's Designated Agent. All counter notifications must include responsive information to what is set forth above, including any required statements or signatures.

You acknowledge that you may be liable for damages, including attorneys' fees and costs, if you materially misrepresent that a work or activity is infringing your rights.

As with all legal notices, a copy of the notice may be sent to one or more third parties who may make such notice available to the public.

## **8. PAYMENT TERMS**

You agree to pay the applicable license or subscription fee(s) designated by AIA, including any taxes, for use of the ACD Online Service. You will pay the fee(s) for a designated time period in advance. The payment will not be refunded once it has been paid, even if you terminate use of the Service prior to the end of the designated period. We may increase the fee(s) no more than once each calendar year. If we do so in a given year, you will be subject to the new rate at the end of your designated period.

Payments will be billed to you in U.S. Dollars (\$), and you must pay in U.S. Dollars (\$) using a method permitted by AIA.

Unless otherwise indicated by AIA in writing, you must pay any invoice within 30 days of receipt. All past-due payments will accrue interest at a rate of 1.5% or the highest rate permissible by law, whichever is less, per month on the unpaid balance from the due date until paid in full.

AIA reserves the right to terminate or suspend your access to the ACD Online Service if you fail to pay any amounts within 60 days of when due. You agree to reimburse AIA for all reasonable costs incurred (including reasonable attorney's fees) in collecting past-due amounts.

## **9. AVAILABILITY OF SERVICE AND SUPPORT**

We try our best to have the ACD Online Service available 24 hours a day, 7 days a week. There, however, may be times when the Service is unavailable for routine maintenance, to correct technical difficulties, or for some other reason. Availability of the Service is subject to change at any time in our sole discretion. You also acknowledge and agree we have no obligation to receive or process through the Service any Client Information whose technical requirements do not fit within the Service's specified technical parameters.

In addition to making the ACD Online Service available, we also agree to provide the technical support for the Service set forth on <http://www.aiacontracts.org>. We reserve the right to modify or terminate the offered support, and to determine the manner by which it is provided in our sole discretion. You are otherwise solely responsible for training and otherwise informing Authorized Users of the features and capabilities of the ACD Online Service.

## **10. OTHER TERMS AND CONDITIONS**

Additional notices, terms, and conditions, including, without limitation, AIA's **Membership Agreement**, and the payment terms due and owing thereunder, may apply to the use of the ACD Online Service. You agree to abide by such other notices, terms, and conditions (as applicable). If there is a conflict between this Agreement and any other terms regarding the ACD Online Service, this Agreement governs to the extent of the conflict.

## **11. LINKS TO OTHER SITES**

The ACD Online Service may facilitate access to other third-party websites for your convenience and reference. We have no control over these third-party sites and are not responsible for their content. We do not endorse, and are not responsible in any way for, the content, the accuracy of the information, and/or the quality of the products or services provided by, made available through, or advertised on these third party websites.

## **12. FEEDBACK**

We welcome your feedback about the ACD Online Service and on how to improve it, and you can do so by emailing AIA at [docstechsupport@aia.org](mailto:docstechsupport@aia.org). By sending us any feedback, suggestions, or ideas, you represent and warrant that you have all rights necessary to convey them to us, and acknowledge that we may freely use any feedback, suggestions, or ideas you send us without any obligation to you. You grant AIA a royalty-free, perpetual, irrevocable, transferable, non-exclusive right and license to use the feedback, suggestions, or ideas that you provide to AIA in any way.

## **13. YOUR REPRESENTATIONS AND WARRANTIES**

By accessing and using the ACD Online Service and/or accepting this Agreement, you represent and warrant to AIA that: (i) you are at least 18 years old; (ii) you are authorized to enter into this Agreement on behalf of yourself or the business using the Service; and (iii) you are authorized and able to fulfill and perform the obligations as specified herein.

With respect to the Client Information, you further represent and warrant that: (i) you own or have obtained all rights necessary to authorize your use of your Client Information; (ii) you have collected and are using the Client Information in accordance with all applicable laws (including regulations and attorney general or agency guidance, guides, or rulemaking) and privacy

policies; and (iii) the Client Information will not contain any social security numbers, payment card information, or medical records.

## **14. OUR DISCLAIMERS OF WARRANTY**

We provide the ACD Online Service using a commercially reasonable level of skill and care. But there are certain things we do not promise about the Service.

AIA AND THE ACD ONLINE SERVICE DO NOT PROVIDE LEGAL ADVICE. You are solely responsible for obtaining your own legal advice, for protecting legal privilege, and for abiding by or negotiating your own contracts and legal terms and conditions. Consult the services of a competent legal professional when you need this type of assistance.

OTHER THAN AS EXPRESSLY SET OUT IN THIS AGREEMENT, AIA DOES NOT MAKE ANY SPECIFIC PROMISES ABOUT THE ACD ONLINE SERVICE. FOR EXAMPLE, WE DO NOT MAKE ANY COMMITMENTS ABOUT THE CONTENT WITHIN THE SERVICE; THE SERVICE'S RELIABILITY, SECURITY, OR AVAILABILITY; OR THE ABILITY OF THE SERVICE TO MEET YOUR NEEDS OR ACHIEVE CERTAIN RESULTS. WE PROVIDE THE SERVICE "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND AND FOR USE BY YOU AT YOUR OWN RISK.

SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, WE EXCLUDE ALL SUCH WARRANTIES.

## **15. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AIA WILL NOT BE RESPONSIBLE FOR THE FOLLOWING: (A) ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) DAMAGES, REGARDLESS OF LEGAL THEORY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE ACD ONLINE SERVICE; AND (B) DAMAGES RELATING TO A CAUSE THAT IS BEYOND AIA'S CONTROL OR IS NOT REASONABLY FORESEEABLE, INCLUDING, BUT NOT LIMITED TO, FAILURE OF ELECTRONIC OR MECHANICAL EQUIPMENT OR COMMUNICATION LINES, TELEPHONE OR OTHER CONNECTION PROBLEMS, COMPUTER VIRUSES, UNAUTHORIZED ACCESS, THEFT, OPERATOR ERRORS, SEVERE WEATHER, EARTHQUAKES OR OTHER NATURAL DISASTERS, STRIKES OR OTHER LABOR PROBLEMS, WARS, OR GOVERNMENTAL RESTRICTIONS. THE ABOVE LIMITATIONS APPLY EVEN IF AIA HAS BEEN ADVISED OF THE POSSIBILITY OF THE EVENT GIVING RISE TO POTENTIAL LIABILITY.

WITHOUT LIMITATION OF THE FOREGOING AND TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF AIA, FOR ANY CLAIMS RELATED TO THE USE OF THE ACD ONLINE SERVICE OR TO THIS AGREEMENT IS LIMITED TO YOUR LICENSE COST OR \$5,000 (USD), WHICHEVER IS LESS.

## **16. INDEMNITY**

You agree to defend, indemnify, and hold harmless AIA and its employees, agents, directors, officers, shareholders, attorneys, successors, and assigns from and against any and all third party claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including reasonable attorneys' fees and litigation expenses), relating to or arising from your use of the Service or breach of this Agreement. AIA reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any such claims. You agree to reasonably cooperate as requested by AIA in the defense of such claims.

## **17. GOVERNING LAW**

The laws of District of Columbia, U.S.A., excluding the District of Columbia's conflict of laws rules, will apply to any disputes arising out of or relating to this Agreement or the ACD Online Service. The courts in the District of Columbia will have exclusive jurisdiction and venue over all controversies in connection with this Agreement. You and AIA consent to such exclusive and personal jurisdiction and venue. To the extent permitted by law, (i) any claim you might have against AIA arising out of performance under this Agreement must be brought within two (2) years of the underlying cause of the claim, or such claim or cause of action is barred; and (ii) you agree to waive any right to a jury trial in connection with any action or litigation arising out of or related to this Agreement and that You and AIA each has the right to seek attorneys' fees in any proceeding. You also acknowledge and agree that any applicable state law implementation of the Uniform Computer Information Transactions Act (including any available remedies or laws) shall not apply to this Agreement.

## **18. TERM AND TERMINATION**

This Agreement and your right to use the ACD Online Service will take effect at the moment you click "I accept," or access or use the ACD Online Service. This Agreement and your right to access and use the ACD Online Service will terminate automatically if you click "Reject." You may also terminate this license at any time by ceasing to use the ACD Online Service and providing AIA notice of the termination through your account. Termination is limited to the license AIA grants to you, and any the survival clauses stated in this Paragraph.

We reserve the right to terminate this license, or suspend or terminate your access to the ACD Online Service at any time, with or without notice, if we determine that you have violated this Agreement, including, without limitation, by providing any false, inaccurate, untrue, or incomplete information, by exceeding the scope of the license, by engaging in activities that compromise the security of the Service, or by failing to pay in a timely manner any applicable fees, charges, or costs. The provisions in this Agreement concerning ownership of intellectual property, feedback, confidentiality, warranties and disclaimers of warranty, limitations of liability, indemnification, termination, governing law, and the miscellaneous terms will survive



the termination or expiration of this license for any reason. Termination is limited to the license AIA grants to you, and any the survival clauses stated in this Paragraph.

Notwithstanding the Termination provisions of this Paragraph, the following Paragraphs shall survive termination: 3; 4-7; 13-17; 19-20.

## 19. NOTICES

You agree to send any notice you are required to send to AIA to the following designated address: [docstechsupport@aia.org](mailto:docstechsupport@aia.org). AIA will and may provide any notice hereunder (effective upon submission) to the email address you provide to AIA as a part of registering to use the ACD Online Service. It is your responsibility to update and maintain current notice information. In addition, you agree that AIA may also communicate with you through the email address you provide and, for changes applicable generally to all users, through the posting of notice to and through the ACD Online Service.

## 20. MISCELLANEOUS

- a) You and AIA agree that this Agreement is for the benefit of you, AIA, and any licensors of AIA. Accordingly, this Agreement is personal to you, and may not be assigned to any other person or entity without AIA's prior written consent.
- b) This Agreement does not create any third party rights.
- c) AIA's failure to enforce a provision of this Agreement is not a waiver by AIA of its right to do so later.
- d) A printed version of this Agreement and of any related notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- e) If any provision (or part thereof) in this Agreement is later determined to be unenforceable by a court of competent jurisdiction for any reason, such determination will not affect the remaining provisions (or parts thereof).
- f) You and AIA are independent contractors. No joint venture, partnership, employment, or agency relationship exists between you and AIA as result of this Agreement or your use of the ACD Online Service. You have no right to bind AIA without its prior written permission.
- g) The headings in this Agreement are inserted for convenience only, and should not be construed to limit or modify the scope of any provision of this Agreement.
- h) This Agreement represents the entire agreement between you and AIA regarding its subject matter, and it supersedes all prior or contemporaneous communications and proposals between you and AIA with respect to the ACD Online Service.
- i) Unless otherwise agreed to by AIA, AIA reserves the right to change the terms and conditions of this Agreement and under which the ACD Online Service is extended to you by providing you in writing or electronically a copy of such revised terms and conditions (or notice thereof). Following such provision or notice, your continued use of

the ACD Online Service will be conclusively deemed acceptance of any change to this Agreement or the ACD Online Service.

Last Update July 6, 2017

I HAVE READ AND UNDERSTOOD THE FOREGOING AGREEMENT AND AGREE TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS. PLEASE MANIFEST YOUR ASSENT TO THIS AGREEMENT BY CLICKING ON THE APPROPRIATE LINK.

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