

*Guide for Supplementary Conditions, including Amendments to AIA Documents A201 and the Owner-Contractor Agreements*

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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.

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

construction. Project-specific information must be included in one of four locations:

- a. in the bidding requirements (note, bidding requirements are not part of the Contract Documents unless specifically identified as such in the enumeration of Contract Documents.);
- b. in the Owner-Contractor Agreement, including the Insurance Exhibit;
- c. in modifications or supplements to the General Conditions of the Contract for Construction ; or
- 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 AIA Documents A101–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, and A201–2017, General Conditions of the Contract for Construction. However, the guidance and model language presented is also applicable to AIA Documents A102–2017, 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, and A103–2017, 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. Cross references to AIA Document A102–2017 and A103–2017 are provided where appropriate.

This Guide is not a standard form supplementary conditions document. Model language is sometimes presented in 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. However, the Architect typically assists the Owner in preparing the Contract for Construction, and the Contractor may also serve that role. This Guide is useful for Owners, Architects, and Contractors alike when assembling procurement information and the various components of the Contract for Construction.

### **How to Use This Guide**

This Guide assumes that modifications will be made directly in the text of AIA Contract Documents in electronic format. However, Supplementary Conditions may be assembled as a separate document cross-referenced to the appropriate AIA Contract Document. With careful coordination, this Guide may also be used to modify other General Conditions of the Contract, or other Owner-Contractor agreements, including manuscript documents or other AIA Contract Documents such as A133, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guarantee Maximum Price.

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 that 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.

Some Owners, notably governmental agencies, require the use of their own standard documents, such as instructions to bidders or general conditions, and have particular requirements for supplementary conditions. These must be carefully reviewed and correlated with any wording taken from this Guide.

### **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, and that are generally applicable to most construction projects, are 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, or that respond to specific legal constraints in the jurisdiction, 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 coordination 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 AIA Contract Documents are carefully coordinated to be used together, the complete deletion of a particular provision should be avoided. Section deletions and re-numbering of sections can conflict with carefully coordinated internal references and cross references to other agreements.

## **GUIDANCE AND MODEL LANGUAGE**

### **I. AMENDMENTS TO AIA OWNER-CONTRACTOR AGREEMENTS**

AIA Document A101–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, is used as the frame of reference for the items discussed in this section. The numbering in the sections below follows the numbering of the relevant provisions in A101–2017. However, revisions and suggestions included in this section are equally applicable to AIA Documents A102–2017, 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, and A103–2017, 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. The appropriate section references for modifications to A102–2017 and A103–2017 are included in italics.

### **ARTICLE 4 CONTRACT SUM**

#### **§ 4.5 Liquidated Damages**

Liquidated damages are sum(s) that the parties agree, at the time of contracting, will be the Owner's remedy for any damages that the Owner will claim as a result of the Contractor's failure to achieve Substantial Completion within the Contract Time, as provided in the Owner-Contractor Agreement. Unless otherwise expressly stated in the Contract, liquidated damages will be the Owner's sole remedy for the Contractor's delay in achieving Substantial Completion and the Owner would be precluded from recovering other types of damages, including direct, consequential, and special damages resulting from delay.

Usually, a liquidated damages provision is inserted in the Agreement between the Owner and Contractor, allowing the parties to define the appropriate terms and conditions related to the assessment of liquidated damages.

The language shown here is a suggested guide. It should not be included without review by the Owner's

attorney and concurrence of the Owner. In multiple-prime contracting, the Owner should consider including appropriate provisions addressing liquidated damages in each of the multiple prime contracts.

Care must be taken to avoid even the appearance that a liquidated damages provision will be used to extract a penalty—an amount that is not a reasonable measure of the anticipated actual damages. If it is found that the liquidated amount is disproportionate to the anticipated harm, or if there is no anticipated harm, then the amount may be judged to be an unenforceable penalty. Penalties in contracts are not generally enforceable for public policy reasons—the few exceptions are typically made by statutes granting authority to public entities, cities and municipalities.

A liquidated damages provision will often address the following items: (1) the date or event that triggers the commencement of the assessment of liquidated damages; (2) the date or event that triggers the termination of the assessment of liquidated damages or a monetary cap on the amount of liquidated damages, if any; and (3) the monetary amount of liquidated damages to be assessed, the incremental period of time for each assessment (calendar day, etc.), and whether that amount is uniform or variable over time.

It is generally recommended that liquidated damages provisions be:

1. enumerated in the Owner-Contractor Agreement; and
2. highlighted in AIA Document A701, Instructions to Bidders, to inform all potential participants in the project in advance of the potential for exposure to such damages.

If the Owner and Contractor agree to include a provision for liquidated damages in the Owner-Contractor Agreement, and there is a single Substantial Completion date for the entire Work, the following Model Language may be used.

#### **OPTION A**

If liquidated damages are to be uniform for the period of assessment, insert the following in the fill point at Section 4.5 of Article 4:

*(For A102–2017 and A103–2017 insert in Section 5.1.6)*

##### **Model Language:**

If the Contractor fails to achieve Substantial Completion within the Contract Time, the Contractor shall be liable for the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) as liquidated damages, and not as a penalty, for each calendar day beginning on the first day after the Contractor fails to achieve Substantial Completion within the Contract Time until the date that Substantial Completion is achieved.

#### **OPTION B**

If liquidated damages are to be variable for the period of assessment, insert the following in the fill point at Section 4.5 of Article 4:

*(For A102–2017 and A103–2017 add to Section 5.1.6)*

##### **Model Language:**

If the Contractor fails to achieve Substantial Completion within the Contract Time, the Contractor shall be liable for the sums stipulated below, as liquidated damages and not as a penalty: (1) for each calendar day beginning on the first day after the Contractor fails to achieve Substantial Completion within the Contract Time for a period of \_\_\_\_\_ days (the “Initial Period”): \_\_\_\_\_ Dollars (\$ \_\_\_\_\_); and (2) for each calendar day beginning on the day after the Initial Period until the date that Substantial Completion is achieved: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

If the Owner and Contractor agree to include provisions for liquidated damages in the Owner-Contractor Agreement and there are multiple Substantial Completion dates for different phases of the Work, then the liquidated damages provisions may address the damages appropriate to each phase of Substantial Completion set forth in Section 3.3.2 of AIA Document A101-2017 or Section 4.3.2.2 of AIA Document A102-2017 and AIA Document A103-2017.

Circumstances may justify a cap on the total amount of liquidated damages that may be assessed against the Contractor. In those circumstances, the parties may consider adding the following language to the language selected under Option A or Option B above:

**Model Language**

Under no circumstances shall the total amount of liquidated damages exceed the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

**§ 4.6 Bonus**

Below is an example of a bonus provision that may be used to counterbalance a liquidated damages provision such as those shown in Section 4.5. To overcome the public policy objection against penalties in contracts, some parties believe that a bonus counterpoint will cause a court to look more favorably on a liquidated damages provision.

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

Bonus provisions should be used when the Owner will obtain a 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 to Section 4.6 of Article 4:

*(For A102–2017 and A103–2017 add to Section 5.1.7)*

**Model Language:**

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 5 PAYMENTS**

**§ 5.1.7 Retainage**

Retainage is an amount specified in the Agreement that is withheld by the Owner from each of the Contractor's progress payments until the Contractor achieves Substantial Completion. Retainage may be withheld as a constant or variable percentage for the entire application, or retainage may be withheld differently based upon each line item in the schedule of values. The amount, purpose, and conditions for release, of retainage are typically governed by state law. Be sure to consult with legal counsel before finalizing the provisions for retainage.

Parties may select certain items in the schedule of values that are not subject to retainage, which might include costs for which the Contractor must make full payment in a timely manner. These items would be inserted in Section 5.1.7.1.1 of A101-2017 (or Section 12.1.8.1.1 of A102-2017 or Section 12.1.7.1.1 of A103-2017) and may include insurance and bond premiums, permits, and deposits for long lead items.

Reduction or limitation of retainage may take different forms with respect to timing and amount. The following model language may be used to reduce or limit retainage.

**OPTION A**

Option A 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. Coordination with the language in Section 9.8.5 of A201–2017 will be required because that section requires release of all retainage at Substantial Completion.

Add the following to Section 5.1.7.2 of Article 5:  
(For A102–2017 add to Section 12.1.8.2 or for A103–2017 add to Section 12.1.7.2 )

**Model Language:**

Until Substantial Completion, the Owner may withhold \_\_\_\_\_ percent ( \_\_%) of the amount due the Contractor on account of progress payments, as applied to each line item in the schedule of values approved by the Architect, until that line item is fifty percent (50%) complete, and thereafter there shall be no additional retainage on that line item.

**OPTION B**

Option B provides for progress payments in full to the Contractor after the Work is 50% complete. This method applies the burden of retainage unequally to the Subcontracts, -requiring full retainage to be withheld on Work performed during the first half of construction, but no retainage to be withheld on Work performed during the second half of construction. Coordination with the language in Section 9.8.5 of A201–2017 will be required because that section requires release of all retainage at Substantial Completion.

Add the following to Section 5.1.7.2 of Article 5:  
(For A102–2017 add to Section 12.1.8.2 or for A103–2017 add to Section 12.1.7.2 )

**Model Language:**

Until the Work is fifty percent (50%) complete, the Owner may withhold \_\_\_\_\_ percent ( \_\_%) of the amount due the Contractor on account of progress payments. At the time the Work is fifty percent (50%) complete and thereafter, there shall be no additional retainage withheld.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§7.1.1 Termination Fee**

Under Section 14.4.3 of AIA Document A201-2017, if an Owner terminates the Agreement for convenience, the Owner pays the Contractor for:

1. work properly executed;
2. costs incurred by reason of the termination, including costs attributable to termination of subcontracts; and
3. a termination fee, if any, set forth in the Agreement.

The place to enter the termination fee appears as a fill-point in the Owner-Contractor Agreements (i.e., Section 7.1.1 of AIA Document A101–2017 and Section 14.1.3 of AIA Document A102–2017 and A103–2017). This termination fee is intended to be a negotiated amount (or means to compute an amount) that liquidates the Owner’s liability to the Contractor for claims based on the Contractor’s lost business opportunity and overhead and profit on the Contractor’s unperformed Work. It is not designed to completely liquidate the Owner’s liability for termination because claims from the Contractor’s subcontractors and suppliers may be separately payable to the Contractor under Section 14.4.3 of AIA Document A201-2017 as “costs attributable to termination of subcontracts.” Under Section 7.2.2.2 of AIA Document A401-2017, if the Owner terminates the Contractor for convenience, the Subcontractor is entitled to receive payment for Work properly executed, costs incurred by reason of the termination, and reasonable overhead and profit on the Work not executed.

The termination fee can be structured as a flat fee, a percentage of the Contract Sum, or as a tiered payment system based upon the stage of completion of the Project. Several options are given below.

**OPTION A**

If the Owner and Contractor agree to a flat termination fee, the following Model Language may be used.

Add the following to Section 7.1.1 of Article 7:  
(For A102–2017 and A103–2017 add to Section 14.1.3)

**Model Language:**

The termination fee shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

**OPTION B**

If the Owner and Contractor agree to a percentage of the unpaid Contract Sum for the termination fee, the following Model Language may be used.

Add the following to Section 7.1.1 of Article 7:  
(For A102–2017 and A103–2017 add to Section 14.1.3)

**Model Language:**

The termination fee shall be \_\_\_\_\_ percent (\_\_\_%) of the value of the unpaid Contract Sum for the Work remaining to be performed as of the date of the Notice of termination.

**OPTION C**

If the Owner and Contractor agree to a tiered payment system for the termination fee, based upon the stage of completion of the Project , the following Model Language may be used.

Add the following to Section 7.1.1 of Article 7:  
(For A102–2017 and A103–2017 add to Section 14.1.3)

**Model Language:**

The termination fee shall be a percentage of the value of the unpaid Contract Sum for the Work remaining to be performed as of the date of the Notice of termination as follows:

Percent of Work remaining to be performed as of the date of the Notice of Termination	Percentage to be Applied to the Value of the Contract Sum for Work remaining to be performed
Greater than 75%	
75% - 25%	
Less than 25%	

Should the parties desire to establish a termination fee to liquidate the Owner’s entire liability for lost opportunity and overhead and profit on the Work remaining to be performed as of the date of the Notice of Termination, inclusive of the Contractor, its Subcontractors and suppliers, the following Model Language may be included in AIA Document A201-2017:

Delete 14.4.3 of A201–2017 and substitute the following:

**Model Language:**

In case of termination for the Owner’s convenience, the Owner shall pay the Contractor for (1) Work properly executed; (2) costs incurred by reason of the termination, including costs attributable termination of Subcontracts; and (3) the termination fee, if any, set forth in the Agreement. The termination fee set forth in the Agreement, if any, is intended to be the sole compensation to the Contractor for overhead and profit on Work not executed by the Contractor, as well as any compensation the Contractor is obligated to pay Subcontractors, and suppliers for overhead and profit on Work not executed.

In addition to the change in the General Conditions, the provisions of the Contractor-Subcontractor Agreement will require modification, modify Section 7.2.2.2 of the AIA Document A401-2017 Contractor-Subcontractor Agreement as follows:

**Model Language:**

In case of termination for the Owner’s convenience, the Subcontractor shall be entitled to receive payment for Work properly executed; costs incurred by reason of the termination; and a termination fee, if any, as provided in the Prime Contract and as reasonably apportioned by the Contractor to the Subcontractor’s Work. The termination fee, if any, set forth in the Prime Contract and as apportioned by the Contractor to the Subcontractor, is intended to the sole compensation to the Subcontractor for overhead and profit on Work not executed.

## II. AMENDMENTS TO GENERAL CONDITIONS AND SUPPLEMENTARY CONDITIONS

AIA Document A201–2017, General Conditions of the Contract for Construction, is used as the framework to which all of the items discussed in this section are related. The numbering in the sections below follows the numbering of the relevant provisions in A201–2017.

### 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 A201–2017, 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.

## 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. General information should be provided 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 to reflect the design intent. 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 1.2.1.2 to Section 1.2.1:

**Model Language:**

§ 1.2.1.2 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

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

§ 2.3.4 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).

§ 2.3.6 Under Section 2.3.6, the Owner is required to provide the Contractor with one copy of the Contract Documents in paper format free of charge. If the Owner will provide the Contractor with Contract Documents in digital format rather than paper, the following language may be substituted for Section 2.3.6.

Delete Section 2.3.6 and substitute the following:

**Model Language:**

§ 2.3.6 The Owner shall furnish the Contract Documents to the Contractor in digital format. If the Contractor requires paper documents, the Contractor shall be responsible for the costs of producing such paper documents.

## ARTICLE 3 CONTRACTOR

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

In B101™–2017, 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 B101–2017 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 G716™–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 allow for consideration of substitutions after the Contract has been executed. This section establishes the criteria for submission and evaluation of substitution requests. Language I regarding the substitution process should be included in the General Requirements (Division 1 of the Specifications). Note that when multiple construction contracts are employed, substitutions must be fully coordinated across the Work of all 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 may consider requests for the substitution of products in place of those specified. The Owner and Architect may, but are not obligated to, consider only those substitution requests that are in full conformance with 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 the product 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 performed or 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;
- .4 agrees that it shall, if the substitution is approved, coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects: and
- .5 represents that the request includes a written representation identifying any potential effect the substitution may have on the Project's achievement of a Sustainable Measure or the Sustainable Objective.

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 B101–2017. The following language allows the Owner to pass this expense on to the Contractor. This language should be used on Projects where the Owner is 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**

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 such as, manufacturers' warranties, roofing warranties, or HVAC 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 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, the permits and governmental fees, licenses and inspections each contractor is required to obtain and pay for should be listed 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, or reimburse the Contractor for, other fees. In those cases, this section should be appropriately modified. Attention should be given to Section 2.3.1 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.

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.

Renovation projects often require implementation of contractual techniques to manage unknown conditions. Quantity allowances may be established for such conditions, 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.

**§ 3.10.1** The Contractor's construction schedule is a management, planning and control tool that can be used by all of the Project participants. The Architect may use the schedule to evaluate the progress of the Work as well as plan its own site observations. If a Claim for extension of the Contract Time is submitted by the Contractor under Section 15.1.6, the Initial Decision Maker (IDM), who is often the Architect, will use the current schedule to evaluate whether the date of Substantial Completion is impacted, supported by the analysis provided by the Contractor.

Section 3.10.1 of AIA Document A201–2017 has been developed to provide general requirements for scheduling on most projects. However, complex or time sensitive projects may need to address scheduling in greater detail. It may be necessary to require a schedule able to describe the logical links among activities, float times, the critical path, and manpower loading. A detailed description of, and requirements for, the Contractor's construction and submittal schedules, including the process for its preparation, required development, and element details; float ownership; delay treatment; and schedule reporting and updating, is often specified in the General Requirements (Division 1 of the Specifications).

Model Language regarding documentation of time related Claims is discussed under Section 15.1.6.

### **§ 3.11 Documents and Samples at the Site**

The documents required here constitute "a record of the Work as constructed" and their function is limited to showing 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 B101–2017), 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 Contractor shall reimburse the Owner 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 during construction. Additionally, information regarding site access such as points of ingress and egress, as

well as allowable working hours, may be specified in the General Requirements.

### **§ 3.14. Cutting and Patching**

**§ 3.14.1** Special requirements for Work involving renovation, remodeling, 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 changes to the Architect's services in A201–2017 may conflict with the services described in the Owner-Architect Agreement. The terms of the A201 are only applicable to the Architect's services to the extent they are consistent with or amended in the Owner-Architect Agreement.

If the Architect's construction administration duties vary from those identified in A201–2017, 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 B101–2017 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 A201–2017 and Section 4.2.3 of B101–2017.

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.

### **§ 4.2.4 COMMUNICATIONS**

Traditionally the Owner and Contractor have been encouraged to discuss matters related to the Project through the Architect. Section 4.2.4 of A201–2017 recognizes that the Owner and Contractor may communicate directly in certain situations, subject to the Owner's responsibility to notify the Architect if the communication is related to the Project. While some Owners prefer to be involved in Project communications, others may prefer that all communications are directed through the Architect. The following language can be used as a substitute if the Owner prefers that all communication between the Owner and Contractor is conducted through the Architect.

Delete Section 4.2.4 and substitute the following:

#### **Model Language:**

§ 4.2.4 The Owner and Contractor shall communicate with each other through the Architect about matters arising out of or relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.7** A201–2017 requires the Architect to perform submittal review in accordance with a submittal schedule that the Architect approves, and that may stipulate the turn-around time for Architect’s review of submittals. 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 A201–2017 language regarding review and response to requests for information. AIA Document B101–2017 stipulates the situations where the review of requests for information is considered an Additional Service. Requirements in A201 should be coordinated with Section 4.2.2 of B101–2017.

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, 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 in writing to the Contractor within 14 days 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

### § 7.1 General

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™–2017. 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™–2017 or AIA Document A103™–2017.

For changes in the Work, overhead and profit may be stated separately or combined but, in either case, the Change Order 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," "profit," or "fee." 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 7.3.4.

§ 7.1.5 In order to facilitate checking of proposals for increases or decreases to the contract sum, 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.

A201 requires that Change Orders be prepared by the Architect. In some instances, however, it may be more expedient if the Contractor prepares some or all of a Change Order. While changes to the Architect's Instruments of Service must be prepared by the Architect in accordance with the Owner-Architect Agreement, the Change Order form may be prepared by the Contractor for review and approval by the Owner and Architect. Appropriate changes to the Owner-Architect Agreement may be necessary for consistency when incorporating the following change.

Delete Section 7.2 and substitute the following:

**Model Language:**

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

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

§ 7.2.2 Except as otherwise provided in the Contract Documents, the Contractor shall prepare the Change Order form, which may include supporting materials prepared by the Architect, for review and approval by the Owner and Architect.

## 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). In addition to the General Requirements (Division 1 of the

Specifications) 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. 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*.

§ 9.3.2 If stored materials and equipment, either on or off the site, will not be paid for until incorporated in the Work, this section needs to be modified appropriately. This should also be reflected in the payment provisions of the Agreement between the Owner and Contractor, which must likewise be modified to omit reference to stored materials. The parties will also need to address ownership of, and risk of loss and insurance for, those materials and equipment.

### § 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), 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.

### § 9.8 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 B101–2017), 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 Final Completion and Final Payment

§ 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 B101–2017), 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.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.2 Safety of Persons and Property

§ 10.2.4 It may be prudent for the Contractor to inform the Owner of known potential hazards on the site or when explosives or unusual methods may be used. The Owner and Contractor may be held liable to third parties and may therefore wish to take precautions.

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.

### § 10.3 Hazardous Materials

Note that A201–2017 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 materials 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 and the 2017 insurance exhibit 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

In A201-2017, the majority of negotiated insurance provisions have been included in an exhibit to the A101, A102 and A103 Owner-Contractor Agreements. This new exhibit provides for required and optional insurance coverages that the Project participants may tailor to the specific needs of the Project.

Sections regarding the waiver of subrogation and the Owner's obligation to hold insurance proceeds as a fiduciary to the party experiencing a loss remain in AIA Document A201–2017, along with other provisions dealing with failure to purchase, or cancellation of, required insurance coverage.

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.

## 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 3.6.6.5 of AIA Document B101–2017 provides for a meeting to be held with the Owner, the 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 A201–2017 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

### § 13.6 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 a new Section 13.6 or in the Owner-Contractor Agreement.

### § 13.7 Confidential Information

In many instances, the Owner or Contractor may provide the other party with confidential information regarding its business or processes. While terms regarding confidentiality are often included in a separate agreement, the parties may wish to include terms regarding confidential information in the General Conditions. Generally, confidentiality provisions are best limited to information that is specifically designated as confidential. This avoids confusion regarding which information is confidential and which may be disclosed.

Add the following Section 13.7:

#### **Model Language:**

§ 13.7 If the Owner or Contractor receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, including its employees, or (2) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. However, the party receiving "confidential" or "business proprietary" information may disclose such information, after seven (7) days' Notice to the party providing the confidential or business proprietary information, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by arbitrator(s) order. Notice shall be provided, and deemed to have been duly served, in accordance with § 1.6.2 of A201-2017.

### § 13.9 Moisture Control and Mold Mitigation

If project conditions warrant special mold mitigation measures, a Division 1 section should be edited or created 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 the mold.

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, and appropriate modifications should be made to the 2017 insurance exhibit for A101, A102 or A103.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

See discussion above in Part I, Article 7 regarding inclusion of a Termination Fee in the Owner-Contractor Agreements.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1.6 Claims for Additional Time

On projects where time is critical or where delays are likely to occur, the Owner may require added protection. In the language suggested below, Section 15.1.6.3 strengthens the documentation requirements for Claims for additional time, and Section 15.1.6.4 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 15.1.6.3 and 15.1.6.4 to Section 15.1.6:

#### **Model Language:**

§ 15.1.6.3 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.

§ 15.1.6.4 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.

Additionally, the parties may want more specific detail or limitations for weather related delays as additional guidance to help evaluate a Contractor's claim for a time extension related to weather.

Modify the language in Section § 15.1.6.2 to read:

#### **Model Language:**

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, the Claim shall be documented by data substantiating that the weather conditions upon which the Claim is based (1) were abnormal when compared to the previous (\_\_\_\_)-year period, during the same time frame and at the location of the Work, (2) could not have been reasonably anticipated, and (3) had an adverse effect on the date of substantial completion of the Work.

### § 15.1.7 Waiver of 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 compliance with the stated conditions, may help protect the Architect from claims by the Contractor for consequential damages. If the language suggested below is included in the Owner-Contractor Agreement, consider making the waiver reciprocal by adding similar language to the Owner-Architect Agreement.

Add the following sentence to Section 15.1.7:

**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 15.1.7 shall be applicable to claims by the Contractor against the Architect.

**§ 15.3 Meet and Confer as Condition Precedent to Mediation**

While good business practice dictates that the parties will meet and confer in an effort to resolve disputes prior to engaging in mediation and binding dispute resolution, many parties find it useful to include this step as a contractual obligation and condition precedent to mediation and binding dispute resolution.

Before Section 15.3, Mediation, add the below new Section 15.3 and renumber the paragraphs as necessary:

**Model Language**

**§ 15.3 Meet and Confer**

§ 15.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to a meet and confer session as a condition precedent to mediation.

§ 15.3.2 The meet and confer session shall be attended by members of the Owner and Contractor's senior management, who shall have full authority to bind their respective party with respect to the Claim, dispute or other matter in question. The meet and confer session shall take place within \_\_\_\_\_ ( ) days after a request by either party, unless the parties mutually agree otherwise.

§ 15.3.3 If the parties reach a mutually acceptable resolution, then they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation in accordance with Section 15.4.