AIA® Document Commentary

A201™ – 2007 General Conditions of the Contract for Construction

INTRODUCTION

An integral part of the prime owner-contractor agreement, the general conditions of the contract sets forth the responsibilities of the owner, contractor and architect during construction. Through references to A201 in owner-architect agreements and subcontracts and the flow-down of A201 into subcontracts and other lower tier agreements, the general conditions bring order to an otherwise disjointed process. On building projects in the United States, the most commonly used general conditions document is AIA Document A201, General Conditions of the Contract for Construction.

The American Institute of Architects (AIA) published the first general conditions document in 1911. A201–2007 is the sixteenth edition. Due to its long history, A201 has been widely cited in litigation conducted over nearly 100 years. *The American Institute of Architects Legal Citator*, 2007 (updated annually and published by Matthew Bender & Company, Inc., a member of LexisNexis Group) provides a useful guide to case law citations to A201 and other AIA agreements.

Like its predecessors, A201–2007 is the product of many years of discussions involving owners, contractors, subcontractors, architects and engineers, as well as legal and insurance counsel, all of whom shared their recommendations for how best to adapt A201–1997 to serve not only the contracting environment of 2007, but also the foreseeable future. AIA contract documents intend to serve fairly all participants in a design and construction project. Because one party's interests may conflict with another's, the AIA strives to balance those interests through a reasonable apportionment of risks and responsibilities that take into account the best interest of the project. Due to a documents development process that gathers and analyzes input from across the design and construction industry, including the wide distribution of draft agreements and face-to-face debate, no one party's interests are allowed to dominate.

A201–2007 provides the basic legal framework for the contract for construction. This A201–2007 Commentary provides explanations for many of the legal concepts and industry practices influencing the wording of particular A201 provisions. Because of variations in the nature of individual projects, requirements of individual owners and variations in specific legal requirements from locality to locality, the standard form A201 document may need to be modified. For suggested modifications and supplementary conditions, see AIA Document A503™–2007, Guide to Supplementary Conditions, available for free on the AIA's Web site.

Changes from A201–1997

The AIA revises A201 on a ten-year schedule to ensure that it remains current with construction industry practices and the state of the law. Accordingly, the 2007 edition includes several changes summarized below. For a comparison between A201–2007 and its 1997 predecessor, showing changes with underlining and strikeouts, see AIA Document A201 Comparison of 1997 and 2007 Editions, available for free on the AIA's Web site. Principal changes from A201–1997 include:

Article 1: A definition of Instruments of Services is now added and the ownership and use of drawings, specifications and other instruments of services through a series of licenses is further clarified. Additionally, the parties are now urged to establish necessary protocols to govern the electronic transmission of data. This article also adds Initial Decision Maker as a defined term (refer also to Article 15).

Article 2: Following commencement of the work, the contractor may only require the owner to provide reasonable evidence that adequate financial arrangements have been made if certain enumerated conditions (of a type that would cause the contractor to have concerns about the owner's ability to meet its financial obligations) exist.

Article 3: Since 1997, many construction projects have suffered delays due to the discovery of burial grounds, archaeological sites, and wetlands. New Section 3.7.5 addresses the owner's and contractor's responsibilities in the event these are not noted on the contract documents, but discovered during construction. Section 3.3.1 now clarifies the extent of the owner's responsibility for the costs associated with owner-required means and methods of construction. Also, new requirements for the contractor to notify the owner of its proposed superintendent and provide the owner with an opportunity to reject the proposed superintendent are set out in Section 3.9.

Article 4: This article is revised to coordinate with changes to the 2007 AIA owner-architect agreements that incorporate A201–2007 and is now re-titled "Architect." The process for making, deciding and resolving claims is substantially revised and is relocated from Article 4 to a new Article 15.

Article 7: Section 7.3.9 is now revised to provide a more efficient process for making payments to the contractor for changes to the work completed under construction change directives.

Article 9: New Section 9.5.3 allows the owner to issue joint checks, if the architect withholds certification for payment as a result of the contractor's failure to make payments properly to the subcontractors or to lower tier subcontractors and suppliers. Section 9.5.3 now grants the owner authority to request written evidence from the contractor that the contractor has properly paid the subcontractors, etc.

Article 10: New Section 10.3.5 now adds a reciprocal indemnity provision whereby the contractor indemnifies the owner for costs and expenses related to hazardous materials the contractor brings to the site and negligently handles, except where such costs and expenses are due to the owner's fault or negligence.

Article 11: This article deletes the optional Project Management Protective Liability insurance added in 1997 to cover vicarious liability for construction operations. To diminish the costs to the project team of third-party claims, a new Section 11.1.4 requires the contractor to add the owner, architect and architect's consultants as additional insureds on its commercial liability coverage for claims caused by the contractor's negligence during the contractor's operations. The contractor is also required to add the owner as an additional insured on its commercial liability coverage for claims caused by the contractor's negligence during the contractor's completed operations.

Article 13: Section 13.5.1 now makes the owner responsible for the costs of tests when applicable codes, such as the International Building Code, prohibit the owner from delegating the costs. Section 13.7, establishing the time period in which the owner and contractor must institute binding dispute resolution proceedings, is amended to more closely follow state statutes of limitations or repose and to require compliance with state law.

Article 15: New Article 15 consists of revised Claims and Disputes language from Article 4 of A201™–1997. Article 15 introduces the concept of an Initial Decision Maker (IDM). Unlike the 1997 edition, A201–2007 allows for claims to be decided initially by someone other than the architect. The owner and the contractor have an opportunity to identify an IDM other than the architect in the owner-contractor agreement. If the owner and contractor do not select a third party IDM, however, the architect will serve as the IDM, thus maintaining its traditional role as the initial decider of claims. For most claims, a decision by the IDM remains a condition precedent to proceeding to mediation. As in A201–1997, mediation is a condition precedent to the method of binding dispute resolution selected in the owner-contractor agreement. While arbitration is no longer mandatory in the 2007 A201 Family of Documents, Article 15 sets forth the requirements for arbitration if it is the selected method of binding dispute resolution. Unlike in the 1997 edition, however, A201–2007 allows for consolidation of arbitrations and joinder of necessary third parties.

The A201 Family of Documents

A document family typically refers to documents written for a particular project delivery method, such as Design-Bid-Build, Construction Management or Design-Build. Documents within a particular family are crafted with common phrasing, uniform definitions and a consistent, logical allocation of responsibilities through the tiers of relationships. A201 and its associated agreements are written for construction projects in the Design-Bid-Build delivery method, also called "Design-Award-Build," "conventional" or "traditional." This delivery method follows a sequential process whereby the owner first retains the architect to design the project and to prepare the construction drawings and specifications. The owner then makes the construction drawings and specifications available to construction contractors and selects the contractor either by bidding or negotiation. The principal agreements in the 2007 A201 Family are listed below:

A101™–2007, Standard Form of Agreement Between Owner and Contractor (Stipulated Sum)

A102™–2007, Standard Form of Agreement Between Owner and Contractor (Cost Plus Fee, with GMP)

A103™–2007, Standard Form of Agreement Between Owner and Contractor (Cost Plus Fee, without GMP)

A401™–2007, Standard Form of Agreement Between Contractor and Subcontractor

B101™–2007, Standard Form of Agreement Between Owner and Architect

B103™–2007, Standard Form of Agreement Between Owner and Architect for a Large or Complex Project

C401™–2007, Standard Form of Agreement Between Architect and Consultant (for use in any family)

The A201 Family is augmented by a number of standard contract administration documents (G-series) used generally for processing payments to the contractor and for formalizing changes in the work.

Notices

This A201–2007 Commentary was prepared by the American Institute of Architects with the assistance of Charles R. Heuer, Esq., FAIA, for original material, and Howard G. Goldberg, Esq., Hon. AIA.

This publication does not constitute and does not offer legal or other professional service. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

The American Institute of Architects, 1735 New York Ave., N.W., Washington, D.C. 20006.

COMMENTARY	A201–2007 TEXT
TITLE	
	General Conditions of the Contract for Construction
COVER PAGE	
	for the following PROJECT: *(Name and location or address)*
	THE OWNER: *(Name and address)*
	THE ARCHITECT: *(Name and address)*
TABLE OF ARTICLES	
	1 GENERAL PROVISIONS **2 OWNER** **3 CONTRACTOR** **4 ARCHITECT** **5 SUBCONTRACTORS** **6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS** **7 CHANGES IN THE WORK** **8 TIME** **9 PAYMENTS AND COMPLETION** **10 PROTECTION OF PERSONS AND PROPERTY** **11 INSURANCE AND BONDS** **12 UNCOVERING AND CORRECTION OF WORK** **13 MISCELLANEOUS PROVISIONS** **14 TERMINATION OR SUSPENSION OF THE CONTRACT** **15 CLAIMS AND DISPUTES**

COMMENTARY	A201–2007 TEXT
ARTICLE 1 GENERAL PROVISIONS	
	§ 1.1 BASIC DEFINITIONS
The *Contract Documents* include the listed elements, as appropriate for the project. A201 provides the *General Conditions*. It may be amended with *Supplementary Conditions*. *Other Conditions* refers to federal, state, local or private contract conditions; these are usually prescribed by the owner. For example, see AIA Document A201/SC, Federal Supplementary Conditions of the Contract for Construction. The definitions used in AIA Document A201–2007 are capitalized under the conventions described in Section 1.3. They are incorporated into many of the other related AIA documents by reference to AIA Document A201–2007. These documents include owner-contractor, owner architect, contractor-subcontractor and architect-consultant agreements. The *Contract Documents* defined here generally apply to the owner-contractor contract. In addition, specific parts of the contract documents, mainly the *General Conditions* (i.e., A201) are adopted (usually by reference) into other contracts. This serves to coordinate the legal relationships on the project. Some public owners require that the bidding requirements be included in the definition of the contract documents. This may create conflicts or ambiguities with the other documents that comprise the contract. This problem can be avoided if the bidding requirements are superseded when the contract for construction is awarded. If statutorily required contract language is contained in the bidding requirements, such language can be included in the supplementary conditions.	**§ 1.1.1 THE CONTRACT DOCUMENTS** The **Contract Documents** are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract **(General, Supplementary and other Conditions)**, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.
One effect of the words *entire and integrated agreement* is that everything discussed as part of contract negotiations that conflicts with, is inconsistent with, or is omitted from, the written agreement is not part of the contract. AIA Document A201–2007 and its related family of AIA documents is based on the premise that legal relationships on a construction project are comprised of two-party contractual arrangements. Thus, there are the owner-contractor contract, owner-architect contract, contractor-subcontractor contracts and architect-consulting engineering contract(s). Each party to those respective contracts is deemed to be in privity only with the other party to the contract. There is no direct contractual relationship between the architect and the contractor. The architect is in some instances entitled to enforce certain obligations of the contractor (such as indemnifying the architect for certain risks, performing warranty obligations, providing certain types of insurance and affording the architect access to the work). The architect has the right to enforce these obligations directly against the contractor regardless of whether the owner does so on its own behalf.	**§ 1.1.2 THE CONTRACT** The Contract Documents form the Contract for Construction. The Contract represents the **entire and integrated agreement** between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. **The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.**

COMMENTARY	A201–2007 TEXT
The term *Work* appears throughout the A201–2007 family of documents. As a defined term and capitalized term, work is especially important (1) for describing the contractor's obligations to provide improvements to the project, (2) for defining the scope of the property insurance required under Section 11.3, and (3) for distinguishing between the contractor's efforts and the efforts of the owner's other contractor(s) who may also be on the project. As a capitalized term, the word *Work* refers only to work performed by the contractor, not to any work performed by the owner's own forces or by a separate contractor pursuant to Section 6.1.	**§ 1.1.3 THE WORK** The term **"Work"** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.
The term *Project* is broader than the term *Work*, and may involve separate contractors or the owner's own forces. Each separate contract includes a scope of work that is unique to that contract.	**§ 1.1.4 THE PROJECT** The **Project** is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.
The term *Drawings* does not imply representations presented only in paper format. In addition to the drawings the architect issues for bidding and/or negotiation, drawings are also found in addenda, change orders, construction change directives, minor changes in the work, other modifications in the work, or in responses to the contractor's requests for information.	**§ 1.1.5 THE DRAWINGS** The **Drawings** are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
The *Specifications* are written descriptions that qualitatively define the work. It is now common construction industry practice to organize the Specifications according to the divisions of MASTERFORMAT, a publication of the Construction Specifications Institute. Each division is further organized into a collection of custom sections which describe the general scope, products to be used and execution of the particular item of work, such as cast-in-place concrete. A library of master specification sections, known as MASTERSPEC®, a product of the AIA, is currently published and available on an annual subscription basis from www.arcom.net.	**§ 1.1.6 THE SPECIFICATIONS** The **Specifications** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
The term *Instruments of Service* refers to more than just drawings, specifications, models and other documents the architect creates in performing design services. Rather, instruments of service represent every embodiment of the professional services that the architect provides, regardless of form. This term underscores the fact that these documents, whether in printed or electronic form, cannot be separated from the services the architect provides through them and through other activities on the project.	**§ 1.1.7 INSTRUMENTS OF SERVICE** **Instruments of Service** are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.
The term *Initial Decision Maker* refers to an individual or entity that will be responsible for providing initial decisions on claims between the owner and the contractor during the course of the project and certifying termination of the agreement. The architect has traditionally performed this service. In A201–2007, however, it is possible for another individual or entity to hold that position. In the AIA's 2007 owner-contractor agreements that incorporate A201–2007, the owner and the contractor	**§ 1.1.8 INITIAL DECISION MAKER** The **Initial Decision Maker** is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

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have the option to name a third party initial decision maker. If the owner and the contractor do not identify a third party as the initial decision maker, the architect will serve in that role, as it has traditionally.	
	§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
Because the contract documents are a collaborative effort sometimes involving the owner, architect and numerous consultants, there is no inherent order of precedence among those documents. For instance, a plan may show a door, a door schedule will designate the type of door and hardware, one specification section may specify the quality of door and another specification section will specify the quality of hardware. Collectively, those contract documents are used to describe that particular work item. Moreover, a pre-selected order of precedence assumes that one item is more important than another. For instance, assuming that the plans are chosen to prevail over the specifications, if the plans did not show the hinges on the door even though the specifications required them, the owner might get a hingeless door. Under these circumstances, a pre-selected order of precedence may cause an absurd result. The contractor is expected to make reasonable inferences from the contract documents. When the documents show wall partitions covered by drywall, for example, it may be inferred that some reasonable method will be used to attach the drywall to the underlying framework.	**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. **The Contract Documents are complementary**, and what is required by one shall be as binding as if required by all; **performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results**.
The contractor is responsible for allocating portions of the work to the subcontractors and others, within the limits required by the contract documents, irrespective of the organization of the specifications.	**§ 1.2.2 Organization of the Specifications** into divisions, sections and articles, and arrangement of Drawings **shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade**.
	§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
	§ 1.3 CAPITALIZATION Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.
	§ 1.4 INTERPRETATION In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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	§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
Technological advances, such as computer-aided design, have and will continue to have an impact on the architect's services and the manner in which they are provided. The architect's services are reflected in instruments of service, such as drawings, specifications, electronic data or interpretive sketches which help the owner to reach the final result, a building project. Because the use or misuse of the architect's instruments of service affects specific rights and obligations affecting the owner, the construction team and the public, the architect as a licensed professional retains ownership of, control over, and responsibility for these documents.	**§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights.** The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.
Through its agreement with the owner, the architect grants the owner a limited license to use the architect's instruments of service solely for use on the project. That license allows the owner, through A201, to authorize the contractor and the various subcontractors, sub-subcontractors and suppliers to use the instruments of service solely to construct the project. Restrictions on use of the instruments of service protect the interests of the owner, architect and architect's consultants, and also serve to protect the public from harm that may result from their misapplication.	**§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work.** All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. **The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work** without the specific written consent of the Owner, Architect and the Architect's consultants.
It is common in the construction industry today for the owner, architect and contractor to utilize various forms of technology in communicating and providing services for the project. This may be as simple as using e-mail to communicate or as complex as employing building information modeling software. Regardless of the digital technology utilized, project participants should establish protocols that will govern the use of such technology. By establishing protocols, the project participants can determine, among other things, how digital information will be transmitted, what software programs are to be utilized to transmit and read the information, and what the transmitted information can be used for. AIA Document E201™–2007, Digital Data Protocol Exhibit, allows contracting parties to define the necessary protocols regarding transmission and use of digital data, and to flow those protocols down to lower tier agreements, thus providing consistent protocols across the project.	**§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM** If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary **protocols governing such transmissions**, unless otherwise already provided in the Agreement or the Contract Documents.
ARTICLE 2 OWNER	
	§ 2.1 GENERAL
The term *Owner* is used to designate the party contracting with the construction contractor. That person or entity may or may not actually own the land or building where the project is sited. For example, the owner may be a	**§ 2.1.1** The **Owner** is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. **The Owner shall designate in writing a representative** who shall

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tenant. If that is the case, the land or building owner may be designated as the landlord. Because the owner may not personally take an active, ongoing role in the project, the owner is required to designate a representative with authority to make decisions that bind the owner. Having such a representative can ensure timely decision making and keep the project moving. This representative is named in AIA owner-contractor agreements. For certain purposes set forth in Article 4, the architect also serves as the owner's representative. The architect is not the owner's designated representative referred to in Section 2.1.1. If the owner designates more than one representative, the separate roles and functions of each individual should be clearly defined to avoid conflicts, gaps and confusion as to each individual's proper authority to act on behalf of the owner.	have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. **Except as otherwise provided in Section 4.2.1, the Architect does not have such authority.** The term "Owner" means the Owner or the Owner's authorized representative.
State mechanic's lien statutes require that the party seeking to assert a lien file documents stating the correct legal description of the property against which the lien claim is being asserted. If the statute is not strictly complied with, the filing may not be adequate to enforce the lien. Thus, the lien rights of the contractor, subcontractors and sub-subcontractors may depend on the information required of the owner under this section.	**§ 2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, **information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights**. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.
	§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
The contractor may request that the owner provide reasonable evidence that the owner has made financial arrangements to fulfill its payment obligations. The contractor's right to request this information is unfettered prior to commencement of the work. Since the owner is not permitted to vary its stated financial arrangements, the contractor may only request such evidence after work commences under the conditions listed in Section 2.2.1. If those conditions are met, the contactor may have reason to believe that the owner may no longer have the ability to make payment. The contractor should not be put in a situation where it has to finance the project. Therefore, the contractor has the right to stop the work (see Section 14.1.1.4) if the owner fails to provide reasonable evidence of its ability to make payment. Reasonable evidence of the owner's ability to finance the project may be a loan commitment letter from an institutional lender, a governmental appropriation or other equally convincing documentation.	**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide **reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract**. **Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due.** The Owner shall furnish such evidence as a **condition precedent to commencement or continuation of the Work** or the portion of the Work affected by a material change. After the Owner furnishes the evidence, **the Owner shall not materially vary such financial arrangements** without prior notice to the Contractor.
	§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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It is appropriate for the owner to furnish surveys of the site because, as the owner of the land, the owner has the most knowledge of it and control over it. If the owner is a tenant, it may need to obtain the survey from the building or land owner. The contractor should be able to rely upon the surveys and not have to duplicate this effort and expense.	**§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project**, and a legal description of the site. **The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner** but shall exercise proper precautions relating to the safe performance of the Work.
This provision makes explicit, with respect to the owner, that the parties will cooperate with each other and will not hinder the other's work or progress.	**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents **with reasonable promptness**. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.
The contractor's use of copies of the contract documents, which include the instruments of service, is governed by the use restrictions set forth in Section 1.5.2.	**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor **one copy of the Contract Documents** for purposes of making reproductions pursuant to Section 1.5.2.
Under the proper circumstances, the owner may stop the work. In this provision, the owner's right to stop work relates specifically to the contractor's failure to comply with the contract documents. This right may be exercised by the owner or the owner's designated representative under Section 2.1.1.	**§ 2.3 OWNER'S RIGHT TO STOP THE WORK** **If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents** as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.
The owner must follow a specific procedure before undertaking and/or correcting some or all of the work under the contract. The owner must give the contractor written notice demanding correction of the problem. Upon receipt of this notice, the contractor has ten days to begin and to continue correction. If remedial action has not been undertaken by the end of this ten-day period, the owner may correct the deficiencies with the owner's own forces. Based on a literal interpretation of this section, the owner is not required to provide additional notice to the contractor beyond the ten-day period. The owner, however, may decide to notify the contractor immediately before commencing work in order to avoid jurisdictional disputes at the job site. Correcting the work is not intended to preclude the owner from pursuing other remedies such as arbitration or legal action for breach of contract or breach of a warranty. The owner and architect may also execute a change order or construction change directive deducting from the contract sum the cost of corrections, including compensation for the architect's services in this regard.	**§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK** **If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies**. In such case an appropriate Change Order shall be issued **deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services** made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both **subject to prior approval of the Architect**. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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ARTICLE 3 CONTRACTOR	
	§ 3.1 GENERAL
In jurisdictions where contractors are required to be licensed, unlicensed contractors may not be permitted to file mechanic's liens or to institute legal proceedings involving the project. The contractor's duty to designate a representative mirrors the owner's under Section 2.1.1. This representative is named in AIA owner-contractor agreements. Other persons or entities authorized to represent the contractor (such as the construction superintendent or project manager) should be identified to the owner and architect. If the contractor designates more than one representative, the separate roles and functions of each individual should be clearly defined to avoid conflicts, gaps and confusion as to each individual's proper authority to act on behalf of the contractor.	**§ 3.1.1** The **Contractor** is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. **The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative** who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.
The contractor's scope of work is set forth in the contract documents. The contractor is responsible for performing all work shown and specified, unless it is specifically stated to be the work of others.	**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.
The contractor cannot claim that it has been released from its obligation to perform the work in conformance with the contract documents or to correct nonconforming work because the architect has not specifically rejected that portion of the work or because the architect has approved payment for it.	**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.
	§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR
	§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
The contractor is required to report errors and omissions promptly in order to minimize the costs of correction. The contractor's failure promptly to report errors and omissions may result in liability to the contractor, pursuant to Section 3.2.4, for remediation costs that would have been avoided by prompt notice. The contractor is not expected to engage in a professional review of the architect's design. If professional design services are required of the contractor pursuant to Section 3.12.10, review of the architect's design by the contractor's design professional is required to the extent necessary for the contractor's design professional to design those elements that the contractor is obligated by the contract documents to both design and build.	**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; **however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor** as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity

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	as a contractor and **not as a licensed design professional, unless otherwise specifically provided in the Contract Documents**.
As with the discovery of errors and omissions in Section 3.2.2, prompt notice is required in order to minimize the costs of correction. This obligation does not require the contractor to review the contract documents for the purpose of seeking out nonconformities, but only to report those nonconformities that the contractor discovers. The contractor's failure to report promptly nonconformities that it discovers may result in liability to the contractor, pursuant to Section 3.2.4, for remediation costs that would have been avoided by prompt notice.	**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall **promptly report to the Architect any nonconformity discovered by or made known to the Contractor** as a request for information in such form as the Architect may require.
Pursuant to Sections 3.2.2 and 3.2.3, the contractor's duty to report arises when design errors or omissions, or nonconformities are discovered or made known to the contractor. The failure to make prompt notification, or the contractor's failure to perform other obligations set forth in Sections 3.2.2 or 3.2.3, may result in liability to the contractor for the remediation costs that would have been avoided by prompt notice.	**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. **If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages** resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.
	§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES
This section recognizes the expertise of the contractor, who determines the contract price based upon the particular construction process and sequence contemplated. In the event the contract documents give specific instructions regarding the construction process, responsibility for jobsite safety remains with the contractor unless the contractor gives timely written notice of a particular safety concern and is instructed to proceed as specified.	**§ 3.3.1** The **Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work** under the Contract, unless the Contract Documents give other specific instructions concerning these matters. **If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof** and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. **If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect** and shall not proceed with that portion of the Work without further written instructions from the Architect. **If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the**

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	Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.
	§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
	§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
	§ 3.4 LABOR AND MATERIALS
	§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
Changes in the work may be accomplished as minor changes in the work, change orders and construction change directives as set forth in Section 7.1.1. Substitutions made after execution of the agreement are changes in the work and must be made in accordance with Article 7.	**§ 3.4.2 Except in the case of minor changes in the Work** authorized by the Architect in accordance with Sections 3.12.8 or 7.4, **the Contractor may make substitutions only with the consent of the Owner**, after evaluation by the Architect and **in accordance with a Change Order or Construction Change Directive.**
	§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.
This warranty is a general representation by the contractor that materials, equipment and workmanship will conform to good quality standards and the requirements of the contract documents. This general warranty is in addition to, and not in lieu of, any additional obligations (see Section 12.2 on Correction of Work) and other warranties, such as those received from product manufacturers and fabricators and forwarded to the owner by the contractor. The warranty under Section 3.5 will typically commence at the date of substantial completion (see Section 9.8.4) and continue through the period of the applicable statute of limitations or repose, whichever is shorter. The one-year correction period of Section 12.2 is a separate and distinct obligation of the contractor, and should not be confused with the contractor's warranty obligation.	**§ 3.5 WARRANTY** **The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new** unless the Contract Documents require or permit otherwise. The Contractor further warrants that the **Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work** the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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If the owner is a tax-exempt organization and intends to have its tax exemption apply to the contractor's work, this section will need to be modified.	**§ 3.6 TAXES** **The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor** that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.
	§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS
Under Section 2.2.2, the owner pays costs associated with approvals and permits obtained before execution of the contract that relate to project feasibility (e.g., zoning, environmental impact, and the like).	**§ 3.7.1** Unless otherwise provided in the Contract Documents, the **Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies** necessary for proper execution and completion of the Work that are **customarily secured after execution of the Contract** and legally required at the time bids are received or negotiations concluded.
It is the architect's obligation to design the project so as to comply with applicable laws, codes, etc. However, many such laws and codes require the contractor to give notice to authorities having jurisdiction over the project for purposes of scheduling inspections by code officials.	**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
Ordinarily, the contractor does not participate in the creation of the contract documents. For this reason, the contractor is not responsible for the failure to comply with applicable law (including building codes) unless the contractor learns of such failure and proceeds with the work irrespective of that knowledge, and/or fails promptly to report it (see Section 3.2.4).	**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to **applicable laws, statutes, ordinances, codes, rules and regulations**, or lawful orders of public authorities, **the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction**.
This section covers physical conditions not specifically addressed in the contract documents (type 1), and/or that differ materially from conditions that might reasonably be assumed to exist at the site (type 2). For example, bedrock may be discovered when none was expected (type 1) or the expected bedrock encountered may fracture much more readily than is typical and expected for that type of rock (type 2). If the difference between what the contractor could reasonably have expected and what it actually found were material to the required work, a claim would be appropriate. The contractor must give notice to the owner and architect before disturbing the differing conditions and within 21 days of first observing them in order to give the architect the opportunity to investigate the conditions. Conditions that materially differ from reasonable expectations may result in either an increase or decrease in the contract sum or contract time.	**§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents**, the Contractor shall **promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions** and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend **an equitable adjustment in the Contract Sum or Contract Time, or both**. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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Since 1997, many construction projects have suffered delays due to the discovery of burial grounds, archaeological sites, and wetlands. Section 3.7.5 addresses the owner's and contractor's responsibilities in the event these are not noted on the contract documents, but are discovered during construction. The conditions discussed in Section 3.7.5 are treated differently from the site conditions in Section 3.7.4 due to the necessary involvement of governmental authorities, and the duty placed on the owner to take action. The discovery of these conditions has the potential to increase costs and cause significant delay.	**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of **burial markers, archaeological sites or wetlands** not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. **Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations.** The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for **adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.**
	§ 3.8 ALLOWANCES
Allowances are customarily used as an accounting device with regard to materials and equipment whose selection and cost cannot be determined precisely at the time the original bid or proposal is submitted. This could occur because the finish or level of quality has not been finally selected or because of variations expected to occur after bidding. The owner has the right to decide who shall supply items covered by allowances. The contractor, however, is not required to employ persons or entities to whom it reasonably objects. Once employed, subcontractors under this provision have an identical status to those selected directly by the contractor.	**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and **by such persons or entities as the Owner may direct**, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.
The contractor's overhead costs—those not specifically attributable to the items covered by the allowance—are excluded from the allowance, but are to be included in the contract sum. For example, if it is known that 1,000 square yards of carpet must be installed, costs for unloading and handling, installation and other expenses can be calculated. Given the allowance amount, overhead and profit can also be calculated. All of those elements are already included in the contract sum. The only unknown is the cost of the carpet itself, and that is the allowance figure.	**§ 3.8.2** Unless otherwise provided in the Contract Documents, **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts; **.2** **Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances**; and **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.
	§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.
	§ 3.9 SUPERINTENDENT
A superintendent cannot build a project alone, but an incompetent superintendent can single-handedly ruin one. For that reason, the owner and architect must insist that	**§ 3.9.1 The Contractor shall employ a competent superintendent** and necessary assistants who shall be in attendance at the Project site during performance of the

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the contractor designate a competent and experienced superintendent. As obvious as this might seem, contractors, construction managers and program managers who broker projects and use skeletal staffing are often the most likely to ignore the importance of the superintendent's function, leaving a project's details to their subcontractors or to the architect.	Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
New in A201–2007, Sections 3.9.2 and 3.9.3 further recognize the importance to the project of a qualified superintendent. The contractor is required to provide the owner and architect with a proposed superintendent's qualifications. The architect then has an opportunity to object to the proposed superintendent (on behalf of the owner or on its own behalf) within 14 days, or request additional time to review. Failure to respond in either form, however, is deemed as notice of no reasonable objection.	**§ 3.9.2 The Contractor**, as soon as practicable after award of the Contract, **shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent**. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. **Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.**
Once a superintendent is in place, the owner has an interest in seeing that superintendent remain to complete the project. However, the contractor may choose to relocate the superintendent to serve the interest of the contractor's business, not the project. Requiring the owner's consent to a change in superintendent, may discourage that practice.	**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. **The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld** or delayed.
	§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES
The contractor is required to provide the owner and architect with the contractor's construction schedule merely for their information rather than for their approval. This is consistent with the concept that the contractor is solely responsible for the sequence and progress of the Work. Division 1 of the specifications may specify the number of days allowed to prepare the schedule, its format or specific data required to demonstrate a realistic, expeditious plan for completing the work within the parameters of the contract documents.	**§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work.** The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
The contractor is required to prepare and submit a submittal schedule to the architect for the architect's approval. This gives the architect and contractor the opportunity to agree on and coordinate their respective roles with respect to submittals and to allow time for adequate review. The contractor is required to provide submittals in accordance with the approved schedule under Section 3.12.5. The architect is required in Section 4.2.7 to complete its reviews in accordance with the approved schedule. Though the requirement that the contractor submit a submittal schedule is not new, the requirement was seldom, if ever, adhered to. Added in 2007 is the contractor's loss of entitlement to obtain additional cost or time based on the time required for submittal review, if the contractor does not provide a submittal schedule.	**§ 3.10.2 The Contractor shall prepare a submittal schedule**, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, **and shall submit the schedule(s) for the Architect's approval**. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. **If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.**

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	§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.
The contractor, as the party responsible for the actual construction, is in the best position to prepare a permanent record of the Work as constructed for ultimate submittal through the architect to the owner. The detailed requirements for this permanent record should be included in the technical sections of division 1 of the specifications.	**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE** The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and **marked currently to indicate field changes and selections made during construction**, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.
	§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
Shop Drawings are not generic and should not simply be preprinted manufacturers' diagrams.	**§ 3.12.1 Shop Drawings are** drawings, diagrams, schedules and other data **specially prepared for the Work** by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
Product Data are usually taken from catalogs and other materials supplied by manufacturers for their standard products. Generally, they are not specially prepared for the project, but are often marked to highlight the specific model or style of product that will be used on the project. Administrative procedures for handling these submittals should be included in division 1 of the specifications.	**§ 3.12.2** Product Data are **illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information** furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
	§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
The purpose of these submittals is to illustrate how the contractor intends to implement the architect's design. Because the owner may not have the opportunity to agree with changes incorporated into shop drawings, product data or samples, the submittals from the contractor to the architect cannot represent the mutual agreement of the parties to the same degree as the contract documents. Occasionally, shop drawings, product data, samples or other submittals will be sent to the architect as a matter of routine even though the contract documents do not require them. In that event, the architect is not obliged to review or take other action with regard to them.	**§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents**. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. **Submittals that are not required by the Contract Documents may be returned by the Architect without action.**
The contractor is to assemble shop drawings and other required submittals from subcontractors and others, coordinate and review the submittals and, if they are found to be proper, approve them before submitting them to the architect. Subcontractors, sub-subcontractors and others should not send submittals directly to the architect. The contractor's submittals are to be made in accordance with the approved submittal schedule (refer to Section 3.10.2).	**§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect** Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents **in accordance with the submittal schedule approved by the Architect or**, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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The mere act of submitting shop drawings, product data, samples or similar submittals is a representation to the owner and architect that, among other listed things, the contractor has approved them.	**§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them**, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
	§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.
The owner's agreement with the contractor is based upon mutual agreement as memorialized in the contract documents. The architect's act of approving shop drawings, product data, samples and other submittals does not modify that agreement so as to relieve the contractor from its obligation to complete the work in conformance with the contract documents. To avoid confusion, the contractor and architect are required to document as a change in the work any intended change in the contract documents that results from the shop drawing process.	**§ 3.12.8** The Work shall be in accordance with approved submittals except that **the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals** unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) **the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation.** The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.
If a submittal has been returned to the contractor for correction and resubmission, it is likely that the architect will check only previously noted items to see if they have been corrected. Therefore, this provision requires the contractor to call specific attention to other changes, if any, from the previous submission. The architect can then quickly review such new information.	**§ 3.12.9 The Contractor shall direct specific attention**, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, **to revisions other than those requested by the Architect on previous submittals**. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.
Since the 1980's it has become more common for project specifications to include not only prescriptive specifications, but also performance specifications that provide design and performance criteria of certain building systems for the contractor to design and build. For example, the routing of sprinkler systems is usually handled by the contractor, who is then free to select the most economical method to install the system and to integrate it into other building components. Design services may only be required of the contractor if such requirements are contained in the contract documents, either specifically (in the form of performance specifications, for example) or as part of the contractor's responsibility for construction means and methods. Such requirements are often incorrectly referred to as "design delegation," but the architect has no contractual relationship with the contractor and cannot delegate to the contractor. What takes place is, in fact, a form of design allocation by the owner, who can realize substantial	**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering **unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures**. The Contractor shall not be required to provide professional services in violation of applicable law. **If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy**. The Contractor shall cause such services or certifications to be provided by a **properly licensed design professional**, whose signature and seal shall appear on all drawings,

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savings through the adaptation by the contractor of standard sub-assemblies. While performance and design criteria will commonly be developed by the architect or architect's consultants, the owner or outside consultants of the owner may also be involved. The person providing design services on behalf of the contractor must be licensed in the jurisdiction in which the project is located. Submittals relating to work designed or certified by an architect or engineer retained on behalf of the contractor must be approved by that professional, just as the architect approves submittals relating to the architect's own work.	calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, **shall bear such professional's written approval** when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.
	§ 3.13 USE OF SITE The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
	§ 3.14 CUTTING AND PATCHING
	§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.
	§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.
	§ 3.15 CLEANING UP
	§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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	§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.
This includes work in progress at locations other than the project site.	**§ 3.16 ACCESS TO WORK** The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.
Royalties and license fees are part of the cost of construction and are thus properly included in the contract sum.	**§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS** The Contractor shall pay all **royalties and license fees**. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.
	§ 3.18 INDEMNIFICATION
In many jurisdictions, anti-indemnification statutes limit the validity and enforceability of indemnification provisions in contracts. Most prohibit only *broad-form* indemnification (requiring indemnification for the indemnitee's sole negligence). This section contains a *narrow-form* of indemnification, under which the indemnitor's obligation only covers the indemnitee's losses to the extent caused by the indemnitor or one for whose acts the indemnitor is responsible. The statutes and the courts' interpretations of surety provisions vary, and for this reason Section 3.18.1 should be reviewed by legal counsel. This provision does not cover injury or damage to the work itself nor does it cover a claim by the owner that the contractor has failed to construct the building according to the contract documents. The contractor's obligation to indemnify is triggered by an act or omission of the contractor or one of the contractor's agents or employees, and covers the indemnitee's loss *only to the extent* that it was caused by such act or omission. This is comparative fault language: for example, if the indemnitee and all other third parties are found to be 20 percent responsible, the contractor's obligation to indemnify would extend to 80 percent of the loss. In some jurisdictions, indemnification may also be available under applicable law. The last sentence section makes it clear that Section 3.18 is not meant to limit such relief.	**§ 3.18.1 To the fullest extent permitted by law** the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (**other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable**, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. **Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist** as to a party or person described in this Section 3.18.
It is not unusual for an injured worker to seek redress from the owner or architect, since statutory compensation awards are typically rather low. This section makes it	**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed

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clear that such compensation awards should not be construed to limit the contractor's indemnity obligation to the payment of statutory workers' compensation benefits in the event the owner or architect is found liable for accidents due to the contractor's negligence.	by them or anyone for whose acts they may be liable, **the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts**.
ARTICLE 4 ARCHITECT	
	§ 4.1 GENERAL
In most states, the title *Architect* may only be used by persons lawfully licensed to practice architecture in that state, and by entities controlled by such persons. The form of such entities (for example, corporations) may be restricted as well.	**§ 4.1.1** The Owner shall retain an **architect lawfully licensed to practice architecture** or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.
Consent of all three participants is required due to the direct effect on them. Ordinarily, the related owner-architect agreement requires the architect to provide administration of the construction contract as set forth in AIA Document A201–2007. A change in contract administration services would thus require modification of the owner-architect agreement as well. This section highlights the importance of making sure that all aspects of the owner-architect and owner-contractor agreements are coordinated.	**§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect** as set forth in the Contract Documents **shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect.** Consent shall not be unreasonably withheld.
Since the architect's activities are an integral part of the construction process and since the contractor may have entered into the contract based upon the identity of the architect, the contractor has a right to object if the owner proposes to replace the architect designated in the agreement.	**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.
	§ 4.2 ADMINISTRATION OF THE CONTRACT
The word *administration* is not intended to imply that the architect either supervises or directs the construction effort. If, under the owner-architect agreement, the architect will not be providing full construction contract administration as described in this article and elsewhere in AIA Document A201–2007, the relevant provisions must be modified accordingly. This section highlights the importance of making sure that all aspects of the owner-architect and owner-contractor agreements are coordinated. The architect's duty to provide administration of the construction contract terminates when the architect issues the final certificate for payment, unless the owner chooses to retain the architect's services during the one-year correction period. The architect is **not** the general agent of the owner. The architect's powers are those enumerated in the contract documents, and the contractor should not rely on actions of the architect beyond the scope of those powers. (See Section 2.1.1 regarding the owner's designated representative.)	**§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents** and will be an Owner's representative during construction **until the date the Architect issues the final Certificate For Payment**. **The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents**.

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This requirement does not imply any definite time interval between site visits. Instead, intervals are related to project requirements, as determined by the architect in the architect's professional judgment. The architect's professional judgment is also the gauge of the number of visits required, unless a specific number is stated in the owner-architect agreement. The architect is not required to be at the site full-time or to make detailed inspections, and in any case is not empowered to direct the contractor's workers or subcontractors. Site visits are intended to permit review of the contractor's work and to give the architect a basis for reporting to the owner. The last sentence underscores the statement of the contractor's responsibilities in Section 3.3.1 and reinforces the dividing line between the contractor's responsibilities and those of the architect. A clear allocation of responsibility is in the interests of all participants in the construction project. Note, however, that the architect must take care not to alter this division of responsibility through conduct—for example, by giving instructions to the contractor's employees at the site regarding safety procedures.	**§ 4.2.2** The Architect will visit the site **at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents**. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. **The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work**, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.
Even when present, the architect cannot possibly see all facets of the work at the same time, so may not detect every deviation from the contract documents regardless of the frequency of the architect's site visits. However, the architect is required to report to the owner known deviations from the contract documents and observed defects and deficiencies.	**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (**1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.** The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
This section highlights the need for maintaining channels for project communication. Adhering to these lines of communication helps to insure that the all project participants are adequately informed as the project proceeds.	**§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the **Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.**
Only work that conforms to the requirements of the contract documents and the representations on the application will be certified for payment. Refer to Section 9.4 for further provisions relating to the architect's certification of payments.	**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, **the Architect will review and certify the amounts due the Contractor** and will issue Certificates for Payment in such amounts.

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The authority, but not the duty, to reject work is one of the principal means at the architect's disposal for discovering and requiring correction of defects and deficiencies in the contractor's work. Other means are the authority to require special testing and inspections under Section 13.5, and the authority to withhold or nullify certification for payment under Section 9.5.1. Note that while the architect has authority to reject work, only the owner may order the contractor to stop work under Section 2.3.1.	**§ 4.2.6** The Architect has **authority to reject Work** that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have **authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3**, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
Appropriate action may include instructions to correct a submittal and resubmit it. Shop drawings, product data and samples are not contract documents. They represent the contractor's intentions for implementing the requirements of the contract documents. Architects, therefore, review them only for the limited purposes stated. The architect is required to take action on submittals in accordance with the approved submittal schedule required under Section 3.10.2. In the absence of an approved submittal schedule, the architect must act on submittals with reasonable promptness. Prompt review by the architect helps avoid claims for delay under Section 8.3.	**§ 4.2.7** The Architect will review and approve, or take **other appropriate action** upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking **for conformance with information given and the design concept expressed in the Contract Documents**. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, **with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review**. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
The architect is responsible for preparing the documents to implement change orders, construction change directives and minor changes in the work. This duty is not altered, even if there is a third party initial decision maker (see Section 15.1.3).	**§ 4.2.8** The Architect will prepare **Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.** The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.
Inspections are distinct from normal site visits. The inspections described here are the only ones the architect performs unless others are specifically required elsewhere in the contract documents, required pursuant to Section 13.5.1, or otherwise agreed to by the owner and architect. Final completion and final payment are covered in Section 9.10.	**§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion**; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a **final Certificate for Payment** pursuant to Section 9.10.

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The exhibit should not expand the architect's responsibilities unless the owner-architect agreement is appropriately modified. AIA Document B352™–2000, Duties, Responsibilities, and Limitations of Authority of the Architect's Project Representative, may be used for this purpose.	**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an **exhibit** to be incorporated in the Contract Documents.
Because the architect has prepared the drawings and specifications, has participated in preparation of the other contract documents, and is actively engaged in administering the construction contract, the architect is uniquely qualified to interpret the requirements of the contract.	**§ 4.2.11 The Architect will interpret and decide matters concerning performance** under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
It is not enough for an interpretation or decision to comply with the architect's design intent in developing the contract documents. The interpretation or decision must also be reasonably inferable from the documents themselves. Intentions of the architect that are not reflected in the contract documents do not bind the contractor, and may give rise to a change order if the contractor is required to perform work not reasonably contemplated at the time the agreement with the owner was executed. Because the architect owes an obligation to provide services to the owner and must exercise judgment in the performance of that duty, the law in most jurisdictions provides for such immunity even in the absence of this language.	**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. **When making such interpretations and decisions, the Architect** will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and **will not be liable for results of interpretations or decisions rendered in good faith**.
	§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.
Though Sections 3.2.2 and 3.2.3 require the contractor to submit requests for information, A201 did not require the architect to respond to them until the addition of this provision in 2007.	**§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents.** The Architect's response to such requests will be made in writing **within any time limits agreed upon or otherwise with reasonable promptness.** If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.
ARTICLE 5 SUBCONTRACTORS	
	§ 5.1 DEFINITIONS
The term *subcontractor* does not include suppliers who do not perform work at the site but only provide materials and equipment to the contractor and subcontractors.	**§ 5.1.1** A **Subcontractor** is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
The term *indirect contract* refers to a contractual relationship involving lower tiers of contractors in the chain leading up to the subcontractor.	**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or **indirect contract** with a Subcontractor to perform a portion of the Work at the site. The term "Sub-

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	subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
	§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK
If the owner and architect require a specific time limit for submitting proposed names, this limit should be stated in the supplementary conditions.	**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, **as soon as practicable after award of the Contract**, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.
	§ 5.2.2 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.
The owner is permitted to reject proposed subcontractors who are not reasonably capable of performing the work without incurring additional cost or time. If the parties disagree as to whether a particular proposed subcontractor is reasonably capable, the contractor may submit the disagreement as a claim pursuant to Article 15. Any adjustment in the contract sum or contract time is a one-time change and the change order is issued before the substitute subcontractor begins performing work. If the substituted subcontractor later fails to perform in a proper or timely manner, the contractor bears the same responsibility as if no substitution had occurred.	**§ 5.2.3 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 Subcontractor was reasonably capable of performing the Work, **the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change**, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
	§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.
A basic requirement of the contract is that subcontractors be bound by the terms of the contract documents. AIA Document A401, Standard Form of Agreement Between Contractor and Subcontractor, so provides. If other subcontract forms are utilized, care must be taken to coordinate them with Section 5.3. The contractor may include terms and conditions in subcontracts that vary from those in the contract as long as such terms and conditions do not prejudice the rights of the owner and architect. The pass-through of terms and conditions of the contract documents serves to coordinate all parties performing	**§ 5.3 SUBCONTRACTUAL RELATIONS** By appropriate agreement, written where legally required for validity, the **Contractor shall require each Subcontractor**, to the extent of the Work to be performed by the Subcontractor, t**o be bound to the Contractor by terms of the Contract Documents**, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. **Each subcontract agreement shall preserve and protect the rights of the Owner and Architect** under

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work on the site. AIA Document A401 contains language permitting the contractor to make this requirement of subcontractors.	the Contract Documents with respect to the Work to be performed by the Subcontractor **so that subcontracting thereof will not prejudice such rights**, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. **Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors**. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.
	§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS
In the event of contractor default, the owner needs to be able to continue the work with minimal disruption and expense. The owner receives the benefit of the original subcontract price, which is subject to adjustment only pursuant to Section 5.4.2. Where a performance bond or payment bond is involved, consultation with the contractor's surety is essential before exercising these rights. Assignment of subcontracts can involve a number of complicated legal issues. The last sentence, added in 2007, clarifies that the owner accepts the rights and responsibilities of the contractor when accepting assignment of subcontracts. This obligation includes paying the assigned subcontractor all amounts that are past due at the time of the contractor's termination.	**§ 5.4.1** Each subcontract agreement for a portion of the Work is **assigned** by the Contractor to the Owner, provided that **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.
	§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.
Added in 2007, this provision acknowledges that owners do not necessarily want to serve as contractors, and so will further assign subcontracts accepted under Section 5.4.1 to a follow-on contractor. The owner, however, retains payment obligations to the subcontractors.	**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.
ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS	
On some projects, the owner may retain multiple contractors, each of whom will perform a separate scope of work. The owner is then responsible for coordinating the work of the separate contractors in much the same way as the contractor is responsible for coordinating the work of the separate subcontractors. The owner may perform this responsibility by use of its own employees or consultants or	**§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

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by including this coordination responsibility within the scope of one of the separate contractor's agreement. Separate contracts may require additional responsibility and services by the architect. These should be addressed in the owner-architect agreement.	
The provisions of this section are consistent with the concept that the project may be more comprehensive than the work of the contractor under the contract documents. There may also be other construction or operations on the site that are not part of the project.	**§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts** in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.
	§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
The owner is responsible for coordinating the activities of the owner's forces and of all separate contractors with those of the contractor. This coordination may be achieved either directly by the owner's staff or through a separate contractual agreement, with coordination undertaken by the architect, the contractor, one of the separate contractors, a construction manager or another designated person or entity. The contractor is required to cooperate with the owner and separate contractors in coordinating construction schedules, making such revisions as are necessary and following the revised schedules.	**§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor**, who shall cooperate with them. **The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules**. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.
	§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.
	§ 6.2 MUTUAL RESPONSIBILITY
	§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
When the contractor's work depends upon construction performed by the owner or by other separate contractors, the contractor must promptly notify the architect of apparent discrepancies or defects in the work of others that would prevent the contractor from properly performing its work. Otherwise, the assumption is that	**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, **promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for**

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such partial or completed construction is (except for defects not then reasonably discoverable) in accordance with the contract documents.	**such proper execution and results.** Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
If the owner's separate contractor is damaged by the contractor, the owner's separate contractor must look to the owner for redress, since there is no direct contractual relationship between the various contractors. The owner in turn may seek reimbursement from the contractor who is at fault.	**§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction**. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.
	§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.
	§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.
	§ 6.3 OWNER'S RIGHT TO CLEAN UP If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.
ARTICLE 7 CHANGES IN THE WORK	
	§ 7.1 GENERAL
	§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
If the owner and contractor can agree on both the change in contract sum and contract time, a *change order* is issued. If no agreement can be reached, the owner can still require the work to be performed by issuance of a *construction change directive*. In either event, and also in the case of an order for a *minor change in the work* issued by the architect, the contractor must perform changes that are within the general scope of the work.	**§ 7.1.2 A Change Order** shall be based upon agreement among the Owner, Contractor and Architect; a **Construction Change Directive** requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a **minor change in the Work** may be issued by the Architect alone.
	§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

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	§ 7.2 CHANGE ORDERS
Change Orders are prepared in writing by the architect, and all of the listed items must be stated and agreed upon. If those items are not agreed upon, the owner may issue either a construction change directive or abandon the proposed change. Even if the contract sum or contract time are to remain unchanged, that fact should be recorded by marking "no net change" on the change order. This helps to avoid disputes as to whether an increase in the contract sum or extension of the contract time was intended, particularly if such changes were suggested in the contractor's proposal.	**§ 7.2.1** A **Change Order** is a written instrument prepared by the Architect and 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.
	§ 7.3 CONSTRUCTION CHANGE DIRECTIVES
Absent a separate modification signed by the owner and contractor, changes in the work that are beyond the general scope of the contract need not be performed by the contractor. Modifications that materially alter the scope of the contract should be submitted for approval of the surety to ensure that the surety will not be released from its obligations by such changes.	**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. **The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract** consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
The construction change directive is the mechanism by which the owner exercises a unilateral right to order changes in the work without invalidating the contract. It is used when a change order cannot be obtained due to limited time or disagreement between the parties with regard to associated changes in the contract sum or contract time. AIA Document G714, Construction Change Directive, can be used to document the change. Upon receipt of a construction change directive, the contractor must perform the work specified and the owner becomes obligated to pay for that work.	**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
The list of methods set out in Section 7.3.3 is mandatory with respect to construction change directives. Those methods are optional with respect to change orders.	**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods: **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; **.2** Unit prices stated in the Contract Documents or subsequently agreed upon; **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or **.4** As provided in Section 7.3.7.
Unit prices are normally quoted in relation to anticipated quantities.	**§ 7.3.4** If **unit prices** are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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	§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
The contractor need not sign the construction change directive in order for it to become effective immediately upon receipt.	**§ 7.3.6** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
Appropriate supporting data might include invoices with similar breakdowns from subcontractors, slips from material suppliers and similar data. The architect may request the assistance of the owner's auditor in reviewing the adequacy of such financial data. It is appropriate to identify in the contract documents the basis for determining the rental values (e.g., the contractor's normal rates, the Associated General Contractors' published rates or others) applicable to contractor-owned equipment. Retail rental rates may include elements of overhead and profit. Duplication of these cost items should be avoided.	**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, **the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data**. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following: **.1** Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; **.2** Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed; **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; **.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and **.5** Additional costs of supervision and field office personnel directly attributable to the change.
Where the change results in a credit, the amount of the credit is determined by the cost that would have been incurred in executing the change by the contractor without decreasing the contractor's overhead and profit.	**§ 7.3.8 The amount of credit** to be allowed by the Contractor to the Owner for a deletion or **change that results in a net decrease in the Contract Sum shall be actual net cost** as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
When work required by a construction change directive spans several payment periods, the contractor is paid on the basis of work performed during each such period. The architect makes an interim determination and certifies that amount for payment.	**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. **The Architect will make an interim**

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If either party disagrees with that determination, that party may assert a claim. The architects' interim determination adjusts the contract sum on a temporary basis, until the construction change directive is settled under Section 7.3.10. The temporary adjustment in the contract sum may be necessary in order for a lender to approve payment.	**determination for purposes of monthly certification for payment for those costs** and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. **The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order**, subject to the **right of either party to disagree and assert a Claim** in accordance with Article 15.
When the final amount of a construction change directive is agreed upon, it must be recorded as a change order. Nothing precludes issuing change orders for partial amounts prior to agreement on the final amount.	**§ 7.3.10 When the Owner and Contractor** agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or **otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order**. Change Orders may be issued **for all or any part of a Construction Change Directive**.
AIA Document G710, Architect's Supplemental Instructions, may be used to document minor changes. A change that is inconsistent with the intent of the contract documents must be documented as a change order or construction change directive rather than as a minor change in the work, even if the contract sum and contract time are unaffected. Problems often arise when the parties disagree as to what constitutes a minor change. Therefore, before a minor change order is issued, the contractor's agreement that the proposed minor change will not affect the contract sum or contract time should be documented.	**§ 7.4 MINOR CHANGES IN THE WORK** **The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents.** Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.
ARTICLE 8 TIME	
	§ 8.1 DEFINITIONS
The work must be *substantially* complete within the contract time (as adjusted). Final completion will occur after this period. This distinction may be important if there are provisions for liquidated damages in the event the date for substantial completion is not met. Liquidated damages are only assessed until the date of actual substantial completion.	**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for **Substantial Completion** of the Work.
The contract time starts to run as of the date specified in the owner-contractor agreement, whether or not the contractor begins work on that date.	**§ 8.1.2** The date of commencement of the Work is the **date established in the Agreement**.
	§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.
	§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.
	§ 8.2 PROGRESS AND COMPLETION
Time is of the essence means that timely performance is an express condition of the contract, and any delay in the owner's or contractor's performance will constitute a breach of contract. By executing the agreement, the contractor is precluded from contending that the contract documents were	**§ 8.2.1 Time limits** stated in the Contract Documents **are of the essence of the Contract**. **By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work**.

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defective because the time allowed for construction was not sufficient to perform the work.	
	§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.
	§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
	§ 8.3 DELAYS AND EXTENSIONS OF TIME
Circumstances beyond the contractor's control can result in an excusable delay, justifying an extension of the contract time. If an extension is justified, the architect determines its extent and prepares a change order to reflect the extension. Each of the items listed constitutes an excusable basis for an increase in the contract time. Whether such a basis represents a basis for an increase in the contract sum is left to state law.	**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work **by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay**, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.
	§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.
So-called *no damages for delay* clauses are sometimes suggested or required by the owner. The owner should seek its attorney's advice before such a clause is included. Such a clause may now be less necessary in view of the contractor's waiver of consequential damages in Section 15.1.6.	**§ 8.3.3** This Section 8.3 does not preclude **recovery of damages for delay** by either party under other provisions of the Contract Documents.
ARTICLE 9 PAYMENTS AND COMPLETION	
	§ 9.1 CONTRACT SUM The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.
The schedule of values is the basis for review of the contractor's applications for payment The architect can request changes in the proposed schedule, but the accounting accuracy of the schedule is the contractor's responsibility. The form of the schedule and the type and level of detail of required supporting data may be described in division 1 of the specifications. One reason that the architect may want to see supporting data is to verify that the schedule is not being *front loaded*.	**§ 9.2 SCHEDULE OF VALUES** **Where the Contract is based on a stipulated sum or Guaranteed Maximum Price**, the Contractor shall submit to the Architect, before the first Application for Payment, a **schedule of values** allocating the entire Contract Sum to the various portions of the Work and **prepared in such form and supported by such data to substantiate its accuracy as the Architect may require**. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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Verification normally is required only when the contractor assigns obviously inflated values to work that will be done early in the construction process. *Front loading* accelerates cash flow to the contractor, resulting in overpayments early in the project that can be particularly troublesome in the event of a contractor default. AIA Document G703™–1992, Continuation Sheet, is often used to record the submitted schedule of values.	
	§ 9.3 APPLICATIONS FOR PAYMENT
Procedures for applications, including format, data required to support accuracy and completeness, and specific voucher or lien requirements may be described in detail in division 1 of the Specifications. If applicable, provisions for retainage may be specified in the owner-contractor agreement and in the supplementary conditions, if any. The date on which payment is due is specified in the owner-contractor agreement. AIA Documents G702–1992, Application and Certificate for Payment, and G703–1992, Continuation Sheet, are often used for the contractor's applications for payment.	**§ 9.3.1** At least ten days before the date established for each progress payment, t**he Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values**, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and **supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require,** such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.
Payment of such amounts, if applied for under this clause, is subject to the procedure set forth in Section 7.3.9.	**§ 9.3.1.1** As provided in Section 7.3.9, such **applications may include** requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.
Applications for payment may only include amounts for the work for which the contractor intends to make payment. The owner retains any amount that will not be paid to the subcontractor. Payment for work by a replacement subcontractor or supplier or the contractor's own forces may be requested.	**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.
Before payment is made for stored materials and equipment, the contractor must provide evidence establishing the owner's title to stored materials and equipment or otherwise safeguarding the owner's interest in them. For example, bills of sale or other documentation may establish that the owner has clear title to such materials and equipment. If other than the usual retainage is required, that should also be specified. Section 11.3.1 has provisions covering property insurance. Section 11.3.1.4, in particular, addresses materials and equipment stored off site.	**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. **If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site** at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner **to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest**, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.
Questions regarding clear title involve legal issues and should be referred to the owner's legal counsel.	**§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment.** The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments

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	received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
	§ 9.4 CERTIFICATES FOR PAYMENT
Upon receipt of an application for payment, the architect has three options: (1) certify the amount the contractor has applied for and forward the certificate to the owner, (2) certify a lesser amount and forward the certificate to the owner, or (3) reject the contractor's application. Actions described in (2) and (3) may be taken for any of the reasons described in Section 9.5.1.	**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, **either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part** as provided in Section 9.5.1.
Section 9.4.2 is extremely important. It spells out what the architect's certificate represents, what it does not represent and the basis of the architect's actions. Certification for payment of amounts not yet due can cost the owner unnecessary interest on construction funds, and can result in further loss by the owner if the contractor later defaults. Overpayment may also cause slow or misdirected payment to subcontractors. Certificates for payment do not constitute acceptance of Work for which payment is to be made.	**§ 9.4.2** The issuance of a Certificate for Payment will constitute **a representation by the Architect to the Owner**, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, t**he Work has progressed to the point indicated** and that the quality of the Work is in accordance with the Contract Documents. **The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect**. The issuance of a Certificate for Payment **will further constitute a representation** that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment **will not be a representation** that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
	§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION
Decisions to certify applications for payment, other than for final payment, may be reconsidered and reversed in the architect's subsequent evaluations of the work. If a subcontractor or supplier notifies the owner of an intent to place a lien on the project, the contractor may choose to post a bond or provide other security to protect the owner against loss, rather than have its payments interrupted. When a payment bond has already been provided, the owner may request confirmation from the	**§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner**, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount

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surety that the bond applies to the claim, or may request some additional bond or security commitment.	for which the Architect is able to make such representations to the Owner. **The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued**, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of **.1** defective Work not remedied; **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless **security** acceptable to the Owner is provided by the Contractor; **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment; **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; **.5** damage to the Owner or a separate contractor; **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or **.7** repeated failure to carry out the Work in accordance with the Contract Documents.
	§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
A joint check is a check made payable to both the contractor and the subcontractor or supplier who may not have received payment for labor or materials furnished for the project. Neither payee can cash or deposit the check in the absence of consent and endorsement by the other. In this way, satisfaction of a claim by a subcontractor or material supplier can be assured. Otherwise, when the contractor fails to make proper payment to subcontractors, the unpaid subcontractors have reasons to consider filing mechanic's liens on the project. This provision, new in 2007, allows the owner to protect the project from the filing of liens by paying the subcontractors by joint check.	**§ 9.5.3** If the Architect withholds certification for payment under Section 9.5.1.3, **the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered.** If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.
	§ 9.6 PROGRESS PAYMENTS
The contractor can wait until ten days before the date when payment is due before submitting the application for payment. The architect then has up to seven days to review the application and take action. Thus, the owner may have as little as three days within which to make payment. If the owner needs more time to make payment, this should be covered in the supplementary conditions, if any, and in the owner-contractor agreement. Section 13.6 establishes the requirements for interest on late payments; interest begins to accrue on the date payment is due.	**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and **within the time provided in the Contract Documents**, and shall so notify the Architect.

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This precludes the contractor from using money received for subcontractors' work for other purposes. It does not, however, imply that a subcontractor's right to be paid for completed work is contingent upon the contractor's receipt of payment from the owner. This is not a *Pay If Paid* clause. If the contractor has a legitimate question about the quality of a subcontractor's work, the proper action would be for the contractor to adjust the application for payment submitted to the owner with regard to that subcontractor for that period. Funds already paid by the owner to the contractor for such subcontractors should either be paid to the subcontractor or returned to the owner. Unless otherwise provided in the subcontract agreement, the contractor may not retain from payments due to subcontractors more than the owner retains from payments due to the contractor relative to that subcontractor's work.	**§ 9.6.2** The Contractor **shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled**, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
This is one of very few direct contacts between the architect and subcontractors in A201–2007.	**§ 9.6.3 The Architect will, on request, furnish to a Subcontractor**, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.
If the owner suspects that the contractor has failed to pay subcontractors after having received payment for the subcontractor's work, the owner may demand evidence of payment to the subcontractors. If evidence of payment is not timely provided, the owner may contact subcontractors directly to ascertain the status of payments. This provision was added in 2007. Lien laws and other state or local law may impose additional obligations on the owner or architect outside of the contract documents	**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, **the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid.** Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, **except as may otherwise be required by law**.
	§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.
The mistaken inclusion of, and payment for, an item of work on one certificate does not preclude the architect from adjusting that item in a subsequent certificate. (See Section 9.5.1.)	**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute **acceptance of Work** not in accordance with the Contract Documents.
This requirement establishes a trust in favor of subcontractors and suppliers of monies received by the contractor by reason of work and materials of its subcontractors and suppliers. This section gives subcontractors and suppliers a preference in the event of the contractor's bankruptcy and thereby protects the owner from lien claims which could have been asserted by those entities had they not been furnished with this preference. As the recipient of trust funds, the contractor is under an obligation to properly apply the funds for the account of the subcontractors and suppliers. Absent the express provision, the contractor would not be able to co-mingle monies received for the benefit of	**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, **payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor**, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person

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subcontractors or suppliers with the contractor's own funds. Such a result would create accounting and bookkeeping complexities unnecessary to the accomplishment of the purpose of this provision.	or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.
This section sets forth the conditions under which the contractor may stop the work on the project due to non-payment. It also allows the contractor to recover costs associated with shut-down, delay and start-up, in addition to any interest payable pursuant to the terms of the owner-contractor agreement.	**§ 9.7 FAILURE OF PAYMENT** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, **then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work** until payment of the amount owing has been received. The Contract Time shall be extended appropriately **and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up**, plus interest as provided for in the Contract Documents.
	§ 9.8 SUBSTANTIAL COMPLETION
The architect determines the date of substantial completion by establishing the point at which the work or a designated portion thereof can be occupied or used as intended. This issue is not affected by the dollar value of the uncompleted work; the absence of a one-dollar part in the only elevator serving a hospital operating room could delay substantial completion. It often happens that an occupancy permit is issued by the appropriate authority at approximately the same time as the date of substantial completion. These times *are not* interchangeable. The criteria upon which an occupancy permit is issued may vary from jurisdiction to jurisdiction, while the criteria for establishing the date of substantial completion is fixed by contract. Because the contract time is tolled at substantial completion, contractors sometimes tend to see the work as substantially complete sooner than would more objective observers. As an independent adviser, the architect makes the final decision on this matter. Section 9.8.1 contemplates substantial completion of the entire work. Earlier substantial completion of a portion of the work requires the owner's agreement to designate such portion separately from the rest of the work. The supplementary conditions may include other items as prerequisites for achievement of substantial completion.	**§ 9.8.1 Substantial Completion** is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.
Typically, it is the contractor who initially proposes that the work is substantially complete. The contractor does this by submitting to the architect a list of items that must be completed before the work is finally complete. This list is commonly referred to as the *punch list*. It constitutes an acknowledgment by the contractor that work remains to be done after substantial completion, and is often supplemented by the architect as a result of the architect's inspection. Some of the items may affect substantial completion; others may not.	**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete**, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment**. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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This is one of only two inspections by the architect contemplated under A201–2007. The other inspection takes place prior to final payment. If the architect does not agree with the contractor that the work is substantially complete, the contractor must complete or correct the items noted by the architect and request another inspection. This process, if repeated over and over, may entitle the architect to additional compensation from the owner. In that case, the owner may be justified in filing a claim against the contractor for this additional expense.	**§ 9.8.3** Upon receipt of the Contractor's list, **the Architect will make an inspection** to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, **the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect**. In such case, the Contractor shall **then submit a request for another inspection** by the Architect to determine Substantial Completion.
When the architect determines that the work is substantially complete, the architect prepares a certificate of substantial completion, with the final punch list attached, establishing the date of substantial completion and the other matters described in Section 9.8. Construction workers may still need to work in occupied spaces following substantial completion. It is important that the certificate be clear about the responsibilities of the owner and contractor for the items mentioned. Both the owner and contractor should sign the certificate to indicate their understanding of and agreement with their assigned responsibilities.	**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the **Architect will prepare a Certificate of Substantial Completion** that shall establish the date of Substantial Completion, **shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance**, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
This provision contemplates full release of any withheld retainage at substantial completion, excepting only retainage for work that is incomplete or not in accordance with the contract documents and damages due to any delay on the part of the contractor in achieving substantial completion.	**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, **the Owner shall make payment of retainage applying to such Work or designated portion thereof**. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
	§ 9.9 PARTIAL OCCUPANCY OR USE
The owner may wish to occupy or use part of the work before it is substantially complete. Section 9.9 establishes the ground rules under which this can occur. A separate agreement between the owner and contractor is required, and the property insurer must consent. The list prepared by the contractor and supplemented by the architect makes reference to all items which are not in accordance with the contract documents. Those which do affect substantial completion must be remedied before the architect can issue the certificate of substantial completion; the others are to be corrected or completed before final payment.	**§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor**, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. **When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a**

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	list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.
Moving into a building frequently causes damage to finished and unfinished work. The parties should document the status of the work before and after move-in by inspection reports, photographs, videotape or other means. This provision is aimed at reducing future disputes by establishing a baseline against which to measure damage to the work that may occur after the owner begins to occupy or use part of the work but prior to final payment.	**§ 9.9.2** Immediately prior to such partial occupancy or use, **the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.**
	§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
	§ 9.10 FINAL COMPLETION AND FINAL PAYMENT
The contractor initially decides that the work is complete and is ready for final inspection by the architect and owner. The final application for payment, along with the appropriate supporting data, must accompany the contractor's request for final inspection. If the stated conditions are met, the architect issues a final application for payment. By signing the certificate, the architect also represents that the conditions listed in Section 9.10.2 have been fulfilled, making it unnecessary to issue a separate certificate for final completion. Because the contractor continues to be obligated to correct defective or nonconforming work and to perform under warranty obligations, no specific certificate of final completion is issued by the architect.	**§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment**, the Architect will promptly make such inspection and, **when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment** stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. **The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.**
AIA Documents G706™–1994, Contractor's Affidavit of Payment of Debts and Claims, and G706A™–1994, Contractor's Affidavit of Release of Liens, may be used for this purpose. Because the surety is entitled to use the retainage to complete the work in the event of a contractor's default, the surety's consent may be advisable so that the surety does not have grounds to avoid obligations it would otherwise have under applicable bonds. AIA Document G707™–1994, Consent of Surety Company to Final Payment, is available for this purpose. All of these items may be requested at the owner's discretion. While the architect may offer comments based on past experience in such matters, the owner and owner's legal counsel should determine what is desired or necessary. Because it may be impossible to obtain lien releases or	**§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit** that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a **certificate** evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) **a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable** to cover the period required by the Contract Documents, (4) **consent of surety**, if any, to final payment and (5), **if required by the Owner**, **other data**

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waivers for reasons other than nonpayment, this provision allows the contractor to post a bond against unfulfilled requirements such as unreleased liens, manufacturers' warranties not yet obtained, etc. Thus, the project can be closed out without releasing the contractor from these obligations to the owner.	**establishing payment or satisfaction of obligations**, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, **the Contractor may furnish a bond** satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
In the event final completion is delayed by causes beyond the contractor's control, Section 9.10.3 allows for payment and release of retainage on Work completed and accepted. Consent of surety is required in situations where the surety's interest is affected.	**§ 9.10.3** If, after Substantial Completion of the Work, **final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion,** and the Architect so confirms, **the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.** If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, **the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted** shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
The owner waives all except the designated claims by making final payment to the contractor. While final payment is a milestone, it does not terminate certain important rights of the owner. The exceptions preserve these rights. Section 9.10.4 preserves rights of the owner that survive final payment including, in this case, rights under the warranty contained in Section 3.5 and during the correction period described in Section 12.2.	**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner **except those arising from** **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled; **.2** **failure of the Work to comply with the requirements of the Contract Documents**; or **.3** terms of special warranties required by the Contract Documents.
This provision requires each payee to restate specifically, in writing, unsettled claims if they are to remain valid. This precludes subsequent presentation of claims that were believed to have been settled, and also new claims relating back to events prior to the date of the final application for payment. This provision has no effect on claims that might arise after final payment.	**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a **waiver of claims** by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.
ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY	
Construction safety is the responsibility of the contractor. Subcontractors, in turn, are responsible to the contractor for the safe performance of their portions of the work.	**§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS** **The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions** and programs in connection with the performance of the Contract.

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	§ 10.2 SAFETY OF PERSONS AND PROPERTY
	§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to **.1** employees on the Work and other persons who may be affected thereby; **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
The owner (when performing work with its own forces) and separate contractors have similar responsibilities under laws and regulations related to safety.	**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
	§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
The contractor and owner may, under some circumstances, be held strictly liable for harm resulting from use or storage of such hazardous materials—that is, liable even if they are not negligent.	**§ 10.2.4** When use or storage of explosives or other **hazardous materials** or equipment or unusual methods are necessary for execution of the Work, **the Contractor shall exercise utmost care** and carry on such activities under supervision of properly qualified personnel.
	§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.
The superintendent is the contractor's principal representative at the site and is responsible for site safety, unless someone else is specifically designated to have this responsibility.	**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the **Contractor's superintendent** unless otherwise designated by the Contractor in writing to the Owner and Architect.

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This includes temporary loads required by construction means and methods.	**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.
	§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.
	§ 10.3 HAZARDOUS MATERIALS
It is important for the health of those workers and others who may be exposed to hazardous materials that work stop promptly upon their discovery. The contract documents may recognize the existence of a hazardous material. The material may, in fact, be in the scope of the contractor's work to remove or encapsulate. The contractor is not permitted to stop the work if the material is addressed in the contract documents, thereby putting the contractor on notice that the material exists on the site.	**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a **hazardous material or substance not addressed in the Contract Documents** and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor**, the Contractor shall, upon recognizing the condition, immediately stop Work** in the affected area and report the condition to the Owner and Architect in writing.
If the contractor has notified the owner in writing that a hazardous material is present, the owner must retain a qualified laboratory to verify whether such material is present. If hazardous materials do exist, the owner must arrange for their removal or remediation. The owner cannot require the contractor to perform this service, though the contractor may agree to do it by change order. The owner and contractor may choose to negotiate an appropriate adjustment in contract price and time, associated with shut-down, delay, and start-up, or the contractor may assert a claim if no negotiated agreement can be reached. Unlike most other claims, claims relating to hazardous materials are not referred to the architect or other designated initial decision maker for initial determination, but proceed directly to mediation and then to binding dispute resolution. (See Section 15.2.) Once it is deemed safe to do so, work may resume according to the written agreement of the owner and contractor.	**§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory** to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, **to cause it to be rendered harmless**. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. **By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.**
This section, like other indemnification provisions, should be reviewed by legal counsel before the agreement is executed. Numerous state statutes affect the enforceability of such provisions.	**§ 10.3.3** To the fullest extent permitted by law, the Owner shall **indemnify and hold harmless** the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against

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	claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.
	§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.
This section, like other indemnification provisions, should be reviewed by legal counsel before the agreement is executed. Numerous state statutes affect the enforceability of such provisions.	**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.
Some federal or state statutes may impose liability on persons who perform work on property which was previously contaminated, even though that person was not responsible for the initial contamination and properly and safely performed the required work. This provision makes the owner financially responsible for costs and expenses incurred by a non-negligent contractor who by law becomes responsible for remediation costs. Like other indemnification provisions, this section should be reviewed by legal counsel.	**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the **cost of remediation** of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.
As part of the contractor's responsibility for construction means and methods and for jobsite safety, the contractor has the authority to act without prior authorization in an emergency.	**§ 10.4 EMERGENCIES** In an **emergency affecting safety of persons or property**, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.
ARTICLE 11 INSURANCE AND BONDS	
	§ 11.1 CONTRACTOR'S LIABILITY INSURANCE
The provisions of this article commonly require expansion. Insurance coverages that the contractor is required to carry should be clearly stated in the contract documents so that the contractor can accurately calculate its costs. The owner's legal counsel and insurance adviser should make appropriate recommendations to the owner on insurance and bonds. The architect should obtain information from the owner on the necessary or desirable	**§ 11.1.1** The **Contractor shall purchase** from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located **such insurance as will protect the Contractor from claims set forth below** which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations

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limits and coverage; AIA Document G612™–2001, Owner's Instructions Regarding Insurance and Bonds, has been designed for this purpose.	be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
	.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
	.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
	.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
In an insurance context, personal injury is different from bodily injury. Personal injury includes libel, slander and false arrest. For example, someone detained at the construction site could claim false arrest, or a material supplier could claim that comments made by the contractor or a subcontractor constituted slander. Bodily injury involves physical harm to a person.	**.4** Claims for damages insured by usual **personal injury** liability coverage;
	.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
	.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
In an insurance context, the term *completed operations* refers to property damage or bodily injury occurring after the contractor has left the site. For example, drywall might be damaged as a result of a roof leak occurring after final completion.	**.7** Claims for bodily injury or property damage arising out of **completed operations**; and
The contractor agrees to hold the owner, architect and others harmless under certain circumstances. This provision requires insurance to fulfill that requirement.	**.8** Claims involving contractual liability insurance applicable to the Contractor's obligations under **Section 3.18**.
Limits of liability refers to the maximum dollar figure that the insurance company will potentially pay. Required limits of liability are either specified by law or in the contract documents. Section 8.2.2 states that the contractor may not begin work prior to the effective date of the insurance required here. Section 9.10.2 discusses insurance requirements in relation to final payment. The last sentence extents the coverage period for completed operations insurance into the correction of work period. During this time the owner is covered as an additional insured (see Section 11.1.4).	**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than **limits of liability specified in the Contract Documents or required by law, whichever coverage is greater**. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption **from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment**, and, with respect to the **Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.**
This 30-day period gives the owner an opportunity to purchase replacement coverage or take other actions prior to the date on which the contractor's insurance expires. Insurance companies commonly agree to provide such notice. Many insurance companies have aggregate limits of liability that limit the amount payable by the insurer on all	**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until **at**

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claims against the insured (in this case, the contractor) during the policy period. Aggregate insurance limits required by the contract documents may be reduced or exhausted altogether by claims against the contractor on other projects. If this occurs, the contractor is obligated to promptly notify the owner.	**least 30 days' prior written notice** has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the **General Aggregate**, or both, shall be furnished by the Contractor with reasonable promptness.
It has become common industry practice to require that the contractor name the owner, architect and/or architect's consultants as additional insureds under the contractor's commercial liability insurance. This provision was added to A201–2007, and the former requirement for Project Management Protective Liability insurance was deleted. This practice saves legal expenses for all insured parties named in a third party lawsuit where the contractor was wholly or partly negligent by consolidating defense costs under one insurance policy.	**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) t**he Owner, the Architect and the Architect's Consultants as additional insureds** for claims caused in whole or in part by the Contractor's negligent acts or omissions **during the Contractor's operations**; and (2) **the Owner as an additional insured f**or claims caused in whole or in part by the Contractor's negligent acts or omissions **during the Contractor's completed operations**.
	§ 11.2 OWNER'S LIABILITY INSURANCE The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.
	§ 11.3 PROPERTY INSURANCE
If the contractor, rather than the owner, is required to provide property insurance, substantial modification to Section 11.3 will be needed so that proper coverages are obtained to protect the interests of all parties, including those of the owner (who may be doing work with the owner's own forces) and of separate contractors.	**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.
All-risk coverage is usually contrasted with *named peril* coverage. *All-risk* coverage includes everything but specifically excluded risks. *Named-peril* coverage, on the other hand, names those perils that are insured against and excludes all other risks. Both types of policies should be reviewed carefully by the owner's insurance adviser.	**§ 11.3.1.1** Property insurance shall be on an **"all-risk" or equivalent policy** form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services

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	and expenses required as a result of such insured loss.
The owner must either purchase the insurance required by the general conditions or inform the contractor that it does not intend to do so. The contractor then has the opportunity to purchase equivalent insurance and is entitled to a change order to cover the costs. If the owner neither buys the insurance nor notifies the contractor, the owner effectively becomes the insurer and will be responsible for costs attributable to losses which would have been covered had the required insurance been purchased.	**§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract** and with all of the coverages in the amount described above, t**he Owner shall so inform the Contractor in writing prior to commencement of the Work.** The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.
These costs are assigned to the owner, who directly obtains the benefit of the lower premiums associated with the deductibles.	**§ 11.3.1.3** If the property insurance requires deductibles, **the Owner shall pay costs not covered because of such deductibles**.
The builder's risk policy described in Section 11.3.1 normally covers portions of the work stored off site.	**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.
	§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.
	§ 11.3.2 BOILER AND MACHINERY INSURANCE The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.
	§ 11.3.3 LOSS OF USE INSURANCE The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.
The contractor may wish to have certain coverages in place in addition to those required by the standard provisions. It may be more efficient and cost-effective to have these coverages included under the owner's property insurance policy. Costs associated with the contractor's request must be borne by the contractor and reflected in a	**§ 11.3.4** If the Contractor requests in writing that insurance for **risks other than those described herein or other special causes of loss be included in the property insurance policy**, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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change order reducing the contract sum.	
This section extends the provisions for waiver of subrogation to other property insurance the owner may purchase. Such policies may cover property at or adjacent to the project site, or they may replace the property insurance that was in effect on the work during construction.	**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, **the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.**
Section 11.1.3 contains very similar requirements regarding the contractor's liability insurance. However, the contractor need only supply the owner with certificates of insurance under that provision. Here the owner must supply the contractor with a copy of each policy, including all conditions, definitions, exclusions and endorsements relating to the project. The actual policies are required because numerous details contained in a property insurance policy would not be reflected in a certificate.	**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor **a copy of each policy** that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.
Subrogation is the right to "stand in the shoes" of another and to claim whatever rights the original person or entity had. The purpose of the required property insurance is to transfer the risk of insured losses from the owner and contractor to the insurance company. It would defeat this purpose if the insurance company were allowed to sue either party to recover such losses. In general, it is possible to waive rights of subrogation as long as this is done before any loss occurs. *The owner should disclose the waiver of subrogation provision to the insurer before purchasing the property insurance.* If the contractor or a subcontractor has rights to insurance proceeds being held by the owner as a fiduciary under Section 11.3.8, such rights are not affected by this waiver.	**§ 11.3.7 WAIVERS OF SUBROGATION** **The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees,** for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, **except such rights as they have to proceeds of such insurance held by the Owner as fiduciary**. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
As a fiduciary, the owner holds the insurance proceeds in trust for those persons who sustained an insured loss. This normally includes the contractor, subcontractors and may include the architect. A mortgagee, such as the	**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the **Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear**, subject to

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construction lender, may also have rights that appear in the mortgagee clause of the insurance. Once the contractor receives payment, it is required to pay its subcontractors and suppliers their allocable share of the proceeds.	requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.
After an insured loss, the owner generally has two choices: (1) terminate the contract for convenience and keep the insurance proceeds (less amounts payable to the contractor and others) or (2) issue a change order under which the contractor is compensated for reconstructing damaged or destroyed work. The amount payable to the contractor is not limited to or determined by the insurance proceeds.	**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. **If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.**
	§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.
	§ 11.4 PERFORMANCE BOND AND PAYMENT BOND
If the owner wants the contractor to provide a performance bond and payment bond, that fact and the appropriate conditions of the bonds must be included in the bidding requirements or in the contract documents *prior* to the time the contract is signed so that their costs can be considered in determining the contract sum. The owner's legal counsel and insurance adviser should advise on the need for bonds. AIA Document A701™–2001, Instructions to Bidders, addresses the topic of bonds. AIA Document A312™–1984, Performance Bond and Payment Bond, is available for use if such bonds are required.	**§ 11.4.1** The Owner shall have the right to require the Contractor to **furnish bonds** covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.
This requirement includes the contractor's obligation to provide its bonding information to its subcontractors and material suppliers of any tier.	**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK	
	§ 12.1 UNCOVERING OF WORK
The contract documents should list clearly those items the architect expects to examine before they are covered.	**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to **requirements specifically expressed in the Contract Documents**, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.
Ultimate responsibility for the cost of uncovering, testing and replacing questioned work under this section depends upon whether the uncovered work complies with the contract documents.	**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. **If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense** unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.
	§ 12.2 CORRECTION OF WORK
	§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION
Work that does not meet the requirements of the contract documents may be rejected even if it has not yet been installed or is only partially completed. The architect also has the option of advising the contractor that work in process, if continued, will not produce acceptable results. The contractor must correct work that does not conform to the requirements of the contract documents even if such work has not been rejected by the architect. Under Section 12.2.4, such costs include costs of removing, replacing and repairing other work or construction of the owner or separate contractors as needed to correct rejected or nonconforming work.	**§ 12.2.1.1** The Contractor shall promptly correct Work **rejected by the Architect or failing to conform to the requirements of the Contract Documents**, whether discovered before or after Substantial Completion and **whether or not fabricated, installed or completed**. **Costs of correcting such rejected Work**, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.
	§ 12.2.2 AFTER SUBSTANTIAL COMPLETION
The contractor's warranty extends until the expiration of the applicable statute of limitations period. The correction period described in Section 12.2.2 is a separate remedy for nonconforming work. To avoid misunderstandings, the introductory language makes it clear that the one-year correction period is in addition to, and not in lieu of, the contractor's warranty obligations. During the correction period, the owner must give the contractor prompt notice of and the opportunity to correct work discovered not to have been performed in accordance with the contract documents. Thereafter, the owner may have the corrective work performed by anyone selected by the owner. During the one-year correction period, the contractor has the right to be notified about defective work. If the owner	**§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5,** if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. **The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if**

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discovers nonconforming work and fails to notify the contractor, the owner waives its right against the contractor to require correction of that work and its warranty right with respect to that work. The contractor must act to correct work within a reasonable time.	**the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.** If the Contractor fails to correct nonconforming Work **within a reasonable time** during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.
Work first performed after substantial completion is also subject to a one-year correction period, in effect extending the correction period with respect to that work.	**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of **Work first performed** after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
When work corrected by the contractor during the correction period needs further correction more than one year after substantial completion, the owner is not obligated to notify the contractor again, but may have the work performed by others. In such an event, the owner may file a proceeding for binding dispute resolution against the contractor if not time-barred under Section 13.7. The contractor's activities in correcting work do not extend the correction period.	**§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work** performed by the Contractor pursuant to this Section 12.2.
	§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
	§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
	§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
Only the owner can accept nonconforming work because such acceptance constitutes a change in the contract. If the contract sum is to be reduced, this must be done by a change order.	**§ 12.3 ACCEPTANCE OF NONCONFORMING WORK** **If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction**, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

COMMENTARY	A201–2007 TEXT
ARTICLE 13 MISCELLANEOUS PROVISIONS	
	§ 13.1 GOVERNING LAW The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.
	§ 13.2 SUCCESSORS AND ASSIGNS
At times, a contractor may want to assign to a major creditor money due or to become due under the contract. This is not prohibited by this provision since it is only an assignment of the right to receive money and not an assignment of the contract as a whole. However, state or federal law may affect a contractor's right to assign money due under a public contract.	**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, **neither party to the Contract shall assign the Contract as a whole** without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
This is an exception to prohibition of assignment of the contract as a whole, as discussed in Section 13.2.1. Institutional lenders often require contingent assignment of the contract as a condition of the construction loan. Without this provision, the project might have to be terminated by the owner, who may not be able to finance the project without such an assignment. On the other hand, the lender cannot condition the assignment on any waiver of rights on the part of the contractor, such as the right to be paid by the lender for pre-default sums due and owing the contractor.	**§ 13.2.2** The Owner may, without consent of the Contractor, **assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents**. The Contractor shall execute all consents reasonably required to facilitate such assignment.
If these requirements are met, notice will have been effectively given, whether or not actually received.	**§ 13.3 WRITTEN NOTICE** **Written notice shall be deemed to have been duly served** if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.
	§ 13.4 RIGHTS AND REMEDIES
	§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
This provision avoids having the contract modified by a party's action or failure to act.	**§ 13.4.2** No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

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	§ 13.5 TESTS AND INSPECTIONS
Normally, the contractor may not conduct tests and inspections or grant approvals of its own work. In some jurisdictions, the contractor may not even hire the independent testing or inspection agency for this purpose. Additionally, certain building codes proscribe the owner's delegating the costs of some tests to the contractor.	**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals **with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority**, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. **The Owner shall bear costs of** (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and **(2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.**
This section covers special tests, inspections or approvals determined to be necessary due to developments in the course of construction. For example, tests on one part of the work may call into question the integrity of other parts.	**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work **require additional testing, inspection or approval** not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.
	§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.
	§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.
	§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.
	§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

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To avoid confusion as to what the *rate prevailing from time to time* is, an agreed-upon rate of interest may be stated in the agreement. The parties should consult legal counsel regarding usury laws and other federal and state requirements that may apply. AIA Owner-Contractor agreement forms have a specific section where the agreed upon rate of interest may be entered.	**§ 13.6 INTEREST** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the **legal rate prevailing from time to time** at the place where the Project is located.
When an owner seeks to bring a cause of action against a contractor, it must be initiated within the applicable state statute of limitations. In many states, owners have the benefit of the discovery rule, which provides that the time period within which legal proceedings must be initiated begins to run when the alleged injury is discovered or should reasonably have been discovered. A201–2007 requires that binding dispute resolution be initiated in accordance with time periods specified in the applicable state law, or within ten years of the date of substantial completion, whichever occurs first. As a result, the owner will have the benefit of the discovery rule in states that follow it, but the contractor will have the benefit of knowing it will not be exposed to potential liability for more than ten years after the date of substantial completion even in states that follow the discovery rule.	**§ 13.7 TIME LIMITS ON CLAIMS** **The Owner and Contractor shall commence all claims** and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement **within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work**. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.
ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT	
	§ 14.1 TERMINATION BY THE CONTRACTOR
If the contractor stops work in accordance with Section 9.7 due to non-payment, the contractor must wait an additional 30 days before terminating the contract. If the contractor or any of the other entities described here are responsible for the work stoppage, the contractor has no right to terminate the contract under this section. Even when the contractor is blameless, one of the four reasons listed must apply in order to justify termination by the contractor under this section. The local building department and fire marshal are examples of *other public authority*.	**§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor** or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons: **.1** Issuance of an order of a court **or other public authority** having jurisdiction that requires all Work to be stopped; **.2** An act of government, such as a declaration of national emergency that requires all Work to be stopped; **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or **.4** The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.
	§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with

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	the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
The contractor must give seven days' written notice (in addition to the 30-day period during which the work was stopped) to the owner and architect before terminating the contract.	**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, **upon seven days' written notice to the Owner and Architect**, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.
The seven days are in addition to the 60 days during which the Work is stopped.	**§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees** or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, **upon seven additional days' written notice** to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.
	§ 14.2 TERMINATION BY THE OWNER FOR CAUSE
Isolated instances of insufficient numbers of workers or improper materials will not justify termination under this clause. Such conduct must occur repeatedly. Isolated infractions will not justify termination under this clause.	**§ 14.2.1** The Owner may terminate the Contract if the Contractor **.1** **repeatedly** refuses or fails to supply enough properly skilled workers or proper materials; **.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors; **.3** **repeatedly** disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.
The initial decision maker must decide if sufficient cause exists to terminate the contract with the contractor. This serves to protect the contractor against unreasonable action by the owner and serves to protect the owner from the consequences of acting prematurely. The payment and performance bonds for the project should be carefully reviewed by the owner's legal counsel so that proper action will be taken to preserve the owner's rights. This accounting affords evidence of the amount to be deducted from the contract sum on account of the contractor's default.	**§ 14.2.2** When any of the above reasons exist, the Owner, **upon certification by the Initial Decision Maker that sufficient cause exists** to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and **the Contractor's surety**, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety: **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; **.2** Accept assignment of subcontracts pursuant to Section 5.4; and **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish

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	to the Contractor a detailed **accounting** of the costs incurred by the Owner in finishing the Work.
Once the work is completed by others, the architect must certify the costs involved and provide an accounting to determine whether any further payment is required of the owner or whether the contractor owes money to the owner.	**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.
The damages mentioned in this section are subject to the mutual waiver of consequential damages contained in Section 15.1.6.	**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and **other damages incurred by the Owner and not expressly waived**, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.
	§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE
Such orders may be given as the owner deems prudent, though they are required to be in writing. Note that repeated suspensions, delays or interruptions may be grounds for termination by the contractor under Section 14.1.2.	**§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work** in whole or in part for such period of time as the Owner may determine.
The contractor is entitled to an adjustment in the contract sum and contract time for increases in the cost and time needed for performance resulting from the owner's order under Section 14.3.1.	**§ 14.3.2** The **Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1.** Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or **.2** that an equitable adjustment is made or denied under another provision of the Contract.
	§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE
	§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
	§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall **.1** cease operations as directed by the Owner in the notice; **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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This is one of the rare occasions when a contractor may be entitled to profit and overhead on work not performed. It is intended to compensate a contractor who is terminated solely for the owner's convenience for the monies to which the contractor would have been entitled (less the actual cost of completing the work) had the termination not occurred.	**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.
ARTICLE 15 CLAIMS AND DISPUTES	
	§ 15.1 CLAIMS
	§ 15.1.1 DEFINITION A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.
Use of the word *initiated* underscores the fact that notice of a claim need not contain all the information pertaining to the claim.	**§ 15.1.2 NOTICE OF CLAIMS** **Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Make**r with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.
This provision mitigates damages that might otherwise arise because it avoids the expense of shutting down the project and later restarting it. The exceptions cover situations justifying suspension or termination.	**§ 15.1.3 CONTINUING CONTRACT PERFORMANCE** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, **the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents**. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.
	§ 15.1.4 CLAIMS FOR ADDITIONAL COST If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.
	§ 15.1.5 CLAIMS FOR ADDITIONAL TIME
Only delays affecting the critical path of the Work entitle the Contractor to additional time. *Continuing delay* means that it is not continuous, but is interrupted from time to time, recurring from the same cause.	**§ 15.1.5.1** If the Contractor wishes to make a Claim for an **increase in the Contract Time**, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. **In the case of a continuing delay, only one Claim is necessary.**

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In general, weather conditions may be documented through National Oceanographic and Atmospheric Administration (NOAA) records. Additionally, the claim must be supported by evidence that indicates the weather actually adversely affected the scheduled construction. For example, four days of rain could make the site impassable and unworkable for seven days, or it could be irrelevant if all Work is under cover.	**§ 15.1.5.2** If **adverse weather conditions** are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.
By waiving claims for consequential damages, the owner and contractor limit themselves to direct damages. This eliminates some of the incentive to escalate claims and may encourage settlement. Other contracts on the project (such as the owner-architect agreement and the subcontracts) should include similar provisions so that other parties are not targeted for receipt of claims waived between the owner and contractor. The items identified as consequential damages in .1 and .2 are not intended to be a complete listing of all such items. State law may include many other items of cost.	**§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES** The Contractor and Owner waive Claims against each other for **consequential damages** arising out of or relating to this Contract. This mutual waiver includes **.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and **.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
	§ 15.2 INITIAL DECISION
The owner and contractor may decide in the owner-contractor agreement to name a third party *Initial Decision Maker*. If the owner and contractor do not agree to have a third party serve as the initial decision maker, the architect will serve in that role. Generally, all claims must be referred to the initial decision maker first, prior to engaging in mediation or binding dispute resolution. This is the case regardless of whether the initial decision maker is the architect or a third party. The purpose of the initial decision maker is to provide a mechanism that will allow claims to be resolved without resorting to more formal dispute resolution proceedings that will inevitably delay the project.	**§ 15.2.1 Claims**, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, **shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement.** Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.
Depending on the nature and magnitude of a claim against the contractor, it is possible that the surety would be willing and able to step in to help the contractor resolve the problem. This may help to mitigate potential damages to everyone's benefit. No communications to the surety should occur without consultation with the owner's legal counsel.	**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the

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	Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.
	§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.
	§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.
	§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.
	§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.
This clause establishes a mechanism to allow the owner and contractor to limit the time period in which the other may file a demand for mediation following an initial decision. If neither party chooses to utilize this section following an initial decision, the terms of Section 15.2.6 allowing the parties to file for mediation at anytime following an initial decision are unchanged. This section permits the owner and the contractor to pursue finality on potential claim issues.	**§ 15.2.6.1 Either party may**, within 30 days from the date of an initial decision, **demand in writing** that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.
	§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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Lien notice and filing deadlines may be complied with regardless of the stage in the claim process.	**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the **lien notice or filing deadlines**.
	§ 15.3 MEDIATION
Mediation may be thought of as assisted negotiation. A neutral mediator endeavors to assist the parties in reaching a settlement, but has no authority to impose a settlement. The initial Decision maker's decision on a claim is immediately subject to mediation. Note, however, that Section 15.2.6.l may shorten the time period in which a party may file for mediation. If invoked, failure to meet the time period for filing set forth in Section 15.2.6.1 will result in a waiver of mediation and binding dispute resolution rights.	**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to **mediation as a condition precedent** to binding dispute resolution.
Copies of the rules are available from regional offices of the American Arbitration Association or from the national office in New York City. The rules of the American Arbitration Association are also available on line at www.adr.org.	**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the **American Arbitration Association in accordance with its Construction Industry Mediation Procedures** in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.
	§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
	§ 15.4 ARBITRATION
Once the initial decision maker has rendered a decision on a claim and mediation has not resulted in a settlement, that decision is immediately subject to arbitration, if the parties selected arbitration as the means of binding dispute resolution in the owner-contractor agreement.	**§ 15.4.1 If the parties have selected arbitration** as the method for binding dispute resolution in the Agreement, **any Claim subject to, but not resolved by, mediation shall be subject to arbitration** which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

COMMENTARY	A201–2007 TEXT
To avoid a statute of limitations issue, a party may file the demand for mediation at the same time as the demand for arbitration. In such event, the mediation will proceed first.	**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.
After arbitration, one cannot typically go to court to try the same dispute again. If either party fails to comply with an arbitration award, the other party can go to court to have it enforced.	**§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final**, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
	§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.
	§ 15.4.4 CONSOLIDATION OR JOINDER
This section permits parties to consolidate arbitrations conducted pursuant to Section 15.4 with other arbitrations in which they are involved provided the stated conditions are satisfied. The provisions in this section, and in Sections 15.4.4.2 and 15.4.4.3 are intended to facilitate the orderly resolution of disputes and to avoid the need for multiple arbitrations involving the same issues but involving claims between project participants.	**§ 15.4.4.1** Either party, at its sole discretion, may **consolidate an arbitration** conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
This section permits parties to include, by joinder, persons or entities in arbitrations conducted pursuant to Section 15.4 provided the stated conditions are satisfied.	**§ 15.4.4.2** Either party, at its sole discretion, may **include by joinder** persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.
This section grants the right to any person or entity made a party to an arbitration conducted pursuant to Section 15.4 the consolidation and joinder rights described above, subject to the same conditions.	**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, **the same rights of joinder and consolidation as the Owner and Contractor under this Agreement**.