

## **AIA B102-2007 Owner / Architect—Suggested Revisions:**

### **Standard of Care:**

Article 1.2: At the end of this provision, add “The Architect makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.”

### **Copyrights and Licenses:**

Article 3.3.1: In line 1, after “Instruments of Service” delete “without retaining” and replace with “(including without limitation any future additions or alterations to the Project) without retaining and maintaining the retention of”. In line 3, after “further agrees to” insert “defend”.

### **Dispute Resolution:**

Article 4.3: We generally recommend avoiding the inclusion of any provisions relating to arbitration in agreements of this kind. There are numerous drawbacks to arbitration, such as the fact that the joinder of additional parties is generally not permitted, discovery proceedings are generally not allowed, rules of evidence are not followed and the application of legal principles is not required.

Note: if the Owner insists on arbitration as the “binding dispute resolution” mechanism, we recommend requiring limited discovery and adherence to the rules of evidence and limiting the scope of arbitration and providing that claims submitted to arbitration must not exceed \$100,000, inclusive of interest and attorney’s fees.

### **Consolidation or Joinder:**

*The consolidation and joinder revisions are necessary only if arbitration is selected as the “binding dispute resolution” mechanism.*

Article 4.3.4.1: At the beginning of this provision, insert “Provided both the Architect and Owner agree to the consolidation,”. In line 1, delete “at its sole discretion”.

Article 4.3.4.2: At the beginning of this provision, insert “Provided both the Architect and Owner agree to the joinder,”. In line 1, delete “at its sole discretion”.

Article 4.3.4.3: At the end of this provision, add “Accordingly, any future consolidation and/or joinder proposed by a person or entity made a party to an arbitration is contingent upon both Owner and Architect consent to such consolidation and/or joinder.”

### **Assignment:**

Article 7.3: At the end of this provision, add “The Architect shall not, in connection with any such assignment by the Owner, be required to execute any documents that in any way might,

in the sole judgment of the Architect, increase the Architect's contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance."

*Hazardous Materials:*

Article 7.6: At the end of this provision, add "In the event that the Architect or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until the Owner retains appropriate specialist consultant's or contractor's to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations."

*Confidentiality:*

Article 7.8: At the end of this provision, add "This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Architect or Owner from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Architect or Owner to defend itself from any suit or claim."

**AIA B201-2007 Owner / Architect—Suggested Revisions:**

*Substitutions:*

Article 2.1.4: At the end of this provision, add "The Owner shall defend, indemnify and hold the Architect harmless from any claims or demands arising out of a directive or substitution made against the Architect's advice."

*Sustainable Design:*

Article 2.2.5.1: In line 1, delete "consider" and replace with "discuss with the Owner".

*If the Owner decides to incorporate sustainable design in the Project, add the following provisions to B102 – 2007, Article 8:*

Article 8.1: "The LEED Green Building Rating System or similar environmental guidelines ("LEED") utilizes certain design, construction and usage criteria in order to promote environmentally friendly building. The Owner acknowledges and understands that LEED is subject to interpretation, and achieving levels of compliance involves factors beyond the control of the Architect, including, but not limited to, the Owner's use, operation and maintenance of the completed project. In addressing LEED, the Architect shall perform its services in a manner consistent with that degree of skill and care ordinarily exercised by design professionals performing similar services in the same locality, and under the same or similar circumstances and conditions. The Architect will use reasonable care consistent with the foregoing standard in interpreting LEED and designing in accordance with LEED. However, the Architect does not warrant or represent that the Project will

actually achieve LEED certification or realize any particular energy savings. The Architect shall not be responsible for any environmental or energy issues arising out of the Owner's use and operation of the completed project."

Article 8.1.1: "Neither the Owner nor the Architect shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty."

Owner's budget for Cost of Work at conclusion of Construction Documents Phase Services is exceeded by the lowest bid or proposal:

Article 5.7: At the end of this provision, add "If the Architect is required to make revisions to the Contract Documents, the Architect shall be entitled to compensation, as an Additional Service for changes to Contract Documents that result from (1) scope changes directed by the Owner that materially impact costs, (2) market fluctuation in the price of construction goods and services that could not have been reasonably anticipated by Architect, (3) revisions to the Contract Documents directed by the Owner that resulted in an increase in the Construction Budget, or (4) matters beyond the reasonable control of Architect."