

**AIA B195-2008 Standard Form of Agreement between Owner and Architect for Integrated Project Delivery—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.”

Article 1.3: In line 1, after “shall not” insert “knowingly”.

Sustainable Design:

Article 1.5.2.2: In line 1, delete “extensive”.

*If the Owner decides to incorporate sustainable design in the Project, add the following provisions to 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.”

Copyrights and Licenses:

Article 3.3: In line 2, after “exclusively for the” insert “purposes of constructing, using and maintaining the”.

Article 3.3.1: In line 1, after “retaining” insert “and maintaining the retention of”. In line 3, after “further agrees to” insert “defend”.

Dispute Resolution:

Article 5.1: 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 discovery proceedings are generally not allowed, rules of evidence are not followed and the application of legal principles in not required.

Note: If the Owner insists on arbitration, we recommend requiring limited discovery and adherence to the rules of evidence and limiting the scope of arbitration by providing that claims submitted to arbitration must not exceed \$100,000, including interest and attorney’s fees.

At the beginning of the provision, insert “As a prerequisite to the initiation of a lawsuit,”. In line 1, after “Owner and Architect shall” insert “attempt to”. In line 2, delete “and arbitration”; delete “and 13.4”.

Governing Law:

Article 7.1: In line 1, delete “subject to the Federal Arbitration Act as applicable”.

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 consultants or contractors 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."

Scope of the Agreement:

Article 9.2: In line 1, after "following documents" insert "in the order of priority as".