

 **AIA** Document Commentary*AIA Document C191™ – 2009, Standard Form Multi-Party Agreement for Integrated Project Delivery***INTRODUCTION**

Current practice in the construction industry promotes inefficiency when the key project participants, namely the owner, architect, and contractor, operate independently of each other. Currently, key project participants often work under separate contracts, with each party pursuing its own set of goals for the project. These inefficiencies may be eliminated by integrating the knowledge, skill, and services to be provided by key project participants, from the earliest stages of the project, under a common set of goals. The parties are able to work toward completing the project in a more efficient and cost effective manner and new and emerging technologies, such as building information modeling (BIM), may also be used to their fullest potential, further increasing efficiency and cost effectiveness.

Integrated project delivery is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the owner, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction. Integrated project delivery fosters an environment where information is openly shared; goals are clearly established; risk is collectively managed and allocated where appropriate; success is tied to shared incentives; and cutting edge technologies are used to their fullest potential.

AIA Document C191–2009 establishes the basic legal framework for a multi-party agreement for integrated project delivery. C191–2009 integrates the owner, architect, contractor, and perhaps other key project participants, under one agreement from the outset of the project. The parties are required to communicate, share information, and make decisions in a collective manner; establish project goals and compensation criteria based on the success of the project; collectively manage and allocate risk; and use BIM and other technologies to effectively manage the project.

C191–2009 reflects a significant departure from traditional delivery models in that C191–2009 aligns the success of the individual parties with project success. At the same time, C191–2009 maintains the familiar roles and responsibilities of each of the parties.

C191–2009, the multi-party agreement, is only one of several contractual models developed by the AIA for use in integrated project delivery. The AIA has also published two other sets of integrated project delivery documents that are separate and distinct from C191–2009. Specifically, the AIA has published the A295™ set of documents as well as the C195™ set of documents. For additional information on those documents please visit our website at [www.aia.org/contractdocs/reference](http://www.aia.org/contractdocs/reference).

For additional information about integrated project delivery, see [Integrated Project Delivery: A Guide](#) at [www.aia.org/contractdocs/reference](http://www.aia.org/contractdocs/reference).

This C191–2009 commentary provides insight into new concepts unique to integrated project delivery and explanations for many of the legal concepts and industry practices influencing the wording of particular C191–2009 provisions. Because of the variations in specific legal requirements from locality to locality, the standard form C191–2009 document may need to be modified. The AIA encourages users to consult an attorney with respect to completion and modification of C191–2009 and any of its exhibits.

**NOTICES**

This C191–2009 Commentary was prepared by the American Institute of Architects with the assistance of Charles R. Heuer, Esq., FAIA, for original material, Howard G. Goldberg, Esq., Hon. AIA. and Patrick J. O'Connor, Esq.

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

This publication may be updated from time to time. To ensure that this is the latest commentary, check the version number in the lower right hand corner of the document.

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## FORMAT

C191–2009 is comprised of two main forms, the C191–2009, Standard Form Multi-Party Agreement for Integrated Project Delivery, and C191–2009, Exhibit A, General Conditions of the Multi-Party Agreement for Integrated Project Delivery. Additionally, there are several other exhibits that make up the full contract for integrated project delivery, as set forth in C191–2009. The agreement form contains provisions, and fill points for information, applicable to most integrated project delivery projects. The General Conditions define the roles and responsibilities of the parties throughout the course of the project.

## THE AGREEMENT FORM

Key features of C191–2009, Standard Form Multi-Party Agreement for Integrated Project Delivery include the following.

### **Integration of the Parties**

C191–2009 promotes collaboration by integrating the owner, architect, contractor and other parties, under one agreement. In this respect, each of the parties act together under the same set of goals and with the same incentive—completion of a successful project, efficiently and with the least amount of waste. This alignment of interests is critical to integrated project delivery.

C191–2009 allows for the inclusion of persons or entities other than the owner, architect, and contractor as parties to the agreement. However, it is impossible for a standard form to account for all of the project participants who may be included in the agreement as additional parties, or to define the roles and responsibilities of those additional parties. Therefore, C191–2009, in general, contemplates the typical situation where the parties will be the owner, architect and contractor. The inclusion of additional parties to the agreement will necessitate modification of the standard form agreement. Accordingly, the American Institute of Architects encourages users to consult with an attorney for the careful review and modification of C191–2009 and its exhibits to appropriately reflect the roles and responsibilities of the additional parties in coordination with those of the owner, architect and contractor.

### **Management of the Project**

For integrated project delivery to make the most of the collaborative environment, project decisions must be made with the input of all project participants. C191–2009, Article 2, establishes two project teams, the project executive team and project management team. Both the project executive team and project management team consist of one representative from each party, and both teams must act unanimously to carry out the project's objectives.

The project executive team is responsible for establishing project goals, and making key decisions regarding issues referred by the project management team, as well as high level planning and management of the project. The project executive team representative should be selected from each party's executive management. The project executive team has ultimate decision making authority with respect to the project, subject only to directives by the owner and the dispute resolution procedures of the agreement.

The project management team is responsible for executing the decisions of the project executive team, as well as the day-to-day management of the project. The project management team is responsible for establishing procedures and processes necessary to achieve project goals, including implementing protocols for collaborative technologies such as BIM. The project management team consists of representatives from each of the parties and should include members that are experienced in the management of similar projects.

The members of the project executive team and project management team have equal votes. In the event the project management team is unable to reach a unanimous decision, any member of the project management team may refer the matter to the project executive team. If the project executive team is unable to reach a unanimous decision, any member of the project executive team may refer the decision to dispute resolution under the agreement. In the interim, the owner may issue a directive, which the parties must follow, subject to the outcome of the dispute resolution process.

### **Compensation**

The compensation structure in C191–2009 is meant to be extremely flexible, should be tailored to the specifics of each project, and is limited only by the creativity of the parties. Compensation under C191–2009 has been designed to incentivize the parties to develop and manage the project in the most cost effective and efficient manner. In order to foster a collaborative environment, each party's individual success is directly tied to the success of the project through C191–2009's compensation structure. Specifically, the parties do not earn profit on their direct services. Instead, the parties provide their direct services at cost, while profit is earned in two ways, goal achievement compensation and incentive compensation, both of which are directly related to the achievement of project milestones.

Goal achievement compensation is compensation established by the parties as payment for successful achievement of certain project goals. The parties collectively identify the project goals, the compensation associated with the achievement of each goal and the manner in which the parties will measure achievement of each goal. These

determinations with regard to the project goals will be set forth in the target criteria amendment. It is important to note that goal achievement compensation is earned collectively rather than on an individual basis. If the identified goal is achieved, all non-owner parties are compensated. If the identified goal is not achieved, no one is compensated, regardless of fault. This serves to reinforce the team approach to project success.

Incentive compensation will be paid to the parties as a portion of the difference between the actual cost and the target cost. Early in the project, the parties are required to establish a target cost. The target cost becomes the baseline by which incentive compensation is measured. The target cost is established by the parties based on detailed estimates of the costs the parties expect to incur in the planning, design, construction and commissioning of the project. The target cost will include the parties' estimates of the cost of the work and any goal achievement compensation established by the parties. Cost of the work is described in more detail in the introductory paragraphs to the General Conditions. It is important to note that C191–2009 defines the "Actual Cost" of the project as the sum of the cost of the work plus any earned goal achievement compensation.

C191–2009 is structured to distribute any savings, realized as the difference between actual cost and target cost, among the parties. In this respect, incentive compensation benefits all of the parties. The owner shares and has the potential to realize project savings and the other parties receive the benefit of incentive compensation as profit for a successful project. Through incentive compensation, the parties are encouraged to look for opportunities to reduce costs and increase efficiencies on the project.

If the actual cost exceeds the target costs all is not lost, the non-owner parties will continue to receive goal achievement compensation and will continue to receive payment for items included as a cost of the work, with one possible exception. The parties must choose, at the time of entering the agreement, whether direct labor costs will be reimbursable in the event the actual cost exceeds the target cost. Section 4.2.4 includes a check box where the parties make this election. It should be noted however, that the owner will still be responsible for the costs of construction materials as well as costs the parties incur as a result of consultants and subcontractors performing work on the project.

It is important to emphasize that performing for less than the target cost is not the only goal of the project. That is why, in C191–2009, the parties execute the Target Criteria Amendment, Exhibit D. The focus of that document is not solely on the target cost. Rather, the target criteria amendment sets forth all the goals that are important to the parties including, maintaining the target cost as well as other project goals. Because C191–2009 allows the parties to identify and focus on a variety of project goals, the agreement also allows the parties to create incentives for achievement of the goals in accordance with the value each goal has to the parties. The parties are free to develop the compensation structure in whatever manner they see fit in order to encourage the achievement of the identified goals for the project.

### **Insurance**

Integrated project delivery is a new and emerging delivery model. C191–2009 requires that the parties retain an insurance consultant to provide advice and assistance in identifying and obtaining the best types of insurance for the project. The insurance consultant should look into a variety of insurance products, including integrated insurance programs such as owner or contractor controlled insurance policies.

Prior to establishing the project specific insurance program, the parties will be required to maintain customary insurance coverages as set forth in the General Conditions. These initial insurance requirements must remain in place until the parties agree on an insurance program for the project.

### **Risk Sharing**

Integrated project delivery depends upon the intelligent allocation and mitigation of risk by and among the project participants. The collaborative nature of integrated project delivery increases a party's reliance on the information and services of another party. At the same time, the collaborative process will allow problems to be identified and solved early using the combined knowledge and expertise of the parties.

In order to increase openness and collaboration, and discourage the potential for legal action, Section 8.1 requires that each party waive liability against the other, except in the instance of a party's willful misconduct or breach of specific enumerated contractual duties. In addition to those waivers set forth in Section 8.1, the agreement includes customary waivers of consequential damages and waivers of subrogation by the parties.

Risk is further allocated by the inclusion of mutual indemnities. Section 8.3 includes the familiar indemnity requiring that each of the parties indemnify the others for claims, damages, losses and expenses arising from bodily injury or property damage to the extent of the indemnifying party's negligent acts or omissions.

C191–2009 explicitly disclaims the existence of vicarious liability and the creation of a joint venture. Given the extensive levels of collaboration involved, third parties may try to assert claims based upon vicarious liability.

Moreover, Section 8.4 requires that each of the parties indemnify the others for any claim based on vicarious liability arising from the failure, or alleged failure, of another party to perform an obligation under the contract documents or other acts or omissions for which the indemnified party is, or is claimed, to be liable.

## **Dispute Resolution**

While it is hoped that the collaborative process and mutual decision making through the project executive team and project management team will lead to fewer disputes, there may be instances where the parties are unable to reach a mutual agreement. In these instances any party may refer a dispute to the dispute resolution committee.

The dispute resolution committee will include a senior management representative of each party having broad organizational authority (such as the president or CEO) and a project neutral. The project neutral will be designated by the parties. In the event the parties fail to designate a project neutral, the parties will select a project neutral in accordance with the American Arbitration Association's Construction Industry Mediation Procedures.

The dispute resolution committee will meet within 15 days of initiation of the dispute and the project neutral shall attempt to mediate a resolution of the dispute. The mediation will be conducted in accordance with the American Arbitration Association's Construction Industry Mediation Procedures with the expenses of the project neutral and mediation being shared equally by the parties.

In the event the parties fail to mediate a satisfactory resolution, Section 9.6.1 allows the parties to choose to submit the dispute to arbitration before the project neutral, arbitration in accordance with American Arbitration Association's Construction Industry Mediation rules, or another form of dispute resolution as the parties may decide, such as litigation.

## **Suspension and Termination**

Because the owner bears the ultimate financial risk of the project, the owner must have the ability to determine whether it should continue with the project or cut its losses and suspend or terminate the project. Therefore, the owner may suspend the project at any time and has ultimate authority to terminate the project for cause, or at its convenience, similar to traditional delivery models.

The actions of the other parties may also have a dramatic impact on the project and each of its participants. C191–2009 only allows for termination by non-owner parties when the non-owner party has suspended its work for more than 30 days because the owner has failed to make payment, through no fault of the non-owner party, or when a suspension of the project has exceeded, in the aggregate, 100 percent of the total number of days scheduled for completion, or 120 days in any 365 day period, whichever is less.

In the event the agreement is terminated as to one or more but not all of the parties, the remaining parties may elect to end the project or continue on, perhaps with a replacement party. In the event the parties elect to continue with the project, the remaining parties must negotiate terms for continuing with the remainder of the project.

## **THE GENERAL CONDITIONS**

The second major component of C191–2009 is Exhibit A, General Conditions of the Multi-Party Agreement for Integrated Project Delivery. This document sets forth the roles and responsibilities of each party under the contract. Highlighted below are some of the key features of C191–2009, Exhibit A.

### **The Work**

The terms *Architect's Services* and *Contractor's Work* have been used where it is necessary to distinguish between the specified parties' performance. However, the architect's services and contractor's work are each part of the overall "work" of the project. In addition to the architect's services and the contractor's work, the term *Work* also includes the services or work provided by or through the owner, and the services or work provided by any additional parties to the contract necessary for completion of the project.

The architect's services have been defined to mean the professional services, including the planning, design and construction contract administration services, required of the architect under the contract documents.

The contractor's work has been defined to mean the construction and services required of the contractor under the contract documents. Typically, the contractor's work would include responsibility for construction of the project, including the means and methods of construction, but may also include certain design responsibilities.

### **Cost of the Work**

The definition of cost of the work will be familiar to users accustomed to performing construction under guaranteed maximum price contracts and remains similar to the definition of cost of the work under AIA Document A102™–2007. However, certain provisions have been revised to avoid the possibility that parties to the agreement would include unnecessary contingencies in the cost of the work, to mitigate certain project risks.

### **Project Phases**

Like the other AIA Integrated Project Delivery documents, C191–2009 establishes distinct integrated project delivery phases leading to completion of the project. During each of these phases, all of the parties are required to contribute their collective knowledge and expertise to completion of the project.

**Conceptualization Phase.** During the conceptualization phase, the parties are required to develop project criteria based on information provided in the Owner's Criteria, Exhibit C. The project criteria should include a mutual understanding of the project and its requirements. In addition, the parties are required to prepare a preliminary evaluation of the project and discuss possible alternative approaches to design and construction. The project criteria will be set forth in the Project Definition, Exhibit BB to the Target Criteria Amendment, and incorporated as a contract document.

Additionally, the parties must establish protocols for the permitted use of digital information and building models. The established protocols will be incorporated as exhibits to the agreement. The parties may wish to use AIA Document E201–2007, Digital Data Protocol Exhibit (as Exhibit FF to the Target Criteria Amendment), and AIA Document E202™–2008, Building Information Modeling Protocol (as Exhibit GG to the Target Criteria Amendment), for these purposes.

**Criteria Design Phase.** During the criteria design phase, the parties are required to complete the Integrated Scope of Services Matrix, Exhibit DD to the Target Criteria Amendment, which will identify the tasks required to plan, design, construct and commission the project.

In addition, the parties are required to further develop the Project Definition, Exhibit BB to the Target Criteria Amendment; establish Project Goals, Exhibit CC to the Target Criteria Amendment; establish Project Schedules and Early Procurement Schedules as part of the Project Schedule, Exhibit EE to the Target Criteria Amendment; and ultimately prepare the Target Cost Breakdown, Exhibit AA to the Target Criteria Amendment; as part of the criteria design phase. The parties are also required to develop a risk matrix during the criteria design phase. The risk matrix, however, does not become a part of the agreement. It is instead intended to be a tool by which the parties can identify the various risks presented on a project, and assign responsibility for those risks to the party most able to control them.

The target cost breakdown will itemize the estimated project costs and identify, in detail, the various elements of the target cost. The initial target cost breakdown will be developed by the contractor with input from the parties. All fees and contingencies in the target cost breakdown must be identified, and include sufficient detail and support to permit the parties to evaluate the target cost. The target cost breakdown will be set forth in the Target Criteria Amendment, Exhibit D, executed by all of the parties.

The target criteria amendment is a critical turning point in the project. If the parties agree to the target criteria amendment, the project will go forward. If the parties cannot agree to the target criteria amendment, the contract will be terminated in accordance with its terms.

**Detailed Design Phase.** The detailed design phase will commence upon execution of the target criteria amendment. The parties will provide the detailed design services and continue to update the target cost. Any changes to the target cost will be documented as an amendment to the target criteria amendment.

**Implementation Document Phase.** During the implementation document phase the parties will prepare implementation documents for the project which will include the Drawings and Specifications, Exhibit A, General Conditions, and any other documents necessary to set forth the detailed requirements for the work. At this time the parties will obtain finalized cost information from subcontractors and consultants and agree to a commencement date for construction.

**Agency Review Phase.** During the agency review phase, the parties will provide the services required of them to obtain necessary approvals from governmental authorities having jurisdiction over the project.

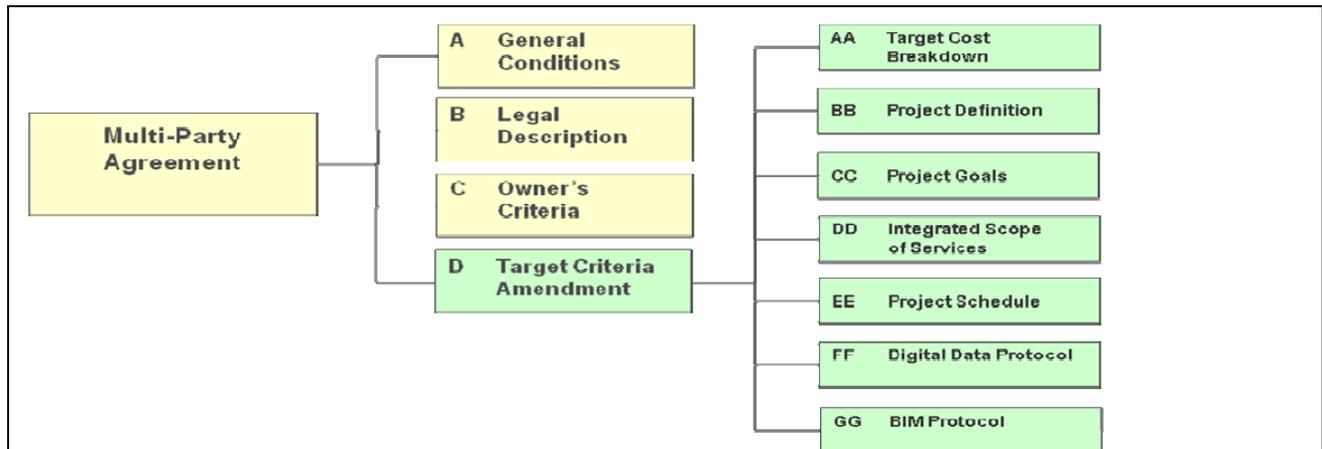
**Buyout Phase.** During the buyout phase, the parties will select any remaining subcontractors and suppliers necessary to complete the work.

**Construction Phase.** During the construction phase the parties will perform the services required of them, including the contractor's work, necessary to construct the project.

**Closeout Phase.** During the closeout phase, the parties will complete inspections of the project and a certificate of substantial completion will be issued.

## THE EXHIBITS

C191–2009 includes a number of exhibits that are used to record additional elements of the agreement and assist the parties in their efforts to collaborate. The exhibits to C191–2009 are discussed below.



**Exhibit A General Conditions**

The general conditions define and describe the roles and responsibilities of the parties *and will be discussed, in detail, in an upcoming supplement to this commentary.*

**Exhibit B Legal Description of the Project**

Exhibit B includes a fill point for the parties to insert a legal description of the project. A legal description will provide important information regarding the record legal title to the project and the owner’s interest in the site.

**Exhibit C Owner’s Criteria**

Exhibit C establishes the owner’s criteria for the project and includes the owner’s program; a detailed narrative that sets forth the owner’s objectives, constraints, and criteria, on which the project definition will be based. In addition, the owner’s criteria will include information regarding the physical characteristics of the project site, the owner’s budget for the project, the owner’s schedule for the project, and other information important to the owner, and for use in developing the project definition.

**Exhibit D Target Criteria Amendment**

Exhibit D is the Target Criteria Amendment that will be signed by each of the parties prior to conclusion of the criteria design phase. Exhibit D is composed of multiple exhibits prepared by the parties during the conceptualization and criteria design phases. The exhibits comprising Exhibit D are discussed below.

**Exhibit AA: Target Cost Breakdown.** Exhibit AA includes a fill point for the parties to insert an itemization of the target cost that identifies, at a minimum, the elements included in Exhibit A, General Conditions, Section A.5.8.1, Minimum Required Elements of the Target Cost. The target cost breakdown should set forth in detail each element of the target cost the parties have agreed to. All fees and contingency amounts in the target cost breakdown should be clearly identified and explained. The parties will be well served to include as much detail and support as possible in the target cost breakdown. This is the standard against which actual cost will be measured when determining the amount, if any, of available incentive compensation.

**Exhibit BB: Project Definition.** Exhibit BB includes the project criteria, which includes the parties’ understanding of the owner’s criteria and possible alternative approaches to design and construction. In addition to the project criteria, the project definition will include information about the project participants selected by the parties, including any subcontractors and consultants; an allocation of post-project completion costs and recoveries; and other critical project information the parties used as a basis for the target cost.

**Exhibit CC: Project Goals.** Exhibit CC includes fill points allowing the parties to enter information regarding project goals established by the parties. Exhibit CC will include a description of the project goals, metrics that form the basis for achievement of the project goals, goal achievement compensation payable for achieving the project goals, and any information regarding adjustments to the target cost in the event a project goal is not achieved.

**Exhibit DD: Integrated Scope of Services.** Exhibit DD includes a detailed integrated scope of services matrix that is to be completed by the parties. The integrated scope of services matrix identifies the tasks required to plan, design and commission the project. One party should be assigned primary responsibility for performing each task identified. All remaining parties are required to assist in the performance of the task to the extent of the party’s knowledge, skill and expertise.

**Exhibit EE: Project Schedule.** Exhibit EE includes a fill point where the parties will enter the project schedule they developed.

**Exhibit FF: Digital Data Protocol.** Section A.4.2 of Exhibit A, General Conditions, requires the parties to establish a

protocol for the permitted uses of digital information on the project. AIA Document E201™–2007, Digital Data Protocol Exhibit may be used for this purpose, or another digital data protocol exhibit may be used as the parties agree.

**Exhibit GG: Building Information Modeling Protocol.** In addition to the Digital Data Protocol, Section A.4.2 of Exhibit A, General Conditions, requires the parties to develop a protocol for the use of digital models on the project. AIA Document E202–2008, Building Information Modeling Protocol Exhibit, may be used for this purpose, or another building information modeling protocol exhibit may be used as the parties agree

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<b>TITLE PAGE</b>	
AGREEMENT made as of the ____ day of ____ in the year ____ <i>(In words, indicate day, month and year.)</i>	This date should precede or coincide with the date when performance of each party’s obligations are to actually commence.
<b>BETWEEN the Owner:</b> <i>(Name, legal status, address and other information)</i>	The term <i>Owner</i> is used to designate the individual or entity for which the other parties are performing their services. The individual or entity may be a tenant, for example, and may or may not actually have an ownership interest in the premises for which the project is commissioned.  Use the full legal name of the entity or individual expected to pay for the parties services and who will be liable for performing the owner’s obligations under this agreement.
and the <b>Architect:</b> <i>(Name, legal status, address and other information)</i>	The term <i>Architect</i> refers to the person who is lawfully licensed to practice architecture or to an entity lawfully practicing architecture in the jurisdiction where the project is located. If the architect is an entity, indicate the full name of the entity.
and the <b>Contractor:</b> <i>(Name, legal status, address and other information)</i>	The term <i>Contractor</i> refers to the person who is properly licensed, if required, to perform the services of the contractor under this agreement. If the contractor is an entity, indicate the full name of the entity.
and <b>additional Parties</b> , if any: <i>(Name, legal status, address and other information)</i>	Additional Parties refers to any parties to this agreement, other than the owner, architect or contractor. If the additional parties are entities, indicate the full name of each entity.  In general, C191–2009 has been drafted around the owner, architect and contractor. However, integrated project delivery and the multi-party format allows the flexibility to add additional parties. Additional parties may include key subcontractors or consultants such as MEP design consultants. If additional parties are identified, this agreement, including each exhibit, should be carefully reviewed and modified as necessary.
collectively, “ <b>the Parties</b> ” for the following <b>Project:</b> <i>(Name, location or address, and general description of the Project to be completed pursuant to this Agreement)</i>	The term <i>Parties</i> is used collectively under this agreement to refer to all parties to the agreement including, the owner, the architect, the contractor and any additional parties.  The inclusion of a detailed description of the project is critically important for mutual understanding and for protection of all parties’ interests. The project may or may not be a building.

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The Parties agree as follows:	
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1 GENERAL PROVISIONS 2 MANAGEMENT OF THE PROJECT 3 RESPONSIBILITIES AND PARTIES 4 COMPENSATION 5 TARGET CRITERIA AMENDMENT AND TARGET COST 6 FORCE MAJEURE 7 INSURANCE AND BONDS 8 RISK SHARING 9 DISPUTE RESOLUTION 10 SUSPENSION AND TERMINATION 11 MISCELLANEOUS PROVISIONS 12 SCOPE OF THE AGREEMENT EXHIBIT A GENERAL CONDITIONS OF THE MULTI-PARTY AGREEMENT FOR INTEGRATED PROJECT DELIVERY EXHIBIT B LEGAL DESCRIPTION OF PROJECT EXHIBIT C OWNER’S CRITERIA EXHIBIT D TARGET CRITERIA AMENDMENT Exhibit AA: Target Cost Breakdown Exhibit BB: Project Definition Exhibit CC: Project Goals Exhibit DD: Integrated Scope of Services Exhibit EE: Project Schedule Exhibit FF: Digital Data Protocol Exhibit GG: Building Information Modeling Protocol	
<b>ARTICLE 1 GENERAL PROVISIONS</b>	
§ 1.1 Integrated Project Delivery	
§ 1.1.1 The Parties intend that the Project shall be delivered in a collaborative environment and shall endeavor to align individual interests with those of the Project. The Parties agree to contribute their knowledge, skill and services during all phases of the Project and to bring to bear their expertise for the benefit of the Project. The Parties shall collectively act to establish and accomplish mutually agreed-upon Project Goals that they shall set forth in the Target Criteria Amendment to this Agreement.	Key to the success of integrated project delivery is the open sharing of information and work in a collaborative environment. The individual interests of the parties must be aligned with those of the project. Section 1.1.1 affirms those principles and the ultimate goal of creating and completing a successful project.  In furtherance of these collaborative efforts, the parties may also establish project goals for which additional compensation may be based. Compensation for achieving project goals is intended to foster collaboration. Compensation is paid to all parties if a goal is achieved, and no party receives goal based compensation if a goal is missed, regardless of fault.
§ 1.1.2 The Parties intend to establish a Target Cost for the Project and to amend this Agreement to incorporate the Target Cost. To the extent that the Actual Cost is less than the Target Cost, the Parties shall share in any savings realized in accordance with the terms of this Agreement. To the extent the Parties have agreed to Project Goals, they shall be set forth in Target Criteria Amendment and the Parties shall be compensated for achieving such Project Goals as specified in this Agreement.	Section 1.1.2 establishes an incentive for the parties to complete the project in an efficient and cost effective manner. The target cost is established as a baseline against which project success is measured. To the extent the actual costs of the project are less than the target cost, the parties will share in any savings.  As established by the parties, successful achievement of project goals will result in additional compensation. The

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	project goals, and the associated compensation, serve to align the parties' individual success to project success. Specifically, achievement of goals that are important to the project results in additional compensation to the parties collectively.
<p>§ 1.1.3 The Parties shall <b>identify key Project participants</b> such as separate contractors, Subcontractors, Consultants and suppliers critical to the definition and accomplishment of Project Goals and involve them at appropriate times for the benefit of the Project.</p>	<p>Integrated project delivery requires the early involvement of parties critical to the success of the project. Section 1.1.3 requires that the parties identify critical project participants in the early stages of the project to maximize input and impact on the project.</p>
<p>§ 1.1.4 The Parties agree, where practicable, to employ collaborative technologies such as Building Information Modeling (BIM) and digital collaboration tools. The Project Management Team may choose to augment Models with additional materials including, but not limited to, physical models, renderings, sketches, drawings, reports, or specifications.</p>	<p>New technologies allow parties to share important information and thereby identify potential problems and explore solutions early in the design or construction of the project. Section 1.1.4 requires that the parties explore the use of collaborative technologies such as building information modeling and, where practical, implement those technologies on the project to increase efficiency and minimize waste.</p>
<p><b>§ 1.2 Integrated Project Delivery Phasing</b> The Parties shall deliver the Project in the following phases: Conceptualization, Criteria Design, Detailed Design, Implementation Documents, Agency Review, Buyout, Construction, and Closeout. The descriptions of these phases and the Parties' respective responsibilities during each phase are more fully set forth in the General Conditions, attached hereto as Exhibit A.</p>	<p>Project phasing is discussed in detail in the commentary to C191–2009 Exhibit A, General Conditions.</p>
<b>ARTICLE 2 MANAGEMENT OF THE PROJECT</b>	
<b>§ 2.1 Project Executive Team</b>	
<p>§ 2.1.1 The Project Executive Team shall make decisions as well as plan and manage the Project in such a manner as to allow the Parties to achieve the Project Goals and successfully complete the Project. The Project Executive Team shall exercise its authority in the best interests of the Project. The Project Executive Team may delegate its responsibilities to others, including the Project Management Team, if in the view of the Project Executive Team, such delegation is in the best interests of the Project. The Project Executive Team is not responsible for supervising any Party's employees nor is it authorized to direct the actions of any Party's employees and shall not be responsible for the failure of any Party to perform its obligations.</p>	<p>The project executive team is responsible for the overall management and planning of the project and is tasked with making decisions necessary for the success of the project.</p>
<p>§ 2.1.2 Decisions by the Project Executive Team must be unanimous. If the Project Executive Team is unable to reach a unanimous decision, it may submit the matter to the dispute resolution process set forth in Article 9, Dispute Resolution.</p>	<p>In order to ensure involvement of all parties in the management of the project, decisions of the project executive team must be unanimous.  In the event the project executive team is unable to reach a unanimous decision, any party may submit the matter to the dispute resolution procedures.</p>
<p>§ 2.1.2.1 In the event the Project Executive Team is unable to reach unanimous decision, the Owner may issue a directive within the general scope of the Contract with regard to the matter. The Owner's Directive shall be issued in writing and provide clear direction to the Parties. The Parties shall comply with the Owner's Directive. To the extent the Owner's Directive requires an increase in the Target Cost or Contract Time or otherwise materially impacts achieving a</p>	<p>In the absence of unanimous agreement, there must be a mechanism to allow the project to keep moving while the parties work through their difficulties. Because the owner is the ultimate end-user of the project and because the owner will be asked to pay for changes in the agreed upon project scope, the owner is authorized to issue directives that may be contrary to the other parties' wishes. So long as the owner's directive is</p>

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<p>Project Goal, the directive shall identify the Owner’s proposed modifications to the Target Criteria Amendment. Any dispute regarding an Owner’s Directive issued under this section shall be resolved pursuant to the terms of Article 9, Dispute Resolution.</p>	<p>within the general scope of the project, the parties are required to follow the owner’s directive.</p> <p>Disputes regarding the cost or time impacts of an owner directive will be resolved using the dispute resolution procedures.</p>
<p>§ 2.1.3 The Project Executive Team shall consist of one representative from each of the Parties. The Parties’ respective representatives are identified below:</p> <p>Owner: _____  Architect: _____  Contractor: _____  Additional Parties, if any: _____</p> <p>The Parties’ representatives shall have full authority to bind their respective organizations in all matters within the scope of the Project Executive Team’s authority.</p>	<p>Each party must appoint one representative to the project executive team. Each party’s appointed representative should be listed here.</p> <p>Because the unanimous decision of the project executive team will be binding on the parties, each party’s representative must have full authority to bind the party under this agreement.</p>
<p>§ 2.2 Project Management Team</p>	
<p>§ 2.2.1 The Project Management Team is responsible for executing the decisions and directives of the Project Executive Team, or any Owner Directives issued pursuant to this Article 2. The Project Management Team shall be responsible for the day-to-day management of the Project, including the scheduling and coordination of the Parties’ activities required to complete the Project in a collaborative and integrated manner. The Project Management Team is responsible for establishing the procedures and processes necessary to achieve Project Goals including such protocols and understandings as are necessary to implement collaborative technologies, such as Building Information Modeling. The Project Management Team is not responsible for supervising any Party’s employees nor is it authorized to direct the actions of any Party’s employees and shall not be responsible for the failure of any Party to perform its obligations. When appropriate, the Project Management Team shall plan and implement programs to improve Project performance and shall develop Recovery Plans as required by Section 5.4 of this Agreement.</p>	<p>The project management team is responsible for carrying out the decisions and directives of the project executive team or the unilateral directives of the owner pursuant to Section 2.1.2.1. In this capacity, the project management team will be responsible for the day-to-day management of the project and will be responsible for establishing procedures to ensure that the parties’ activities are completed in a collaborative and integrated manner.</p>
<p>§ 2.2.2 The Project Management Team shall consist of one representative from each Party. The Parties’ representatives shall use their knowledge, skill, and expertise to benefit the Project. The Project Management Team shall develop such communication and management protocols as appropriate to carry out its responsibilities, including whether and to what extent to colocate team members. The Parties acknowledge the importance of selecting Consultants, Subcontractors, and suppliers who can operate effectively within a collaborative environment; and the Project Management Team shall establish a set of pre-qualification criteria and selection protocols to facilitate the selection of Project participants who can successfully perform within a collaborative environment.</p>	<p>In order to effectively manage the project, it will be important for the project management team to develop effective communication and management protocols. The term “colocate” means to place the team members at the same location, such as the project site.</p> <p>The project management team is also responsible for coordinating the selection of consultants, subcontractors and suppliers that will work effectively within the collaborative environment.</p>
<p>§ 2.2.2.1 The Project Management Team may choose to include, as non-voting advisers, representatives from certain key Project participants that are not parties to this Agreement in order to bring to bear their unique skills and expertise on particular matters.</p>	<p>In order to harness the knowledge and expertise of all project participants, the project management team may choose to include non-voting advisers from certain key project participants. This will allow the project management team the respective expertise of such key project participants on any given issue.</p>

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<p>§ 2.2.3 Decisions by the Project Management Team shall be unanimous. Subject to a subsequent decision by the Project Executive Team and the Dispute Resolution Committee, the Parties agree to be bound by any decision rendered by the Project Management Team. If the team representatives are unable to reach a unanimous decision on a matter, any Party’s Project Management Team representative may refer the matter to the Project Executive Team for decision.</p>	<p>Like the project executive team, all members of the project management team must be involved in making collaborative decisions. All decisions of the project management team must, therefore, be unanimous.</p> <p>Because the project executive team has ultimate management responsibility for the project, any member of the project management team may refer an issue to the project executive team if the project management team is unable to reach a unanimous decision.</p>
<p>§ 2.2.4 The Project Management Team shall create and maintain a Project work plan for review and approval by the Project Executive Team. The Project work plan shall set forth the process by which the Project Management Team proposes to develop a Project Definition consistent with the Owner’s Criteria. The Project work plan shall also contain a schedule for accomplishing the work necessary to develop the various elements of the Target Criteria Amendment. Upon execution of the Target Criteria Amendment, the Project Management Team shall supplement the Project work plan to describe the process by which the Project Management Team expects to achieve the Project Goals and successfully complete the Project.</p>	<p>In order to ensure a reasoned progression of the work, the project management team must create and maintain a project work plan that includes a schedule for accomplishing the work necessary to develop the target criteria. The project work plan must be reviewed and approved by the project executive team.</p>
<p>§ 2.2.5 A primary responsibility of each Party is to communicate to its employees the importance of adhering to Integrated Project Delivery principles and to provide training and guidance as necessary. The Project Management Team shall assist the Parties in these efforts and shall be responsible for monitoring training for the employees of key Project participants focused on Integrated Project Delivery principles.</p>	<p>The project management team is required to facilitate integrated project delivery by assisting the parties in training their employees in key integrated project delivery principles.</p>
<p>§ 2.2.6 The Project Management Team shall develop mutual understandings with respect to Project quality and communicate such understandings to all Project participants. The Project Management Team shall monitor Project quality through the implementation of appropriate Project quality control and assurance procedures. The Project Management Team’s Project quality understandings and procedures shall be set forth in writing and delivered to the Project Executive Team for review and approval.</p>	<p>Increased project quality is a key goal and benefit of the integrated project delivery model. The project management team is required to develop specific quality expectations and communicate those expectations to all of the parties. The project management team will then monitor project quality against the agreed upon expectations.</p>
<p>§ 2.2.7 The Parties’ respective representatives to the Project Management Team are identified below:</p> <p>Owner: _____  Architect: _____  Contractor: _____  Additional Parties, if any: _____</p> <p>The Parties’ representatives shall have full authority to bind their respective organizations in all matters within the scope of the Project Management Team’s authority.</p>	<p>Each party must appoint one representative to the project management team. Each party’s appointed representative should be listed here.</p> <p>Because the unanimous decision of the project management team will be binding on the parties, each party’s representative must have full authority to bind the party under this agreement.</p>
<p>§ 2.3 Issue Resolution</p>	
<p>§ 2.3.1 The Parties shall develop protocols by which Project issues shall be raised and reviewed by the Project Management Team and Project Executive Team. Such protocols shall include, but not be limited to, any notice requirements for raising matters to be addressed, required supporting documentation, and time frames within which team members must render a decision. The Parties shall endeavor to resolve all Project issues through direct</p>	<p>Issues will inevitably arise on a project no matter how carefully coordinated. The prompt resolution of disputes at the appropriate management level is critical to keeping a project on track. Establishment of clear protocols for the resolution of issues is critical to efficient performance. By setting clear parameters and time limits for the resolution of issues, decisions can be quickly and efficiently rendered at the appropriate level.</p>

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<p>discussions at meetings of the Project Management Team. Issues not resolved by the Project Management Team may be submitted by any Party’s Project Management Team representative to the Project Executive Team. Issues that are not resolved by the Project Executive Team may be referred by any Party’s Project Executive Team representative for resolution under Article 9, Dispute Resolution.</p>	<p>Minor issues should be resolved by project team members with more critical issues resolved by the project management team. Where a unanimous decision cannot be reached by the project management team, the issue should be determined by the project executive team or, as necessary, through the dispute resolution provisions of the agreement.</p>
<p>§ 2.3.2 If the resolution of any issue results in a change to the Target Cost or the Contract Time, the Project Management Team shall prepare a proposed Change Order for review and approval by the Project Executive Team. If the Project Executive Team agrees to a change, the Parties shall execute a Change Order. In the event the Project Executive Team fails to agree, the Project Executive Team representative of any Party may submit the matter to be resolved pursuant to Article 9, Dispute Resolution.</p>	<p>When resolution of an issue impacts the target cost or contract time, it is appropriate for a change order to be prepared by the project management team and approved by the project executive team. In this way, the project management team is involved in the development of the written change order and the project executive team authorizes the change.</p> <p>Failure of the project executive team to reach a unanimous decision regarding approval of a change order will allow any party’s representative to submit the matter to dispute resolution.</p>
<p>§ 2.4 Team Meetings, Communications and Recordkeeping</p>	
<p>§ 2.4.1 The Project Executive Team shall establish a meeting schedule, which shall include regular meetings with the Project Management Team. The Project Management Team shall establish a regular meeting schedule, which, unless the Project Management Team agrees otherwise, shall require meetings no less frequently than weekly. Special meetings of either the Project Executive Team or the Project Management Team may be called by any team member upon two business days’ written notice to the other team members. The notice shall specify the reasons for the meeting and include a proposed agenda and any documents material to the subject matter for discussion.</p>	<p>In order to promote collaboration and efficient project management, it is important that the project executive team and project management team hold regular meetings. The project executive team is required to establish a schedule of meetings, to include the project management team. The project management team will meet no less frequently than weekly, unless otherwise agreed. In addition, the project executive team and project management team may hold special meetings upon any members’ request.</p>
<p>§ 2.4.2 The Parties acknowledge that timely sharing of relevant Project information among the Parties and, when relevant and applicable, among other Project participants, is important to the success of the Project. Accordingly, communications for purposes of sharing such information are not based on a contractual hierarchy, and team members, their Consultants, Subcontractors, advisors, and agents are encouraged to share information directly with one another.</p>	<p>Communications among the project participants are encouraged. Any team member, including subcontractors and consultants, should feel free to discuss issues and share project information with other project participants. The project executive team and project management team have been established to provide direction and management for the project. While discussion of issues and sharing of information is not restricted by the contractual hierarchy, the project participants must still abide by the contractual hierarchy for binding decisions related to contractual responsibility.</p>
<p>§ 2.4.3 The Project Executive Team and Project Management Team shall each elect a chair. The chair may delegate administrative and recordkeeping responsibilities to one or more of the representatives. All decisions directly affecting Target Cost, Actual Cost, Project Goals, Contract Time or otherwise bearing materially on the success of the Project, shall be recorded in the teams’ minutes, which shall be timely distributed to all team members and, where appropriate, to other key Project participants. Meeting minutes shall be prepared for all meetings of the Project Management Team, and shall be timely distributed to all team members, the Project Executive Team and, where appropriate, other Project participants. Meeting minutes shall be prepared for all meetings of the Project Executive Team,</p>	<p>Collaboration requires that key project information is available to all parties. Therefore, it is important that information affecting key project parameters is recorded and available to all of the project participants. Discussions during meetings of the project executive team and project management team are to be recorded in meeting minutes and distributed to the project participants.</p>

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and shall be timely distributed to all team members, the Project Management Team, and, where appropriate, other Project participants.	
<b>ARTICLE 3 RESPONSIBILITIES AND PARTIES</b>	
<b>§ 3.1 Collaboration Responsibilities</b>	
§ 3.1.1 In addition to performing its individual responsibilities, each Party shall collaborate with the other Parties and key Project participants toward the successful accomplishment of the Project. Collaboration shall occur during all aspects of design and construction of the Project.	Critical to the success of integrated project delivery is the continued discussion and collaboration of the parties. This provision places an explicit obligation on the parties to continue to collaborate during the course of the entire project.
§ 3.1.2 The Parties’ specific obligations during the Conceptualization and Criteria Design phases shall be set forth in the Target Criteria Amendment, Exhibit DD: Integrated Scope of Services, or similar document. <i>(Identify the document in which the Parties have set forth their respective responsibilities during the Conceptualization and Criteria Design phases.)</i>	Integrated project delivery requires that the parties work together in a collaborative manner toward completion of the project; however, it is important for each party to have a clear understanding of its individual obligations for the project. Roles and responsibilities should be delegated to the party best able to perform specific obligations. In addition, a clear assignment of obligations will avoid overlap among each party’s activities. Target Criteria Amendment, Exhibit DD: Integrated Scope of Services, or similar writing, requires the parties to clearly establish the obligations of each party.
<b>§ 3.2 Owner Responsibilities</b>	
§ 3.2.1 In accordance with Article 4, Compensation, the Owner shall pay for the Work performed by the Parties to develop the Target Criteria Proposal and the Target Criteria Amendment. If the Owner accepts the Target Criteria Proposal and the Parties execute the Target Criteria Amendment, the Owner shall thereafter pay to the Parties the Actual Cost, including earned Goal Achievement Compensation, to complete the Project, as well as all earned Incentive Compensation.	
§ 3.2.2 The Owner shall timely furnish the services specifically required of it in the Contract Documents. To the extent the Owner furnishes those services through agreements with its own Consultants and contractors, the Owner shall furnish to the other Parties copies of the scopes of services in such agreements. With the assistance of the Project Management Team, the Owner shall coordinate the services of its own Consultants and contractors with those services furnished by others.	The contract documents may require the owner to furnish services in furtherance of the project. The services and work of the other parties may depend upon the timely completion of the services to be provided by the owner. In order to further collaboration and efficient project management, the owner will share information about the owner’s consultants’ and contractors’ scopes of service and will work with the project management team to coordinate the work of the owner’s consultants and contractors with other services and work on the project.
<b>§ 3.2.3 Owner Responsibilities Prior to Execution of the Target Criteria Amendment</b> The Owner shall provide the information and services required of it in the Contract Documents, including those items identified in Section 3.1.2, to develop the Target Criteria Proposal and Target Criteria Amendment.	
<b>§ 3.2.4 Owner Responsibilities Following Execution of the Target Criteria Amendment</b> Upon the Parties’ execution of the Target Criteria Amendment, the Owner shall provide the portions of the Work required of the Owner as described in the Contract Documents including those required of the Owner in the Target Criteria Amendment.	

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<p>§ 3.2.5 Throughout the course of the Project, the Owner shall participate in the management process for the Work as required in the Contract Documents. Accordingly, the Owner shall provide the representatives identified in Article 2, Management of the Project, to serve on the Project Executive Team and Project Management Team.</p>	<p>This provision places an explicit obligation on the owner to continue to contribute to the project throughout the design and construction of the project.</p> <p>The owner’s representatives for the project executive team and project management team must be clearly identified. Information must also be provided to enable the architect, contractor and other parties to contact those individuals quickly and easily, otherwise, the decision-making process may be interrupted at critical times during the project.</p>
<p>§ 3.3 Architect Responsibilities</p>	
<p>§ 3.3.1 General</p>	
<p>§ 3.3.1.1 The Architect shall provide the Architect’s Services, including planning, design and construction contract administration services, as set forth in the Contract Documents.</p>	
<p>§ 3.3.1.2 The Architect shall perform the Architect’s Services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform the Architect’s Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.</p>	<p>This is a generally applicable formulation of the standard of care for the architect’s performance of its services. Although the standard of care may be stated slightly differently from state to state, this formulation is generally accurate nationwide and is sufficiently flexible to adapt to each state’s particular standard of care. The architect’s services have always been subject to this standard of care. This explicit formulation has been included so that parties will not add a standard of care that is inaccurate and alters the common law standard of care.</p> <p>Expeditious performance is the best that any professional can promise when dealing with matters of indeterminate nature. Requiring the architect to meet absolute time limitations by using such terms as “time is of the essence” with this contract can adversely affect the quality of the architect’s services and may require behavior that is inconsistent with the architect’s standard of care. Typically, the architect is depending upon input or decisions from others, including representatives of governmental authorities having jurisdiction over the project and the owner, to accomplish the scheduling objectives. A written schedule usually helps, but it must be adjustable when delays or factors beyond the owner’s or architect’s control intervene.</p>
<p>§ 3.3.1.3 Throughout the course of the Project, the Architect shall participate in the management process for the Work as required in the Contract Documents. Accordingly, the Architect shall provide the representatives identified in Article 2, Management of the Project, to serve on the Project Executive Team and Project Management Team.</p>	<p>This provision places an explicit obligation on the architect to continue to contribute to the management of the project throughout the design and construction of the project and to provide the architect’s representatives for the project executive team and project management team.</p>
<p>§ 3.3.2 Architect Services Prior to Execution of the Target Criteria Amendment</p> <p>The Architect shall provide the Architect’s Services required of it in the Contract Documents, including those Architect’s Services identified in Section 3.1.2, to develop the Target Criteria proposal and Target Criteria Amendment.</p>	
<p>§ 3.3.3 Architect Services Following Execution of the Target Criteria Amendment</p> <p>Upon the Parties’ execution of the Target Criteria Amendment, the Architect shall provide the Architect’s</p>	

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Services described in the Contract Documents including those required of the Architect in the Target Criteria Amendment.	
§ 3.4 Contractor Responsibilities	
§ 3.4.1 General	
§ 3.4.1.1 The Contractor shall provide the Contractor’s Work as set forth in the Contract Documents.	
§ 3.4.1.2 The Contractor shall perform the Contractor’s Work required under the Contract Documents consistent with the skill and care ordinarily provided by a contractor in the same or similar locality under the same or similar circumstances. The Contractor shall perform the Contractor’s Work as expeditiously as is consistent with such skill and care and the orderly progress of the Project.	This is a generally applicable formulation of the standard of care for the contractor’s performance of its work. The contractor is required to perform its services in a manner consistent with those of a contractor with similar knowledge, skill and expertise necessary to construct a project of similar scope under similar conditions to the project. This specific formulation has been included so that the contractor’s standard of care will generally match the standard of care applicable in the locality of the project.
§ 3.4.1.3 Throughout the course of the Project, the Contractor shall participate in the management process for the Work as required in this Agreement. Accordingly, the Contractor shall provide the representatives identified in Article 2, Management of the Project, to serve on the Project Executive Team and Project Management Team.	This provision places an explicit obligation on the contractor to continue to contribute to the management of the project throughout the design and construction of the project and to provide the contractor’s representatives for the project executive team and project management team.
§ 3.4.2 Contractor Work Prior to Execution of the Target Criteria Amendment	
§ 3.4.2.1 The Contractor shall provide the Contractor’s Work required of it in the Contract Documents, including those items identified in Section 3.1.2, to develop the Target Criteria Proposal and Target Criteria Amendment.	
§ 3.4.3 Contractor Work Following Execution of the Target Criteria Amendment Upon the Parties’ execution of the Target Criteria Amendment, the Contractor shall perform the Contractor’s Work as required in the Contract Documents and in the Target Criteria Amendment.	
§ 3.5 Additional Party Responsibilities <i>(Set forth below, in detail, the responsibilities of any additional Parties to this Agreement.)</i>	C191–2009 is a flexible document allowing for the inclusion of additional parties to the agreement. In drafting a standard form agreement, however, it is difficult to consider all of the possible additional parties and their scopes of work, as well as how the inclusion of different additional parties will affect the responsibilities of the other parties. Therefore, C191–2009 has been drafted using the typical model where the owner, architect and contractor are the primary project participants. If the owner, architect and contractor choose to include additional parties to this agreement, the scope of the additional parties’ services should be clearly defined here. Additionally, the parties should take great care in modifying the responsibilities of the owner, architect and contractor, in a manner that is consistent with the additional parties’ services and responsibilities and to ensure the roles and responsibilities of all parties are coordinated. The parties are encouraged to consult qualified legal counsel to assist in modification of this agreement.

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<p><b>§ 3.6 Key Project Personnel</b>  Each Party has identified the following key Project personnel, if any. Each Party agrees that it shall not remove or replace any of the identified key Project personnel without the approval of the Project Management Team, which approval shall not be unreasonably withheld.  <i>(Set forth below the key Project personnel for each Party, if any.)</i></p>	<p>Certain personnel of each party may be considered critical to the success of the project and, once identified, should not be removed or replaced without approval of the other parties. Key project personnel, if any, should be listed here.</p>						
<b>ARTICLE 4 COMPENSATION</b>							
<p><b>§ 4.1</b> The Owner shall reimburse the other Parties for their Cost of the Work, as that term is defined in Section A.13 of Exhibit A, General Conditions, incurred in the performance of their obligations under the Contract Documents. Except as otherwise provided in the Contract Documents, the Owner’s obligation to reimburse the other Parties for their Cost of the Work shall continue regardless of whether Actual Costs exceed the Target Cost.</p>	<p>A detailed description of items included as a cost of the work is set forth in Exhibit A, General Conditions and discussed further below.</p> <p>It is important to note that the owner’s obligation to pay the parties for cost of the work continues even if the target cost is exceeded, with the possible limited exception of labor cost if the parties so agree in Section 4.2.4.</p>						
<p><b>§ 4.2 Labor Costs</b></p>							
<p><b>§ 4.2.1</b> If the Owner’s payments for Labor Costs are to be based on negotiated hourly rates, insert the rates below. The rates shall be adjusted in accordance with the Parties’ respective normal review practices. It is understood that any rates identified below, or subsequently agreed upon, incorporate all Labor Costs identified in Sections A.13.1.1.2 through A.13.1.1.5 of Exhibit A, General Conditions.  <i>(If applicable, attach an exhibit of hourly rates or insert them below.)</i></p> <table border="0" data-bbox="224 1081 779 1113"> <thead> <tr> <th style="text-align: left;">Party</th> <th style="text-align: left;">Employee or Category of Employee</th> <th style="text-align: left;">Hourly Rate</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Party	Employee or Category of Employee	Hourly Rate				<p>The parties may wish to set forth their agreement to hourly labor rates for their personnel working on the project. Hourly labor rates are deemed to include those amounts described for labor rates in the General Conditions.</p>
Party	Employee or Category of Employee	Hourly Rate					
<p><b>§ 4.2.2</b> If the Owner’s payments for Labor Costs are not to be based on negotiated hourly rates, the Labor Costs shall be determined in accordance with Sections A.13.1.1.2 through A.13.1.1.5 of Exhibit A, General Conditions.  <i>(For each Party, if applicable, insert any agreed upon overhead rate as a percentage to be applied to the Parties’ Labor Costs listed below, or other method for calculating an overhead rate.)</i></p> <table border="0" data-bbox="224 1360 646 1392"> <thead> <tr> <th style="text-align: left;">Party</th> <th style="text-align: left;">Method of Calculating Overhead Rate</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Party	Method of Calculating Overhead Rate			<p>Labor rates that are not based on agreed to hourly rates will be billed in accordance with the General Conditions with the parties stipulating the agreed to method for calculating overhead on the labor rates.</p>		
Party	Method of Calculating Overhead Rate						
<p><b>§ 4.2.3</b> If the Parties agree to a not-to-exceed amount for the development of a Target Criteria Proposal, such amount shall be set forth below  <i>(If applicable, insert the maximum not-to-exceed amount below.)</i></p>	<p>The parties may wish to establish a not-to-exceed amount for delivery of the target criteria proposal which work will occur before delivery of the detailed design and commencement of construction. The maximum not-to-exceed amount should be entered here.</p>						
<p><b>§ 4.2.4 Compensation for Labor Costs When Actual Costs Exceed the Target Cost</b>  When Actual Costs for the Project exceed the Target Cost, as adjusted under the Contract Documents, the Owner’s obligation to reimburse the other Parties’ Labor Costs shall be as follows:  <i>(Check the appropriate box.)</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Owner shall reimburse the Parties for all Labor Costs in accordance with Section 4.2.</li> <li><input type="checkbox"/> The Owner shall not be required to reimburse the other Parties for any further Labor Costs incurred.</li> <li><input type="checkbox"/> Other: <i>(Identify)</i></li> </ul>	<p>The parties may select one of the options provided in Section 4.2.4 for reimbursement of labor costs when the actual cost of the project exceeds the target cost, from that point forward. Under C191–2009, labor costs are defined to include direct labor costs only and do not include labor costs associated with subcontractors and consultants. The parties may agree that the owner will reimburse the parties for all labor costs, or agree that the owner is not obligated to continue to reimburse the parties for direct labor costs once actual costs exceed the target cost. The parties may also agree to some other method of determining the payment of labor costs.</p>						

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<p>If the Parties fail to make a selection above, the Owner shall reimburse the Parties for all Labor Costs in accordance with Section 4.2.</p>	<p>This selection has an important impact on how the risk of project overruns is shared on the project, and the incentives influencing the parties' behavior on the project. If the parties decide that the non-owner parties will not be reimbursed for labor costs after the target costs is exceeded, the non-owner parties will be more negatively impacted by overruns than if they continue to be reimbursed for labor costs. This option allows the parties the flexibility to impose a substantial negative incentive for the failure to keep costs below the target cost. The use of such a negative incentive can serve to encourage the non-owner parties to work efficiently and effectively.</p>
<p>§ 4.3 The Owner shall pay the Parties in accordance with Article A.12 of Exhibit A, General Conditions. Amounts unpaid ____ (__) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the affected Party. <i>(Federal, state or local laws may require payment within a certain period of time. Insert rate of monthly or annual interest agreed upon, if any.)</i></p>	
<p>§ 4.4 Incentive Compensation</p>	
<p>§ 4.4.1 Upon final completion of the Project as set forth in Section A.12.9 of Exhibit A, General Conditions, if the Actual Costs are less than the Target Cost, then the Owner shall pay to the other Parties, as Incentive Compensation, a portion of the difference between the Actual Costs and the Target Cost, as follows: <i>(Insert each Party's proportionate share of any savings realized as Incentive Compensation.)</i></p>	<p>C191–2009 does not utilize a traditional model where profit is paid based on a lump sum or predetermined portion of the actual cost. Instead, profit is received in the form of incentive compensation. The amount of available incentive compensation is equal to the difference between the actual cost and target cost, if any, and will be distributed to the parties as the parties agree. In doing so, profit is based on the success of the project and the parties' ability to minimize the actual cost and avoid waste. Because the amount available for incentive compensation increases when actual costs are minimized, all parties benefit from working together to increase efficiency.</p> <p>The parties should agree to an equitable distribution of incentive compensation and record that agreement here.</p>
<p>§ 4.4.1.1 The Owner shall pay Incentive Compensation earned under this Agreement in a lump sum payment ____ (__) days following final payment. Amounts unpaid ____ (__) days after final payment shall bear interest at the rate required in Section 4.3.</p>	<p>Because incentive compensation can only be calculated based on the actual cost of the completed project, incentive compensation is not paid until after final completion.</p>
<p>§ 4.5 Goal Achievement Compensation</p>	
<p>§ 4.5.1 Project Goals shall be set forth in the Target Criteria Amendment. For each Project Goal, the Owner and the other Parties shall agree either on an amount, or on the method to determine an amount, available to the other Parties as Goal Achievement Compensation.</p>	<p>In addition to incentive compensation, the parties may wish to establish interim project goals and provide for additional compensation if these goals are achieved. The parties will be incentivized to achieve key project goals by receiving goal achievement compensation.</p>
<p>§ 4.5.2 Upon achievement of a Project Goal, the other Parties are each entitled to invoice the Owner for their respective Goal Achievement Compensation as set forth in the Target Criteria Amendment.</p>	<p>Because incentive compensation is not payable until after final completion of the project, a party whose primary work is completed early in the project, the architect for example, would have to wait until the end of construction before receiving any profit on the project. Goal achievement compensation is payable</p>

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	when earned allowing the parties to realize profit during the course of the project.
<p>§ 4.5.3 Goal Achievement Compensation for each Project Goal shall be payable by the Owner upon achievement of such Project Goal. Amounts unpaid by the Owner _____ ( ) days after the invoice date shall bear interest at the rate required in Section 4.3.</p>	
<p>§ 4.5.4 If Actual Costs for the Project exceed the Target Cost, as adjusted under the Contract Documents, the Owner shall not be relieved of its obligation to pay the other Parties any Goal Achievement Compensation earned on the Project.</p>	<p>To avoid placing a party’s entire profit at risk in the event actual costs exceed the target cost, goal achievement compensation is payable even if the actual cost exceeds the target cost.</p> <p>Another aspect of aligning individual interest with project interest requires the parties to identify project goals that are of importance to the owner, so much so that the owner is willing to create a separate profit pool to incentivize the achievement of such goals. If the identified project goals are achieved, the owner receives the benefit of these goals, and should reward the parties for achievement of the project goals regardless of the fact that the target cost has otherwise been exceeded.</p>
<p>§ 4.6 Record Keeping and Owner Audit Rights</p>	
<p>§ 4.6.1 The Parties shall keep detailed records and accounts related to the Cost of the Work to substantiate all costs incurred and exercise such controls as may be necessary for proper financial management under the Contract Documents. The Parties shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.</p>	<p>The parties must maintain accurate books and records necessary for the effective financial management of the project.</p> <p>Books and records must be maintained for a period of three years or any longer period as required by law.</p>
<p>§ 4.6.2 The other Parties’ accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the other Parties’ respective records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Consultant or Subcontractor proposals, purchase orders, vouchers, memoranda and other data relating to the Contract Documents. Agreed upon rates, unit prices, lump sums and other agreed upon fixed dollar amounts shall not be subject to audit.</p>	<p>Accounting transparency is important to the effective financial management of the project. The parties’ books and records must be available for the owner’s audit.</p> <p>Rates, unit prices or other lump sum amounts that are agreed to by the parties are not subject to audit.</p>
<p>§ 4.6.3 Any information relating to accounting records, business methods, including methods for determining costs and expenses for purposes of determining the Actual Cost, and other related business and accounting information a Party provides to the Owner or the other Parties, shall be deemed confidential and business proprietary. Accordingly, the receiving Party shall be subject to the requirements set forth in Section 11.5 with regard to maintaining the confidentiality of such information. This provision applies regardless of whether the transmitting Party designates such information as “confidential” or “business proprietary.”</p>	<p>Many parties will consider their financial and accounting information confidential. To encourage open-book accounting, financial and accounting information of the parties will be deemed confidential and business proprietary regardless of a parties’ designation of such information.</p>
<p><b>ARTICLE 5 TARGET CRITERIA AMENDMENT AND TARGET COST</b></p>	
<p>§ 5.1 Target Criteria Proposal The Parties shall jointly develop a Target Criteria Proposal for the Owner’s final review and acceptance. To do so, the Parties shall perform the pre-Target Criteria Amendment services set forth in the Contract Documents, including</p>	<p>The <i>Target Criteria Proposal</i> is prepared by the parties and establishes detailed project information, including project goals, a target cost, a project definition and a project schedule. A detailed description of the parties’ services in preparing the target criteria proposal is</p>

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Section 3.1.2, and shall undertake the actions required under Articles A.4 and A.5 of Exhibit A, General Conditions, including the development of Project Goals, a Target Cost, a Project Definition and a Project Schedule.	included in the Commentary to the General Conditions.
<p><b>§ 5.2 Accepting or Rejecting the Target Criteria Proposal</b>            At the conclusion of the Criteria Design phase, the Parties other than the Owner shall agree upon a Target Criteria Proposal, making all such adjustments to the Project Definition and Project Schedule as necessary. If the Owner accepts the Target Criteria Proposal, the agreed-to Target Criteria, including the Target Cost, shall be set forth in the Target Criteria Amendment to this Agreement. In the event the Parties are unable to arrive at a mutually agreeable Target Cost or are otherwise unable to execute the Target Criteria Amendment, this Agreement shall terminate pursuant to Section 10.2.1.</p>	<p>At the conclusion of the criteria design phase, the parties, other than the owner, must work together to prepare a target criteria proposal for review by the owner. The target criteria proposal will set forth a proposed target cost and key criteria upon which that target cost is based. If the owner accepts the target criteria proposal, the parties' agreement to the target cost, and the criteria upon which it is based, will be stipulated in the target criteria amendment. Failure to agree to the target criteria amendment will result in the automatic termination of the agreement.</p>
<p><b>§ 5.3 Adjusting the Target Cost</b></p>	
<p><b>§ 5.3.1</b> Upon the execution of the Target Criteria Amendment, the Target Cost shall not be adjusted except as stated in this Section 5.3, or upon the unanimous, written agreement of the Parties. A Target Cost adjustment must be recorded as a Modification to this Agreement. If the Parties cannot agree with respect to adjusting the Target Cost, the Parties shall resolve the matter pursuant to Article 9, Dispute Resolution.</p>	<p>After execution of the target criteria amendment, any adjustment to the target cost must be in writing and signed by all of the parties. It is anticipated that the target cost will not generally be subject to adjustment absent a change in the criteria upon which it is based as described in Section 5.3.2.</p>
<p><b>§ 5.3.2</b> The Target Cost may be adjusted as a result of agreed upon <b>quantity variations</b> for specified units for which unit pricing has been provided in accordance with Section A.5.8.1 of Exhibit A, General Conditions; costs variations from specified allowances established in accordance with Section A.5.8.1 of Exhibit A, General Conditions; Owner-initiated changes in the Project Definition; Owner-initiated changes to the Project Schedule; material defects and deficiencies in information or services required of the Owner by the Contract Documents; and events falling within Article 6, Force Majeure.</p>	<p>The target cost may only be adjusted for quantity variations in unit price items, cost variations from specified allowances, owner initiated changes, material defects and deficiencies in the information or services required of the owner or force majeure events.</p>
<p><b>§ 5.3.3</b> The Target Cost shall be reduced to the extent that a Project Goal identified in the Target Criteria Amendment is not achieved and, as a result, Goal Achievement Compensation for the unachieved Project Goal is not awarded.</p>	<p>Failure to achieve project goals will result in a reduction of the target cost equal to the goal achievement compensation that is not awarded because the goal is not achieved.</p> <p>This reduction in the target cost is necessary to avoid unjustly increasing the potential for incentive compensation. Because the actual cost includes goal achievement compensation paid, a failure to receive goal achievement compensation results in a decrease in actual cost. If the target cost, which includes all potential goal achievement compensation, was not likewise reduced, the difference between the actual cost and target cost would be increased thereby artificially inflating incentive compensation.</p>
<p><b>§ 5.4 Monitoring and Maintaining the Target Cost</b></p>	
<p><b>§ 5.4.1</b> The Parties agree that, in addition to achieving the identified Project Goals, a primary objective is to maintain the Target Cost. The Parties shall closely monitor Actual Costs and make such periodic cost projections as are necessary to satisfy all Parties that the Target Cost is being maintained. Unless agreed to otherwise, periodic cost projections shall be made monthly, shall identify all material variations between incurred</p>	<p>Ensuring that the actual costs remain at or below the project target cost is key to the profitability of the project. The parties have an explicit duty to try and maintain the target cost. The parties are required to make monthly projections for the actual costs and identify any variations between the incurred or projected actual cost and the target cost.</p>

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Actual Costs and the Target Costs, and shall project those variations to Project completion.	
§ 5.4.2 If any periodic cost projection reveals that the Target Cost may be exceeded for reasons that do not justify an adjustment to the Target Cost under Section 5.3, the Parties shall develop and unanimously approve a plan to maintain the Target Cost (Recovery Plan). The Recovery Plan may entail alterations to the Project Definition and Project Schedule.	
§ 5.4.3 If any Party comes to believe or acquires information to suggest that the Target Cost may be exceeded for reasons that do not justify an adjustment to the Target Cost under Section 5.3, it shall immediately notify the other Parties in writing, setting forth the basis for its belief and any pertinent information acquired. The Parties shall then timely meet to evaluate the matter. If, after reviewing the matter, the Parties agree that it is likely the Target Cost will be exceeded, the Parties shall develop a Recovery Plan as necessary for review and approval by all Parties.	Each of the parties has an explicit obligation to notify the other parties in writing if it comes to believe or acquires information suggesting that the target cost will be exceeded.
§ 5.4.4 If a Party identifies an occurrence or expected occurrence justifying an adjustment to the Target Cost under Article 6, Force Majeure, the Party shall notify the other Parties in writing and the Parties shall either appropriately adjust the Target Cost by unanimous written amendment or, upon the request of any Party, develop a Recovery Plan for review and approval by all Parties. Any Party shall have the right to require the Parties to attempt to develop an acceptable Recovery Plan.	A party must notify the other parties in writing of an event or occurrence giving rise to a force majeure extension of time or adjustment in the target cost. Timely notification allows the parties to evaluate the event and take action as soon as possible to avoid further delay.
§ 5.4.5 If the Target Cost is projected to be exceeded for reasons for which an adjustment is not justified under Section 5.3, Adjusting The Target Cost, the Parties shall jointly prepare a written Recovery Plan for review and approval by all Parties. If a Recovery Plan is not approved, the Parties shall proceed with the Work and take such mitigation steps as are reasonable to keep cost escalation to a minimum.	If the parties are unable to agree to a recovery plan, the parties have a duty to take reasonable steps to keep cost escalation to a minimum.
§ 5.4.6 Recovery Plans called for under this Section 5.4 shall be developed without consideration of which Party or Parties is (are) responsible for the failure to maintain the Target Cost. The Parties reaffirm their commitment to work collaboratively to maintain the Target Cost and to develop Recovery Plans when necessary. The Contract shall be appropriately amended through a Modification in the event the Parties approve a Recovery Plan.	The purpose of the recovery plan is to maintain the target cost for the benefit of all parties. The recovery plan should not take into consideration the party at fault but should utilize the collective skill and expertise of the parties to select the best course of action to maintain the target cost.
<b>ARTICLE 6 FORCE MAJEURE</b>	
<p><b>§ 6.1 Force Majeure Event</b></p> <p>As used in this Agreement, a “Force Majeure Event” shall mean any act or event that prevents a Party from performing, or interferes with a Party’s performance of, its obligations under the Contract Documents if such act or event is beyond the reasonable control of, and not the fault of, the Party. A Force Majeure Event shall include the following events: war; earthquake; fire; volcanic eruption; explosion; landslide; unusually severe weather; or other similar acts of God or the public enemy; unknown burial markers or archeological sites; conditions encountered at the site that are unknown physical conditions of an unusual nature differing materially from those normally found to exist and recognized generally</p>	<p>Circumstances beyond the parties’ control can result in a project delay or increased costs. Those circumstances are often referred to as <i>force majeure events</i>. This section defines <i>force majeure events</i> that will justify extension of the time of performance and may justify an increase in the target cost.</p> <p>Because the parties may be entitled to compensation for force majeure events, differing site conditions have been included as a force majeure event.</p>

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<p>as inherent in construction activities; strikes or labor disputes, but expressly excluding any strikes or labor disputes involving only employees or other direct labor of a Party; civil disturbance; unanticipated change in law; or action of a court or public authority that reasonable action by the Party could not have prevented.</p>	
<p><b>§ 6.2 Excused Performance</b>            Except for payment obligations accruing in accordance with the Contract Documents, if any Party is rendered wholly or partially unable to perform its obligations under the Contract Documents because of a Force Majeure Event, that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected, provided that</p> <ol style="list-style-type: none"> <li>.1 the affected Party, within ten <b>(10)</b> business days after becoming aware of the occurrence of a Force Majeure Event, gives the other Parties written notice describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of the Party's obligations, and thereafter continues to furnish timely, regular reports of its effects during the continuation of the Force Majeure Event;</li> <li>.2 the Party's suspended performance shall be of no greater scope and of no longer duration than is reasonably caused by the Force Majeure Event;</li> <li>.3 no failure of performance before a Force Majeure Event arose shall be excused as a result of a Force Majeure Event; and</li> <li>.4 the affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Parties, provided that, and notwithstanding anything in the Contract Documents to the contrary, the affected Party shall not be obligated to otherwise incur costs that would not normally be incurred in performance of its obligations under the Contract Documents in order to overcome any delay due to a Force Majeure Event, unless the Party is compensated for the costs incurred.</li> </ol>	<p>Except for payment obligations, the parties are excused from performing during the duration of a force majeure event. However, the affected party must take steps to mitigate the potential impact of a force majeure event. The affected party is also required to provide timely notice of the event, and to continue to update the parties regarding the continued effects of the force majeure event.</p> <p>A parties' performance may not be suspended for a longer period than the period reasonably caused by the force majeure event. The occurrence of a force majeure event will not excuse a party's failure to perform prior to the occurrence of the force majeure event.</p>
<p><b>§ 6.3 Adjusting Target Cost for Force Majeure Events</b>            The Target Cost shall be subject to adjustment based on the reasonable costs incurred as a result of a Force Majeure Event. If the Parties cannot reach agreement with respect to adjusting the Target Cost and other aspects of the Target Criteria Amendment, where applicable, the matter shall be resolved pursuant to Article 9, Dispute Resolution.</p>	<p>C191–2009 expressly allows the parties to receive an adjustment in the target cost resulting from the force majeure event. This express provision avoids the inclusion of unnecessary contingencies in the target cost, to otherwise cover any potential loss.</p>
<b>ARTICLE 7 INSURANCE AND BONDS</b>	
<p><b>§ 7.1 Insurance Program</b>            The Parties shall retain an insurance consultant to provide advice and assistance with respect to integrated insurance products such as Owner or Contractor-Controlled Insurance Programs or with respect to the individual insurance requirements for the Parties and other Project participants. The Parties shall obtain from the insurance consultant recommendations with regard to the desirability and structure of an insurance program. Any insurance program the Parties select shall be instituted no later than execution of the Target Criteria Amendment and structured to provide</p>	<p>Because of the new and emerging nature of integrated project delivery, a variety of insurance products and potential programs may be available to meet the particular needs of the parties or the project. This provision requires the parties to retain an insurance consultant to provide advice on available insurance products and programs. Particular consideration should be given to owner or contractor controlled insurance programs which would allow all of the parties to be covered under one policy. Typical benefits of controlled insurance programs include lower costs and the potential for greater policy limits than</p>

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<p>adequate coverage at reasonable cost, striving to avoid duplication in coverage or exposure gaps. Once an insurance program is selected, the terms and requirements of the program shall be set forth in the Target Criteria Amendment. Each eligible Party shall enroll in, and cause any eligible Subcontractors and Consultants to enroll in, the selected insurance program. Each Party is entitled to receive copies of any policies required under this Article 7.</p>	<p>the parties could obtain individually. Selection of a project insurance program should occur no later than execution of the target criteria amendment when detailed design and construction will begin.</p>						
<p><b>§ 7.2 Initial Insurance Requirements</b> Prior to implementation of the insurance program selected pursuant to Section 7.1, the Parties shall obtain the following coverages in such amounts and upon such terms as set forth below and in Article A.14 of Exhibit A, General Conditions. The Parties shall be required to maintain insurance in accordance this Section 7.2 and Article A.14 of Exhibit A, General Conditions, until such time as the Parties agree on an insurance program as set forth in Section 7.1: <i>(Identify types and limits of insurance coverage, and other insurance requirements applicable to this Agreement, if any.)</i></p> <ol style="list-style-type: none"> <li>.1 From Architect: Commercial General Liability, Automobile Liability, Workers' Compensation/Employers Liability, Electronic Data Processing Liability, and Professional Liability.</li>   <li>.2 From Contractor: Commercial General Liability, Automobile Liability, Workers' Compensation/Employers Liability, and Electronic Data Processing Liability. If the Contractor performs professional services, it shall procure Professional Liability insurance.</li>   <li>.3 From Owner: Commercial General Liability, Automobile Liability, Workers' Compensation/Employers Liability, and, no later than the commencement of any Work, appropriate property coverages.</li> </ol>	<p>The parties must have some insurance protection prior to selection of a project insurance program. Therefore, each party is responsible for providing customary insurance coverages prior to implementation of the project insurance program. Limits and types of coverage are detailed in C191–2009, Exhibit A. If the parties are unable to agree on an insurance program under Section 7.1, the insurance requirements set forth in this Section will remain in effect.</p>						
<p><b>§ 7.3 Bonds</b> The Parties shall purchase and provide bonds as set forth below. <i>(State bonding requirements, if any.)</i></p> <table border="1" data-bbox="186 1459 844 1501"> <thead> <tr> <th data-bbox="186 1459 397 1501">Party</th> <th data-bbox="397 1459 673 1501">Type of Bond</th> <th data-bbox="673 1459 844 1501">Bond Amount</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Party	Type of Bond	Bond Amount				
Party	Type of Bond	Bond Amount					
<b>ARTICLE 8 RISK SHARING</b>							
<p><b>§ 8.1 General Waivers of Claims and Liability</b> The Parties waive all claims against each other, except this waiver shall not extend to claims</p> <ol style="list-style-type: none"> <li>.1 arising out of a Party's willful misconduct;</li> <li>.2 arising out of any express warranty obligations of the Parties including those set forth under Section A.10.4 of Exhibit A, General Conditions, or an obligation to provide third-party warranties under the Contract Documents;</li> <li>.3 against the Owner for payment of amounts due under this Agreement. Nor shall the Parties' waiver restrict their ability to enforce their right to payment pursuant to applicable statutory law, including the right to</li> </ol>	<p>Integrated project delivery requires the open sharing of information in a collaborative environment. However, exposure to potential claims often discourages parties from sharing information in an attempt to avoid liability. To encourage the open sharing of information, Section 8.1 requires that the parties waive all claims against each other except for those arising from the parties' willful misconduct, breach of an express warranty, failure of payment, an express indemnification obligation, failure to procure insurance, or if a claim is otherwise covered by insurance required under the contract documents.</p>						

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<p>enforce mechanics’ liens or stop-notice rights;</p> <p>.4 arising out of any express indemnification obligations set forth in the Contract Documents, including those set forth in Exhibit A, General Conditions;</p> <p>.5 for failure to procure the insurance required under the Contract Documents;</p> <p>.6 to the extent insurance proceeds are available through insurance expressly required under the Contract Documents; and</p> <p>.7 for damages arising from liens, claims, security interests or encumbrances against the Project filed by persons or entities not a Party to this Agreement.</p>	
<p><b>§ 8.2 Additional Waivers</b> The following waivers are in addition to those set forth in Section 8.1 and are not subject to the exceptions set forth in Section 8.1.</p>	
<p><b>§ 8.2.1 Waiver of Claims for Consequential Damages.</b> The Parties waive claims against each other for consequential damages arising out of or related to the Contract. This mutual waiver includes</p> <p>.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 person;</p> <p>.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 portions of the Contractor’s Work actually performed; and</p> <p>.3 damages incurred by the Architect 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 portions of the Architect’s Services actually provided.</p> <p>This mutual waiver is applicable, without limitation, to all consequential damages due to any Party’s termination in accordance with Article 10, Termination or Suspension. Nothing in this Section 8.2.1 shall be deemed to preclude an award of liquidated damages, where applicable, in accordance with the requirements of the Contract Documents.</p>	<p>By waiving claims for consequential damages, the owner, architect and contractor limit themselves to direct damages. This eliminates some of the incentive to escalate claims and may encourage settlement. The items identified as consequential damages in this section are not intended to be a complete listing of all such items. State law may include many other items of cost.</p>
<p><b>§ 8.2.2 Waivers of Subrogation.</b> The Parties waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, consultants, agents and employees, and each of the other, and (2) separate contractors described in Section A.10.16 of Exhibit A, General Conditions, 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 Contract 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 Parties, as appropriate, shall require of the separate contractors described in Section A.10.16 of Exhibit A, General Conditions, and the subcontractors, sub-subcontractors, agents and employees of any of them, by</p>	<p>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 insurance is to transfer the risk of insured losses from the parties to the insurance company. It would defeat this purpose if the insurance company were allowed to sue a 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. <i>The parties should disclose the waiver of subrogation provision to their insurers before purchasing insurance.</i></p> <p>If a party or a subcontractor or consultant has rights to insurance proceeds being held by the owner as a fiduciary, such rights are not affected by this waiver.</p>

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<p>appropriate agreements, written where legally required for validity, similar waivers each in favor of the other Parties enumerated herein. The insurance policy or 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.</p>	<p>If the parties agree that one or more parties other than, or in addition to, the owner will obtain property insurance, consideration should be given to modification of this section. In particular, the parties should consider modifying the waiver exception to include “proceeds of such insurance held by the owner or other parties as fiduciary.”</p>
<p><b>§ 8.3 Indemnification against Claims for Property Damage or Bodily Injury</b>  To the fullest extent permitted by law, a Party shall indemnify and hold harmless the other Parties and the 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 such Party’s portion of the Work required under the Contract Documents, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or 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 Party providing the indemnification, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a Party indemnified hereunder. The indemnification obligation under this Section 8.3 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers’ compensation acts, disability benefit acts, or other employee benefit acts. This indemnification obligation shall be limited, however, to the indemnifying Party’s insurance coverage available for this indemnification obligation unless the Party failed to secure the coverage required of it by the Contract Documents.</p>	<p>In many jurisdictions, anti-indemnification statutes limit the validity and enforceability of indemnification provisions in contracts. Most prohibit only <i>broad-form</i> indemnification (requiring indemnification for the indemnitee’s sole negligence). This section contains a <i>narrow-form</i> 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 8.3 should be reviewed by legal counsel.</p> <p>This provision does not cover injury or damage to a party’s work itself nor does it cover a claim by a party that another has failed to perform its work in accordance with the contract documents.</p> <p>A party’s obligation to indemnify is triggered by an act or omission of the party or one of the party’s agents or employees, and covers the indemnitee’s loss <i>only to the extent</i> 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 indemnifying party’s obligation would extend to 80 percent of the loss.</p> <p>In order to appropriately allocate risk, a party’s obligation to indemnify is limited to the amount of insurance available for the indemnification obligation unless the party failed to obtain coverage required by the contract documents. Again this provision is intended to avoid unnecessary contingencies. If a party’s indemnity obligation is limited to available insurance coverage, a contingency for indemnity cost will be unnecessary.</p>
<p><b>§ 8.4 Indemnification against Third-Party Claims for Vicarious Liability</b>  To the fullest extent permitted by law, a Party shall indemnify and hold harmless the other Parties and the agents and employees of any of them to the extent of loss or damage, including but not limited to, attorneys’ fees arising out of or resulting from a claim based upon vicarious liability arising from the act or omission of the indemnifying Party for which the indemnified Party is or is claimed to be liable, or the failure or alleged failure of the indemnifying Party to perform some obligation required of it under the Contract Documents.</p>	<p>Vicarious liability results in one person, regardless of fault, being held responsible for the acts or omissions of another party. Because of the close collaboration of the parties to the multi-party agreement, a non-party may seek to hold one party responsible for the acts or omission of another party. To address this situation, each party has a duty to indemnify the other parties for any liability or responsibility imposed on one party as a result of the indemnifying party’s failure to perform as required under the contract documents, or as a result of an act or omission of the indemnifying party, for which the indemnified party is claimed to be liable.</p>
<p><b>§ 8.5 Cooperation in the Defense of Third-Party Claims</b>  Subject to all applicable legal and ethical considerations,</p>	<p>Legal or ethical requirements in the jurisdiction of the project may prevent the parties from participating in the</p>

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including the need for independent legal counsel, the Parties shall cooperate to seek resolution of all third-party claims.	joint defense of third-party claims. The parties should seek the advice of their attorneys' before beginning any joint defense of claims.
§ 8.6 Any claims or disputes permitted under this Article 8 shall be pursued only through the dispute resolution proceedings set forth in Article 9, Dispute Resolution.	Any disputes amongst the parties must be resolved through the dispute resolution procedures set forth in this Agreement.
<b>ARTICLE 9 DISPUTE RESOLUTION</b>	
<p>§ 9.1 General</p> <p>All disputes between or among any of the Parties, arising out of or related to this Agreement, whether stated in contract, tort, warranty or otherwise, that are not resolved under Section 2.3, shall be subject to the provisions of this Article 9.</p>	This provision states explicitly that all disputes among the parties arising out of or related to the agreement are subject to the dispute resolution provisions agreed to by the parties.
<p>§ 9.2 Continuing Contract Performance</p> <p>Pending final resolution of a dispute, except as otherwise agreed in writing or as provided in Section A.12.8.13 of Exhibit A, General Conditions, and Article 10, Termination or Suspension, the Parties shall proceed diligently with performance of their contractual obligations, including any Owner's Directive issued pursuant to Section 2.1.2.1.</p>	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.
<p>§ 9.3 Initiation of Disputes</p> <p>Disputes may be initiated in the following manner:</p> <ol style="list-style-type: none"> <li>.1 Upon written referral by the Project Executive Team.</li> <li>.2 After the Project Executive Team has failed to reach unanimous decision on any issue, any Party may initiate a dispute upon written notice by that Party to the other Parties.</li> <li>.3 On issues arising after final payment, upon notice by any Party to the other Parties.</li> </ol>	
<p>§ 9.4 Dispute Resolution Committee</p> <p>All disputes initiated in accordance with Section 9.3 shall be referred to the Dispute Resolution Committee for resolution. The Dispute Resolution Committee shall consist of Party representatives in senior management with broad organizational responsibilities and the Project Neutral identified in this Section 9.4.</p>	As disputes escalate beyond the project management and project executive teams it is important that the dispute be considered by the appropriate senior management personnel of the parties. Members of the dispute resolution committee should be members of senior management from each party such as the chief executive or president.
<p>§ 9.4.1 The following individuals are designated as the Parties' respective members of the Dispute Resolution Committee:</p> <p>Owner: _____  Architect: _____  Contractor: _____  Additional Parties, if any: _____</p> <p>The Party representatives of the Dispute Resolution Committee shall have full authority to bind their respective Party. If at any time a dispute is initiated, a Party's designated representative is unable to serve, the Party shall appoint another person from senior management as its Party representative.</p>	<p>The parties must appoint representatives to the dispute resolution committee. Each party's appointed representative should be listed here.</p> <p>Because resolutions reached by the dispute resolution committee will be binding on the parties, each party's representative must have full authority to bind the party under this agreement</p>
<p>§ 9.4.2 The following individual is designated as the Project Neutral:</p> <p>Project Neutral: _____</p>	<p>The project neutral selected by the parties should be listed here.</p> <p>It should be noted that the project neutral may not only be charged with the duty of mediating disputes between the parties but, depending on the parties' selection in Section 9.6, the project neutral may also serve as the arbitrator of the dispute. The parties, therefore, should take care to appoint, when necessary, an individual with</p>

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	the skill sets to serve in both roles.
<p>§ 9.4.2.1 In the event the Parties fail to designate a Project Neutral and the Parties cannot otherwise mutually agree upon a Project Neutral, or if the Project Neutral selected by the Parties is unable to serve, the Parties shall select a Project Neutral in accordance with the American Arbitration Association’s Construction Industry Mediation Procedures.</p>	<p>The parties may jointly agree on a project neutral or select one in accordance with the American Arbitration Association’s Construction Industry Mediation procedures.</p>
<p>§ 9.5 Mediation through the Dispute Resolution Committee</p>	
<p>§ 9.5.1 The Dispute Resolution Committee shall meet and confer within 15 days of initiation of a dispute. The Project Neutral shall endeavor to mediate a resolution of the dispute. Unless mutually agreed to otherwise, the mediation shall be conducted in accordance with the American Arbitration Association’s Construction Industry Mediation Procedures in effect on the date of this Agreement. The Project Neutral shall decide all procedural matters such as scheduling and location of meetings. The Parties to the dispute shall share equally the fees and expenses of the Project Neutral. If a resolution is reached, the Project Neutral shall prepare a written settlement agreement setting forth the terms of the Parties’ resolution and upon the Parties’ execution of a settlement agreement, this Agreement shall be modified accordingly.</p>	<p>Integrated project delivery requires the timely resolution of disputes. The dispute resolution committee must meet within 15 days of initiation of the dispute. The project neutral will act as a mediator to facilitate negotiations among the parties, but cannot impose settlement terms. However, once the parties come to a negotiated agreement in the course of the mediation, the agreement becomes binding and enforceable. The agreement reached in mediation will be memorialized in a writing signed by the parties to be bound.</p>
<p>§ 9.5.2 Disputes shall be subject to mediation as a condition precedent to binding dispute resolution. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.</p>	<p>Like the AIA A201™–2007 family of documents, mediation is a condition precedent to any form of binding dispute resolution.</p>
<p><b>§ 9.6 Binding Dispute Resolution</b>  § 9.6.1 If the Parties do not resolve a dispute through mediation pursuant to Section 9.5, the method of binding dispute resolution shall be the following:  <i>(Check the appropriate box. If the parties do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method, the dispute will be resolved by arbitration before the Project Neutral in accordance with the procedures determined by the Project Neutral.)</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration before the Project Neutral in accordance with procedures identified by the Project Neutral</li> <li><input type="checkbox"/> Arbitration pursuant to Article A.15 of Exhibit A, General Conditions</li> <li><input type="checkbox"/> Other: <i>(Specify another method of binding dispute resolution such as litigation in a court of competent jurisdiction, dispute resolution board or a mini-trial.)</i></li> </ul>	<p>Binding arbitration is not mandatory for disputes that fail to settle in mediation. Instead, the parties are required to select at Section 9.6.1 from three choices. The first two choices are for arbitration, either before the project neutral or before an arbitrator selected in accordance with the General Conditions. Arbitration is a formal, binding process for resolving disputes outside of litigation. It requires the selection of one or more arbiters who have judge-like powers to hear the parties’ dispute and make decisions that are enforceable by a court of law.</p> <p>The parties may wish to have the project neutral, or another arbiter(s) selected by the parties, administer the arbitration. These options have been provided because the parties may not wish to arbitrate before the project neutral who heard their arguments during mandatory mediation. In addition, the parties may be reluctant to provide the project neutral with all information, during mediation, in order to preserve arguments for the later arbitration. On the other hand, the project neutral will be able to render a decision quickly, having already been introduced to the issues and the parties’ arguments in mediation.</p> <p>The AIA takes the position that selection of a method of dispute resolution such as arbitration is essentially a business decision. Although arbitration is intended to be quicker, less complex and more convenient than litigation, the parties may choose litigation by selecting “other” and designating litigation as the method of binding dispute resolution. Litigation has been</p>

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	maintained as an option to ensure that any waiver of the Constitutional right to a jury trial is explicit. Of course, if the parties choose litigation, they may always agree later to arbitrate disputes instead.
<b>ARTICLE 10 SUSPENSION AND TERMINATION</b>	
<b>§ 10.1 Suspension</b>	
§ 10.1.1 The Owner may, without cause and upon seven days' written notice to the Parties, suspend the Project or one or more Party's performance under this Agreement.	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 non-owner parties under Section 10.2.2.1.
§ 10.1.2 The Owner shall pay each Party whose performance is suspended all sums due prior to suspension, including earned Goal Achievement Compensation as of the date of suspension, plus an equitable amount for Goal Achievement Compensation not realized as a result of such suspension, and any expenses incurred by such Party, caused by or as a result of such suspension, and any other sums due under the Contract Documents.	If the work is suspended by the owner, the parties are still entitled to collect amounts they have earned as well as an equitable amount for any goal achievement compensation they would have been entitled to receive if the suspension had not occurred.
<p>§ 10.1.3 In the event of a suspension under this Section 10.1, and prior to the resumption of a Party's performance, the Target Cost and Project Schedule shall be adjusted for increases in the cost and time of performance caused by suspension, delay or interruption. No adjustment shall be made, however, to the extent</p> <ul style="list-style-type: none"> <li>.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Party whose services are suspended is responsible; or</li> <li>.2 that an equitable adjustment is made or denied under another provision of the Contract.</li> </ul>	The parties are entitled to an adjustment in the target cost and contract time for increases in cost or time of performance resulting from the owner's suspension of the project under 10.1.1.
<b>§ 10.2 Termination</b>	
<p>§ 10.2.1 Automatic Termination</p> <p>This Agreement shall terminate upon the Parties' failure to execute the Target Criteria Amendment. Upon such termination, the Owner shall pay to the other Parties all amounts due and owing under the Contract Documents at the time of such termination.</p>	If the parties fail to agree to the target criteria amendment there is no basis upon which to move forward. Accordingly, failure to agree on the target criteria amendment will result in an automatic termination of the agreement.
<b>§ 10.2.2 Termination by Parties Other Than the Owner</b>	
<p>§ 10.2.2.1 A Party other than the Owner, upon seven days' written notice to the other Parties, may terminate its obligations under this Agreement, if the Party's portion of the Work has been stopped for a period of 30 consecutive days through no act or fault of the Party or any of its agents or employees or any other persons or entities performing under direct or indirect contract with the Party, because the Owner has failed to make payments to the Party in accordance with the Contract Documents. In the event of such a termination, the Owner shall compensate the Party in accordance with section 10.2.3.2</p>	<p>If a party has stopped work for non-payment, the party must wait 30 days before terminating the contract.</p> <p>In addition, the party must give seven days' written notice to the other parties, in addition to the 30-day period during which the work was stopped, before terminating the contract.</p>
<p>§ 10.2.2.2 A Party other than the Owner may terminate its obligations under this Agreement if, through no act or fault of the Party or any of its agents or employees or any other persons or entities performing under direct or indirect contract with the Party, repeated suspensions, delays or</p>	In addition to a work suspension resulting from non-payment, the non-owner parties may terminate the agreement if continued suspensions, delays or interruptions of the entire work by the owner have a significant impact on the project.

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<p>interruptions of the entire Work by the Owner as described in Section 10.1 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. In the event of such a termination, the Owner shall compensate the Party in accordance with Section 10.2.3.2</p>	
<p>§ 10.2.2.3 In the event a Party other than the Owner terminates pursuant to this Section 10.2.2, any remaining Parties shall meet within 10 days of such termination to determine whether to proceed with the Project. If the remaining Parties cannot mutually agree upon the terms and conditions under which they shall continue with the Project, the Contract shall terminate and the Owner shall compensate the terminated Parties in accordance with Section 10.2.3.2.</p>	<p>Given the highly collaborative nature of integrated project delivery, and the close working relationship of the parties, the loss of any party may significantly change the dynamics of the project for the remaining parties. Accordingly, if one or more parties terminate their obligations pursuant to Section 10.2.2, the remaining parties to the agreement must meet within 10 days of the termination and attempt to agree on terms to proceed with the project. The parties may wish to continue with the project using a substitute for the terminating party or agree to other grounds for continued performance. In the event the remaining parties are unable to agree to conditions for continuing with the project, the agreement will terminate.</p>
<p>§ 10.2.3 Termination by the Owner for Convenience The Owner may, at any time, terminate the Contract for the Owner’s convenience and without cause, upon seven days’ written notice to the other Parties.</p>	<p>The owner’s right to terminate for convenience is a right that should be exercised cautiously, since there are consequences for all of the parties to the contract. The other parties will be entitled to termination expenses, because termination for the owner’s convenience is not a termination based on the fault of the parties. Note that Section A.16.2 of Exhibit A, General Conditions, grants the owner a continued license to use the architect’s instruments of service provided the Owner substantially performs its obligations under the contract, including its payment obligations and payment of any licensing fee set forth in the contract documents.</p>
<p>§ 10.2.3.1 Upon receipt of written notice from the Owner of such termination for the Owner’s convenience, the Parties shall</p> <ol style="list-style-type: none"> <li>.1 cease operations as directed by the Owner in the notice;</li> <li>.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and</li> <li>.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.</li> </ol>	
<p>§ 10.2.3.2 In the event of a termination under this Section 10.2.3, the Owner shall pay the Parties all sums due and owing under the Contract, including earned Goal Achievement Compensation as of the date of termination plus an equitable amount for Goal Achievement Compensation not realized as a result of a termination and all Termination Expenses as defined in Section 10.2.3.2.1.</p>	<p>If the work is terminated by the owner without the fault of the parties, the parties are still entitled to collect amounts they have earned as well as an equitable amount for any goal achievement compensation they would have been entitled to receive if the suspension had not occurred.</p>
<p>§ 10.2.3.2.1 Termination Expenses are in addition to compensation to the Parties required by the Contract and include expenses directly attributable to termination for which the Parties are not otherwise compensated, plus an amount for the Parties’ customary profit as of the date of termination.</p>	<p>This is one of the rare occasions when a party may be entitled to profit on work not performed. It is intended to compensate the party who is terminated solely for the owner’s convenience for the profits the party would have been entitled to receive had the termination not occurred.</p>

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<p><b>§ 10.2.4 Termination by the Owner for Cause</b></p>	
<p><b>§ 10.2.4.1</b> The Owner may terminate the Contract, or the participation of one or more of the Parties to this Agreement, for cause if one or more of the Parties</p> <ol style="list-style-type: none"> <li>.1 repeatedly refuses or fails to supply enough labor or resources to adequately perform obligations under the Contract;</li> <li>.2 fails to make payments as required under their respective agreements with their Consultants and Subcontractors;</li> <li>.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or</li> <li>.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.</li> </ol>	<p>Isolated instances of insufficient labor or improper materials will not justify termination under this clause. Conduct must occur repeatedly. Isolated infractions will not justify termination.</p>
<p><b>§ 10.2.4.2</b> If the Owner terminates one or more of the Parties to this Agreement pursuant to Section 10.2.4.1, the terminated Party or Parties shall not be entitled to receive further payment until the Project is completed. Upon completion of the Project, the Owner shall pay sums properly attributable to the terminated Party or Parties as a result of their performance prior to termination as that amount is determined by the remaining Parties, less damages and expenses incurred by the remaining Parties by virtue of such termination.</p>	<p>If a party is terminated for cause, payment to the terminated party is suspended pending completion of the project. Once the work is completed, the remaining parties must determine the costs associated with termination and determine whether any further payment is required of the owner or whether the terminated party or parties owe money to the owner.</p>
<p><b>§ 10.2.4.3</b> In the event the Owner terminates one or more of the Parties to this Agreement pursuant to Section 10.2.4.1, but not the entire Contract, the remaining parties shall meet within 10 days of such termination to determine whether to proceed with the Project. If the remaining Parties cannot mutually agree upon the terms and conditions under which they shall continue with the Project, the Contract shall terminate and the Owner shall compensate such Parties in accordance with Section 10.2.3.2.</p>	<p>Given the highly collaborative nature of integrated project delivery, and the close working relationship of the parties, the loss of any party may significantly change the dynamics of the project for the remaining parties. Accordingly, if the owner terminates one or more parties' obligations pursuant to Section 10.2.4.1, the remaining parties to the agreement must meet within 10 days of the termination and attempt to agree on terms to proceed with the project. The parties may wish to continue with the project using a substitute for the terminating party or agree to other grounds for continued performance. In the event the remaining parties are unable to agree to conditions for continuing with the project, the agreement will terminate.</p>
<p><b>§ 10.2.5 Continued Use of Instruments of Service</b> The Owner's right to continue using a terminated Party's Instruments of Service shall be as set forth in Section A.16.2 of Exhibit A, General Conditions.</p>	<p>Section A.16.2 of the General Conditions provides the owner with a limited license for continued use of the instruments of service.</p>
<p><b>§ 10.2.6</b> Any dispute arising from or related to a termination or suspension under this Article 10 shall be resolved pursuant to Article 9, Dispute Resolution.</p>	
<p><b>ARTICLE 11 MISCELLANEOUS PROVISIONS</b></p>	
<p><b>§ 11.1</b> Nothing in this Agreement shall be interpreted to create or form any partnership or joint venture among the Parties and no Party shall represent that a partnership or joint venture has been created.</p>	<p>Partnerships and joint ventures may be formed under certain circumstances when two or more parties are working together for a specific purpose. One of the key risks associated with partnerships or joint ventures is joint and several liability. Joint and several liability imposes full liability on each of the members of the partnership or joint venture for the actions of the other members in carrying out the purpose of the partnership or joint venture. While the parties to the multi-party</p>

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	agreement are working toward the completion of the project, they do not intend to create, nor do they hold themselves out as a partnership or joint venture. No party to the agreement may represent to others that the parties operate as a partnership or joint venture.
§ 11.2 Nothing in this Agreement shall create a contractual relationship with, or cause of action in favor of a third party against, any Party to this Agreement.	This agreement obligates the parties only to each other and not to others, such as lenders, subcontractors, construction workers or sureties.
§ 11.3 Terms in this Agreement shall have the same meaning as those in AIA Document C191–2009, Exhibit A, General Conditions of the Multi-Party Agreement for Integrated Project Delivery.	By cross-reference, the parties agree to adopt the terminology found in C191–2009, Exhibit A, General Conditions, including such terms as “Work”, “Contract Documents”, “Drawings”, and “Substantial Completion.” Terms with specialized meaning are generally defined and capitalized in AIA documents.
§ 11.4 The Parties bind themselves, their respective agents, successors, assigns and legal representatives to this Agreement. No Party shall assign this Agreement without the written consent of the other Parties, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under the Contract Documents.	Because the contribution of the parties to the project is unique to each individual firm, assignment of this agreement is only permitted to third parties with the consent of the other parties. The only exception involves an assignment to the owner’s lender who is providing financing for the project.
§ 11.5 If any Party receives information specifically designated by another Party as “confidential” or “business proprietary,” or as otherwise required under Section 4.6.3 of this Agreement, the receiving Party shall keep such information strictly confidential and shall not disclose it to any other person, except to <ol style="list-style-type: none"> <li>.1 its employees,</li> <li>.2 those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project,</li> <li>.3 its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or</li> <li>.4 its legal counsel, accountants, or in response to an order issued by a court.</li> </ol>	An essential element of the relationship created in the integrated project delivery model is trust and sharing of financial and other sensitive business information. Section 11.5 establishes that the parties will not disclose the other parties’ confidential information unless certain enumerated exceptions apply.
§ 11.6 If a Party is requested to execute certificates, the proposed language of such certificates shall be submitted to the Party for review at least 14 days prior to the requested dates of execution. If a Party is requested to execute consents reasonably required to facilitate assignment to a lender, the Party shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Party for review at least 14 days prior to execution. A Party shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.	A request for a parties’ certificate or consent often occurs because of the owner’s dealings with other entities that have indirect interests in the project, such as financial institutions. For example, the owner may be required by the lender to submit an architect’s or contractor’s certificate at the loan closing. This can result in substantial pressure on the architect or contractor to submit the certificate, even though there may be no specific contractual obligation to do so. Because the language provided by some banks for such certificates or consents may impose unwarranted liability on the parties, this provision gives the parties time to review such language with legal counsel and to suggest modifications.
§ 11.7 Each Party shall have the right to include photographic or artistic representations of the Project among the Party’s promotional and professional materials. Each Party shall provide appropriate professional credit to the other. Each Party shall be given reasonable access to the completed Project to make such representations. However,	Unless the owner informs the parties that such matters are confidential, the parties have the right to photograph and to show the results of the design and construction to the public and to future clients.

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<p>no Party's materials shall include the Owner's confidential or proprietary information if the Owner has previously advised the Party in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the other Parties in the Owner's promotional materials for the Project.</p>	
<p><b>§ 11.8 Failure to Pursue Remedies</b>  The failure of any Party to seek redress for violation of, or to insist upon the strict performance of, any provision of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.</p>	<p>A contract may be modified if the parties' course of dealing is inconsistent with the terms of the contract. For example, if a contract requires payment within 30 days of submission of an invoice but over the course of several months payment is received on the 45<sup>th</sup> day after submission of an invoice, a party may have waived its right to receive payment on the 30<sup>th</sup> day and must now look to the 45<sup>th</sup> day for payment. Section 11.8, prevents the establishment of a course of dealing and a failure of a party to enforce performance of the contract in one instance does not preclude it from enforcing the contract term in a later instance.</p>
<p><b>§ 11.9 Governing Law</b>  Unless the Parties mutually agree otherwise, this Agreement and the rights of the Parties hereunder shall be interpreted in accordance with the laws of the jurisdiction where the Project is located, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.</p>	<p>The law of the place where the project is located will be used in interpreting this agreement.</p>
<p><b>§ 11.10 Special Terms and Conditions</b>  Special terms and conditions that modify this Agreement are as follows:</p>	<p>Any modifications to the standard terms and conditions of the document should be inserted here if not otherwise inserted elsewhere in the document. For more information about modifying this agreement see the document instructions.</p>
<b>ARTICLE 12 SCOPE OF THE AGREEMENT</b>	
<p><b>§ 12.1</b> This Agreement represents the entire and integrated agreement among the Parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by each of the Parties.</p>	<p>Note that amendments to this agreement must be in writing. Many decisions are made during the design and construction of the project that may impact the nature and scope of services provided by the parties. To the extent that decisions are made by the parties to delete from the scope of services to be provided, or that conflict with the initial terms of this agreement, those decisions, and resulting modifications to the scope of services, project schedule and compensation, should be documented in a writing signed by the parties.</p>
<p><b>§ 12.2</b> This Agreement is comprised of the following documents listed below:</p> <ol style="list-style-type: none"> <li>.1 AIA Document C191–2009, Standard Form Multi-Party Agreement for Integrated Project Delivery</li> <li>.2 AIA Document C191–2009, Exhibit A, General Conditions of the Multi-Party Agreement for Integrated Project Delivery</li> <li>.3 AIA Document C191–2009, Exhibit B, Legal Description of Project, or the following: <ol style="list-style-type: none"> <li>.4 AIA Document C191–2009, Exhibit C, Owner's Criteria</li> <li>.5 AIA Document C191–2009, Exhibit D, Target Criteria Amendment <ol style="list-style-type: none"> <li>.1 AIA Document C191–2009, Exhibit D, Exhibit AA: Target Cost Breakdown</li> </ol> </li> </ol> </li> </ol>	

