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**The 2017 AIA Changes: An Overview**

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# Overview of AIA's 2017 Documents<sup>i</sup>

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The American Institute of Architects (AIA) has published standard form agreements since 1888. AIA Contract Documents have long been viewed as the industry standard; reflecting current industry practices and fairly balancing the risks and responsibilities of all project participants<sup>iii</sup>. In order to ensure that these documents stay current, the AIA reviews and revises its project delivery “families” of documents on a 10-year cycle. In 2017, the AIA released updated versions of its flagship A201 family of documents developed for the design-bid-build delivery model. This paper will first provide background on the AIA Contract Documents program and explain the drafting and review process and guidelines followed by the AIA; it will then focus on the 2017 review process, and some of the key revisions made to the A201 Family of documents.<sup>iv</sup>

## **History:**

In 1888 the AIA published the Uniform Contract, the AIA's first standard form of agreement between an owner and contractor. While initially focused on the design-bid-build delivery method, the AIA Contract Documents library has expanded to include coordinated sets of standard form agreements covering every major delivery method.<sup>v</sup> In addition, the AIA publishes coordinated agreements, and specialized forms and exhibits, that address particular aspects of a project. For example, the AIA publishes coordinated sets of documents (1) for use

on projects involving significant elements of interior design and construction<sup>vi</sup> (2) to address how digital data, including Building Information Modeling (BIM), will be used and managed on a project<sup>vii</sup>; and (3) for use when a project involves significant elements of sustainable design and construction<sup>viii</sup>. AIA Contract Documents are published in a number of formats, and include options for single document purchase as well as unlimited annual licenses.<sup>ix</sup> The AIA also publishes a number of helpful reference materials that are free and available on the AIA website. Those resources include commentaries on the flagship documents A201 (General Conditions of the Contract For Construction)<sup>x</sup> and B101 (Owner-Architect agreement)<sup>xi</sup>; comparatives showing changes between document editions<sup>xii</sup>; guides for supplemental terms and conditions that parties might use to address common contract issues<sup>xiii</sup> and guides that explain how AIA Contract Documents are used to address issues unique to sustainable design and construction projects<sup>xiv</sup>, building information modeling (BIM)<sup>xv</sup>, and payment and performance bond issues<sup>xvi</sup>.

### **Overview of Documents Committee and Drafting Principles and Process:**

Since its inception in 1887, the AIA Documents Committee has been an AIA committee dedicated to creating and revising AIA Contract Documents. Qualified applicants for the AIA Documents Committee are licensed architects and members of the AIA actively engaged in the design and construction industry through employment in architectural firms or construction companies, or for building owners or developers. New members are appointed to maintain a balance of viewpoints based on diversity, including geography, firm size, practice type, and area of expertise. Appointments are made on an annual basis, but members are generally asked to serve for ten years. Usually, committee members are firm principals or managers charged with

negotiating the firm's agreements, handling risk management and legal issues, and resolving contractual matters during construction.

Over time, the AIA Documents Committee adopted several drafting principles and objectives, including the following:

- 1.** To establish and maintain, for nationwide application, standardized legal forms that enhance the stability and order of design and construction legal transactions;
- 2.** To provide assistance to the industry by (a) providing standard documents as an alternative to expensive, custom-drafted documents, and (b) promoting flexible use through the publication of supplemental guides demonstrating, with model language and instructions, the adaptability of the standard documents to particular circumstances;
- 3.** To provide continuing education on the proper use of the documents;
- 4.** To strive for balanced and fair documents by:
  - (a) conforming to common law and statutory precepts adopted in the majority of jurisdictions;
  - (b) allocating risks and responsibilities to the party best able to control them, to the party best able to protect against unexpected cost, or to the owner when no other party can control the risk or prevent the loss; and
  - (c) seeking industry feedback from parties whose interests may be significantly impacted by individual documents;
- 5.** To publish documents that are subject to uniform legal interpretations so as to be predictably enforceable and thus reliable;
- 6.** To express unambiguous intentions in language comprehensible to the users and interpreters (courts and lawyers) of the standard documents; and

7. Where practices are consistent among regions, to reflect industry customs and practices, rather than to impose new ones; and where practices are inconsistent or no guidelines for practice exist, to provide leadership and guidance for practitioners to follow.

The documents drafting process is based on the cooperative input and experience of the AIA Documents Committee. In developing documents, the Committee also seeks input from industry stakeholders and experts, including a variety of associations and attorney groups representing the interests of each of the key project participants, to ensure that, as much as feasible, the documents are fair and balanced and that risk is apportioned to the party best able to insure against and/or control any given risk.

**The 2017 Review and Revision Process:**

Work on the 2017 release of AIA Contract Documents began in the fall of 2013. The AIA Documents Committee was split into a number of task groups, and each task group was assigned one or more documents to review and revise. Typically, a task group is comprised of seven to eight members, with specific interest or expertise in the assigned documents. The work of the Documents Committee was also facilitated and informed by the AIA staff attorneys on the Contract Documents Content team<sup>xvii</sup> and by the regular participation of outside legal counsel at all meetings and on intervening task group conference calls, including Howard G. Goldberg, Esq., Patrick J. O'Connor, Esq., and Robin G. Banks, Esq.<sup>xviii</sup> In addition, representatives from Victor O. Schinnerer and XL Caitlin Insurance Company participate in the AIA Documents Committee meetings.

In order to understand the respective interests of contractors, subcontractors and owners, the Documents Committee undertook an outreach program, including the following<sup>xix</sup>:

1. Roundtable discussions with contractor representatives;<sup>xx</sup>
2. Solicitation of feedback from the members of the American College of Construction Lawyers (ACCL) in 2014 and 2015;<sup>xxi</sup>
3. Review of materials published by other industry stakeholder associations and related to contract terms and issues;
4. Solicitation of input from trade groups representing industry stakeholder interests; and
5. Solicitation of input from prominent attorneys representing industry stakeholders.

Based on this initial feedback, and consideration of industry issues arising since the 2007 release (such as BIM, sustainability, insurance etc.), the AIA Documents Committee developed updated drafts of the A201 and related documents. Those drafts were circulated to a wide range of liaisons for several rounds of review and comment.<sup>xxii</sup> The relevant Documents Committee task groups carefully considered each of the comments received. If a comment had implications across several documents, it was shared among task groups. This iterative process continued until the Committee approved the final drafts.

**Insurance, A201 Article 11 and the Insurance Exhibit:**

In preparation for the revision of the AIA's Design-Build documents in 2014, the AIA Documents Committee discussed the changing range and types of insurance coverages applicable to construction projects. Recognizing the need to allow for flexibility in developing the insurance requirements for any particular project and the need to allow for adaptation to

changes in the insurance market, the Committee developed an insurance exhibit for inclusion in the Owner/Design-Builder agreements. That same discussion and analysis led the Committee to develop a new and comprehensive insurance exhibit for use in conjunction with the A101™–2017, A102™–2017, and A103™–2017.<sup>xxiii</sup> This approach also resulted in substantial revision of Article 11 (Insurance and Bonds) of A201.<sup>xxiv</sup> The use of an exhibit to A201, as opposed to incorporating the terms of the exhibit into the text of A201, was intended to facilitate the user's ability to transmit the insurance exhibit to the user's insurance advisor or broker for evaluation and completion. It also will allow the AIA to update insurance requirements, if necessary to keep up with industry and market changes, without having to revise the General Conditions document.

**The Insurance Exhibit<sup>xxv</sup>:**

The insurance exhibit requires either the Owner or the Contractor<sup>xxvi</sup> to purchase property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis.<sup>xxvii</sup> If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the property insurance must also cover the existing structure against direct physical loss or damage on a replacement cost basis. The property insurance is to be maintained until Substantial Completion and thereafter continued or replaced with coverage for the total value of the Project through the Contractor's one-year period for correction of the Work. This insurance is to include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project, and the interests of mortgagees as loss payees. The Owner assumes financial responsibility for any loss not covered because of deductibles or self-insured retentions.

In addition to the required property coverage, the parties may agree that the Owner will purchase and maintain certain optional extended property insurances. Coverages which may be selected include the following:

**Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

**Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

**Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

**Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

**Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

**Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

**Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

In addition, the insurance exhibit prompts the parties to consider other types of insurance the Owner might obtain, such as cyber security insurance.

The insurance exhibit also requires that the Contractor purchase and maintain a number of different coverages. Required insurance coverages include commercial general liability; automobile liability; workers' compensation; and employers' liability. In addition, the Contractor must procure coverage required by the Jones Act and Longshore & Harbor Workers' Compensation Act, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks. Also, the Contractor must procure professional liability insurance, if the Contractor is required to furnish professional services as part of the Work; pollution liability coverage, if the Work involves the transport, dissemination, use, or release of pollutants; maritime liability coverage, associated with the operation of a vessel, if the Work requires such activities; and separate coverage for the use or operation of manned or unmanned aircraft, if the Work requires such activities.<sup>xxviii</sup>

In addition to the required coverages, the parties are prompted to consider other insurance coverages the Contractor might be required to purchase and maintain, including railroad

protective liability insurance; asbestos abatement liability insurance; insurance for physical damage to property while in storage or transit; and property insurance to cover property owned by the Contractor and used on the Project. The parties must also indicate whether the contractor is required to obtain payment and performance bonds for the project and, if so, to specify the penal sum of the bonds.<sup>xxix</sup>

All insurance and bonds obtained for the Project are to be purchased from companies lawfully authorized to issue insurance or surety bonds in the jurisdiction where the Project is located. The Owner and the Contractor are to procure the required insurance and bonds prior to commencement of the Work. The Owner is required to provide evidence of the required coverages, and upon request of the Contractor, provide a copy of the property insurance policies. The Contractor is required to provide certificates of insurance acceptable to the Owner evidencing compliance with the insurance requirements at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, must be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage. There are additional insured requirements for the property insurance and commercial general liability coverages.

***The Sustainable Projects Exhibit:***

In 2007, the AIA recognized that sustainable design and construction was being embraced by many industry stakeholders, but it was not clear how broadly those concepts and

practices were going to be adopted. Accordingly, in 2007, some of the Owner-Architect agreements contained very basic references and requirements related to sustainability.<sup>xxx</sup> Shortly after the 2007 release, however, the increased use of “green” building standards like LEED®, and the development of green building codes and other legislative initiatives, made it apparent that large segments of the industry were moving toward inclusion of sustainable design and construction elements across a variety of project types. In response, the AIA Documents Committee developed and published D503™–2011, Guide for Sustainable Projects<sup>xxx</sup>. The 2011 version of D503 identified and discussed a multitude of legal and contractual issues associated with sustainable design and construction practices as they were developing in the industry. The Guide also suggested model language that could be used to edit the core 2007 documents to create a coordinated set of agreements for use on a project with significant sustainable design and construction elements.<sup>xxxii</sup> While D503 was well received, it was clear that the industry wanted and needed more than just a guide. In 2013, the AIA Documents Committee responded to this demand and released fully coordinated Sustainable Project “SP” versions of each of the key contracts in the A201 (design-bid-build), CMc (CM as Constructor) and CMa (CM as Advisor) Families.

During the review and revision of the Design-Build family of agreements, the Documents Committee took a different approach. Instead of creating SP versions of each agreement in the Design-Build family, the Committee developed A141™–2014 Exhibit C, Sustainable Projects; an exhibit to the Owner-Design/Builder Agreement for use when the project has a Sustainable Objective. The exhibit addresses the specific responsibilities of the Owner and the Design-Builder, and is incorporated, as appropriate, into each of their downstream agreements on the project.

For the 2017 release, the Documents Committee combined all of this aggregated work in the development of the E204™–2017, Sustainable Projects Exhibit. In a single document, E204 sets forth the roles and responsibilities for each of the project participants as they relate to unique elements of sustainable design and construction which will be incorporated in the Project. Once the owner determines that the project will involve a sustainable objective<sup>xxxiii</sup>, E204™–2017 is incorporated into the Owner-Architect and Owner-Contractor agreements, and incorporated as appropriate into each of the other Project agreements. In this way, the Project participants obtain the benefit of a detailed and coordinated statement of the sustainable design and construction specific responsibilities.

E204 establishes a comprehensive process for identifying, developing, and assigning responsibility for, the sustainable design and construction elements for the project, similar to the process described in D503 and the existing SP documents. E204–2017 requires the Architect to meet with the Owner to discuss the sustainable design features of the Project during a Sustainability Workshop. The ultimate outcome of the Sustainability Workshop is the development of a Sustainability Plan that outlines Sustainable Measures necessary to achieve the Sustainable Objective and allocates responsibility for each of the Sustainable Measures to the Project participant in the best position to perform the Sustainable Measure. In addition, the Sustainability Plan includes other critical information such as the testing and implementation strategies necessary to achieve the Sustainable Objective. The requirements of the Sustainability Plan, with the Owner’s approval, are further developed as the design for the Project progresses and, as appropriate, are incorporated into the Construction Documents.

In addition to this process, the E204–2017 also addresses a number of other issues unique to sustainable design and construction. Examples include such things as requirements for

proposed materials or equipment substitutions; requirements for construction waste management; Project registration with, and submissions to, the Certifying Authority; certain types of claims to be included in the waiver of consequential damages; and the relationship between achievement of the Sustainable Objective and Substantial and Final Completion.<sup>xxxiv</sup>

The Sustainability Plan is specifically identified as a Contract Document. This is of critical importance to the Contractor, and all other Project participants who become responsible for performing those Sustainable Measures assigned to them. It is important that all Project participants review the Sustainability Plan and understand its requirements. For example, while E204–2017 states that the Contractor does not guarantee achievement of the Sustainable Objective, the Contractor will be responsible for failure to perform those Sustainable Measures assigned to the Contractor in the Contract Documents.

It is anticipated that E204 will be attached as an exhibit to the Owner-Architect agreement, the Owner-Contractor agreement and, as appropriate, to each of the parties' other Project-related agreements.

### **Building Information Modeling (BIM) and other Digital Data:**

In 2007 and 2008, the AIA Documents Committee first developed standard forms that could be used to manage the expectations, roles and responsibilities of Project participants when exchanging Project information in digital format. E201<sup>TM</sup>–2007, Digital Data Protocol Exhibit, was developed to allow project participants to specify which types of Project information could/would be exchanged in digital format, and the protocols to be followed. C106<sup>TM</sup>–2007, Digital Data Licensing Agreement, was created as a licensing agreement for use between parties who do not otherwise have an agreement allowing for the exchange and use of information,

including Digital Data. E202™–2008, Building Information Modeling Protocol Exhibit, like the E201™–2007, was an exhibit that attached to each Project participant’s agreement. E202–2008 establishes the requirements for BIM model content at five progressive levels of development, and the authorized uses of the model content at each level of development.

Digital practice and the use of BIM continue to be rapidly evolving areas of the industry. Accordingly, in 2011, the AIA Documents Committee again evaluated the continued development and adoption of digital practice and BIM. As a result of this evaluation, the AIA Documents Committee created an updated and reconfigured set of Digital Practice documents that includes AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit; AIA Document G201™–2013, Project Digital Data Protocol Form; and AIA Document G202™–2013, Project Building Information Modeling Protocol Form. The updated set of Digital Practice documents includes a substantial amount of content from E201–2007 and E202–2008. The content, however, was restructured, edited, and expanded upon. This process also resulted in a set of documents that are structurally different from their predecessors. For a detailed analysis and explanation of the E203, G201, and G202, please refer to the AIA’s Guide, Instructions, and Commentary to the 2013 AIA Digital Practice Documents <sup>xxxv</sup>.

There can be significant risk and responsibility associated with the exchange of Project information in digital format. This is particularly true when it comes to the use of Building Information Modeling. When using BIM on a project, it is imperative that requirements for the various elements of the Model, at various stages of the Project, be well documented, along with the allowed uses of, and reliance on, the Model. Accordingly the 2017 Owner-Contractor and Owner-Architect agreements (except A105 and B105) expressly require the parties to agree upon protocols governing the transmission and use of Instruments of Service or other documentation

in digital form, and require the use of E203™–2013 to establish protocols for the development, use, transmission, and exchange of digital data. In addition, with respect to BIM, those documents further provide that any use of, or reliance on, all or a portion of information contained in a model, without first having established and set forth the necessary protocols in E203™–2013 and G202™–2013 is at the using or relying party’s own risk and without liability to any other project participant.<sup>xxxvi</sup>

**Fall 2017 Release:**

In the fall of 2017, the AIA Contract Documents Committee released the second part of its once-in-a-decade update of the A201, design-bid-build family of documents. The fall release includes the following documents:

- B201-2017, Standard Form of Architect’s Services: Design and Construction Contract Administration
- B203-2017, Standard Form of Architect’s Services: Site Evaluation and Project Feasibility
- B205-2017, Standard Form of Architect’s Services: Historic Preservation
- B207-2017, Standard Form of Architect’s Services: On-Site Project Representation
- B210-2017, Standard Form of Architect’s Services: Facility Support
- C203-2017, Standard Form of Consultant’s Services: Commissioning
  
- G701-2017, Change Order
- G701S-2017, Change Order, Subcontractor Variation
- G704-2017, Certificate of Substantial Completion
- G710-2017, Architect’s Supplemental Instructions
- G714-2017, Construction Change Directive
- G715-2017, Supplemental Attachment for ACORD Certificate of Insurance 25
- G801-2017, Notice of Additional Services
- G802-2017, Amendment to the Professional Services Agreement
- G803-2017, Amendment to the Consultant Services Agreement
- G808-2017, Project Directory and Design Data Summary

Here are some of the more important features of these updated documents:

Site Evaluation and Project Feasibility Services: Through B203-2017, an owner can hire an architect to determine the development potential of a site, and to determine whether a site is suitable for a particular project. B203-2017 is set up as a menu of services, so the owner can precisely select the services it requires. B203-2017 was also updated to clarify the architect's responsibility to prepare a site evaluation and feasibility report as a deliverable as part of its services. B203-2017 also includes a simplified list of services and an enhanced initial information section.

Historic Preservation Services: Through B205-2017, an owner can hire an architect to perform evaluation and design services on a building with historic significance. The services in B205-2017 are arranged into four main categories – (1) Historic Assessment, (2) Existing Buildings Assessment, (3) Preservation Planning, and (4) Specific State and Federal Services. The Existing Buildings Assessment services were revised so the Architect can provide a preliminary evaluation of the site's historic buildings, then provide more detailed services as necessary. B205-2017 also clarifies the Architect's responsibility regarding hazardous materials on a project with historically significant buildings or features.

On-Site Project Representation Services: Through B207-2017, an owner can hire an architect to perform more regular and enhanced on-site services, beyond the architect's customary periodic site visits, during the construction phase of a project. Notably, B207-2017 was revised to allow the owner and architect to establish the scope of the on-site representative's authority to act on behalf of the architect. B207-2017 also includes enhanced and clarified responsibilities for the

on-site project representative to keep a daily log of site activities, prepare monthly written progress reports, perform certain off-site activities, and observe on-site tests and inspections.

Facility Support Services: Through B210-2017, an owner can hire an architect to perform services to support an existing, or recently constructed, facility or group of facilities. B210-2017 is set up as a menu of services with six main categories of services - (1) Facility Condition Assessment, (2) Facility Performance Assessment, (3) Operations Assessment, (4) Space Management, (5) Maintenance Management, and (6) Digital Facility Management System. The first three service categories were included in the 2007 version of B210, but have been expanded in the 2017 version. The later three service categories are new to the 2017 version of B210.

Commissioning Services: C203-2017 has been significantly updated to reflect changes in the industry that have taken place since the prior version. For example, C203 now includes: (1) provisions describing the consultant's role to assist in preparing the owner's project requirements; (2) a more detailed description of the consultant's commissioning plan; (3) updated provisions related to commissioning-related design reviews; and (4) updated provisions related to the consultant's role in commissioning during the construction phase of the project. In developing C203-2017, the AIA Documents Committee recognized that professionals from a variety of backgrounds perform commissioning services. Thus, C203 is no longer written as an architect's scope of services in the B-Series of documents. Instead, C203 is silent as to the professional background of the person or entity performing the commissioning services and is categorized as a consultant document in the C-Series of documents. An owner can still use C203

to hire an architect to perform commissioning services, but C203 can also be used to hire professionals from other backgrounds to perform these services.

Certificate of Substantial Completion: G704-2017 was reorganized so the architect can sign the form, and include the date of substantial completion, immediately after the description of the work the architect is certifying. Also, the paragraph regarding warranties was updated to clarify that warranties commence on the date of substantial completion unless the parties indicate otherwise.

Notice of Additional Services: G801-2017 was updated to allow an architect to satisfy the additional services notice requirements included in B101-2017, B103-2017, and B104-2017. Note that amendments to the owner/architect agreement that do not contemplate additional services should be accomplished with G802-2017.

Amendment to the Professional Services Agreement: G802-2017 was revised to simplify the process to amend owner/architect agreements when additional services are not contemplated as part of the amendment. For such amendments, the owner and architect need only to describe the amendment, indicate changes to the architect's compensation and schedule, and execute G802-2017 according to the underlying owner/architect agreement.

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<sup>i</sup> The AIA published new and revised documents in 2 releases in 2017. The first release, in the Spring of 2017, included the A201 and its related Owner-Architect and Owner-Contractor agreements, and the subcontract and consultant agreements. The second release, in the Fall of 2017, included several updated contract administration forms and architect's scope of services documents.

<sup>ii</sup> Kenneth Cobleigh, Esq. is Managing Director and Counsel for the AIA Contract Documents program. Ken leads the team of attorneys who, in conjunction with the AIA Documents Committee, are responsible for the development, review and revision of the AIA Contract Documents. Also contributing to this article were others on the AIA staff, and outside counsel to the AIA Contract Documents program, including: Susan Van Bell, Esq., Sr. Director and Counsel; Michael Bomba, Esq., Director and Counsel; Joshua Ballance, Esq., formerly Sr. Manager and Counsel at the AIA and now Assistant General Counsel at Clark Construction Group; Michael Koger, Esq., AIA, Manager and Counsel; and outside legal counsel Howard Goldberg, Esq., Patrick O'Connor, Esq., and Robin G. Banks, Esq.

<sup>iii</sup> Construction Law, ABA Forum on Construction Law, Allensworth, Altman, Overcash, and Patterson 2009, at 106-107.

<sup>iv</sup> For comparisons, showing the changes to each of the 2017 documents, visit ([www.aiacontracts.org/comparatives](http://www.aiacontracts.org/comparatives)).

<sup>v</sup> The AIA publishes coordinated sets of agreements for the following delivery methods: design-bid-build ([www.aiacontracts.org/dbb](http://www.aiacontracts.org/dbb)); design-build ([www.aiacontracts.org/db](http://www.aiacontracts.org/db)); construction manager as constructor (sometimes referred to as CM at risk) ([www.aiacontracts.org/cmc](http://www.aiacontracts.org/cmc)); construction manager as advisor ([www.aiacontracts.org/cma](http://www.aiacontracts.org/cma)) and integrated project delivery ([www.aiacontracts.org/ipd](http://www.aiacontracts.org/ipd)).

<sup>vi</sup> [www.aiacontracts.org/interiors](http://www.aiacontracts.org/interiors);

<sup>vii</sup> [www.aiacontracts.org/digidocs](http://www.aiacontracts.org/digidocs)

<sup>viii</sup> [www.aiacontracts.org/D503](http://www.aiacontracts.org/D503)

<sup>ix</sup> [www.aiacontracts.org/purchase](http://www.aiacontracts.org/purchase).

<sup>x</sup> [www.aiacontracts.org/A201-2007](http://www.aiacontracts.org/A201-2007)

<sup>xi</sup> [www.aiacontracts.org/B101-2007](http://www.aiacontracts.org/B101-2007)

<sup>xii</sup> When a review and revision cycle is concluded, and new editions of key agreements are published, the AIA also publishes comparatives showing the edits made to the prior edition of the document. Most comparatives show the changes using underlining for added text and strike-through for deletions. Comparatives for key documents in each of the AIA Contract Document families (delivery methods) can be found at ([www.aiacontracts.org/comparatives](http://www.aiacontracts.org/comparatives)).

<sup>xiii</sup> Guides for supplemental terms and conditions include A503<sup>TM</sup>-2007, Guide for Supplementary Conditions ([www.aiacontracts.org/A503](http://www.aiacontracts.org/A503)); A533<sup>TM</sup>-2007, Guide for Supplementary Conditions, Construction Manager as Advisor Edition ([www.aiacontracts.org/A533](http://www.aiacontracts.org/A533)); B509<sup>TM</sup>-2010, Guide for Supplementary Conditions to AIA Document B109<sup>TM</sup>-2010 for use on Condominium Projects ([www.aiacontracts.org/B509](http://www.aiacontracts.org/B509)).

<sup>xiv</sup> [www.aiacontracts.org/D503](http://www.aiacontracts.org/D503)

<sup>xv</sup> [www.aiacontracts.org/digidocsguide](http://www.aiacontracts.org/digidocsguide)

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<sup>xvi</sup> [www.aiacontracts.org/bonds](http://www.aiacontracts.org/bonds)

<sup>xvii</sup> See note 1. Prior to joining the AIA Contract Documents team, each of these attorneys spent varying amounts of time practicing law in the private sector, with significant concentration in construction law and litigation, working for either law firms or as general counsel to a large national construction company. In addition, Michael Koger practiced architecture prior to attending law school.

<sup>xviii</sup> For more information about these attorneys please visit the following websites: Howard Goldberg ([www.gbpclawfirm.com/howard-g-goldberg.html](http://www.gbpclawfirm.com/howard-g-goldberg.html)), Patrick O'Connor ([www.faegrebd.com/patrick-oconnor](http://www.faegrebd.com/patrick-oconnor)), and Robin Banks ([www.gbpclawfirm.com/robin-g-banks.html](http://www.gbpclawfirm.com/robin-g-banks.html)).

<sup>xix</sup> The initial input from various industry representatives (items 1,2,4 and 5) was prompted by open ended questions asking them to identify and discuss terms they would like to see changed in the A201 and related documents.

<sup>xx</sup> Throughout 2014, the AIA Documents Committee met with representatives of Contractors throughout the country to discuss concerns with, or recommendations for changes in, the Owner/Contractor Agreements and A201. These “roundtable” discussions were held as an open forum with representatives attending in person or by telephone. Meetings generally lasted for two to three hours and allowed the AIA Documents Committee to learn first-hand the issues important to members of the General Contractor community. Participants included representatives from national and local Contractors.

<sup>xxi</sup> *The ACCL is a national organization of lawyers who have demonstrated skill, experience and high standards of professional and ethical conduct in the practice, or in the teaching, of construction law, and who are dedicated to excellence in the specialized practice of construction law. The College provides advanced professional workshops and educational programs to its Fellows and identifies and contributes to the solution of major construction industry legal problems. It is a collegial forum for the exchange and development of ideas by some of the most knowledgeable attorneys in construction law. See, [www.accl.org](http://www.accl.org)*

<sup>xxii</sup> Throughout the 2017 review process, the AIA worked with over 100 volunteer liaisons from the ABA Forum on Construction Law, and other industry segments, that provided valuable advice and guidance to the members of the AIA Documents Committee. As an example, the AIA Documents Committee received and reviewed more than 1200 comments, over three rounds of liaison review, for AIA Document A201<sup>TM</sup>-2017 alone.

<sup>xxiii</sup> A104<sup>TM</sup>-2017 is an abbreviated Owner-Contractor agreement, and A105<sup>TM</sup>-2017 is a short form Owner-Contractor agreement. Neither agreement incorporates A201, and both rely on general conditions contained in the agreements. The terms of A201<sup>TM</sup>-2017, Article 11 and the 2017 Insurance exhibit have largely been written into Article 17 of the A104. A105 contains only very basic insurance provisions.

<sup>xxiv</sup> This paper contains an overview of the terms of the 2017 Insurance exhibit. For a more detailed explanation and analysis of the changes to Article 11, please refer to other portions of the CLE materials.

<sup>xxv</sup> While there are separate insurance exhibits for A101- 2017, A102- 2017, and A103- 2017, each exhibit is identical except for the title reference to the agreement to which it applies.

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<sup>xxvi</sup> The Insurance Exhibit presumes that the Owner will purchase the required property insurance, but allows the parties to place that responsibility on the Contractor.

<sup>xxvii</sup> The property insurance coverage is to be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications, and labor performed and materials or equipment supplied by others. The insurance must provide coverage for direct physical loss or damage, and may not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance must also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. It must also provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance must also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

<sup>xxviii</sup> The parties are prompted to set the per claim and policy limits for each required coverage, except workers' compensation, which is set at statutory limits. The sections on commercial general liability also specify the risks that must be covered, as well as prohibited exclusions.

<sup>xxix</sup> The 2017 Owner-Contractor agreements also now provide that payment and performance bonds will be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

<sup>xxx</sup> For example, B101™–2007 provided:

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

<sup>xxxi</sup> [www.aiacontracts.org/D503](http://www.aiacontracts.org/D503)

<sup>xxxii</sup> D503™–2011 suggested model language to allow for a coordinated set of project agreements based upon AIA Contract Documents A101™–2007, A201™–2007, A401™–2007, B101™–2007, and C401™–2007.

<sup>xxxiii</sup> A Sustainable Objective might be achievement of a Sustainability Certification, such as LEED® (Leadership in Energy and Environmental Design), or a Sustainable objective might be based on incorporation of performance based sustainable design or construction elements. Furthermore, as new "green" codes are developed, the process outlined in the Sustainable Projects documents will help Project participants navigate the requirements of code compliance.

<sup>xxxiv</sup> For a more detailed discussion of the elements of E204–2017 and the issues covered, please review the document itself, the document instructions, and the D503

([www.aiacontracts.org/D503](http://www.aiacontracts.org/D503)).

<sup>xxxv</sup> [www.aiacontracts.org/digidocsguide](http://www.aiacontracts.org/digidocsguide)

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<sup>xxxvi</sup> The concepts contained in E203™–2013 and G202™–2013 are generally accepted in the industry, particularly the concepts surrounding the Model levels of development. In fact, the AIA Contract Documents definitions of the Levels of Development have quickly become the industry standard. Pursuant to licenses granted by the AIA, those definitions were included in the Level of Development (LOD) Specification published by the BIMForum. In addition, also pursuant to licenses granted by the AIA, the Levels of Development definitions were used in the creation of the National BIM Specification and in documents created by the Institute for BIM in Canada.