



# AIA<sup>®</sup> Document B143<sup>™</sup> – 2004 Instructions

## *Standard Form of Agreement Between Design-Builder and Architect*

### GENERAL INFORMATION

**Purpose.** AIA Document B143<sup>™</sup>–2004 replaces B901<sup>™</sup>–1996, Standard Form of Agreement Between Design-Builder and Architect, and consists of the Agreement portion and two exhibits, Exhibit A, Initial Information, and Exhibit B, Architect’s Services. B143–2004 establishes the contractual arrangement between the Design-Builder and the Architect. Exhibit A provides the location for the parties to memorialize the initial information and assumptions upon which they base the agreement. B143 does not provide a fixed scope of architect’s services, but instead provides in Exhibit B an extensive menu of services from which the Owner and Architect may select.

Design-Build is a process in which the Owner contracts directly with one entity to provide both the design and construction of the project. The Design-Builder may be a design-build entity, an architect, construction contractor, real estate developer, or any other person or entity legally permitted to do business as a design-builder in the jurisdiction where the project is located. The design-builder’s organization may take a variety of legal forms, such as a sole proprietorship, a partnership, a joint venture, or a corporation. An architect or architectural firm choosing to function as a design-builder may directly contract to perform design-build services or, alternatively, may form a separate corporate entity or joint venture for design-build.

Prior to entering into this agreement, any person or entity that wishes to act as the design-builder should consult its legal counsel and insurance advisers. Some states may restrict or prohibit design-build practices under statutes that regulate architectural registration, contractor licensing, or incorporation of professionals.

**Related Documents.** AIA Document B143–2004 is published in conjunction with four other documents in the 2004 Design-Build family of documents. This family of documents is intended to govern the relationships among the parties to a design-build project:

- B142<sup>™</sup>–2004, Agreement Between Owner and Consultant, where the Owner contemplates using the Design-Build method of project delivery
- A141<sup>™</sup>–2004, Agreement Between Owner and Design-Builder
- A142<sup>™</sup>–2004, Agreement Between Design-Builder and Contractor
- G704DB<sup>™</sup>–2004, Acknowledgement of Substantial Completion of a Design-Build Project

**Dispute Resolution—Mediation and Arbitration.** This document contains provisions for mediation and arbitration of claims and disputes. Mediation is a non-binding process, but is mandatory under the terms of this agreement. Arbitration may be mandatory under the terms of this agreement. Arbitration is binding in most states and under the Federal Arbitration Act. In a minority of states, arbitration provisions relating to future disputes are not enforceable but the parties may agree to arbitrate after the dispute arises. Even in those states, under certain circumstances (for example, in a transaction involving interstate commerce), arbitration provisions may be enforceable under the Federal Arbitration Act.

The AIA does not administer dispute resolution processes. To submit disputes to mediation or arbitration or to obtain copies of the applicable mediation or arbitration rules, write to the American Arbitration Association or call (800) 778-7879. The American Arbitration Association may also be contacted at [www.adr.org](http://www.adr.org).

**Why Use AIA Contract Documents.** AIA Contract Documents are the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. The documents reflect actual industry practices, not theory. They are state-of-the-art legal documents, regularly revised to keep up with changes in law and the industry—yet they are written, as far as possible, in everyday language. Finally, AIA Contract Documents are flexible: they are intended to be modified to fit individual projects, but in such a way that modifications are easily distinguished from the original, printed language.

**Use of Non-AIA Forms.** If a combination of AIA documents and non-AIA documents is to be used, particular care must be taken to achieve consistency of language and intent among documents.

**Letter Forms of Agreement.** Letter forms of agreement are generally discouraged by the AIA, as is the performance of a part or the whole of the Work on the basis of oral agreements or understandings. The standard AIA agreement forms have been developed through more than 100 years of experience and have been tested repeatedly in the courts. In addition, the standard forms have been carefully coordinated with other AIA documents.

**Standard Forms.** Most AIA documents published since 1906 have contained in their titles the words "Standard Form." The term "standard" is not meant to imply that a uniform set of contractual requirements is mandatory for AIA members or others in the construction industry. Rather, the AIA standard documents are intended to be used as fair and balanced baselines from which the parties can negotiate their bargains. As such, the documents have won general acceptance within the construction industry and have been uniformly interpreted by the courts. Within an industry spanning 50 states—each free to adopt different, and perhaps contradictory, laws affecting that industry—AIA documents form the basis for a generally consistent body of construction law.

**Use of Current Documents.** Prior to using any AIA Contract Document, users should consult [www.aia.org](http://www.aia.org) or a local AIA component to verify the most recent edition.

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#### CHANGES FROM THE PREVIOUS EDITION

AIA Document B143–2004 is not an update to the B901–1996 document that it replaces, but is a wholly new document with a new one-part format, and new content.

**Format.** A single standard form document replaces the B901–1996 edition's Part 1 Agreement for preliminary design and the sequentially executed Part 2 Agreement covering final design and construction contract administration. The new B143 document integrates preliminary and final design with construction contract administration in a one-part agreement, and provides greater flexibility in tailoring the standard form to an individual project.

Terms and conditions and the architect's compensation are defined in the agreement, with Exhibit A providing the initial information on which the agreement is based, and Exhibit B providing the scope of the architect's services.

Exhibit A sections have the prefix "A." before the numbers to distinguish them from the section designations in the Agreement. Exhibit B sections are similarly distinguished. The Standard Form Exhibits may be used as-is, modified, or replaced with custom exhibits of the parties' creation.

**Content.** In B143, as in the three other agreements in the 2004 Design-Build family of documents, binding arbitration is not mandatory, and the parties must select the binding method of dispute resolution from three choices: arbitration, litigation or another method that the parties must identify. Due to the multiple ways in which design-build is performed, the architect's scope of services is not fixed, but is offered as an extensive menu of choices from which the parties may select. So as not to prevent the owner from moving forward with the project in the event of a termination of the design-builder or the architect, new nonexclusive license provisions allow for the owner to use the instruments of service to complete and maintain the project.

#### USING B143–2004

**Modifications.** Particularly with respect to professional or contractor licensing laws, building codes, taxes, monetary and interest charges, arbitration, indemnification, format and font size, AIA Contract Documents may require modification to comply with state or local laws. Users are encouraged to consult an attorney before completing or modifying a document.

In a purchased paper AIA Contract Document, necessary modifications may be accomplished by writing or typing the appropriate terms in the blank spaces provided on the document, or by attaching Supplementary Conditions, special conditions or referenced amendments.

Modifications directly to purchased paper AIA Contract Documents may also be achieved by striking out language. However, care must be taken in making these kinds of deletions. Under NO circumstances should standard language be struck out to render it illegible. For example, users should not apply blocking tape, correction fluid or Xs that would completely obscure text. Such practices may raise suspicion of fraudulent concealment, or suggest that the completed and signed document has been tampered with. Both parties should initial handwritten changes.

Using AIA software, modifications to insert information and revise the standard AIA text may be made as the software permits.

By reviewing properly made modifications to a standard AIA Contract Document, parties familiar with that document can quickly understand the essence of the proposed relationship. Commercial exchanges are greatly simplified and expedited, good faith dealing is encouraged, and otherwise latent clauses are exposed for scrutiny.

AIA Contract Documents may not be retyped or electronically scanned. Retyping can introduce typographic errors and cloud legal interpretation given to a standard clause. Furthermore, retyping and electronic scanning are not permitted under the user's limited license for use of the document, constitute the creation of a derivative work and violate the AIA's copyright.

### **Cover Page**

**Date.** The date represents the date the Agreement becomes effective. It may be the date that an oral agreement was reached, the date the Agreement was originally submitted to the other party, the date authorizing action was taken or the date of actual execution. Professional services should not be performed prior to the effective date of the Agreement.

**Parties.** Parties to the Agreement should be identified using the full legal name under which the Agreement is to be executed, including a designation of the legal status of both parties (sole proprietorship, partnership, joint venture, unincorporated association, limited partnership or corporation [general, limited liability, close or professional], etc.). Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.

**Design-Build Contract.** Enter the date of the agreement between the Owner and the Design-Builder.

**Project.** Describe the Project in sufficient detail to identify (1) the official name or title of the facility, (2) the location of the site, if known, (3) the proposed building usage, and (4) the size, capacity or scope of the Project, if known.

**Owner.** Provide the name and address of the Project Owner, as they appear on the agreement between the Owner and the Design-Builder.

**Architect's Portion of Project.** As the Architect may not be responsible for all design services necessary for the Project, describe in detail the portion of the Project for which the Architect shall provide its services. If for the entire Project, insert "Entire Project as identified above" in the space provided.

### **§ 3.4.1 Dispute Resolution**

In the AIA 2004 Design-Build family of documents, binding arbitration is not mandatory for disputes that fail to settle in mediation. Instead, the parties are required to select from three choices of binding dispute resolution: (1) arbitration, (2) litigation or (3) another method that they must identify. Other types of dispute resolution include a dispute resolution board or a mini-trial. For additional information about other methods of dispute resolution, refer to *The Construction Industry's Guide to Dispute Avoidance and Resolution*, free online at [www.adr.org](http://www.adr.org).

## **Article 4 Scope of Agreement**

This Article enumerates all documents that comprise the Agreement between the Owner and the Architect.

**§ 4.1.2** If other documents substitute for B143–2004, Exhibit A, Initial Information, list those documents here and attach them to the Agreement as Exhibit A.

**§ 4.1.3** If other documents substitute for B143–2004, Exhibit B, Consultant's Services, list those documents here and attach them to the Agreement as Exhibit B.

## **Article 5 Compensation**

**§ 5.1** Describe the basis of computing compensation for the Architect's services. Several different methods may be used for various services on a particular project. When more than one method of compensation is used, each method should be referenced to the appropriate services. For a detailed discussion of compensation methods, refer to the Instructions to AIA Document B141™–1997, Standard Form of Agreement Between Owner and Architect.

**§ 5.2** Insert the basis of compensation for a Change in Services as described in Section 3.3.

**§ 5.3** Insert the multiple to be used to determine the cost to the Architect for a Change in Services of the Architect's consultants.

**§ 5.4** Insert the multiple to be used to determine the amount due the Architect for Reimbursable Expenses of the Architect and the Architect's employees and consultants.

**§ 5.7** Insert the dollar amount of the initial payment.

**§ 5.8** Indicate when payments will become due and when unpaid amounts will begin to bear interest. Insert the percentage rate basis (monthly, annual) of interest charges.

**§ 5.9** Insert the date beyond which the Architect's services shall be compensated as a Change in Services.

## **Exhibit A Initial Information**

This exhibit provides the opportunity for the Owner and Architect to discuss and record the information and assumptions upon which their agreement is based. Insert information at each prompting statement in this Exhibit without leaving any spaces blank.

**Project and Parties (Cover Page).** Identify the Project and the parties just as they appear on the cover page of the Agreement.

### **§ A.1 Project Parameters**

**§ A.1.1** Insert a statement identifying the objective or use of the Project.

**§ A.1.2** Insert a description of the physical parameters of the Project, such as size and location.

**§ A.1.3** Identify the Project Criteria provided to the Architect by the Design-Builder. Project Criteria is a term defined in AIA Document A141-2004, Agreement Between Owner and Design-Builder, Exhibit A, Terms and Conditions.

**§ A.1.4** Identify other information in addition to the Project Criteria that the Design-Builder has provided to the Architect to supplement the Project Criteria.

**§ A.1.5** Insert a statement that identifies legal information about the Project, such as legal descriptions and restrictions.

**§ A.1.6.1** Insert the dollar amount of the Design-Builder's overall budget for the Project, including the Design-Builder's and Architect's compensation.

**§ A.1.6.2** Insert the dollar amount of the Design-Builder's budget for the Cost of the Work, excluding the Design-Builder's and Architect's compensation.

**§ A.1.7** State any special scheduling constraints or requirements, including whether fast track scheduling will be employed.

**§ A.1.8** Insert the Design-Builder's procurement method.

**§ A.1.9** After consultation with insurance advisers, insert insurance requirements for the Owner, Architect and Design-Builder. Insert the limits of coverage for each type of insurance required or otherwise applicable, and state the corresponding deductible amounts.

### **§ A.2 Project Team**

**§ A.2.1** Provide the name and address of the Design-Builder's Designated Representative for the Project. Other information may be added, such as telephone numbers and electronic addresses.

**§ A.2.2** List the name and address, if known at the time of contract execution, of the cost consultant retained by the Design-Builder. Other information may be added, such as telephone numbers and electronic addresses.

**§ A.2.3** List the disciplines or trades and names and addresses, if known at the time of contract execution, of other consultants, design professionals and contractors retained by the Design-Builder.

**§ A.2.4** List the name and address of the Architect's Designated Representative. Other information may be added, such as telephone numbers and electronic addresses.

**§ A.2.5** List the disciplines of the listed consultants by type, and if known, their names and addresses. Other information may be added, such as telephone numbers and electronic addresses.

**§ A.2.6** List the name and address of other consultants retained at the Architect's expense, if known at the time of contract execution. Other information may be added, such as telephone numbers and electronic addresses.

**§ A.2.7.** List the name and address of the Owner's Designated Representative, as it appears in the agreement between the Design-Builder and Owner. Other information may be added, such as telephone numbers and electronic addresses.

**§ A.2.8** List the disciplines or trades, and names and addresses of the Owner's consultants and separate contractors, if any. Other information may be added, such as telephone numbers and electronic addresses.

**§ A.2.9** List the names and addresses of persons or entities, if any, besides the Design-Builder's Designated Representative, required to review the Architect's Instruments of Service. Other information may be added, such as telephone numbers and electronic addresses.

### **§ A.3 Other Initial Information**

**§ A.3.1** Insert any other important initial information or assumptions on which the agreement is based. Such information may be incorporated by reference into Exhibit A, or attached to the Exhibit A document.

## **Exhibit B Architect's Services**

This Exhibit provides a menu of services from which the parties may choose in agreeing upon the Architect's scope of services. After discussing the services presented and the needs of the Project, designate the services the Architect shall provide by placing a check or "X" in the box adjacent to those service descriptions. The Architect is not obligated to perform any service that is not clearly designated with a check or "X" in the appropriate box.

**Project and Parties (Cover Page).** Identify the Project and the parties just as they appear on the cover page of the Agreement.

## **EXECUTING THE AGREEMENT**

The persons executing the Agreement should indicate the capacity in which they are acting (i.e., president, secretary, partner, etc.) and the authority under which they are executing the Agreement. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.