

**AIA**[®]

Document B101[™] – 2007 SP Instructions

Standard Form of Agreement Between Owner and Architect, for use on a Sustainable Project

GENERAL INFORMATION

Purpose. AIA Document B101[™]–2007 SP is a one-part standard form of agreement between Owner and Architect for sustainable building design and construction contract administration. B101–2007 SP is based on AIA Document B101[™]–2007, with modifications that address the risks, responsibilities and opportunities unique to projects involving substantial elements of sustainable design and construction (sustainable projects). B101–2007 SP follows AIA Document B101–2007 in the division of services into Basic and Additional Services. B101–2007 SP also includes a new scope of services section that sets forth services unique to sustainable projects.

AIA Document B101–2007 SP and the other Sustainable Projects documents included in the Conventional (A201) family of AIA Contract Documents have been developed for use on a wide variety of sustainable projects; including those in which the Sustainable Objective includes obtaining a Sustainability Certification, such as LEED[®] (Leadership in Energy and Environmental Design), or those in which the Sustainable Objective is 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.

The Architect’s new “Sustainability Services” are critical in defining the Owner’s sustainability goals for the Project; identifying the steps necessary to achieve those goals; and identifying the party responsible for completing each step. The Sustainability Services require 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 identifies the Owner’s Sustainable Objective for the Project, 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, will be further developed as the design for the Project progresses and will, as appropriate, be incorporated into the Construction Documents.

The Sustainability Plan is the roadmap for the successful achievement of the Sustainable Objective. The allocation of responsibility in the Sustainability Plan ensures that each party, the Owner, the Contractor and the Architect, performs specific tasks in order to achieve the Sustainable Objective. For example, the Owner, under AIA Documents B101–2007 SP and A201[™]–2007 SP, has an obligation to perform those Sustainable Measures assigned to it in the Sustainability Plan. The same is true of the Contractor under AIA Documents A101[™]–2007 SP and A201–2007 SP. Additionally, the careful flow-down of responsibilities under C401[™]–2007 SP, the Architect-Consultant Agreement, and A401[™]–2007 SP, the Contractor-Subcontractor Agreement, ensures that the Architect’s Consultants and the Contractor’s Subcontractors each assume responsibility for certain Sustainable Measures as allocated by the Architect or Contractor, respectively.

Each of the Sustainable Projects (SP) documents contains specific terms developed to allocate the risks presented by sustainable projects. The instructions for each document include a brief explanation of each change or addition to the text of the underlying standard document on which the SP version is based.

Like the standard B101–2007, AIA Document B101–2007 SP may be used with a variety of compensation methods, including percentage of construction cost and stipulated sum; and assumes that the Architect will provide cost estimates, and will design the Project to meet the Owner’s budget for the Cost of the Work.

Related Documents. B101–2007 SP is intended to be used in conjunction with AIA Document A201–2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project, which it incorporates by reference. B101–2007 SP is also coordinated for use with AIA Document C401–2007 SP, Architect-Consultant Agreement for use on a Sustainable Project. Before transmitting Instruments of Service or other information in digital form, parties should establish protocols for that transmission and may use AIA Document E201[™]–2007, Digital Data Protocol Exhibit, for that purpose.

AIA Document B101–2007 SP is designed to be used with the other Sustainable Projects documents in the Conventional (A201) family of documents. For sustainable projects that do not use the AIA Sustainable Projects documents, please visit www.aia.org/contractdocs/reference to consult AIA Document D503™–2011, Guide for Sustainable Projects, including Agreement Amendments and Supplementary Conditions.

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, call the American Arbitration Association at (800) 778-7879, or visit their Web site at 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. Certain owners require the use of owner-architect agreements and other contract forms which they prepare. Such forms should be carefully compared to the standard AIA forms for which they are being substituted before execution of an agreement. If there are any significant omissions, additions or variances from the terms of the related standard AIA forms, both legal and insurance counsel should be consulted. Of particular concern is the need for consistency between the Owner-Architect Agreement and related documents and the anticipated General Conditions of the Contract for Construction in the delineation of the Architect's construction contract administration services and responsibilities.

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 professional services based on oral agreements or understandings. The AIA's 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 of them free to adopt different, and perhaps contradictory, laws affecting that industry—they 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 or a local AIA component to verify the most recent edition.

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DIFFERENCES BETWEEN B101–2007 SP AND B101–2007

AIA Document B101–2007 SP is based on AIA Document B101–2007, with modifications that address the risks, responsibilities and opportunities unique to sustainable projects. A brief description of each of the changes is provided below. Please visit www.aia.org/contractdocs/reference to review a comparative document that shows the differences between AIA Documents B101–2007 SP and B101–2007.

Sustainable design and construction projects create a number of new roles, responsibilities, and risks for project participants that may not be fully discussed in these instructions. For a more detailed discussion of the roles, responsibilities and risks unique to sustainable projects, please visit www.aia.org/contractdocs/reference to review AIA Document D503–2011, Guide for Sustainable Projects, including Agreement Amendments and Supplementary Conditions.

Throughout B101–2007 SP

References to A201–2007 found in B101–2007 have been changed to reference A201–2007 SP, the General Conditions document for use on sustainable projects. This is an important distinction, and B101–2007 SP should only be used on projects that use A201–2007 SP as the General Conditions of the Contract for Construction. A201–2007 SP includes a number of newly defined terms and other conditions that will have important consequences when using B101–2007 SP. Please refer to A201–2007 SP and its instructions for a more detailed description of the new terms and conditions found in A201–2007 SP.

Article 1 Initial Information

§ 1.1 The parenthetical explanation of the Initial Information has been expanded to prompt users to provide the anticipated Sustainable Objective and any incentive programs that the Owner intends to pursue.

§ 1.2 This section has been modified to note that the term “Substantial Completion” is used as defined in A201–2007 SP. This is an important distinction as Substantial Completion is defined as the stage in the progress of the Work when the Work may be occupied or utilized for its intended purpose. This does not mean that Substantial Completion occurs when a Sustainability Certification is granted. Typically, a Project may be occupied and used for its intended purpose while the Owner awaits the issuance of the Sustainability Certification.

Article 3 Scope of Architect’s Basic Services and Sustainability Services

§ 3.1 Article 3 has been modified to include the Sustainability Services as a new Section 3.3. It is important to note that Section 3.3 is not part of the Architect’s Basic Services, which are set forth in Sections 3.1 and 3.2. The Sustainability Services, however, are not Additional Services but services the Architect will perform as part of its scope of services under the Agreement and in conjunction with its Basic Services.

§ 3.2 Scope of Architect’s Basic Services

§ 3.2.1.3 Because the Architect will be performing the Sustainability Services under B101–2007 SP, the language in this section that appears in B101–2007 that requires the Architect to present an evaluation of the feasibility of incorporating environmentally responsible design approaches has been deleted.

§ 3.2.1.5.1 This section has been modified to recognize that the Architect’s consideration of environmentally responsible design alternatives is performed as part of the Architect’s Sustainability Services under Section 3.3.

§ 3.2.1.7 This section has been modified to require that the Architect submit the Sustainability Plan to the Owner for approval along with the Schematic Design Documents.

§ 3.2.2.3 and § 3.2.3.5 The Architect is required to update the Owner on any adjustment to the Sustainability Plan when submitting Design Development Documents and Construction Documents.

§ 3.2.5.6.1 Language has been included here to clarify that Substantial Completion does not include verification that the Sustainable Objective has been achieved.

§ 3.2.5.6.4 Under A201–2007 SP, the Contractor is required to submit all of its Sustainability Documentation to the Architect as a condition of Substantial Completion; unless a portion of the Sustainability Documentation, by its nature,

cannot be provided until after Substantial Completion. Sustainability Documentation to be provided after Substantial Completion might include the results of certain systems testing, or some other requirement that cannot be tested or verified until the building is occupied. Section 3.2.5.6.4 has been revised to exclude post Substantial Completion Sustainability Documentation from the items that the Architect must provide the Owner as part of Project Completion.

§ 3.3 Scope of Architect's Sustainability Services

§ 3.3.1 The Sustainability Services, while separate from Basic Services, cannot be performed in a vacuum and must be performed in conjunction with the Architect's Basic Services. The Sustainability Services will be performed throughout the design and construction phases as appropriate.

§ 3.3.2 Sustainability Certification Agreements

If the Project is seeking a Sustainability Certification, such as LEED®, the Certifying Authority may require that the person registering the Project consent to a number of agreements with the Certifying Authority as part of the registration and certification processes. B101–2007 SP assumes that the Architect will register the Project on behalf of the Owner. The Architect will provide any agreements required by the Certifying Authority to the Owner for review; and the Owner agrees to execute all documents required by the Certifying Authority to establish the Architect as the agent of the Owner for purposes of certifying the Project.

§ 3.3.3 Sustainability Workshop

This section requires that the Architect conduct a Sustainability Workshop with the Owner, and the Owner's and Architect's consultants as requested by the Architect, to establish the Sustainable Objective and discuss potential Sustainable Measures for the Project. It is important to note that the Sustainability Workshop could be one meeting or a series of meetings as necessary to clearly establish the sustainability goals for the Project.

§ 3.3.4 Sustainability Plan Services

§ 3.3.4.1 Following the Sustainability Workshop, the Architect will develop a Sustainability Plan that will act as a roadmap that identifies and describes: the Sustainable Objective; the Sustainable Measures targeted; implementation strategies selected to achieve the Sustainable Measures; the Owner's, Architect's and Contractor's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Documentation for Certification required for the Project. Once completed, the Sustainability Plan is submitted to the Owner for approval.

§ 3.3.4.2 The Sustainability Plan may allocate responsibility for certain Sustainable Measures to the Architect. This new provision requires the Architect to perform the Sustainable Measures identified as its responsibility.

§ 3.3.4.3 The Sustainability Plan is an evolving document that may require adjustment as the design and construction of the Project progresses. The Architect is required to revise the Sustainability Plan based on changes approved by the Owner.

§ 3.3.5 Design Phases

§ 3.3.5.1 The requirements of the Sustainability Plan are ultimately incorporated into the Schematic Design Documents, Design Development Documents and Construction Documents for the Project, as appropriate. This does not mean that the Sustainability Plan is not an important document. The Sustainability Plan becomes a Contract Document forming, in part, the basis of the Contractor's performance. The Owner, too, may have certain responsibilities under the Sustainability Plan. Certain aspects of the Sustainability Plan may not lend themselves to incorporation into the Drawing and Specifications, such as an Owner requirement to provide energy use information to a Certifying Authority.

§ 3.3.5.2 The Owner's Sustainable Objective or other Project requirements may necessitate use of untested materials and equipment on the Project. The Architect may be unable to confirm a track record of reliability for the materials or equipment. If the materials or equipment fail to perform in accordance with the manufacturer's representations, the Project may fail to achieve the Sustainable Objective. It is important that the Architect discuss the proposed use of such materials or equipment with the Owner and inform the Owner of any potential impact on the Sustainable Objective that may occur if the product fails to meet the manufacturer's representations. If the Owner chooses to use the product, the model language included in Section 3.3.5.2 may limit the Architect's liability for a failure of the product to perform in accordance with the manufacturer's representations.

§ 3.3.6 Construction Phase

§ 3.3.6.1 The Architect has a duty to keep the Owner apprised of the Project's progress toward achievement of the Sustainable Measures and any defects or deficiencies in the Work that the Architect recognizes will impact achievement

of the Sustainable Measures. If such a condition is recognized, the Owner, Architect and Contractor are required to meet to discuss alternatives to remedy the condition.

§ 3.3.6.2 Because of the significant impact a change could have on achievement of the Sustainable Measures or the Sustainable Objective, the Architect is required to notify the Owner of proposed changes that will materially affect achievement of a Sustainable Measure or the Sustainable Objective. The Owner may then authorize the Architect to further investigate the change and provide recommendations regarding the proposed change.

§ 3.3.6.3 Under A201–2007 SP, the Contractor is required to provide a representation with any substitution request describing how the substitution may affect achievement of a Sustainable Measure. In order to make this representation, the Contractor may request additional information from the Architect describing how the product, material or equipment was intended to satisfy the requirements of a Sustainable Measure or the Sustainable Objective. This section requires the Architect to provide this information to the Contractor.

§ 3.3.7 Project Registration and Submissions of Sustainability Documentation to the Certifying Authority

§ 3.3.7.1 Section 3.3.7 sets forth specific services the Architect will perform if the Sustainable Objective or Sustainable Measures require achievement of a Sustainability Certification. The Architect will register the Project; collect the Sustainability Documentation and submit the Sustainability Documentation to the Certifying Authority; and prepare and submit the application for certification to the Certifying Authority. It is important to note that each of these services is performed as an agent for the Owner. An agency relationship creates certain legal rights that may differ based on the jurisdiction where the Project is located. Users of B101–2007 SP are urged to consult with an attorney regarding the specific legal implications of this relationship.

§ 3.3.7.2 Language has been included requiring the Architect to register the Project with the Certifying Authority. Acting as the Project registrant can have ramifications which are explored in greater detail in AIA Document D503–2011, Guide for Sustainable Projects, which can be downloaded free of charge at www.aia.org/sustainableprojectsguide.

§ 3.3.7.3 The Architect is required to collect Sustainability Documentation from the party responsible for producing it in accordance with the Sustainability Plan, and submit the Sustainability Documentation to the Certifying Authority. Submissions beyond the limitations set forth in Section 4.3.3 will be compensated as Additional Services.

§ 3.3.7.4 Section 3.3.7.4 has been added to address the appeal of credit or point rulings under the various Sustainability Certifications. Provided the Architect has received timely notice of denial of a credit or point necessary to achieve the Sustainability Certification, the Architect will prepare and file the appeal of the credit or point ruling to the Certifying Authority. Appeals to the Certifying Authority are performed as part of the Architect's Basic Services subject to a limitation on the number of appeals under Section 4.3.3. Any appeals in excess of the number set in section 4.3.3 will be compensated as an Additional Service. In addition, it should be noted that the Architect's obligation under Section 3.3.7.4 does not extend to prosecuting appeals to the Certifying Authority, or taking any other actions determined by the Owner to be necessary or desirable, arising from the revocation or reduction of an awarded Sustainability Certification.

§ 3.3.7.5 Language has been included requiring the Architect to prepare and submit the application for certification to the Certifying Authority. This activity can have ramifications that are explored in greater detail in AIA Document D503–2011, Guide for Sustainable Projects, which can be downloaded free of charge at www.aia.org/sustainableprojectsguide.

§ 3.3.7.6 The Architect is required to prepare responses and submit additional documentation required by comments or questions received from the Certifying Authority, subject to the limitations set forth in Section 4.3.3.

§ 3.3.7.7 Language has been included stating that any certification, declaration or affirmation the Architect makes to the Certifying Authority does not create a warranty or guarantee to the Owner.

Article 4 Additional Services

§ 4.1 Several revisions have been made to the table of Additional Services in B101–2007 SP. Listings that appear in the table in B101–2007 for extensive environmentally responsible design and LEED® Certification have been deleted. Because B101–2007 SP contains an integrated scope of services for sustainable projects, those Additional Services are not applicable when using this document. Regional or urban planning using AIA Document B212™–2010 has been added to B101–2007 SP at line 4.1.26 as a potential Additional Service for sustainable projects.

§ 4.3.1.2 As in Section 4.1, the references in B101–2007 to potential Additional Services arising from the Owner's request for extensive environmentally responsible design alternatives has been deleted.

§ 4.3.1.11 and § 4.3.1.12 Section 4.3.1 has been revised to add two new potential Additional Services that may arise during the course of the Project. Section 4.3.1.11 adds changing or editing previously prepared Instruments of Service, including the Sustainability Plan, necessitated by changes in the requirements to achieve the Sustainability Certification for the Project. Section 4.3.1.12 adds assisting the Owner or Contractor with the preparation of the Documentation for Certification for which the Owner or Contractor are responsible under the Sustainability Plan.

§ 4.3.3 Section 4.3.3 allows the Architect to place a limit on certain tasks that are performed as part of the Basic Services or the Sustainability Services. Under B101–2007, these tasks occur only during the Construction Phase. On sustainable projects, the Architect may wish to limit certain of its design services related to the sustainable project that occur during both design and construction. The term “Construction Phase” has been deleted from the first sentence of this section due to the addition of five new tasks on which the Architect may place limitations. Those tasks include revisions to the Sustainability Plan; meetings during development of the Contract Documents required to define, develop, and incorporate the Sustainable Measures; submittals to the Certifying Authority; responses to the Certifying Authority’s comments and questions; appeals to the Certifying Authority; and meetings with the Owner and Contractor to discuss remedial options regarding achievement of Sustainable Measures or the Sustainable Objective.

§ 4.3.5 Section 4.3.5 has been added so that the parties may insert an outer time limit on the Sustainability Services the Architect will perform. This section has been added because it could be one or more years after Substantial Completion of the Project before the Project is awarded a Sustainability Certification. While Section 4.3.4 puts an outer limit on the Architect’s services, the Owner may wish to extend the Architect’s Sustainability Services beyond this time limit so that the Architect can perform services necessary to achieve the Sustainability Certification after the Architect’s other services under the Agreement have been completed.

Article 5 Owner’s Responsibilities

§ 5.13 The success of sustainable projects depends on each party performing those tasks assigned to the party in accordance with the Sustainability Plan. Section 5.13 has been added to place an obligation on the Owner to perform those Sustainable Measures identified as the obligation of the Owner in the Sustainability Plan.

§ 5.14 Sustainable projects may require additional information about the Project site or existing construction. An obligation has been added for the Owner to provide additional relevant and necessary information upon the Architect’s request.

§ 5.15 Because the various Sustainability Certifications may place requirements specifically on the Owner in addition to those related to the design and construction of the Project, such as the requirement to provide utility bills, language has been added stating that the Owner will comply with the requirements of the Certifying Authority before and after construction.

§ 5.16 Language has been included obligating the Owner to pursue any appeals or other actions with the Certifying Authority necessitated by the revocation or reduction of a Sustainability Certification.

§ 5.17 Commissioning is an important aspect of sustainable design and construction. B101–2007 SP assumes that the Owner will provide a commissioning agent for the Project unless the Architect otherwise agrees to perform commissioning as an Additional Service pursuant to Section 4.1.22.

Article 7 Copyrights and Licenses

§ 7.1 Because the Certifying Authority may require that information submitted to it be available for access on its own Web sites or publishable for other purposes, language has been added to this section by which the transmitting party warrants that it has received permission from the copyright owner to allow the recipient of the information to transmit the information to the Certifying Authority so that the Certifying Authority may use the information in accordance with the Certifying Authority’s requirements.

§ 7.2 This section has been modified to recognize that the Owner may submit the Architect’s Instruments of Service to the Certifying Authority without violating the Architect’s reserved rights to the Instruments of Service.

§ 7.3 For sustainable projects where a Sustainability Certification is sought, the Owner may be required to submit certain of the Architect’s Instruments of Service to the Certifying Authority in order to comply with the documentation requirements. The Owner’s license to use the Architect’s Instruments of Service has been expanded to include transmission of the Architect’s Instruments of Service to the Certifying Authority to comply with the requirements of

the Certifying Authority. In addition, the Architect grants to the Owner a license to allow the Certifying Authority to publish the Architect's Instruments of Service as required by the Certifying Authority.

Article 8 Claims and Disputes

§ 8.1.3.1 While B101–2007 includes a mutual waiver of consequential damages under Section 8.1.3, because of the types of consequential damages that may occur on sustainable projects, Subsection 8.1.3.1 has been added to clarify that claims for damages arising from unachieved energy savings, unintended operational expenses, lost financial or tax incentives, or unachieved gains in worker productivity, are considered consequential and waived under the Agreement.

Article 10 Miscellaneous Provisions

§ 10.2 It is important to note that terms used in B101–2007 SP have the same meaning as those in AIA Document A201–2007 SP, which contains a number of newly defined terms related to sustainable projects. The newly defined terms are included below for reference:

Sustainable Objective

The Sustainable Objective is the Owner's goal of incorporating Sustainable Measures into the design, construction, maintenance and operations of the Project to achieve a Sustainability Certification or other benefit to the environment, to enhance the health and well-being of building occupants, or to improve energy efficiency. The Sustainable Objective is identified in the Sustainability Plan.

Sustainable Measure

A Sustainable Measure is a specific design or construction element; or post occupancy use, operation, maintenance or monitoring requirement that must be completed in order to achieve the Sustainable Objective. The Owner, Architect and Contractor shall each have responsibility for the Sustainable Measure(s) allocated to them in the Sustainability Plan.

Sustainability Plan

The Sustainability Plan is a Contract Document that identifies and describes: the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's, Architect's and Contractor's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project.

Sustainability Certification

The Sustainability Certification is the initial third-party certification of sustainable design, construction, or environmental or energy performance, such as LEED®, Green Globes™, Energy Star or another rating or certification system, that may be designated as the Sustainable Objective or part of the Sustainable Objective for the Project. The term Sustainability Certification shall not apply to any recertification or certification occurring subsequent to the initial certification.

Sustainability Documentation

The Sustainability Documentation includes all documentation related to the Sustainable Objective or to a specific Sustainable Measure that the Owner, Architect or Contractor is required to prepare in accordance with the Contract Documents. Responsibility for preparation of specific portions of the Sustainability Documentation will be allocated among the Owner, Architect and Contractor in the Sustainability Plan and may include documentation required by the Certifying Authority.

Certifying Authority

The Certifying Authority is the entity that establishes criteria for achievement of a Sustainability Certification and is authorized to grant or deny a Sustainability Certification.

§ 10.8 Various Sustainability Certification programs, such as LEED® or Green Globes™, may require the submission of certain documents, reports or other information to the Certifying Authority. Specific language has been included in this section allowing the Architect to disclose confidential or business proprietary information received from the Owner, or its contractors or consultants, to the persons or entities necessary for the Architect to fulfill its obligations under the Agreement.

§ 10.9 A new section has been included, making clear that the Architect does not guarantee or warrant that the Project will achieve the Sustainable Objective. This language reinforces the notion that the success of a sustainable project is

dependent on the work of all participants and cannot be guaranteed by any one party. This language is not intended to absolve the Architect of responsibility for its own negligence.

Article 11 Compensation

§ 11.2 Article 11 has been modified to include compensation for the Architect's Sustainability Services in this new Section 11.2. It is important to note that compensation for the Sustainability Services is not included in compensation for the Architect's Basic Services, which is provided in the fill point in Section 11.1. The Sustainability Services, however, are not Additional Services but services the Architect performs as part of its scope of services under the Agreement and in conjunction with its Basic Services.

§ 11.6.1 Section 11.6 allows the Owner and Architect to allocate payment for each phase of the Architect's Basic Services when the services are performed on a percentage of the Cost of the Work basis or where compensation is based on a Stipulated Sum. Section 11.6.1 apportions the Architect's compensation, when based on a percentage of the Cost of the Work or Stipulated Sum, on the same percentages designated for each phase in Section 11.6, unless otherwise stipulated by the parties.

§ 11.9.1 New items have been added to the list of reimbursable expenses, including: expenses of project specific software or other equipment or materials necessary to achieve the Sustainable Objective, with prior written approval from the Owner; registration or other fees charged by the Certifying Authority; and presentation materials required for submissions to the Certifying Authority or as necessary to achieve the Sustainable Objective, with the Owner's prior written approval.

§ 11.11.1.1 Because of the potentially significant costs involved in registering a Project with a Certifying Authority, this new provision allows for an initial payment from the Owner for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The initial payment should be based on an estimate of the potential cost of registration and will be credited to the Owner's account at the time the expense is incurred.

Exhibit A Initial Information

Exhibit A has been expanded to include fill points for information about the Owner's anticipated Sustainable Objective, incentive programs the Owner intends to pursue, and the Architect's consultants required for the Sustainable Services.

USING B101-2007 SP

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 this 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.

Project. The proposed Project should be described 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.

Article 1 Initial Information

§ 1.1 The parties may either rely on Exhibit A to provide the Initial Information or provide such information in Section 1.1. If the parties choose to utilize Section 1.1, they should take care to be as explicit and detailed as possible with respect to the relevant Initial Information including the anticipated Sustainable Objective and any incentive programs the Owner intends to pursue.

§ 1.2 The parties must set forth the Owner's anticipated dates for commencement of construction and Substantial Completion as those dates are to be incorporated into the Architect's initial schedule for the Architect's services, and they determine at which point the Architect will provide certain services as Additional Services. As stated previously, it is important to distinguish that the date of Substantial Completion is the stage in the progress of the Work when the Work may be occupied or utilized for its intended use, and is not the anticipated date of award of a Sustainability Certification.

Article 4 Additional Services

§ 4.1 The parties should complete the table contained at Section 4.1 prior to executing the Agreement. For each service listed, the parties should indicate the party responsible for providing the service in the appropriate column and identify the place where the service is described—e.g., "Section 4.2" or "an exhibit attached to this document and identified below," etc. The Architect is not responsible for any listed service unless specifically so designated in the Responsibility column of the table.

§ 4.1.13 Conformed Construction Documents are the Construction Documents modified to include any addenda issued during the bidding or negotiation process.

§ 4.1.14 As-designed Record Drawings are the record of everything the Architect designed for the Project, and include the original Construction Documents plus all addenda, Architect's Supplemental Instructions, Change Orders, Construction Change Directives and minor changes in the work.

§ 4.1.15 As-constructed Record Drawings (commonly called "As-builts") are the record of the Project as constructed based on information the Contractor provides to the Owner under the contract for construction. Because the As-constructed Record Drawings will be based on the Contractor's mark-ups, the Architect is not responsible for the accuracy or completeness of the As-constructed Record Drawings.

§ 4.3.3 Insert an agreed-upon number in each of the spaces provided.

§ 4.3.4 Insert the number of months beyond which the Architect shall be entitled to compensation as Additional Services.

§ 4.3.5 Insert the number of months after the date of Substantial Completion beyond which the Architect will be entitled to Additional Compensation.

Article 8 Claims and Disputes.

§ 8.2.4 Select from three choices of binding dispute resolution: (1) arbitration, (2) litigation or (3) another method that the parties 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.

Article 11 Compensation

There are at least ten methods of computing compensation for architectural services. Four of these methods are time-based, reflecting in different ways the time spent by the Architect on the Project:

Multiple of Direct Salary Expense, in which direct salaries of designated personnel are multiplied by a factor representing benefits, overhead and profit.

Multiple of Direct Personnel Expense, in which the salaries plus benefits of designated personnel are multiplied by a factor representing overhead and profit.

Professional Fee Plus Expenses, in which the salaries, benefits and overhead of designated personnel are the expense and the fee may be a multiplier, percentage or lump sum representing profit.

Hourly Billing Rates, in which salaries, benefits, overhead and profit are included in the rate for designated personnel.

Other methods, while they may be indirectly related to time expended on the Project, do not use time as a factor in the calculation:

Stipulated Sum, in which compensation is listed as a dollar amount.

Percentage of Cost of the Work, in which compensation is calculated by applying an assumed percentage to the estimated or actual Cost of the Work, whichever is most certain at the time the calculation is made.

Multiple of Consultants' Billing, in which Consultants' bills are multiplied by a factor representing the Architect's administrative costs, overhead and profit.

Square Footage, in which the square footage of the structure is multiplied by a pricing factor.

Unit Cost, in which the number of certain units such as rooms, acres, etc., is multiplied by a pricing factor.

Royalty, in which compensation is a share in the Owner's income or profit derived from the built facility.

The AIA makes no recommendation as to the appropriateness of any of these methods of compensation on a particular project, nor does the AIA suggest that the foregoing list includes all methods that are possible, practical or in actual use. The use of any of the compensation methods described above, singly or in combination with other methods, is a business decision for the Architect and the Owner. Further, the AIA makes no recommendations and has no guidelines or schedules that specify the amount of compensation an architect should be paid.

§ 11.1 Insert the basis of compensation for the Architect's Basic Services under Sections 3.1 and 3.2. Sample language is provided below for several of the most widely used methods of compensation.

If a **Multiple of Direct Salary Expense** is used, include multipliers using words and numerals in the following insert:

Compensation for services rendered by principals and employees shall be based on a multiple of _____ () times Direct Salary Expense, which shall be defined as the direct salaries of the Architect's personnel engaged on the Project excluding any costs of mandatory or customary contributions and benefits. Compensation for services rendered by Consultants shall be based on a multiple of _____ () times the amounts billed by Consultants.

If a **Multiple of Direct Personnel Expense** is used, include multipliers using words and numerals in the following insert:

Compensation for services rendered by principals and employees shall be based on a multiple of _____ () times Direct Personnel Expense. Compensation for services rendered by Consultants shall be based on a multiple of _____ () times the amounts billed by Consultants.

If a **Professional Fee Plus Expenses** is to be used, include the dollar figure and the appropriate multipliers (using words and numerals) in the following insert:

Compensation shall be a Fixed Fee of _____ (\$____) plus a multiple of _____ (____) times Direct Personnel Expense. Compensation for services rendered by Consultants shall be based on a multiple of _____ (____) times the amounts billed by Consultants.

Alternatively, the fee (representing profit) may be calculated as a multiplier or percentage.

If **Hourly Billing Rates** are used, include the cumulative amount for salary, benefits, overhead and profit to fix each rate using words and numerals in the following insert:

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates set forth below:

1. Principals' time at the fixed rate of _____ (\$____) per hour. For the purposes of this Agreement, the Principals are: *(List Principals, such as owners, partners, corporate officers and participating associates.)*
2. Supervisory time at the fixed rate of _____ (\$____) per hour. For the purposes of this Agreement, supervisory personnel include: *(List managerial personnel by name or job title, such as general manager, department head or project manager.)*
3. Technical Level I time at the fixed rate of _____ (\$____) per hour. For the purposes of this Agreement, Technical Level I personnel include: *(List those personnel by name or job title who are highly skilled specialists, such as job captains, senior designers, senior drafters, senior planners, senior specifiers or senior construction administrators.)*
4. Technical Level II time at the fixed rate of _____ (\$____) per hour. For the purposes of this Agreement, Technical Level II personnel include: *(List those personnel by name or job title who hold intermediate-level positions relative to Technical Level I, such as professionals awaiting licensure and managers of clerical staff.)*
5. Technical Level III and clerical personnel time at the fixed rate of _____ (\$____) per hour. For the purposes of this Agreement, Technical Level III and clerical personnel include: *(List those personnel by name or job title who occupy junior-level positions, such as word processor or office assistant.)*
6. Compensation for services rendered by Consultants shall be based on a multiple of _____ (____) times the amounts billed by Consultants.

If a **Percentage of Cost of the Work** is to be used, insert the following:

Compensation shall be _____ percent (____%) of the Cost of the Work, as defined in Section 6.1.

If a **Stipulated Sum** is to be used, insert the sum in words and numerals in the following sample language:

Compensation shall be a stipulated sum of _____ (\$____).

No sample language is provided for compensation based on square footage, unit cost or royalty. Parties choosing one or more of these methods should craft their own language based on the particulars of the Project.

§ 11.2 See methods of compensation shown above for Section 11.1.

§ 11.3 See methods of compensation shown above for Section 11.1.

§ 11.4 See methods of compensation shown above for Section 11.1.

§ 11.5 See methods of compensation shown above for Section 11.1, if other than a percentage of the invoiced amount.

§ 11.11.1.1 Insert the amount of any initial payment that will be made by the Owner for fees payable to the Certifying Authority.

Article 12 Special Terms and Conditions

Insert any modifications to the standard text of the document, if the modifications are not otherwise inserted elsewhere in the document. For more information about modifying the document, refer to the Modifications section of these Instructions.

Exhibit A Initial Information

If the parties choose to utilize Exhibit A, Initial Information, in lieu of completing Section 1.1, the parties should complete each prompting statement in this Exhibit. If a statement is not applicable to a particular project, the parties should insert a statement to that effect. No spaces should be left blank.

EXECUTING B101–2007 SP

The persons executing AIA Document B101–2007 SP 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.