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**U.S. CONSTRUCTION INDUSTRY COLLABORATIVE/INTEGRATED STANDARD FORM AGREEMENTS  
COMPARISON OF NOTABLE FEATURES**

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and

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**COMPARISON OF AIA IPD DOCUMENTS WITH THE CONSENSUSDOCS 300**

<b>Feature</b>	<b>AIA IPD Transitional</b>	<b>AIA IPD SPE</b>	<b>ConsensusDOCS 300</b>
Involves creation of corporate entity involving Incorporation, capital contributions, corporate governance	No	Yes	No
Incorporates new planning phase duties/names contained in AIA Integrated Practice Guide	Yes	Yes	No
Included a CM as Agent Only as one of the Contracting parties	No	Yes	No
Establishment of Owner POR, Budget, Schedule Requirements	Yes	Yes	Yes
Project Management Group Among Contracting Parties	No	Yes	Yes
Collaborative Project Delivery Team	No	No	Yes
Establishment of Project Goals	No	Yes	Yes
Lean Construction concepts, principals, processes	No	No	Yes
Target Costing	No	Yes	Yes

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Feature	AIA IPD Transitional	AIA IPD SPE	ConsensusDOCS 300
Requires Establishment of Project Goals, Definitions Standards	No	Yes	Yes
Requires the conducting of a Collaborative Standards Workshop	No	Yes	No
Requires the incorporation of an Integrated Scope of Services among the contracting Parties	No	Yes	No
Requires the development of a Risk Matrix	No	Yes	No
CPD Team is required to make and secure Reliable Commitments	No	No	Yes
The CPD team is required to develop a Quality Plan	No	No	Yes
The CPD Team is to employ a Lean Construction Inspired Project Planning System	No	No	Yes
Contemplates the attachment of a Digital Data Protocol/Electronic Communication Protocol	No	Yes	Yes
Building Information Modeling (BIM)	Yes	Yes	Yes
BIM Addendum	No	No	Yes
BIMs required for Contract Documents	No	Yes	No
Financial Incentives	No	Yes	Yes
Risk Sharing	No	No	Yes



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Feature	AIA IPD Transitional	AIA IPD SPE	ConsensusDOCS 300
Guaranteed Maximum Price for Construction Contracts	Yes	Yes	No*
Information/Pricing from Subcontractors/Suppliers early in or at beginning of design	Yes	Yes	Yes
Development of a Lean Construction Quality Plan at the Start of Construction	No	No	Yes
Integrated Project Insurance	No	Yes	No
Group Limitation of Liability	No	Yes	Yes
Group Waiver of Claims	No	Yes	Yes
Laddered Dispute Resolution	No	Yes	Yes

\* Constructor's compensation is limited to, with a few exceptions and subject to incentive and risk provisions, the Project Target Cost Estimate (PTCE) developed and locked through an Amendment at the end of design (Article 10)



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## U.S. CONSTRUCTION INDUSTRY COLLABORATIVE/INTEGRATED STANDARD FORM AGREEMENTS

### NOTABLE FEATURES AND ANALYSIS

#### AIA Integrated Project Delivery (IPD) Documents--Generally:

(AIA A295-2008 General Conditions of the Contract for Integrated Project Delivery)  
(AIA A195-2008 Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery)  
(AIA B195-2008 Standard Form of Agreement Between Owner and Architect for Integrated Project Delivery)  
(AIA C195-2008 Standard Form Single Purpose Entity (SPE) Agreement for Integrated Project Delivery)

- 1) Along with the ConsensusDOCS 300 will help legitimize collaborative/integrated project delivery/contracts as viable U.S. construction industry project delivery and form contract options to help lower project costs, save time, improve quality and reduce or eliminate major disputes and litigation
- 2) Incorporates BIMs to varying degrees
- 3) Incorporates front-end focused planning phases of AIA Integrated Project Delivery Guide
- 4) Does not incorporate Lean Construction
- 5) Only the AIA IPD Transitional Documents can readily be entered into at this time given the AIA has yet to publish major accompanying form contracts to the AIA IPD SPE Agreement

#### ConsensusDOCS 300 Standard Form of Tri-Party Agreement For Collaborative Project Delivery (ConsensusDOCS 300)--Generally:

- 1) First and still only U.S. Construction Industry standard form three party collaborative or integrated agreement between an Owner, Architect and Contractor
- 2) Optionally incorporates BIM to some degree
- 3) Fully incorporates Lean Construction
- 4) Does not incorporate AIA Integrated Project Delivery Guide Pre-Construction Phases
- 5) This agreement is ready to be entered into at this time when three party contract liability issues are addressed through techniques such as contractual apportionments of liability and/or special integrated project insurance and/or the setting aside of special contingency monies



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**AIA Transitional Documents (AIA A295-2008; AIA A195-2008; AIA B195-2008)**

**AIA Transitional Documents Notable Features:**

- 1) Contractor provides pre-construction services with the Owner and Architect (GMP plus pre-construction services fees) (Articles 4, 5, 6, 7, 8)
- 2) Architect, Owner and Contractor pre-construction and construction phase duties now almost all moved to General Conditions
- 3) Architect, Owner and Contractor duties all together and integrated at each phase of design/construction in the General Conditions
- 4) Incorporates BIM in pre-construction phase (Section 5.5, 6.2, 7.1)
- 5) Moves more of design work earlier in phases and re-names pre-con phases to correspond with AIA Integrated Project Delivery Guide (Articles 5, 6, 7, 8)
- 6) Adds an expanded POR Phase called Conceptualization Phase (Article 5)
- 7) Creates an expanded CD Phase now called Implementation Phase where Shop Drawings and Other Submittals are submitted and approved instead of Construction Phase (Article 8)
- 8) Permits consolidated dispute resolution as between the Owner, Architect and Contractor (Section 13.4.4)

**AIA Transitional Documents Analysis:**

- 1) Decided change from AIA Design/Bid/Build Documents and AIA A201 related to integration of Owner, Architect and Contractor in pre-con phases, use of BIM and use of subcontractor/supplier info, systems, materials, costs, schedules, etc. in pre-construction
- 2) Incorporates front-end focused planning process contained in the AIA Integrated Project Delivery Guide
- 3) Still two separate agreements for Owner/Architect and Owner/Contractor
- 4) Do not use of Lean Construction principals, methods and processes
- 5) No "all for one and one for all" or "best for project" reward/risk sharing, but instead has GMP
- 6) Forms no Project Management Team to collaboratively manage the project by consensus
- 7) Does not require the establishment of Project Goals, Target Costs, Reliable Commitments, Quality Plans, Project Planning System, Construction Quality Plan, etc.
- 8) Contractor by participating in pre-construction gives up the implied warranty of fitness of the plans/specs as a basis to get an increase in its GMP. Any Contractor participating in pre-construction may give up the implied warranty of fitness of the plans/specs.



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**AIA IPD SPE Document (AIA C195-2008)**

**AIA IPD SPE Document Notable Features:**

- 1) Requires creation of an LLC between an Owner, Architect and Construction Manager that must be incorporated in the state of jurisdiction, governed through a governing board and requires capital contributions of its members (Articles I, 2, 3, 8)
- 2) A CM, not the Contractor, is a party to the LLC; instead, contractors are non-members that contract with the LLC
- 3) The LLC must separately contract with the Owner, Architect and CM as well as actual construction work (Article 6)
- 4) Architect and CM reimbursed on actual costs, only way to make profit is through performance Goal Achievement Compensation (where Owner goals achieved) and Incentive Compensation (percentage of savings between the Target Cost and Actual Cost) (Section 6.2.1)
- 5) The Contractors can be paid a stipulated sum, GMP, but also receive Incentive Compensation and Goal Achievement Compensation (Section 6.1.6)
- 6) Requires the Legal Description of the Project (Exhibit A); the Owner's Criteria (Exhibit B); Owner, Architect and CM Member Agreements (Exhibit C); Work Plan (Exhibit D)
- 7) Requires the LLC Members to establish a Project Management Team (Exhibit D; Article D.1)
- 8) Requires the use of BIM in pre-construction period generally (Exhibit D; Article D.3) and specifically requires the use of BIMs as Contract Documents (D.3.2) and to coordinate and provide for the proper administration of BIMs (D.3.3)
- 9) Moves more design work earlier in design and uses the revised and renamed planning phases contained in the AIA Integrated Project Delivery Guide (Exhibit D; Article D.2)
- 10) Requires the development of a Target Cost and Target Cost Breakdown early in design and then locked in through an amendment (Article 5)
- 11) Permits the LLC to award pre-construction contracts to contractors, fabricators and suppliers but only after the Target Cost Amendment is executed in the Criteria Design Phase (Exhibit D; Article D.2.7)
- 12) Requires the Project to be Defined (Section 5.2.1; Exhibit E(BB)), establish Goals (Exhibit E (CC)), establish an Integrated Scope of Services (Section 5.2.5; Exhibit E (DD)), Project Schedule (Exhibit E (EE)), Digital Data Protocol (Exhibit E (FF))
- 13) Requires the conducting of a Collaboration Standards Workshop (Section 5.2.2)



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- 14) Requires the establishment of a Risk Matrix (Section 5.2.3)
  - 15) The Owner is required to fund the LLC (Section 7.2)
  - 16) Requires the procurement of integrated project insurance including pre-target cost insurance and post-target cost insurance (Article 13)
  - 17) Failure to arrive at a mutually agreeable Target Cost will dissolve the LLC (Section 16.1.2)
  - 18) The Owner, Architect and CM companies and employees are shielded from debts, obligations and liabilities of the LLC (Section 12.1.1), shielded from liability from another LLC Member except willful misconduct (Article 12.2) and will be indemnified and defended by the LLC for third party losses, damage or claims (Article 12.3)
  - 19) Requires Consensus Resolution, first among the LLC Members, then at the Governance Board level, then a Dispute Resolution Committee (Article 18)

**AIA IPD SPE Document Analysis:**

- 1) Setting up and funding an LLC likely to be time-consuming, complicated and costly
- 2) An LLC as a shield for its Members liability might not work (e.g., "Corporate veil might be pierced") and will an LLC create corporate directors liability which might have to be specially insured
- 3) The Construction Manager does not hold the contracts for construction, the LLC does, and there may be a disconnect, gap or inconsistency between the CM's services and that of the construction contractors, fabricators and suppliers, both during pre-construction and construction phases
- 4) Agreements between the LLC and the Owner, the LLC and the Architect, the LLC and the Construction Manager and the LLC and the Contractor are required but AIA contract forms have not yet been published (In the AIA General Information Section on Related Documents, it states: "The AIA expects to publish standard forms of these agreements in late 2008"). This makes fully executing this agreement very difficult at this time.
- 5) Incorporates front-end focused planning process contained in the AIA Integrated Project Delivery Guide
- 6) Does not require the use of Lean Construction
- 7) The Target Cost to be developed, broken-down and made the subject of an amendment early in planning in the Criteria Phase (See Exhibit D; Article D.2.3) is similar to a baseline or owner's budget in other contracts although the Owner Budget is also stipulated in Exhibit B Article B.1.3
- 8) The Target Cost is set prior to trade contractor/supplier involvement or collaboration
- 9) Any Contractor participating in pre-construction may give up the implied warranty of fitness of the plans/specs



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### **ConsensusDOCS 300**

#### **ConsensusDOCS 300 Notable Features:**

- 1) The only U.S. construction industry form tri-party agreement for collaborative project delivery on the market (Primary Parties are the Owner, Designer and Constructor or Construction Manager/General Contractor) (Note: The CM/GC enters into all contacts for construction (Paragraph 12.1))
- 2) Expressly delineates collaborative objectives, collaborative project delivery and the collaborative relationship (Paragraph 3.1, 3.2 and 3.3)
- 3) Expressly contemplates a Collaborative Project Delivery Team (CPD Team) made of the contracting parties and other invited parties such as consultants and trade contractors (Paragraph 3.3)
- 4) Permits the choice of a collaborative risk allocation where liability is released among the parties for collaborative decisions or to choose a traditional risk allocation where each party is fully liable for its own negligence and breaches of contract and warranty (Paragraph 3.8) but regardless there is a mutual waiver of consequential damages (Subparagraph 3.8.3)
- 5) The Owner, Designer and Constructor collaboratively manage and make decisions on the project through a Management Group (Article 4)
- 6) Permits the parties to establish an Electronic Communication Protocol (Subparagraph 4.9.2)
- 7) Requires the use of Lean Construction inspired Pull Based Design (Paragraph 6.5)
- 8) A BIM approach is optionally authorized and authorizes the execution of a BIM Addendum detailing BIM parameters, standards and technological requirements (Paragraph 6.9) (Note: ConsensusDOCS is set to release a universal BIM Addendum this Summer)
- 9) Requires the CPD Team to secure Reliable Commitments (Paragraph 3.9), employ a Quality Plan (Paragraph 3.10), a Project Planning System using pull planning, phase planning, make-ready look ahead plan (Paragraph 7.2) all of which are inspired by Lean Construction principals and techniques





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**ConsensusDOCS 300 Notable Features (continued):**

- 10) Contemplates the collaboration of certain trade contractors and suppliers at the beginning of design through working agreements (Paragraph 12.1)
- 11) Requires the CPD Team and trade contractors/suppliers to create and develop a Target Value Design (Paragraph 6.13) and develop Target Value Pricing optionally through BIM Models (Paragraphs 8.1, 8.2)
- 12) Requires the creation of a Project Target Cost Estimate (PTCE) at substantial completion of design that cannot exceed the Owner's budget without permission and that will be the basis of an Amendment locking in the PTCE and forms the basis for the Constructor's cost of construction with some exceptions (Paragraph 8.3)
- 13) The Designer and Constructor are paid for actual costs that can rise or be lowered under incentive and risk sharing provisions (Articles 9, 10 and 11)
- 14) General Conditions like construction operations provisions for all parties are contained in the base agreement (Articles 13, 14, 15, 16, 17, 18, 19, 20, 21, 22)
- 15) The Constructor is to develop a Lean Construction inspired Quality Plan at the beginning of Construction (Paragraph 13.1)
- 16) Disputes must first be resolved by the parties in the field, then if not successful, it is submitted to the Management Group, then if not successful, to a Project Neutral or Dispute Review Board (Article 23)



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**ConsensusDOCS 300 Analysis:**

- 1) The only U.S. Construction Industry collaborative form of agreement that combines collaborative project delivery, BIM and Lean Construction
- 2) This three party agreement might be found to be a partnership resulting unintended joint and several liability which will have to be addressed somehow such as through an express apportionment of liability among the parties in the contract, special integrated or collaborative project group insurance coverage and/or the setting aside of contingency money to pay for any group exposure
- 3) The only agreement that contemplates true incentives and downside risk sharing in the same agreement for all parties
- 4) The pre-construction phases and duties of the parties including related to BIMs are not as detailed as the AIA IPD Documents and the AIA Integrated Project Delivery Guide project phases have not been adopted
- 5) With careful understanding, preparation, negotiation, supplementation, exhibits and addendums, this agreement is ready to be entered into now
- 6) Does not contemplate the use of project specific integrated project insurance but instead the usual individual party general, auto, excess, professional and property insurance coverages but the agreement can be supplemented to require project specific integrated project insurance
- 7) The Project Target Cost Estimate is finalized at the end of design versus the beginning of design as in the AIA IPD SPE Document, but can't exceed the Owner's Budget without the Owner permission, and is the basis for the Constructor's construction cost with some exceptions
- 8) The Project Target Cost Estimate is developed with the input of the trade contractors/suppliers unlike in the AIA IPD SPE Document where the Target Cost is developed like a baseline budget prior to trade contractor/supplier input
- 9) The Constructor by participating in pre-construction may give up the implied warranty of fitness of the plans/specs

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