ConsensusDocs™
BUILDING A BETTER WAY

# ConsensusDocs Guidebook

## ConsensusDocs 297 – Joint Venture Line Item Agreement

August 2013 Edition

ConsensusDocs™
BUILDING A BETTER WAY



Permissions
ConsensusDocs
2300 Wilson Blvd., Suite 400
Arlington, VA 22201

ConsensusDocs™
BUILDING A BETTER WAY

# Introduction to the ConsensusDocs Guidebook

ConsensusDocs is the product of leading construction associations, dedicated to identifying and utilizing best practices in the construction industry for standard construction contracts. The 36 participating associations represent Design Professionals, Owners, Constructors, Subcontractors, and Sureties that literally spell the DOCS in ConsensusDocs. ConsensusDocs contracts and forms attempt to fairly and appropriately allocate risks to the Party in the position to manage and control the risk. The practices articulated in the documents are forward-thinking, and may not always represent the status quo, but rather a better path forward to achieve project results. The goal of the multi-disciplined drafters was to create documents that best place the Parties to a construction contract in a position to complete a project on time and on budget with the highest possibility of avoiding claims.

By starting with better standard documents that possess buy-in from all stakeholders in the design and construction industry, you reduce your transaction time and costs in reaching a final Agreement. By using fairer contracts helps eliminate unnecessary risk contingencies and thereby better pricing. In addition, “fill-in-the-blanks” are intended to lead to productive discussions about how particular risks should be allocated on specific projects before a contract is finalized.
Also, the ConsensusDocs catalog includes complete “families” of documents for each project delivery method that provide a coordinated set of Agreements and complimentary administrative forms. There also are short form agreements that address the Owner-Constructor (205), the Owner-Design Professional (245), and the Constructor-Subcontractor contractual relationships in a more abbreviated manner than do the standard Agreements (ConsensusDocs 200, 240, and 750 respectively).

In this Guidebook you will find comments by individual associations regarding particular contract documents. These comments are organized by numeric sequence of the ConsensusDocs contract documents. The overview sections highlight issues and innovative features of the documents generally. Association comments are expressions by an association to its association membership. These comments highlight provisions or alert their membership to consider possible project-specific modifications to a consensus standard Agreement or form. ConsensusDocs contracts covered in this release of this Guidebook include the 200, 200.1, 200.2, 205, 220, 221, 235, 240, 260, 246, 261, 262, 263, 298, 300, 301, 310, 410, 415, 450, 460, 470, 471, 472, 473, 500, 702, 703, 710, 750, 752, and 803.

Please note that there has been a significant number of editing changes and section renumbering between the 2007 and 2011 versions that give the appearance that more substantive changes were made in the 2011 update than is actually the case. Consequently, a highlight sheet of changes was created to better pinpoint substantive changes. The 2011 update highlights sheet can be found here for free on the internet.

Lastly, the ConsensusDocs coalition organizations and ConsensusDocs staff are deeply indebted to the hard work of the many the seasoned professionals who contributed countless hours in the creation of the ConsensusDocs contracts as well as this Guidebook. Their collective experience represents hundreds of years of practical experience in the construction field.  Contributor names can be found at the conclusion of this Guidebook.



Support@ConsensusDocs.org • 1-866-925-DOCS (3627) • www.ConsensusDocs.org

ConsensusDocs™
BUILDING A BETTER WAY

# **Comments regarding ConsensusDocs 297***
## Joint Venture Line Item Agreement

Agreement (article 1): This form is set up for a Joint Venture (JV) among three Joint Venturers, but it should be adaptable with relative ease to situations involving two, four, or more Joint Venturers.

Indemnification and Wrongful Acts (section 3.2): This section is based on the assumption that the Joint Venturers wish to share their liabilities in proportion to their Percentage Interests, even if a mistake or negligence by one of the Joint Venturers caused the liability or cost. Under this approach, the indemnification in subsection 3.2.1 assures that liabilities remain split according to the Percentage Interests, except for certain defined exceptions, such as Wrongful Actions.

Capital Expenditures (subsection 4.3.2(h)): If the JV is expected to acquire substantial capital assets, such as real estate or major equipment, the parties may wish to consider drafting more detailed provisions regarding accounting methods, tax treatment, and disposition procedures for such assets.

Responsibility for the Work (section 6.1): The form language proposes that the Executive Committee endeavor in good faith to keep overall contributions proportional to the Percentage Interests. If it is contemplated that a particular Joint Venturer will make a disproportionate contribution in a given area, the parties may wish to modify the language accordingly.

Subcontracts (section 6.4): When parties wish to accomplish a similar effect without the formality of a subcontract agreement, parties may prefer to use work orders issued by the JV rather than subcontracts to assign tasks and related financial responsibility to a given Joint Venturer. The language of the form should be modified accordingly.

Section 6.5: Issues such as proper licensing, insurance and indemnification should be addressed in the subcontracts. The ConsensusDocs 750 or 751 (short form) subcontracts should be considered for use when subcontracting work under this JV.

* This publication is designed to provide information in regard to the subject matter covered. It is published with the understanding that the publisher, endorsers of ConsensusDocs and contributors to this Guidebook are not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional advice is required, the services of a competent professional person should be sought.

**—From the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations**

Payments by the JV (section 7.3): If the parties intend that the budget be mandatory and to exclude costs not in alignment with the Budget, this section may need to be modified.

The Executive Committee may wish to establish reimbursement policies for certain categories of costs, for example management services; accounting services; computer-related hardware, software, or services; cell phones; vehicles or vehicle allowances; legal expenses; insurance and bond premiums; and deductible or co-insurance costs for claims related to the Project.

Election of Remedies (section 8.2): This section does not limit remedies to those expressly set forth in the Agreement. If the parties desire to limit remedies, they should modify this section to specifically limit remedies to only those included in the Agreement and specifically exclude other remedies allowed by law or equity.

Insurance (section 10.1): This section outlines a “default” approach for how the JV insurance may be handled, subject to the ultimate control of the Executive Committee. The parties should not assume that the default option is necessarily best. Advice from a qualified insurance professional is strongly encouraged.

Bonds (section 10.2): This section is based on the assumption that the Joint Venturers will share responsibility for the bonding of the Project in proportion to their Percentage Interests. Sometimes this is not feasible, as when one Joint Venturer lacks the capacity to bond its portion or when the respective sureties otherwise do not agree. In such cases, the language of this section should be revised accordingly.