

## Advantages of the ConsensusDOCS Construction Contracts

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After an intensive three-year effort, a diverse coalition of owners, contractors, and trade groups joined together to develop “contract documents based on best practices and proper risk allocation, for the benefit of organization members and the construction industry at large.” The result of that effort is a family of documents entitled ConsensusDOCS™.<sup>1</sup> ConsensusDOCS includes more than 82 contracts and forms that address a variety of project delivery methods.<sup>2</sup> The ConsensusDOCS is endorsed by 22 organizations, including organizations that represent owners, contractors, design professionals, and subcontractors.<sup>3</sup>

The ConsensusDOCS stands as an alternate to the form documents long published by the American Institute of Architects (AIA). In the fall of 2007, the AIA issued its latest revision, which contains what proponents of the AIA documents consider to be “cutting edge” revisions intended to reflect the AIA’s recognition of changes in the construction industry and, in some instances, to respond to issues raised by or criticisms of the 1997 iteration. Some argue, in support of the AIA documents, that they are comprehensive and inclusive and reflect industry trends, consensus, and changes in law. Proponents of the AIA documents suggest that there is no need for another set of construction documents. Some further argue, with respect to the ConsensusDOCS, that it does not represent true “consensus,” particularly because the AIA did not participate in or endorse the effort.<sup>4</sup>

Contracts written by one organization are often perceived as being biased toward that membership’s interests. Many perceive

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the AIA documents as written by architects for architects. The AIA’s primary organizational mission is to “serve as the voice of the architect profession.”<sup>5</sup> To help counteract this perception, the AIA documents have historically received input from and the endorsement of the Associated General Contractors of America (AGC) and the American Subcontractor’s Association (ASA). However, the AIA made a departure in its drafting process for the 2007 revisions, and also made some changes that were not universally well received. Consequently, the members of AGC and ASA unanimously elected not to endorse the 2007 edition of the AIA documents.<sup>6</sup>

ConsensusDOCS solves the Gordian knot of perceived bias by giving all the stakeholders in the construction process an equal seat at the table. The “DOCS” in ConsensusDOCS stands for designers, owners, contractors (including subcontractors), and sureties. Upon reaching consensus, AGC and COAA merged their previous contract documents program into ConsensusDOCS, a proactive step to provide cohesion in a somewhat fragmented industry. Some argue that the ConsensusDOCS is solely a rebranding effort of the old AGC contract documents. That conclusion is the result of a misunderstanding of the process that resulted in the publication of the ConsensusDOCS. In reality, the participating organizations built consensus from the foundation of both the AGC and Commercial Owners Association of America (COAA) contracts. In addition to creating entirely new and innovative contract documents, every document, article, and paragraph were put on the drafting table during an intensive three-year process.

The issue remains whether there was a “need” for another set of construction form documents.<sup>7</sup> The endorsers of the ConsensusDOCS say that ConsensusDOCS is a welcome addition to the construction industry. The ConsensusDOCS requires direct communications between the owner and the construction contractor in the agreements for construction, rather than have the architect in the middle as the “third person in the ring.” The ConsensusDOCS stresses collaboration and cooperation between the owner and the contractor, rather than suggesting that a referee or spokesperson for the owner is necessary before a dispute arises.

### *Why ConsensusDOCS?*

The drafting mandate was to develop documents that represent the best interests of the project, rather than a single party. The goal was to create a better contractual foundation from which to build a successful project. This entails greater efficiency in contract negotiations by avoiding repeatedly negotiating similar risk-shifting clauses. More importantly, fair and balanced contracts encourage more diverse buy-in from all parties and should attract the best contractors at their best prices by

avoiding unnecessary risk contingencies.

The resulting contracts employ best practices and fair risk allocation, with the goals of yielding better project results and fewer disputes. The unprecedented, collaborative drafting effort is the most significant industry development in decades. The diverse buy-in among all parties has the potential to transform the industry.<sup>8</sup>

The ConsensusDOCS contracts address all project delivery methods. Written in a straightforward fashion by experienced construction professionals and attorneys, the contracts provide commonsense solutions that could only be achieved by drawing upon all segments of the construction process for genuine input.

The ConsensusDOCS also addresses cutting-edge issues such as electronic communications and building information modeling (BIM). In addition, ConsensusDOCS includes an important new agreement—the Tri-Party Collaborative Agreement (ConsensusDOCS 300)—which was the first standard Integrated Project Delivery (IPD) document published. The Tri-Party Collaborative Agreement brings together three parties—owner, design professional, and constructor—to execute the same contract in which all three commit to act in the best interests of the project. Agreements of this type have been used in Australia for some time, where they are known as “alliancing” or “relational contracting.”<sup>9</sup>

## **Key Provisions of the ConsensusDOCS**

### ***Claims Mitigation and Mediation***

With respect to dispute resolution, the drafters of the ConsensusDOCS believe it is important that parties make a concerted effort to establish positive relations. To advance this goal, the first provision of each agreement states that parties are to proceed on the basis of mutual trust, good faith, and fair dealing.<sup>10</sup> When issues arise, the parties must go through several predefined steps in the attempt to resolve the claims.<sup>11</sup> Parties initially meet and discuss issues at the project level. If not successful, the parties raise issues to a senior management level. If the issue remains unresolved, then parties may utilize a project neutral or dispute review board to issue nonbinding findings to help resolve potential claims. The next step is mediation using the current Construction Industry Mediation Rules of the American Arbitration Association (AAA).<sup>12</sup>

### ***Binding Dispute Resolution***

The drafters of the ConsensusDOCS believe that parties should make a conscious decision at the time the contract is signed whether to use arbitration or litigation, rather than have a “default” contract clause make that decision for them. Of course, parties can always mutually agree to arbitration when a claim arises, but it is more likely that the method chosen at contract signing will remain. As a result, the ConsensusDOCS has a “check the box” provision by which the parties select litigation or arbitration for claims elevated to binding dispute resolution.<sup>13</sup>

The venue for dispute resolution proceedings is established as the location of the project. If arbitration is selected, the

AAA rules in effect at the time of the proceedings are used (as opposed to old rules in effect when the contract was signed). This allows parties to utilize revised and improved procedural rules.<sup>14</sup>

### ***Additional Insured Status***

Additional insured coverage was the last and one of the most difficult issues for the ConsensusDOCS drafters. Owners tend to prefer additional insured protection as a “cost-free” mechanism to protect them from liability exposure that is generally not within their control. Specialty contractors passionately believe that additional insured coverage obligations transfer the burden of providing insurance to those weakest in the contractual chain, and carries the consequence of higher insurance premiums that can result from instances they bore no responsibility in creating. Complicating a solution further is the burdensome litigation cost associated with assigning culpability among parties.

Balancing these concerns, the drafters of Consensus-DOCS decided to give the parties options with regard to additional insured coverage. As one option, an owner may decide not to require liability insurance over and above the insurance it has in place. If more insurance is required, it is chosen from a menu that includes additional insured status for ongoing and completed operations that is limited to the contractor’s negligence. Alternatively, an Owners and Contractors Protective (OCP) Liability Insurance policy can be used for ongoing operations, either alone or in combination with additional insured coverage for completed operations. It is also possible to use the OCP insurance in conjunction with additional insured protection for completed operations only. If there are additional costs for selected insurance coverage, these costs are to be paid by the owner.<sup>15</sup>

### ***Ownership and Future Use of the Design Documents***

One major point of contention between owners and design professionals is the future use of design documents for other projects. Many owners take the view that they have paid good money for the design and the construction documents, and that they should be able to use what they paid for on other projects in the future, including remodeling projects. Many design professionals reply that their intellectual property should not be used on future projects without additional compensation. The issue is particularly complicated when an owner terminates a design professional for convenience or default. Owners do not want their projects unnecessarily delayed over issues surrounding further use of plans. Design professionals do not want their hard work and creativity used without fair compensation.<sup>16</sup>

To resolve these competing concerns, the ConsensusDOCS requires the parties to discuss issues concerning ownership and future use of the design documents before a dispute arises. The documents give the parties a straightforward vehicle to use design plans for just compensation. However, ConsensusDOCS prevents use of design plans as leverage to hold a project hostage. This approach is more project-friendly in instances when a design professional is no longer actively involved in a reno-

vation or has been terminated for cause or convenience. If an owner wants a copyright transfer, the parties must negotiate a fair price for it.<sup>17</sup> The design professional is also protected with indemnification.

### ***Mutual Waivers of Consequential Damages***

In the drafting process, contractors voiced concerns about exposure to consequential damages that could easily exceed the total contract price, and greatly exceed any anticipated profit. On the other hand, owners seek to ensure timely performance by making the contractor face the risk of having to compensate the owner in the event of unexcused delays such as through the use of liquidated damages provisions or by striking any waivers of consequential damages.

Balancing these considerations, the ConsensusDOCS agreements provide a limited waiver of consequential damages. The waiver is limited because owners are prompted to delineate liquidated damages and to identify items specifically excluded from the default waiver of consequential damages.<sup>18</sup> By delineating the costs associated with unsatisfactory performance, the contracting parties put everything on the table before the work commences. This sharing of information concerning the downside risk of failures of performance provides the financial incentives to achieve proper performance, which is in the best interests of the project.

### ***Electronic Communications***

When evaluating the merits of documents proposed for use on a particular project, practitioners should ask: Can the parties rely on information that is provided in electronic format or through building information modeling (BIM)? Under current editions of standard contract documents, the default answer is no because the hard copies solely govern.<sup>19</sup> This limitation includes basic electronic communications such as fax transmissions and email.

The ConsensusDOCS gives the parties advantages in this area as well. The ConsensusDOCS 200.2 Electronic Communications Protocol Addendum provides a comprehensive mechanism for parties to identify which technologies they want to utilize and who will be responsible for their adequacy. ConsensusDOCS recently published ConsensusDOCS 301 BIM Addendum, which is the industry's first standard document to navigate the legal issues surrounding BIM. The document further establishes ConsensusDOCS as the leader in addressing emerging issues in how the industry operates.

### ***ConsensusDOCS Comparisons With AIA<sup>20</sup>***

Given the historical place and widespread use of the AIA family of documents, it is appropriate to compare key provisions of the ConsensusDOCS 200 with the AIA General Conditions A201<sup>TM</sup>. Additionally, the A201's comprehensive treatment of issues that arise during and after construction projects makes it a formidable checklist for examining best practices.

### ***Contract Construction***

Both AIA and ConsensusDOCS provide that the contract documents are complementary and that the contractor shall

perform the work to the extent consistent with them and as reasonably inferable from them, as necessary to produce the indicated results.<sup>21</sup> ConsensusDOCS additionally provides a mechanism for the contractor to call to the owner's attention omissions or errors in figures, drawings, or specifications.<sup>22</sup> AIA does not, other than for the purpose of facilitating coordination and construction by the contractor.<sup>23</sup>

### ***Document Ownership***

AIA expressly and ConsensusDOCS implicitly recognize that the contractor does not have an ownership interest in the design drawings. Although AIA provides that the copyright in the contract documents is owned by the design team, ConsensusDOCS emphasizes the need of the owner to provide appropriate documents to the contractor to enable the contractor to proceed with its work.<sup>24</sup>

### ***Owner Financial Information***

AIA A201-1997 increased the owner's obligation to furnish certain financial information, requiring the owner to provide such information upon request at any time during the job.<sup>25</sup> The AIA A201-2007 attempts to rebalance the situation and reduces the contractor's rights to obtain financial information. Though the contractor may still gain access to the owner's financial information prior to commencement of the work, its ability to do so after the work commences is now much more restricted.<sup>26</sup>

ConsensusDOCS obligates the owner to provide evidence of project financing only, as opposed to general financial information, but the owner is obligated to do so both before the work commences and at any time thereafter upon written request of the contractor.<sup>27</sup>

### ***Contractor Reporting of Problems With the Contract Documents***

Section 3.2 of AIA A201-1997 was criticized for reducing the contractor's obligations to report errors and omissions in the contract documents. Under that provision, the contractor was liable only for errors and omissions it "recognized" and "knowingly" failed to report. The 2007 revision of A201 imposes new obligations on the contractor, in both the kinds of information it must report to the architect and the format for reporting that information. For example, the contractor must report not only errors it discovers, but also anything that is "made known" to the contractor.<sup>28</sup> Failure to do so may obligate the contractor to reimburse the owner for resulting losses.<sup>29</sup>

While ConsensusDOCS similarly requires the contractor to report errors, the burden on the contractor is less onerous. The contractor must report those errors it discovers, and the contractor is liable only to the extent it "knowingly fails" to report a recognized problem.<sup>30</sup> That is, ConsensusDOCS essentially adopts the AIA A201-1997 approach.

### ***Interim Change Directives***

Both AIA and ConsensusDOCS allow the owner to issue an interim change directive, requiring the contractor to implement a change in the work until the parties reach a final agreement, in the form of a change order, regarding any impact to the contract

sum or time for performance.<sup>31</sup> The AIA and ConsensusDOCS differ, however, on the procedures for resolving a dispute regarding the impact of the directed work on the contract sum.

AIA A201-2007 provides that the architect shall determine both the method for and the adjustment of the contract sum where the Construction Change Directive is silent.<sup>32</sup> The Initial Decision Maker (IDM)—the person chosen by the parties to make initial decisions when disputes arise—is not part of the process at that point.<sup>33</sup> Instead, the architect's decisions are binding, subject to the parties' right to invoke the dispute resolution procedures set forth in article 15, which would involve the IDM,<sup>34</sup> and subject to the contractor's right to receive payment for reasonably justified costs on an interim basis.

With respect to disputed adjustments in the contract sum, ConsensusDOCS differs from AIA in two significant respects. First, ConsensusDOCS requires the owner and the contractor, as the parties most directly impacted by the resolution, to try to reach an accord themselves, rather than relegating that authority to the architect.<sup>35</sup> Second, the ConsensusDOCS provides interim relief to the contractor in a specific amount. Specifically, in the event of a dispute regarding an adjustment to the contract sum, ConsensusDOCS requires the owner to at least pay 50 percent of the contractor's estimated costs of the directed work.<sup>36</sup> This will result in an immediate infusion of funds to the contractor to defray the cost of the directed work until a final resolution occurs. In this regard, the drafters of ConsensusDOCS believe they struck the correct balance, allowing the contractor to maintain financial viability, while allowing the owner to dispute the price.

### **Liquidated Damages**

Section 8.3.1 of the AIA A201 provides that in the event the contractor is delayed, the architect may determine whether the contract time should be extended. AIA A201-2007 does not, however, contain a provision authorizing or disallowing liquidated damages (LDs). Section 8.3.3 makes clear that the allowance of a contract extension does not necessarily bar such damages should the parties agree to them, and the basic contract forms invite the parties to specify LDs.

As mentioned above, section 6.5 of ConsensusDOCS 200 establishes a framework for the parties to negotiate LDs before the contract is signed. Some of the ConsensusDOCS organizations, including the AGC,<sup>37</sup> have expressed concern about the use of LDs in the ConsensusDOCS in light of the waiver of consequential damages. Some argue that providing the owner with the ability to assess liquidated damages is inconsistent with the notion of waiver of consequential damages. This is because the owner in some instances does not, in fact, incur actual damages where there is delay or the liquidated damages may grossly overstate the owner's actual damages.

The drafters of ConsensusDOCS were aware of these concerns but included LD provisions with the intent of advancing the interests of the project. For instance, reasonable LDs may function to provide financial incentives to the contractor to accelerate earlier in a project when there is time to take such measures without sacrificing efficiency, resulting in on-time delivery.

### **Retainage**

Under the AIA approach, retainage is not to be released until the achievement of substantial completion of the entire project, and only then as to designated portions of the work if there still remain parts that are not substantially complete.<sup>38</sup> Thus, as to early finishing trades and other subcontractors whose work has been accepted or as to which the owner has made no complaints, the owner may withhold the applicable retainage until the end of the project, when substantial completion is achieved.

ConsensusDOCS adopts a different approach. It permits the owner to release retainage applicable to the work of early finishing trades and other subcontractors once their work has been accepted. Once the overall work of the project is 50 percent complete, the owner is not permitted to withhold any additional retainage.<sup>39</sup> ConsensusDOCS believes that this approach allows for payment to flow in a more fair and equitable manner on the project. Another innovative provision of the ConsensusDOCS is the option given the owner to utilize a retention bond or other form of security interest in lieu of retainage.<sup>40</sup>

### **Termination by Contractor**

Both AIA and ConsensusDOCS allow for the termination by the contractor for the owner's breaches, but the allowable grounds for termination are broader under ConsensusDOCS.<sup>41</sup> In the event of a termination by the contractor, both forms allow the contractor to recover payment due for work performed, including reasonable overhead and profit, and certain additional costs such as demobilization costs. ConsensusDOCS allows recovery of profit on work not performed, while AIA does not. Also noteworthy is the more detailed definition of overhead provided in ConsensusDOCS 200 at paragraph 2.4.12. AIA allows recovery by the contractor for "damages," but does not define what those are in addition to the other listed items. ConsensusDOCS is silent about any entitlement to damages beyond those listed, and could well be interpreted not to permit them.<sup>42</sup>

### **Termination for Cause**

Both AIA and ConsensusDOCS allow for the termination of the contractor for cause and for essentially the same reasons. Although there are relatively minor linguistic differences in the basis for termination, there are major differences in procedure. AIA requires certification by a third party, the IDM, while under ConsensusDOCS, the owner may act unilaterally. AIA provides for only one seven-day notice. ConsensusDOCS requires two notices to the contractor, and an opportunity to cure, extending over 21 days. In a similar matter, ConsensusDOCS provides notification and opportunity for a contractor to correct defective work on a project.<sup>43</sup>

### **Termination for Convenience**

Both the AIA and ConsensusDOCS forms allow the owner to terminate the contractor for convenience. In the event of such a termination, both sets of documents entitle the contrac-

tor to be paid for the work actually performed up to the time of the termination, and reimbursed for other costs incurred by such termination, including demobilization costs.<sup>44</sup> AIA expressly allows the contractor to recover “reasonable overhead and profit” on work not executed but does not provide any guidelines for determining reasonableness.<sup>45</sup>

In contrast, ConsensusDOCS allows a separate premium to be awarded to the contractor in the event of a convenience termination. The amount of the premium is to be agreed upon at the time of contracting.<sup>46</sup> The AGC Guidebook<sup>47</sup> states that this premium better balances the owner’s and the contractor’s risks and interests. Care needs to be taken in arriving at, and articulating the basis for, the amount of the premium so that it is tied to actual anticipated losses by the contractor such as lost business opportunities. Otherwise, the premium may be construed as a penalty, in which case it might not be recoverable under applicable state contract law.<sup>48</sup>

### **Consequential Damages**

In general, consequential damages are those that do not flow directly and immediately from a breach of contract (such as the direct costs of repair or for extras), but arise rather from some other consequence or result of the breach (such as lost income or extended office overhead).<sup>49</sup>

The AIA documents provide for a mutual waiver of consequential damages.<sup>50</sup> The AIA explains that such a waiver serves the purpose of avoiding large, complex claims that are oftentimes uninsurable. AIA reasons that if the owner and contractor are aware that consequential damages are not recoverable, they can plan accordingly.<sup>51</sup> As noted above, ConsensusDOCS provides for a limited mutual waiver of consequential damages. The waiver is limited in that owners may specifically delineate liquidated damages and other specified items that are not waived.<sup>52</sup>

### **Improved Value**

Putting the owner and contractor at the center of the contracting arena is critically important, and is one of the defining principles of the ConsensusDOCS. The ConsensusDOCS also presents a number of features—from a more balanced approach to the use and ownership of design documents to a comprehensive and practical approach to BIM and electronic information—that represent significant improvements from competing families of form contract documents. Construction attorneys and other professionals should be fluent in these new documents and consider incorporating them into their practices. Otherwise, clients will lose out on this significant value-adding perspective. 

### **Endnotes**

1. ConsensusDOCS is a trademark of ConsensusDOCS LLC. ConsensusDOCS contracts and forms are copyrighted by ConsensusDOCS LLC.

2. [www.consensusdocs.org/information.html](http://www.consensusdocs.org/information.html).

3. See [www.consensusdocs.org/about\\_member-organizations.html](http://www.consensusdocs.org/about_member-organizations.html). The organizations are as follows: National Association of State Facilities Administrators (NASFA); Construction Users Roundtable (CURT); Commercial Owners Association of America (COAA); As-

sociated General Contractors of America (AGC); Associated Specialty Contractors (ASC); Construction Industry Round Table (CIRT); American Subcontractors Association (ASA); Associated Builders and Contractors (ABC); Lean Construction Institute (LCI); Finishing Contractors Association (FCA); Mechanical Contractors Association of America (MCAA); National Electrical Contractors Association (NECA); National Insulation Association (NIA); National Roofing Contractors Association (NRCA); Painting and Decorating Contractors of America (PDCA); Plumbing Heating Cooling Contractors Association (PHCC); National Subcontractors Alliance (NSA); Sheet Metal and Air Conditioning Contractors’ National Association (SMACNA); National Association of Surety Bond Producers (NASBP); The Surety & Fidelity Association of America (SFAA); Association of the Wall and Ceiling Industry (AWCI); and National Association of Electrical Distributors (NAED). In addition, the Construction Management Association of America (CMAA) endorses the ConsensusDOCS 301 Building Information Modeling (BIM) Addendum, which was published on June 30, 2008. CURT and LCI include design professionals as members of their respective organizations. In addition, the Engineers Joint Contract Documents Committee (EJCDC) actively participated in the development of the ConsensusDOCS contracts, as did several individual design professionals.

4. After attending an initial meeting, the AIA politely declined to participate further in the collaborative drafting effort. The entire industry of construction associations was invited to participate, and the invitation remains open to participate in ongoing efforts.

5. [www.aia.org/about\\_default](http://www.aia.org/about_default).

6. In an October 12, 2007, press release, AGC’s CEO Stephen E. Sandherr commented that “the A201 does not reflect the collaboration that is necessary for a successful project [and] . . . does not fairly balance risk among all parties but instead significantly shifts risk to general contractors and other parties outside of the design profession.” Press Release, AGC Members Unanimously Vote Against A201 Endorsement, Oct. 12, 2007, [www.asaonline.com/pdfs/Total%20Impact%20and%20Straight%20Talk%20\(FASA\).pdf](http://www.asaonline.com/pdfs/Total%20Impact%20and%20Straight%20Talk%20(FASA).pdf). The ASA went further and commented in a January 7, 2008, press release that the AIA A201 and AIA A410 Subcontract “incorporate the worst industry practices.” Press Release, New FASA CD-ROMs Help Subs Navigate and Avoid the Perils of AIA’s New A201 and A401, Jan. 7, 2008, [www.agc.org/cs/news\\_media/press\\_room/press\\_release?pressrelease.id=72](http://www.agc.org/cs/news_media/press_room/press_release?pressrelease.id=72).

7. In reality, there is actually one *less* set of standard construction contracts as a result of the consensus reached with the new ConsensusDOCS because two of the major producers of standard agreements, AGC and COAA, have folded their contract documents programs into the ConsensusDOCS. COAA and AGC discontinued publishing their individual contracts that have equivalent ConsensusDOCS contracts or forms. Moreover, some of the many other organizations that currently produce standard contracts may endorse ConsensusDOCS contracts without having to stop publishing their own individually produced contract documents.

8. *New Consensus Standard Contracts Should Be Exciting*, ENG’G NEWS REC., Sept. 24, 2007, at 148 (“[T]his is one of those rare times where much of the industry came together and attempted change. If successful, the effort may go a long way to cutting down the mountain of modified standard paperwork that has bogged down many projects and choked courts, arbitrators, mediators and disputes review boards. This has the potential of being something really big, if given a chance.”).

9. See Mike Wilke, Project Alliancing—Sharing Risks and Rewards Through a Collaborative Agreement, 2008 Fall Meeting, American Bar Association, Forum on the Construction Industry, at 6-2, [www.legalist.com/chicago2008/faculty.html](http://www.legalist.com/chicago2008/faculty.html) (Sept. 11–12, 2008).

10. *E.g.*, ConsensusDOCS 200, ¶ 2.1.

11. *E.g.*, *id.* ¶ 12.2.

12. *E.g.*, *id.* ¶ 12.3.

13. *E.g.*, *id.* ¶ 12.5.

14. *E.g., id.*
15. *E.g., id.*
16. For a good, in-depth discussion of how different contract clauses approach these issues, see Mary Jane Augustine and Christopher S. Dunn, *Consequences of Ownership or Licensing of the Project Drawings—If You Pay for it, Do You Own It?* 28:3 CONSTR. LAW. 35 (2008).
17. *E.g.*, ConsensusDOCS 240, ¶ 10.1.
18. ConsensusDOCS 200, ¶¶ 6.5, 6.6.
19. *Id.* ¶ 4.6.1
20. The authors acknowledge the contributions of Roger Price and Mark Johnson of Seyfarth Shaw LLP. This comparative discussion drew from Roger Price & Mark Johnson, *A Comparison of the New ConsensusDOCS and AIA Construction Forms*, CONSTR. LAW REP., Special Ed. (Mar. 2008), [www.consensusdocs.org/downloads/ConstructionLawReport.pdf](http://www.consensusdocs.org/downloads/ConstructionLawReport.pdf).
21. AIA A201-2007, § 1.2.1; ConsensusDOCS 200, ¶ 14.2.1.
22. *See* ConsensusDOCS 200, ¶ 3.2.4.
23. AIA A201-2007, § 3.2.2.
24. *Compare* ConsensusDOCS 200, ¶ 2.3, *with* AIA A201-2007, § 1.5.
25. AIA A201-1997, § 2.2.1.
26. *See* AIA A201-2007, § 2.2.1.
27. *See* ConsensusDOCS 200, ¶ 4.2.
28. AIA A201-2007, § 3.2.2.
29. *Id.* § 3.2.4.
30. *See* ConsensusDOCS 200, ¶ 3.32.
31. AIA A201-2007, § 7.3; ConsensusDOCS200, ¶ 8.1.
32. AIA A201-2007, § 7.3.
33. *See id.* § 15.2.
34. *Id.* §§ 7.3.9, 15.2.
35. ConsensusDOCS 200, ¶ 12.22.
36. *Id.* ¶ 8.22.
37. *See* [www.agc.org/cs/commentary\\_on\\_consensusdocs](http://www.agc.org/cs/commentary_on_consensusdocs).
38. AIA A201-2007, § 9.8.5.
39. ConsensusDOCS 200, ¶ 9.2.4.
40. *Id.* ¶ 9.2.4.3.
41. *Compare* AIA A201-2007, § 14.1, *with* ConsensusDOCS 200, ¶ 11.5.
42. *See* AIA A201-2007, § 14.1.3; ConsensusDOCS 200, ¶ 11.5.3.
43. *See* ConsensusDOCS 200, ¶ 3.9.4.
44. *See* AIA A201-2007, § 14.4; ConsensusDOCS 200, ¶ 11.5.3.
45. *See* AIA A201-2007, § 14.4.3.
46. ConsensusDOCS 200, ¶ 11.4.2.3.
47. [www.consensusdocs.org/information.html](http://www.consensusdocs.org/information.html).
48. RESTATEMENT (SECOND) OF CONTRACTS § 356 (1981).
49. BLACK'S LAW DICTIONARY 334 (7th ed. 1999).
50. AIA A201-2007, § 15.1.6.
51. [www.consensusdocs.org/information.html](http://www.consensusdocs.org/information.html).
52. ConsensusDOCS 200, ¶ 6.5.1.