



## **TC-OA-2020 – Terms and Conditions -- Owner/Architect**

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**CAUTION: THIS DOCUMENT HAS LEGAL CONSEQUENCES.** ALA recommends that the parties seek the advice of their attorney(s) prior to executing or modifying this Agreement. By executing this Agreement, the parties assume sole and complete responsibility for the content contained hereinafter.

**THE FOLLOWING TERMS AND CONDITIONS** are hereby incorporated into the Agreement between the Architect and Owner:

**COPYRIGHTS and LICENSES.** The Architect and the Architect's Consultants shall each be deemed the respective authors and owners of any materials produced under this Agreement and shall retain all common law, statutory and other reserved rights, including copyrights. The Owner acknowledges that the Architect and the Architect's consultants have prepared said materials and agrees to limit use of same to this site-specific project only. The Owner is granted a conditional nonexclusive license to utilize the materials produced under this Agreement on this Project on this project site only, which license is conditional upon payment in full to the Architect for all services performed or to be performed under this Agreement. The Owner's license may be revoked upon any breach of this Agreement. The Owner agrees to defend, indemnify, and hold the Architect and the Architect's consultants harmless from any causes of action, claims, losses, damages and expenses of any kind whatsoever, including reasonable attorney's fees, resulting from the unauthorized reuse of the Architect's and the Architect's consultants' materials.

### **DISPUTE RESOLUTION.**

**a. Mediation.** Any disputes between Architect and Owner shall be subject to mediation as a condition precedent to arbitration or litigation. Mediation shall be administered by the American Arbitration Association in accordance with the applicable rules in effect as of the date of this Agreement. Nothing contained herein shall preclude the Architect from filing any lien arising out of the Architect's services to comply with notice and filing deadlines prior to resolution of the dispute.

If the parties do not resolve the dispute through mediation, the method of binding dispute resolution shall be one of the following:

Arbitration       Litigation

**b. Arbitration.** If the parties did not make a selection above, arbitration shall be the default, and this paragraph shall govern. Arbitrations shall be subject to the Federal Arbitration Act. An arbitration shall address any claim, dispute or other matter in question arising out of or related to this Agreement that was not resolved by mediation, and shall be administered by the American Arbitration Association pursuant to rules in effect as of the date of this Agreement. A demand for arbitration shall be made in writing and delivered to the other party and to the American Arbitration Association prior to the expiration of the applicable statute of limitations. Both parties hereto consent to joinder, at the request of either party, with any other arbitration involving this Project and common questions of law or fact.

**LIMITATION OF LIABILITY.** The Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect to the Owner for any and all claims, losses, costs, expenses, or damages of any nature whatsoever, including attorneys', and expert witness fees and costs, from any cause or causes, so that the total aggregate liability of the Architect to the Owner shall not exceed the Architect's total fee received for services rendered on this project. It is intended that this limitation apply to any and all liability or causes of action, however alleged or arising, unless otherwise specifically prohibited by law.

**STATUTE OF LIMITATIONS PERIOD.** The Statute of Limitations period shall commence to run on the Date of Substantial Completion of the project. In no case shall the Statute of Limitations period commence to run later than the date when the Architect's services are substantially completed.

**VENUE.** The parties agree to be subject to the jurisdiction of the County of Twin Falls, State of Idaho. The laws of the State of Idaho shall govern the interpretation of this Agreement. If no selection is made, the laws of the locale of the Project shall apply and venue shall be in the county where the Project is located.

### **MISCELLANEOUS.**

- a. The Architect and Owner each bind themselves, their agents, successors, assigns and legal representatives to this Agreement. This Agreement may not be assigned without the written consent of the other party.
- b. Nothing in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against the Architect or Owner.
- c. Each party hereto represents that it has all necessary licenses to perform the services contemplated by this Agreement.