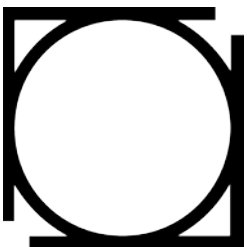


OAA 800

2021 GUIDE

Version 1.0, September 2022

Guide to the Standard Short Form of Contract
for Licensed Member's Services



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The Ontario Association of Architects would like to express its appreciation to the following individuals, participants, and groups whose input and comments were significant in the preparation of the new version of OAA 800 and this Guide:

- participants in the OAA's Roundtable for Construction Law Lawyers,
- participants in the OAA's Roundtable for Procurement Officials,
- McMillan LLP,
- OAA's Practice Resource Committee,
- Pro-Demnity Insurance Company, and
- various members and interested parties who provided commentary and criticisms since the previous version was published.

Revision History

Version	Date	Description
1.0	September 2022	Original issue to accompany OAA 800-2021 Version 1.0

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Note: Changes to the fixed text will be identified in this contract by a vertical line in the right margin alongside the applicable clause.

Introduction

This guide is provided to assist users in completing the contracts and to give users a better understanding of some of the more important parts of the documents. The Guide is provided to assist both clients and OAA members in completing the contracts, and to provide a better understanding of some of the more important aspects of the documents.

The information in the Guide applies equally to OAA 800-2021 A for use by Architects and OAA 800-2021 LT for use by Licensed Technologists OAA. For simplicity, the excerpts from the contract which are included in this Guide are taken from OAA 800-2021 A, and retain the term Architect. In this Guide, the term “*Holder*” is used to refer to both Architects and Licensed Technologists OAA who hold a Certificate of Practice issued by the OAA, rather than referring repeatedly to both Architects and Licensed Technologists OAA.

The instructions and commentary in this document are considered accurate and correct when written. Members and clients are cautioned that changes to the applicable legislation and court decisions, particularly those relating to prompt payment and adjudication, may require adjustments to be made in the use of this document and the related contracts. Since the prompt payment and adjudication provisions are newer and, as of August 2021, had not yet been tested in court, members should consult their legal counsel to determine if there have been court decisions, and what impact those decisions may have on the terms of the contract, liabilities, or responsibilities.

The contract has been significantly re-organized in a fashion similar to the other OAA standard contracts OAA 600-2021 and OAA 900-2021. The OAA contracts are now organized around the Agreement, Definitions, and Supplementary Conditions similar to CCDC contracts, with all the variable / fill-in-the-blanks information being moved out of the General Conditions. Most of this information was relocated to Articles of the Agreement. Some of it will be found in the Schedules and Appendices.

Background & Changes

Process:

OAA [Practice Advisory Services](#) (PAS) began a review of the OAA 800-2011 *Standard Short Form of Contract for Architect's Services* in 2017 in response to the provincial government's proposed changes to the *Construction Lien Act*. Various external factors including a new CCDC 2-2020 (which itself was delayed by COVID-19) delayed the completion of OAA 800-2021. However, the process continued, culminating in OAA Council approving a Practice Resource Committee recommendation in June 2022.

The following general goals for the update were established early on:

- make minor corrections to references, syntax, numbering and content collected by Practice Advisory Services since the 2011 version was released;
- provide the contract as a secure fillable (fill-in-the-blanks) type document;
- apply feedback obtained via OAA-hosted roundtable discussions with construction law lawyers and client procurement department representatives to get a client's perspective of the contract provisions;
- obtain legal review by lawyers who include public and private sector users, Architects, and Licensed Technologists OAA as clients with the aim of developing a balanced contract; and
- create a guide document combining instructions and commentary formatted for clarity with text and colour variation, and appropriate content addressing revisions to the OAA standard short form contract.

The Most Visible Change is Format:

The most visible change to the new version of OAA 800 is the format. There is now only one version. The schedules of services are referenced in the contract. The reference may be to the pre-defined full service list of services provided by the OAA or to a custom list of services developed by users for a specific project or client. The contract and the OAA-provided schedules/appendices are 'fill-in-the-blank' PDF documents.

Updates to the Schedules of Scope of Services:

The schedule of Scope of Services that was integral to OAA 800-2011 was updated, expanded, and then reformatted into Schedule 2 Basic Services and Schedule 3 Additional Services, maintaining consistency with the Royal Architectural Institute of Canada (RAIC) Fee Guide (*A Guide to Determining the Appropriate Fees for the Services of an Architect*), to form a common base on which to establish the published percentage fees.

The identification of *Basic Services* provides greater clarity to clients and members, as well as important consistency with the percentages contained in the RAIC Fee Guide, which are also based on 'Basic' services.

Opportunity to Customize the Services the Holders Offer:

To offer flexibility for situations where *Holders* are providing other than traditional or basic full services such as smaller portions of services (e. g. feasibility studies), or a custom set of services (e.g. condition assessments), members may substitute custom schedules providing lists of tasks suited to a particular project or client rather than the default OAA-provided schedules. Alternatively, where additional services are required, they can be included in custom schedules or added to the OAA-provided schedules through the use of Schedule 4.

Members may find the more comprehensive OAA 600-2021 *Standard Form of Contract for Architect's Services* better suited for situations where OAA 800 is not appropriate. It is intended that Holder-developed schedules may be used with OAA 600 and OAA 800.

Addition of Appendices:

Appendix A has been added as a standardized agreement relating to the provision of editable CAD or BIM files to the client where this is required.

Appendix B has been added as a standardized agreement relating to the waiver of moral rights for situation where such a waiver is desired.

Contracts and Attachments Provided Only as PDF:

The contracts are provided in PDF format only, with no editable Microsoft Word or Excel version available. Having a non-editable template reinforces the premise of having a 'standard' contract. Supplementary Conditions can still be added easily by using Schedule 5, which is referenced in GC15 Other Terms of Contract, and these modifications will be clearly visible to all users as changes to the standard OAA contract language.

As before, there is information that must be added to complete editable fields or to populate fillable text boxes. To simplify use, the editable fields and text boxes have been moved to the Agreement or the Schedules/Appendices. The user then only needs to look at the Agreement and the Schedules to see how the contract has been defined for any particular project. In the absence of Supplementary Conditions, the General Conditions portion of the contract remains constant.

Can't fix everything

The new versions include best attempts at solutions for some of the problems that seem to be perennial, such as getting additional fees for scope creep, or for release of CAD or BIM drawings. However, it is important to note that good management of the process, project, and client expectations can minimize these problems, whereas, changes to contractual language alone cannot. The Guide provides comments on intent, clarifications, and suggested wording for some common situations encountered where special terms and conditions are appropriate. While being able to refer to the Guide is helpful, it is not the same as having the wording in the contract.

Some of the language in the contract is intended to best describe the responsibilities of each party and avoid misunderstandings. The contract relies on plain language as much as possible.

Specific Revisions from 2011 versions:

1. Copyright notice added to restrict authorized use of OAA 800 to the time period it is available on the OAA Website.
2. For consistency, and ease of reference, the Articles and General Conditions were reformatted and numbered.
3. Anticipated dates of construction, Substantial Performance, and Ready-for-Takeover were added. (A07)
4. Added professional liability insurance requirements. (A10)
5. Additional Definitions were included so OAA 800-2021 is not dependant on also having a copy of OAA 600 to know what the defined terms mean.
6. The Appendices A and B were added: Appendix A Provision of Editable CAD or BIM Files and Appendix B Waiver of Moral Rights
7. Some of the user fillable text boxes have been pre-populated with examples of the recommended information that should be considered for use. This was done to provide guidance and to promote discussion of the issues addressed by the suggested wording. This suggested text can be changed by the user without requiring the generation of supplementary conditions.

Availability and Use of Older Versions of OAA 800

The OAA strongly recommends members and clients use the most current version of the standard contracts.

The current versions of OAA 800-2011 will remain available on the OAA Website for a transition period. This transition period is to allow users to become familiar with OAA 800-2021, and to develop any needed supplementary conditions. Once the OAA 800-2011 contracts are removed from the website, permission to use them will also have been rescinded.

The OAA retains archive copies of older versions of the standard contracts. The OAA is aware some client groups have prepared documentation that is coordinated with older versions of OAA standard contracts, and that they prefer to continue to use those. However, since applicable law has changed and the older contracts may no longer be compliant with current law or industry standard practices, it is OAA policy that archived copies of these documents are retained for information only and are not distributed for use as contracts for new projects.

Owners/clients referencing older versions of OAA contracts in RFPs or who have supplementary conditions to older contracts should update their documentation as the older versions have been withdrawn from use, permission to use older versions has also been withdrawn, and they are no longer available from or supported by the OAA.

Basis of the OAA 800-2021 Contract

OAA 800-2021 is intended as a standalone prime contract between a client and an Architect or a Licensed Technologist OAA. As such, it contains appropriate terms and conditions, and a description of the scope of services that the *Holder* of a Certificate of Practice will provide to the *Client*. OAA 900-2021 for the retention of subconsultants by a *Holder* is compatible with both OAA 600-2021 and OAA 800-2021

In order to keep OAA 800 as brief as possible, where something is established by law, it has generally been omitted from the text of the contract. Where provisions generally relate to larger, more complex, or longer projects, they have not been included in the text of the contract. If such provisions are needed for a specific project, consider using OAA 600, or including appropriate provisions as supplementary conditions to OAA 800

Where the Holder Engages Subconsultants Directly

Where the *Holder* engages some or all of the other consultants directly, *Holders* should consider the following:

- Are the terms consistent with the terms of *Holder's* contract?
- Are the subconsultants required to have appropriate professional liability insurance?
- Are the subconsultants as listed in the *Holder's* contract,

Refer to OAA 900-2021 for the retention of subconsultants. It flows the requirements of the prime contract through to the subconsultant, and addresses the requirement for insurance.

Where the Client Engages Consultants Directly

Where the *Client* engages some or all of the consultants directly, *Holders* should consider the following:

- Are the terms consistent with the terms of *Holder's* contract?
- Are the client's consultants required to have appropriate professional liability insurance?
- Did you receive a copy of those contracts, so that the services, and terms and conditions can be confirmed and the work coordinated?
- Are the consultants as listed in the *Holder's* contract, is the *Holder* providing *Consultant Coordination* for them and, if so, is the *Holder's* fee for coordination sufficient? (Refer to the [RAIC Fee Guide](#)).

Letter Agreements

Holders who use a letter proposal with fees and only a brief description of services, such as "design and drawings for permit and construction," may find it is better to have a more detailed list of services for their *Subconsultant(s)* than they have in their *Client* agreement letter.

The advice is to use standard contracts, even where a letter is the initial means of agreement with a client.

Which Projects is the OAA 800 Contract Appropriate for?

There is no definitive statement of when to use OAA 800 instead of OAA 600. Factors to consider would include the size, duration, and complexity of a project, the experience of the client, the experience of the *Holder*, and any past experience with the client, the client's consultants, the authorities having jurisdiction, and the general economic environment.

Schedules

Most items of service are described as *Basic Services* in OAA 800-2021 Schedule 2, such as participating in preliminary analysis of the *Client's* requirements, provision of written information and preliminary drawings, schematics, line diagrams, etc., for schematic design and design development stages, or as *Additional Services* listed in OAA 800-2021 Schedule 3 such as services for multiple bid packages or a project with multiple phases.

Instructions for Use of Contracts

Note: Some features of Adobe PDF forms do not view as intended with other PDF software, including Apple's standard "*Preview*" software on Mac's. Efforts have been made to keep the documents Mac-compatible, but the OAA has no control over what features software developers incorporate in their programs. In some reported cases, older versions are more compatible than newer ones. Adobe Acrobat Reader DC or Adobe Acrobat Pro DC may be required to properly view, fill in, and print PDF forms. Adobe Acrobat Reader DC for the PC, Mac or Android is available at:

Detailed instructions for the use of the contract are contained in the Quick Start Instructions: How to Use the Template Files and Customize Your OAA Contract document available on the OAA Website

For Use with RFPs and Other Procurement Processes

Where OAA standard contracts are to be used, it is recommended to include a copy of the contract as part of the procurement documents. This avoids having to restate, paraphrase, or repeat elsewhere what is already in the contract. It is also recommended that appropriate information or values be inserted in the fill-in-the-blanks boxes in the contract included in the procurement documents. Again, this avoids having to restate the provisions elsewhere. It may also preclude the need to develop some supplementary conditions.

Provided all the required information is included in the procurement documents, the shorter the documents, the easier it is to understand them. The less repetition of information, the less the chance of inconsistency or contradiction among the various statements.

Commentary

General

In this section of the Guide, headings corresponding to those in the contract are in **black text**, and commentary and guidance on the content under each heading are in blue text. Additionally, an example of a completed contract is available on the OAA Website as an attachment to this Guide. The commentary and references to other information are intended as assistance and guidance to users, but are neither a complete nor comprehensive analysis of the contract. It is simply impossible to anticipate all possible circumstances. The commentary is not intended to provide legal advice nor replace advice from your own legal counsel.

Of note is the introduction of Appendix A – Provision of Editable CAD or BIM Files. This appendix is a licensing agreement relating to the provision to the client of the *Holder's* and other consultants' original drawing files. Also, separate Schedules 2 and 3 have been introduced, superseding the integral scope of services item list that was in the previous version. The content of Schedule 2 has been modified. This was done to allow for the development of new versions of the schedules for use with different project delivery types, and to allow schedules developed for the OAA 600 series of contracts to be used with the OAA 800 series of short form contracts. In addition, the Articles of the Agreement and General Conditions (GC), have been numbered for easy reference.

Where a member develops their own scopes of services for a project, they should be organized as Schedules 2 and 3. Where there is a need to add a few services to those already listed in the OAA-provided Schedule 2, the additional scope of services should be added as Schedule 4. Schedule 5 should be used for any required supplementary conditions, or changes to the articles of agreement or the definitions. Any member-developed scope of services should be reviewed carefully to ascertain it fairly describes the services of the *Holder* and the responsibilities of the client, such that both parties understand not only their respective duties and responsibilities under the contract, but also which services are not being provided in the agreed fee.

It is always recommended that parties obtain legal and insurance advice when entering into a contract. This is a particular need when there are significant revisions to the standard terms and conditions via supplementary conditions or amendments, if non-standard contracts for construction (other than the industry standard CCDC construction contracts) are to be used, or if there are amendments or supplementary conditions to the construction contracts.

Any amendments to the OAA 800 contract such as revised wording, deletions, or additions should be documented in Schedule 5 as referenced in GC08 Other Terms of Contract. Alternatively or for minor changes, hard copies of the contract can be amended by hand and each change initialled by both parties. Again, legal advice is recommended.

Consistency between the Client/Architect or Client/Licensed Technologist OAA contract and the construction contract is essential if any services are to be provided during the procurement phase for assistance with tendering, or the construction phase for general/site review, and/or construction contract administration. The *Holder's* services contract needs to be coordinated with the "Role of the Consultant" described in the owner/contractor construction contract (e.g. CCDC 2). This coordination needs to include any supplementary conditions added to the construction contract.

Consistency is also needed between the requirements of the contract with the client and the subconsultant contracts, particularly in relation to passing RFP requirements for confidentiality, conflict of interest, licensing of instruments of service, insurance, and indemnification from the prime contract to the subcontract. This would also equally apply if the Architect or Licensed Technologist OAA contract directly other members of the project team via an OAA 900 SubContract or other forms of written subcontract.

Cover and Front Matter

The cover identifies which contract is being used and provides a text box in which to insert the *Project* name/brief description.

The inside of the cover contains the copyright notice, tying valid use of the contract to the availability of the contract on the OAA Website.

The inside of the cover also credits those who assisted in suggesting changes and additions, and in reviewing drafts of the contract with the goal of producing a contract that reflects current industry practices and fairly balances the needs of clients and OAA members.

The Table of Contents lists the major components of the contract and how the contents are organized to assist in locating appropriate clauses. When Schedules 3, 4, 5, or Appendices A or B are included, indicate this by putting a mark in the corresponding check box.

Agreement

A01 Effective Date

Enter the effective date of the contract, which could be:

- the date an oral agreement was reached;
- the date an interim or letter agreement was executed;
- the date the contract was submitted to the client for signature;
- the date the client first authorized action;
- the date of execution of the contract; or
- some future date at which the parties want the services to start.

It is important that both parties agree on the effective date of the contract and arrange other related contracts accordingly.

A02 Client

Enter at least the legal name and address of the Client. If desired also enter contact information such as telephone number, email address, FTP site, and website.

It is essential for the success of the project that the client be represented by one individual through whom communications between the client and the *Holder* are channelled. This is particularly important when the client is a group of individuals such as a board or building committee with differing ideas about the project. It is not uncommon to experience major redesign and substantial delays when several individuals with disparate views officially represent the client.

A03 Architect

Enter at least the legal name and address of the *Holder* of the Certificate of Practice. If desired, also enter contact information such as telephone number, email address, FTP site, and website. The name of the *Holder* should be the same as that which is registered with the OAA as the *Holder* of the Certificate of Practice.

A04 Project

Enter a detailed description of the Project and its characteristics. The description should be consistent with that on the cover.

A05 Owner

This would be applicable in situations such as when the *Holder* is engaged by a professional engineer as a subconsultant, a project manager, a design-build contractor who is not the owner, or if the Client is a tenant or leasee. If the Client is the owner, enter "Not Applicable" (N/A).

A06 Construction Cost Budget

It is important to understand that the *Holder* designs within a *Construction Cost* budget set by the *Client* and that the fees are inevitably related to the *Construction Cost*. It is critical for a successful project to establish a reasonable budget at the beginning, which includes not only the *Construction Cost*, but also appropriate contingencies, even if the *Client* will be looking to the *Holder* or others for estimates as work progresses

Contingencies are fixed amounts or amounts calculated as a percentage of the *Construction Cost* to cover unknowns or changing factors of cost and include: (i) escalation contingency to cover price escalation from the time of an estimate to the time of bidding; (ii) design contingency for design development factors prior to construction; and (iii) construction contingency to cover unforeseen changes during construction. The latter includes amounts for both design and construction services during construction. At the time of writing, it may also be prudent to include a supply chain contingency to cover price changes and schedule delays due to disruptions in the supply chains for equipment and basic materials.

As the project proceeds, one or more estimates of construction cost may be prepared as statements of the approximate total *Construction Cost* as defined (the accuracy of which depends on the level of detail of the *Contract Documents* at the time the estimate is prepared), based on current area, volume, or similar conceptual techniques; and includes contingencies as defined. The more complete the *Contract Documents* are at the time an estimate is prepared, the more reliable the estimate is likely to be, excluding the impact of unanticipated market forces.

Where prepared by the *Holder*, initial evaluations of the *Construction Cost* budget, the preliminary estimate of *Construction Cost* and any updates, represent the *Holder's* judgement as a design professional. Neither the *Architect* nor the *Client* has control over the cost of labour, materials, or equipment, over contractors' methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, the *Holder* cannot and does not warrant or represent that bids or negotiated prices will not vary from the *Construction Cost* budget or from any estimate of *Construction Cost* or evaluation prepared or agreed to by the *Holder*.

Refer to the Definitions to understand all the components that make up the total budget for *Construction Cost* and enter the dollar value in the space provided.

It is expected that all dollar amounts noted in the contract are in Canadian funds. If it is intended to use another currency, that decision should be recorded in Schedule 5.

A07 Anticipated Dates for Construction

Enter these anticipated milestone dates, which are critical in that a material change to milestone dates may affect the fee calculation, any extra services, and/or the estimates of *Construction Cost*. These dates are used to establish the initial schedule for both design and construction, and by extension, the duration of this contract.

The concept of Ready-for-Takeover was introduced in CCDC 2-2020 to decouple contract milestones from varying construction lien legislation across the country. Select either *Substantial Performance of the Work* or *Ready-for-Takeover* as applicable to this contract and the anticipated construction contract. Mark the other option as N/A.

The requirements for substantial performance of a construction contract are embedded in the *Construction Act* of Ontario, and apply to any contract for an improvement to a property. Ready-for-Takeover is a contractual concept that at the time of writing is not part of any legislation.

A08 Consultants

The *Holder* is responsible for coordinating the work of both the *Holder's Consultants* and the owner's *Consultants* which are listed in Article A08.

Identify by discipline and company name the *Consultants* engaged by the *Holder* in Article A08.1 and those engaged by the *Client* in Article A08.2. These are the *Consultants* whose services the parties have agreed will be coordinated by the *Holder*. (Refer to definition of *Consultant Coordination*, and also to OAA Practice Tip [PT.27](#).)

Should other consultants be added at a later date, the *Holder* is entitled to an extra fee for the coordination of their extra services.

For proper performance of the *Work*, the *Client* should ensure they engage *Consultants* with terms and conditions including insurance conditions compatible with this *Contract*.

The *Client* and the *Holder* should both receive evidence of current certificates of the insurances carried by the *Consultants* and evidence of insurance renewal confirmations.

Where the *Holder* retains *Consultants*, consideration should be given to using OAA 900-2021, the standard form of contract between a *Holder* and a subconsultant. OAA 900-2021 is designed to have the terms of the prime contract flow through to the subcontract.

A09 Information Provided by Client

Risk should be borne by the party in the best position to manage the risk. In the case of real property (land or buildings), that would be the owner or the client. It is the client's responsibility to provide the relevant required information about the existing conditions of the real property. Further the *Holder* and the *Holder's Consultants* involved in providing services to the *Project* must have the right to rely on the accuracy of the information provided.

If the initial information on which the *Holder's* fees are based changes, then the compensation, schedule, and services need to be revisited and appropriately adjusted to reflect the changes in required time and effort.

If the client's information is old or unreliable, the client should use the time leading up to selecting a *Holder* to obtain updated, accurate information that the *Consultants* can rely on, rather than trying to transfer the risk to the *Consultants*.

It is possible for the *Holder* and *Consultants* to assist in defining the scope of the information required for their purposes at the outset of the project and/or as it evolves. This assistance should not be construed as changing the underlying principle that the client is responsible for all information about the existing condition of the real property they control. The design team is responsible for the changes it designs to the client's real property.

In regard to obtaining the services of surveyors, geotechnical consultants, hazardous material consultants, and similar specialist consultants, the *Holder* should acquaint themselves and the client with Practice Tip [PT.30](#) "Retention of Specialist Consultants".

Toxic and hazardous substances include any solid, liquid, gaseous, thermal, or electromagnetic substance that could cause harm to, or adversely affect the environment or human health, and includes, without limitation, chemicals, contaminants, irritants, pollutants, moulds, asbestos, bio-contaminants, polychlorinated bi-phenyls, biohazards, and nuclear, hazardous, and special wastes, whether or not defined in or regulated by any federal, provincial, territorial, or municipal laws, statutes, or regulations. For clarity, material designated as excess soils or regulated by excess soils legislation is not included as toxic or hazardous substances.

The *Client* must also provide the proper legal description of the property. This is information of a different nature, but it also should come from the *Client*. The correct legal description is essential to properly certifying *Substantial Performance of the Work*, and should be provided at the beginning of a project rather than around the time of substantial performance. The legal description is not the municipal address. The information may not be readily at hand, and if it takes time to source or verify it, there is a risk of inadvertent delay in completing the certificate of substantial performance and therefore in the release of holdback, possibly delaying the completion of the *Project*.

A10 Professional Liability Insurance

Professional liability insurance (PLI) (also known as errors and omissions insurance) is mandatory for *Holders*. *Holders* are free to determine how much insurance, in excess of the mandatory minimum, they desire for the practice. PLI's primary purpose is not to protect the *Holders*, but to protect the *Client* and the public. Any limits set in Schedule 5 should be established by the *Client* at a level appropriate for the nature of the project and the services being provided by the *Holder*. For information about the mandatory insurance program, refer to Pro-Demnity Insurance's brochure "[Architects Insuring Architects](#)".

The client should also establish in consultation with their insurance advisors the duration for which coverage should be maintained by the *Holder*. Pro-Demnity suggests a minimum of two or three years after the earlier of the completion of the *Services* or termination of this *Contract*. Note that PLI is claims-made insurance. The coverage and limits available when a claim is made is what matters, not what was available previously when any error, omission, or negligent act occurred.

PLI covers the professional in relation to the professional services provided. As a result, no one else can be added as a named insured to a PLI policy.

In consultation with their insurance advisors, the *Client* should also establish minimum insurance levels for all other consultants. The *Holder* should not be the only consultant carrying insurance. The coverage provided to *Holders* through Pro-Demnity includes separate pools of money to settle any claims, and from which to pay defence costs. Typically, the coverage available to *Holders* or other consultants from other insurers involves only one pool of money, so anything spent on defence costs reduces the coverage available to settle any claims.

PLI only provides coverage for the specified risks. Consideration should be given to other types of insurance that may be appropriate depending on the nature of the project and the scope of services being provided.

Other insurances which may be considered include:

General Liability Insurance – While the *Client*, the *Holder*, and the other consultants should be named insureds on the contractor's general liability insurance policy, *Holders* should consider having their own insurance coverage to protect against claims not covered by professional liability insurance, and those which may arise out of the *Holder's* activities on site prior to construction mobilization, and after the demobilization of the contractor, in addition to claims arising during the course of the *Work*.

Automobile Liability Insurance – *Holders* should have automobile insurance covering owned and non-owned vehicles used in connection with the *Project*. *Holders* should confirm any insurance coverage on their personal vehicles provides coverage for occasional use in connection with projects.

A11 Basic and Additional Services

Services that are known to be required at the time of contract signing are divided into *Basic Services* and *Additional Services* so there can be a correlation with the percentages for Basic Services indicated in the RAIC's "[A Guide to Determining Appropriate Fees for the Services of an Architect](#)", commonly called the RAIC Fee Guide. For further explanation, refer to the Definitions section. The category of *Extra Services* has been added to account for those services which were not known to be required when the contract was signed, but were later recognized as being needed. This third category addresses the confusion that existed in having three types of services but only two categories to which to assign them.

The scope of basic and additional services is documented in Schedules 2, 3, and 4.

A12 Fees for Holder's Services

Where the basis for the fees for the services is straightforward, it may be noted in Article A12. Where the basis for the fees is less straightforward, it is appropriate to use Schedules 1 through 5 as needed to properly describe the basis for the fee calculation. Refer to the commentaries, in this guide, on the Schedules for guidance on how to use them.

The scope of basic and additional services, and the basis for fee calculation is set out in Schedules 2, 3, and 4. Fixed fee amounts and time based (e.g. hourly, daily) or unit rates to be applied to the services should be established at contract signing.

The purpose of the schedules is two-fold:

- 1) identify the services included in the contract; and
- 2) identify the fee or the formula/method that will be used to calculate the fee for each service.

Fee types, suitable for the specific project, should be established, described and a legend given for each different fee type. Refer to Schedule 1. It has been pre-populated with recommended fee types. The legend is commonly:

F1, F2, F3, F4, etc., as used in this commentary for the example text. The legend is identified in Article A15 along with the explanatory text. The legend symbols F1, F2, etc., are put into the schedules as appropriate.

Some tasks, such as attending meetings, may be priced as a fixed number of meetings in a fixed fee, and then charging for any additional meetings required at time-based or unit rates. For example: If the construction is expected to last 12 months, 24 site reviews may be appropriate. The contract could specify a fixed fee to include 24 site reviews and provide for additional site reviews required (due to site conditions or delays that are not the *Holder's* responsibility) to be charged at the identified time-based rates or at a cost per site review.

Fees for Changes to the Work or Services

Changes to the work and extra fees can rarely be avoided. The contract should include an appropriate method for dealing with fees for any additional services required due to changes.

Fees required for a specific change to the work should always be agreed on prior to the commencement of the services related to the change. A determination should be made as to whether the change involves more services of the same type as already contracted for or involves extra services not previously contemplated. Advise the client of known or possible impacts to the work of other disciplines as well.

The OAA Standard Form for Extra Services or Contract Change may be used to record such changes.

For percentage-based fees:

Changes to the *Work* with percentage-based fees is covered in the text for percentage-based fees. This includes where a reduction or elimination of a portion of the project would normally result in a reduction of fees, yet actually requires more effort or time from the *Holder*. This can occur where work already done must be undone or revised.

For fixed fees:

For fixed fees, care is required by the *Holder* to identify to the client any changes to the original scope of the project, for which the *Holder* may be compensated for the extra services based on hourly rates, unit rates, or an agreed fixed amount.

A fixed fee may be presented as being based on a percentage of the estimated construction cost at commencement. This computation can include a reasonable amount (percentage) for changes during construction based on the experiences of the parties. Where this method is chosen, and provided that there is no material project change, the fixed fee will include services for changes to the work. Such an arrangement depends on both parties being very familiar with the project type and scope of work needed.

A13 Retainer

The retainer is a deposit for the *Holder's* services. It is in recognition that the *Holder* in accepting the *Contract* has arranged its business affairs and personnel to provide the necessary service for the *Project*.

The retainer is an advance payment on fees, which will be deducted from the final invoice. An advance payment may appropriately be accounted for as a statement of credit to the client's account. This retainer is the non-refundable minimum amount payable under the contract. At the end of a project, if the final invoice is less than the retainer amount, the difference shall be refunded. Clients should obtain legal advice regarding any holdback to be retained in trust in relation to the retainer.

A14 Reimbursable Expenses and Administrative Charge

Reimbursable expenses vary by project, and may be very hard to estimate under the best of conditions. The Article's text box is pre-populated with items that are typically considered reimbursable expenses.

- (i) transportation in connection with the *Project* for authorized travel (e.g. for transportation, lodging and meals while travelling) Sometimes reimbursable travel is limited to that exceeding a minimum distance from the *Holder's* office in order to simplify the record keeping. Where travel costs are to be reimbursed, enter the amount per kilometre that will be invoiced for auto travel in Schedule 5.

Where travel costs are not being reimbursed, but are otherwise being accounted for, rather than writing supplementary conditions to delete the wording throughout, simply set the rate to “\$0.00”.

Sometimes, for automobile travel is charged for only when it is beyond a stipulated distance from the *Holder’s* office. Include any stipulated distances or other parameters in Schedule 5

For purposes of calculating the cost per kilometre for automobile travel (should the client not have their own established rates) a fair guide is the published federal government rates which are updated regularly — refer to the Canadian Revenue Agency (CRA) website.;

- (ii) communication and shipping (e.g. for long distance telephone calls and facsimile messages, courier services, postage, and electronic conveyances);
- (iii) reproduction of *Instruments of Service*, photographs, reports, and other documents in excess of one printed or electronic copy of each. Some clients are equipped to copy documents themselves, so it may not make sense for the *Holder* to provide a number of copies that are difficult to determine in advance;
- (iv) web-based project management services, specifically requested by the *Client*;
- (v) fees, levies, duties, or taxes for permits, licences, or approvals from authorities having jurisdiction. These would not include those required by the *Holder* or consultants to be properly licensed or offer services to the public;
- (vi) premiums for additional insurance coverage or limits requested by the *Client* in the interests of the *Project*, in excess of that normally carried by the *Holder* or the *Holder’s* consultants;
- (vii) fees for *Project*-specific collaborative software or software subscriptions requested by the *Client*; and
- (viii) other *Project*-related expenses approved by the *Client* in writing prior to expenditure. This last line allows for unanticipated items without having to amend the contract.

The administrative charge for processing reimbursable expenses should be entered as a percentage here.

Some clients will try to negotiate out the administrative charge if separate from the fee. *Clients* should recognize and be advised that there is a real administrative cost in the assembly, review, preparation, and issuance of any agreed upon pass-through reimbursable cost invoices.

If the administrative charge is to be zero, rather than writing supplementary conditions to delete the wording throughout the contract, simply set the administrative charge percentage to 0. This avoids unnecessary supplementary conditions, and the possibility of missing a reference somewhere.

In some instances, clients insist on *Holders* carrying the entire cost of reimbursable expenses, including the administrative charges within the fee. In such cases after estimating the anticipated amount of *Reimbursable Expenses* including appropriate administrative charges, add the amount determined to the fixed fee or increase the percentage fee, and record this as part of Schedule 5. Then set the administrative charge percentage to “0” and note in Schedule 5 that “*Reimbursable Expenses* are included in the *Holder’s* fees.”

Every attempt should be made to determine the magnitude of the *Reimbursable Expenses* prior to signing the *Contract*. This would include defining how many copies of the *Instruments of Service* are required.

A15 Invoicing

Typically, services are invoiced monthly. If invoices are to be issued upon the achievement of project milestones or some other trigger rather than on a recurring basis such as weekly, monthly, or quarterly, amend the requirements in Schedule 5 to establish what is agreed upon. On some small, fast-paced contracts, it is appropriate to invoice twice monthly or even weekly. Other projects may be invoiced on the basis of milestones met.

Proper Invoice Contents

The *Construction Act* defines the minimum requirements for the information to be included in a *Proper Invoice*.

At the time of writing, as defined in the *Construction Act*, a *Proper Invoice* means a written application for payment for *Services*, materials, *Reimbursable Expenses*, or other compensation containing at a minimum the following information:

- (i) *Holder’s* name, address, and telephone number;

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- (ii) Date of the invoice and the period during which the Services, materials, or related documentation were supplied;
 - (iii) Information identifying the authority under which the Services, materials, or related documentation were supplied;
 - (iv) Description, including quantities where appropriate, of the Services, materials, or related documentation that were supplied;
 - (v) Amount payable for the Services, materials, or related documentation that were supplied, and the payment terms;
 - (vi) Name, title, telephone number and mailing address of the *Holder* to whom payment is to be sent;

Reference to the applicable lien legislation should be made to check for changes in the minimum requirements. The *Construction Act* also provides for a contract to specify additional requirements. Any desired additional requirements such as the *Holder's* and *Client's* project numbers are to be listed in Schedule 5.

Many construction contracts require the contractor to submit a CCDC 9a Statutory Declaration with all but the first invoice. As a result, many contractors have a commissioner of oaths or a notary public on staff. Such is not the case with *Holders*. Architects and Licensed Technologists OAA are licensed professionals subject to professional standards and discipline. In recognition of these differences, it is recommended that when requested by clients to provide statutory declarations, *Holders* introduce the OAA Standard Certificate of Payment and Distribution form, and recommend this be used instead.

A16 Interest on Unpaid Balance

The underlying principle is that the *Holder* is not in the business of funding the client's project. Accordingly, the interest paid to the *Holder* on overdue amounts should be more than the interest that the client pays to its lender, and more than the *Holder* pays for bridge financing between when the client should have paid and when the client does pay. This should be reflected in the rate entered here. The rate, while a deterrent, ought not to be of usurious proportions.

Clients should understand that *Holders* are in business, and have obligations to meet business expenses, and overhead costs, as well as expenses directly attributable to the client's project. *Holders* are not in the business of funding client's projects even indirectly.

Prudent *Holders* exercise good practice, and satisfy themselves that their clients have the capacity to meet the financial commitments to the project and the *Holder*. Late payments may be indicative of funding problems. Sometimes an event occurs after due diligence has been performed, causing a change in the client's ability to meet its obligations. On projects for public clients funding approval may be delayed. *Holders* should avoid allowing unpaid balances to accumulate.

Regardless of why it occurs, any suspension of services will result in extra costs. Too frequently, as stated in OAA Regulatory Notice RN.09, to avoid charges of professional misconduct, *Holders* may be required to suspend services when a client allows a contractor to proceed without proper approvals in place.

The suspension of services (demobilization) has associated costs in time and money related to such things as disassembling teams, reassigning of project team members (where possible), recording project status, archiving files, and possibly costs for premises, software, and hardware.

The resumption of services (remobilization) has associated costs in time and money related to the reassembling of the project team members, recruitment of replacement team members, re-familiarization with the project and its status, and possibly costs for premises, software, and hardware among others.

Signing Space

Those with authority to sign the contract should sign here. Corporations should affix their corporate seal. A *Holder's* seal is not a corporate seal and should not be used as such. It is sometimes prudent to have corporate directors sign personally as well signing as officers of the corporation. Where the client is a couple, both should sign the contract.

Definitions

Many of the definitions herein are self-explanatory. Guidance is provided where appropriate to explain changes or additions from the previous versions of OAA 800.

The previous versions only included definitions that were not found in OAA 600-2013, referring users to OAA 600 for the definition of defined terms that had the same definition as that used in OAA 600. It was decided that the OAA 800-2021 contracts should be self-contained for use with any prime contract, and should not rely on OAA 600. As a result, the definitions for all the defined terms used in OAA 800-2021 are now included in OAA 800. Defined terms are shown in italics with initial capital letters.

Additional Services

These services are those services which are known to be required for the *Project* at the time of contract signing, and which do **not** form the basis for the percentage fees as defined in the Royal Architectural Institute of Canada (RAIC) Fee Guide (A Guide to Determining the Appropriate Fees for the Services of an Architect).

Architect

Basic Services

These services are those services which are known to be required for the *Project* at the time of contract signing, and which form the basis for the percentage fees as defined in the Royal Architectural Institute of Canada (RAIC) Fee Guide (A Guide to Determining the Appropriate Fees for the Services of an Architect).

Client

Construction Cost

The *Construction Cost* typically includes construction contract price(s), cash allowances included in the construction contracts, building permit fees, changes during construction, contractor's general conditions costs, overhead and profit, construction management fees, or other fees for the coordination and procurement of construction services, and all applicable taxes, excluding the full amount of Value-Added Taxes, whether recoverable or not. The *Construction Cost* excludes the compensation of the *Architect* and the *Consultants*, land cost, land development charges, or other professional fees, which are also the responsibility of the *Client*.

It is prudent for the client's budget to exceed the anticipated *Construction Cost*. Contingencies should be included in the budget to account for inflation between the design phases and the end of construction, for design changes, to accommodate changes in applicable law, to account for unexpected site conditions, or unknown factors that may affect the not only the *Construction Cost*, but also soft costs and fees, and as of the time of writing, for supply chain issues.

The exclusion of value added taxes from the definition of *Construction Cost* reflects the exclusion of value added taxes from the percentage fee calculations in the 2019 version of the RAIC's "A Guide to Determining Appropriate Fees for the Services of an Architect". The revised definition is a change from earlier versions of the Fee Guide which included VAT in the percentage calculations.

This situation arose when the hidden Manufacturer's Sales Tax was replaced by the visible Goods and Services Tax. To have excluded GST from construction costs would have immediately reduced consultant's fees, so GST (and later HST) were included in the construction cost until the fee guide could be recalculated. Now that that has finally been done, the definition had to be revised for consistency.

Construction Documents

Contract

Consultant

Consultant Coordination

Typically, *Consultants* are professional engineers with a certificate of authorization, *HOLDERS* of a Certificate of Practice, and perhaps landscape architects, interior designers, specification writers, hardware consultants, and cost consultants.

There are other, less commonly used consultants specializing in relatively narrow fields who may be engaged on a specific project and require coordination. It is important at the outset of a project, especially if the project is large or complex, to ascertain the extent of consultancies that will be involved and the extent of the coordination services that the *Holder* will be required to provide.

When consultants are added to the *Project* after contract signing, it is appropriate to adjust the *Holder's* fees to reflect the additional work required to coordinate the additional consultants.

A distinction should be made between the coordination of the *Holder's Consultants* and the *Client's* other *Consultants*. The distinction is based on the lack of a contractual relationship between the *Holder* and the *Client's Consultants*. It is recognized that the *Holder* may not know the complete scope of services of the *Client's Consultants*, and that the *Holder* can only request the *Client's Consultants* cooperation. Even where the *Holder* provides coordination, it is the responsibility of the *Client* to manage the performance of the *Consultants* they retain directly.

Refer to Practice Tip [PT.27](#) for additional information on coordination.

Contract

Contract Documents

Effective Date

Extra Services

The category *Extra Services* was added to remove the need to redefine basic and additional services. These services are those which are **not** known to be required for the *Project* at the time of contract signing, but which are later determined to be necessary.

Extra Services may include, but are not limited to, the provision of services or the reviewing, evaluating, revising, or providing of additional drawings or specifications, including of proposed change notices, change orders, change directives, or other documents; or increased levels of effort which are:

- .1 caused by instructions of the *Client* that differ from instructions or written approvals previously given by the *Client*, including revisions made necessary by material adjustments in the *Client's Functional Program* or *Construction Cost* budget;
- .2 caused by significant changes to the *Project*, including size, quality, complexity, or the *Client's* schedule, including the anticipated dates identified in Article A07;
- .3 caused by changes to the method of bidding or negotiating with the construction parties or the construction delivery method or the form of construction contract;
- .4 caused by the enactment of, or revision to statutes, regulations, codes, bylaws, or orders by authorities having jurisdiction applicable to the *Work* or *Services* subsequent to the *Effective Date*, which enactment or revisions the *Holder* could not have reasonably anticipated or foreseen;
- .5 caused by an interpretation or change in interpretation by the authorities having jurisdiction which differs from the *Holder's* reasonable interpretation of statutes, regulations, codes, bylaws, or orders by authorities having jurisdiction, which difference the *Holder* could not have reasonably anticipated or foreseen;
- .6 due the *Client's* failure to render decisions in a timely manner;
- .7 in connection with evaluating substitutions proposed by the contractor that require significant research or effort to evaluate, or in connection with making subsequent revisions to the drawings, specifications, or other documentation resulting from the acceptance of such substitutions;
- .8 caused by the evaluation of an extensive or unreasonable number, size, or complexity of claims or requests for information submitted by the contractor or others in connection with the *Work*, except to the extent any such requests for information result from a lack of appropriate detail, clarity, or consistency in the *Instruments of Service*;
- .9 due to replacement of any of the *Work* damaged by fire or other causes beyond the *Holder's* control during construction;

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- .10 made necessary by the default of the contractor, by major defects or deficiencies in the *Work* of the contractor, or by failure of performance by either the *Client* or the contractor under the construction contract;
 - .11 requested by the *Client* in connection with any *Adjudication*, mediation, arbitration, legal proceeding, or other dispute resolution proceeding that is not as between the *Client* and *Holder* under this *Contract*, including in respect of any contract of the *Client* being administered by the *Holder*, and which was not substantially caused by an error or omission of the *Holder* unless the *Holder* is included or joined as a party therein;
 - .12 made necessary as a result of any delay to the *Project* to the extent that such delays are not due to the acts or omissions of the *Holder*; or
 - .13 made necessary by extension to the duration of the *Project*, including extension of the anticipated dates for construction described in Article A07, except to the extent that any such extension is due to an error or omission of the *Holder* or its *Consultants*.

Where appropriate, what are considered the causes of *Extra Services* can be included in Schedule 5 so that they become an integral, enforceable part of the contract.

Force Majeure Event

Force Majeure is not an established principle at law and is defined solely by the contract terms and conditions. The definition of *Force Majeure Event* was written without reference to a list of examples to avoid excluding an event because it wasn't listed; rather the definition relies on three characteristics to determine if an event is a *Force Majeure Event*.

General Review

General Review is defined by legislation, and professional liability insurance provides coverage for what is required by law. Any change to what constitutes *General Review* may result in exclusion from PLI coverage and reduced protection for clients and the public.

Refer to [Regulation 27](#) Section 50, to [OAA Documents & Publications](#) and to the Canadian Handbook of Practice for Architects ([CHOP](#)) for recommended procedures and reporting forms.

When required by the building code, it is essential for the client to retain a *Holder* to provide general review from the start of construction. The *Holder* will then be able to certify payments, substantial performance, or release of holdback. Therefore, it is in the interest of both the client and the *Holder* that the substance of this service be clearly understood.

When *General Review* is not required by the building code, it may still be necessary for the client to retain a *Holder* to provide construction contract administration and site review from the start of construction. In many cases, financial lenders require third-party certification before they will advance funds. Unless retained from the start of construction, a *Holder* will not be able to certify payments, substantial performance, or release of holdback. Therefore it is in the interest of both the client and the *Holder* that any lender requirements, and the substance of this service be clearly understood.

Instruments of Service

Instruments of Service are the drawings, reports and specifications are communication tools required to convey the design recommendations that are the result of the provision of professional services. They are not work products; they are *Instruments of Service*. Attempting to redefine the *Instruments of Service* as work products is highly problematic and inconsistent.

The transfer of work product may be construed by a court to be subject to strict liability or product liability standards with implied warranties of merchantability and fitness for use. This is inappropriate for the output of professional services.

Unless specifically contracted otherwise, the *Instruments of Service* do not include the *Holder's* prior intellectual property, draft versions, files, computations, emails, or superseded documents of any format or description, etc., which remain the *Holder's* personal files.

Refer to Appendix A for provisions relating to editable CAD or BIM files.

Lien Legislation

As with other applicable law, the phrase “as amended as of the effective date of the Contract” is used rather than the more common “as amended from time-to-time”. There is no question that applicable law must be complied with. There is much greater risk and uncertainty for the *Holder* in agreeing to provide services complying with the scope unknown and unpredictable future changes for no adjustment in fee or in time.

If future changes to the applicable law result in changes in the effort or time required to comply with the amended law, it is reasonable for the *Holder’s* fee and time to be adjusted by mutual agreement.

In the case of changes to the *Building Code Act* or the regulations thereunder, there is typically a specified transition period or an effective date at least six months in the future from the date of the announcement of the changes. Where such changes have been detailed and the transition period or effective date formally announced, the *Holder’s* fee and time should include those known changes. If the changes become known after the effective date of the contract, then the *Holder’s* fee and time should be appropriately adjusted.

Place of the Work

Project

Proper Invoice

A *Proper Invoice* is an invoice consistent with the requirements of the *Construction Act*. In jurisdictions in which a proper invoice is not defined, the requirements for a *Proper Invoice* may be applied to any invoice for payment.

Ready-for-Takeover

This new concept is defined in CCDC 2-2020 GC 12.1 and is expected to be incorporated in other CCDC standard contracts as they are revised. It has the effect of moving the start of the contractor’s warranty period from the date of *Substantial Performance of the Work* to much closer to deemed completion. It also requires some of the close-out documents to be submitted as a prerequisite for *Ready-for-Takeover* while leaving other close-out documents to be submitted later. The specifications should be clear about the close-out submission requirements.

Reimbursable Expenses

Services

Standard of Care

The standard of care is that of an ordinary member, not an expert. There should be no expectation of perfection. Any agreement to increase the contractual standard of care above that required at law is outside the coverage of professional liability insurance, and as such it likely to reduce the protection of the client and the public.

Substantial Performance of the Work

Substantial Performance is governed in Ontario by the *Construction Act*. It will be computed on the basis of the improvement to the property being ready for the purpose intended, AND the mathematical formula defined in the Act. The payment certifier determines the value remaining in the contract for incomplete work and correction of determined deficiencies.

Note that “ready for the purpose intended” is interpreted to mean the date the owner takes occupancy for the purpose intended such as furnishing, equipping, training, etc., and not, as in the case of a hospital, the date it is patient-ready. There is much work to be done in a hospital that is not related to the construction contract before a hospital is patient-ready. In the case of a shopping mall, it is the date a retail unit is ready for fit up. This interpretation is made on the basis that the contractor has no control of the patient-ready date, the retail opening date, or actual tenant occupancy date.

Work

The construction industry through the CCDC documents has adopted *Work* (italicized) to refer to components of the work, such as the general or trade contractor’s construction work. In this contract *Work* is used with the same meaning. It does not refer to the *Holder’s* services.

General Conditions

GC01 Architect's Responsibilities

The *Standard of Care* is the standard of care in law (Refer to “The Canadian Law of Architecture and Engineering”, by Beverley M. McLachlin and Wilfred J. Wallace), which is what professional liability insurance covers. Beverley M. McLachlin went on to become the Chief Justice of the Supreme Court of Canada. Her opinion carries a lot of weight. Adding to the *Standard of Care* in the contract will create exclusions from insurance coverage. Such exclusions are not in the client’s or the public’s interest.

While recognizing the need for confidentiality, the *Holder* must be allowed to share the information or documents as required to perform the *Services*, obtain legal advice, comply with requests from authorities having jurisdiction, and respond to insurance providers or the regulator of the profession. Regulation 27, Section 42 (44) states “Disclosing confidential information received from a client or employer except as authorized by law or with the consent of the client or employer” is considered professional misconduct.

Regulation 27, Section 42 (23) requires a “*Holder* to provide to the Registrar upon request any design, document, or record relating to an investigation or a proceeding in respect of the professional conduct or competence of a member or *Holder*.” Regulation 27, Section 47 (2) requires that every *Holder* must “(b) maintain chronological books, records, accounts and files for each architectural project...”.

Typically, the *Holder* is the consultant responsible for the coordination of the work of all the other consultants. Often, this role is referred to as being the “prime consultant”. It is important to identify which consultants will be forming part of the design team in Article A08, whether they are retained by the *Holder* or by the client. If additional consultants are retained after the contract is signed, the *Holder’s* fee should be adjusted to reflect the additional effort required.

GC02 Client's Responsibilities

2.1.1 Different clients will take varying lengths of time to make decisions or respond to questions. Unexpected delays on the part of the client may cause delays in the project. *Holders* should discuss with the client what their needs are and how long it will take them to render decisions so this can be built into the schedules.

It is prudent to discuss with the client early in the project, when during the project approvals will be required for the smooth flow of services and to permit production schedules to be met. Different clients will have varying abilities to read and understand drawings. Some may require more assistance in understanding the information contained in the documents needing their approval prior to giving approval to proceed to the next phase of the architectural services.

Authorities may only communicate with permit applicants. In such cases, it is important that clients understand the need to pass along to the *Holder* communication from the authorities. Failure to do so may result in delays in approvals processes and to the project. Although the client (as applicant) is officially the recipient of the building permit, the *Holder* may assist the client to understand and function in this role, and may be the entity that submits the application for building permit on the client’s behalf.

2.1.2 *Holder’s* fees are in part based on an estimate of the amount of work required by the expected project delivery method. A change in delivery method will require an assessment of any required change in the scope of *Services* needed. Similarly, any fee proposal is based on working with an average reasonable contractor. Where the contractor is not competent, inexperienced with similar projects, was low bidder by reason of an error in the bid calculation, or may be in financial difficulty, the *Holder* may need to perform *Services* beyond those originally estimated, for the benefit of the *Project*, and should be appropriately compensated.

The importance of coordinating all consultant contracts should be emphasized to the client, particularly if the *Holder* is required, as is often the case, to coordinate the services of any consultants engaged directly by the client. As Pro-Demnity has shown in the [Claims Experience Workbook](#), most insurance claims it defends arise from the services provided by mechanical and electrical engineering consultants.

Unlike OAA licensed professionals, not all consultants are required by legislation to carry professional liability insurance. Notwithstanding certain exceptions, the client will be best advised to require that all consultants on the project carry adequate insurance for their own services, and to obtain evidence of insurance where possible.

2.1.3 Architects and Licensed Technologists OAA are retained by clients for their technical knowledge and experience. It is to be expected that clients will generally accept a *Holder's* professional recommendations related to the *Services* being provided rather than rejecting or overruling such recommendations. The failure of the Client to accept the *Holder's* professional judgement may relate primarily to issues of life safety, building code compliance, zoning, or other applicable legislative matters. Where there are a substantial number of issues, or other significant matters demonstrating, not a single instance, but a pattern of loss of confidence, it may give rise to grounds for termination.

2.1.4 Work cannot proceed effectively without timely approvals by the client. Once approvals are given, work proceeds in accord with the approvals. If the client, for whatever reason, changes their mind, it is expected that the *Holder* and other consultants will be reimbursed for the costs of any work which must then be undone or redone.

2.1.5 Where required for the *Project*, the client in coordination with their insurance broker/provider should determine the insurance coverages and bonding required for existing real property, and of the client's consultants and contractors. The client should confirm the adequacy and suitability of any proofs of insurance or bonding provided.

As Pro-Demnity has shown, most insurance claims they defend arise from the services provided by mechanical and electrical engineering consultants. Unlike OAA licensed professionals, not all consultants are required by legislation to carry professional liability insurance. Notwithstanding certain exceptions, the client will be best advised to require that all consultants on the project carry adequate insurance for each consultant's services and to obtain evidence of insurance where possible.

2.1.6 The *Client*, not the *Holder* is responsible for the performance of the *Consultants* retained by the *Client*. The *Holder* is responsible for coordination to the extent made possible by the performance of the *Client's Consultants*. If the *Client's Consultants* do not provide information in a timely manner, the *Project* may be delayed and the *Holder* may incur additional costs for which they should be reimbursed.

GC03 Construction Phase Services

When engaged to conduct site reviews, the frequency of review and the total number of reviews required depend on the stage and pace of construction, its duration, the quality of the work, as well as unforeseen site conditions. While the client may establish the minimum frequency or number of site visits, clients are typically not technical experts, do not carry the responsibility of performing services to the *Standard of Care*, and should not establish the maximum number or frequency of site reviews.

Despite being hired by the client, perhaps acting as the client's agent, acting on the client's behalf, and administrating a contract defined in part by documents created by the *Holder*, it is considered professional misconduct not to be fair and impartial in the administration of the contract. Further, independent of contractual responsibilities, the *Holder* has a duty of care to the public. It is not the *Holder's* role to act solely in the best interests of the client or of the project.

The payment certifier's role in the certification for payment process is to ascertain the extent and proportionate value of the construction that has been completed in accordance with the construction contract documents, in conjunction with appropriate other consultants' input where applicable.

At the beginning of the work, the *Holder* and the client should review the schedule of values prepared and submitted by the contractor. The schedule of values is intended to be an accurate and fair representation of the percentage that each line item is of the total construction cost. The purpose of the schedule of values is to facilitate the payment certification process, and the breakdown of line items should be done to the *Holder's* approval, including the presence of line items for close-out documents, bonds, insurances, operator training as the *Holder* sees fit to require.

The typical monthly payment certification process entails a review on site of the application for payment submitted by the contractor. An application for payment is divided into multiple components describing the percentage completion of the contractor's General Conditions, and the subcontractor's or trade contractor's work, and is presented in a format that parallels the schedule of values.

The *Holder* may want to consider including wording such as the following in the cover letter accompanying a certificate for payment:

When engaged to provide payment certification, the issuance of a certificate for payment shall constitute a representation by the *Architect* to the *Client*, based on the *Architect's General Review* and on review of the contractor's schedule of values and application for payment, that the *Work* has progressed to the value indicated; that to the best of the *Architect's* knowledge, information and belief, the *Work* observed is in general conformity with the *Contract Documents*, and that the contractor is entitled to payment in the amount certified. Such certification is subject to:

- .1 review and evaluation of the *Work* as it progresses for general conformity as provided in the *Services* described in this *Contract*;
- .2 the results of any subsequent tests required by or performed under the *Contract Documents*;
- .3 minor deviations from the *Contract Documents* being corrected prior to completion; and
- .4 any specific qualifications stated in the certificate for payment.

Refer to OAA documents and the Practice Advisory Knowledge Base for additional information and standard forms.

GC04 Copyright and Use of Documents

4.1 In some instances, clients request that copyright in the *Instruments of Service* be assigned to them. In most instances, the reasons cited by the client can be satisfied without the assignment of copyright. A licence granting the client specific rights, explicitly stating the purposes for which the license is granted, and any related terms and conditions for the use of the *Instruments of Service* is appropriate. This applies to uses such as facility management, maintenance, and reference with respect to future renovations or additions.

In some rare cases, it may actually be necessary to assign copyright to the client. If this does occur, it must be done in writing and should be limited to only those documents that are absolutely needed. Be aware that, if *Holder*s are not careful, they may be transferring the control of their standard details, boilerplate notes and office specifications, assuming copyright exists in such works, to the client. If this is done, *Holder*s would need a licence from the client to use any of them on any future project.

The *Holder* should also ask the client to confirm the client has obtained permission to use any information provided to the *Holder* by the client. This would include preliminary designs, reports, surveys, images and other information.

4.2 The *Holder* is responsible for the information provided to the client, and no one is allowed to alter the information in any way without a written license.

4.3 This constitutes a basic licensing agreement for the *Instruments of Service*, subject to the conditions stated in this General Condition.

4.4 Particularly with public sector clients, the *Holder* should seek clarification as to what extent the client is allowed to indemnify the *Holder*. In some cases, the extent may be very limited. Indemnifications and hold harmless agreements are important, but are not a panacea. The value of such commitments depends on the character and capacity of the person making the commitment. Such commitments are intended to cover not only issues arising in contract, but also in tort.

4.5 Unless it is explicitly intended otherwise, designs for projects are for a specific location at a given point in time, and are not transferable to other sites, or use at other times (including being used as prototypes). Projects are designed in accordance with the building code and other applicable legislation then in effect. Applicable legislation changes over time, sometimes from one day to the next. As a result, the *Instruments of Service* may become unsuitable for use at any point in time.

Typically, projects are also designed for the specific conditions existing at the *Place of the Work*, including for the specific orientation and topography of the *Place of the Work*; the available infrastructure, and for the specific sub-surface conditions of the site. As a result, the *Instruments of Service* are usually unsuitable for use at any other location.

General Commentary on GC04

While a design and its representations may be unique, software is often generic, and for the sake of usability shares a common user interface and other organizational elements across multiple implementations. The value of the software is in how the client's data is manipulated. Unless it is explicitly contracted for, it is unreasonable to prevent a *Holder* from reusing software on future projects provided the client's data is not used on those future projects, but is kept confidential.

The *Holder* should take care to ensure that consultants engaged by it are also bound to the same terms and conditions, and arrange for licensing or transfer of their copyright in a similar fashion. Legal advice should be sought in effecting such assignments, and whether the subconsultants should transfer their copyright to their client (the *Holder*) in the first instance or both to the *Holder* and directly to the *Holder's* client.

The RAIC's Canadian Handbook of Practice (CHOP) provides useful information on electronic data transfer and assignment of copyright.

When the client requests, and the *Holder* agrees to provide editable CAD or BIM files for future use in managing the facility, complete a licensing agreement such as that included as Appendix A.

Where the client's concern is that the *Holder* may provide a substantially similar design to another client, rather than assigning the copyright, add wording similar to the following to Schedule 5:

“The *Architect* (or *Licensed Technologist OAA*) undertakes not to design another project which is substantially identical in design features to this *Project*.”

GC05 Indemnification and Liability of the Architect

5.1 *Holders* are required to carry at least the mandatory minimum professional liability insurance (PLI) coverage. Unlike many forms of insurance, PLI is intended in the first instance to protect the client and the public, not the *Holder*. Clients can set the limits of the PLI and the duration of the coverage to suit the needs of the project, and provide the level of comfort the client desires. Correspondingly, the limits of any claims, by the client under the PLI, should not in aggregate exceed the coverage available at the time of the claim.

Most claims against *Holders* arise within a few years of the completion of the project. Since PLI is claims made insurance, what is important is the insurance coverage and limits in effect when the claim is made, not what was available during design or construction. Only the insurance limits and coverage in effect at the time a claim is made is available to settle a claim. The client can request higher limits than those normally carried by the *Holder*, and request they are maintained for a specified duration after the end of the project. Maintaining higher limits for longer periods comes at a cost. Clients should pay any fees for such additional protection they desire.

Note, there is no contractual limit on the *Holder's* liability at law for uninsurable claims such as those arising from illegal, intentional, or malicious acts.

Note that 30 day's notice of cancellation is not available in relation to the *Holder's* mandatory professional liability insurance. Also, since PLI insures the *Holder* in relation to its professional services, unlike general liability insurance no one else can be added as a named insured.

5.2.1 When clients make decisions within the scope of a *Holder's* responsibilities without or contrary to a *Holder's* advice, the *Holder* should ensure that their position or advice, and where appropriate the consequences of not abiding by the advice is noted in writing to the client in plain language.

5.2.2 Staff at the Authorities Having Jurisdiction change over time, and so do the interpretations of applicable law given to *Holders*. Similarly, different offices may provide varying or even conflicting interpretations. The *Holder* has no control over this.

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- 5.2.3 The *Holder* is responsible for its design, not for unauthorized changes made by others.
- 5.2.4 Unless explicitly requested in the contract, the *Holder's* presence on site is neither exhaustive nor continuous, but as determined by the contract, and as necessary based on the *Holder's* professional judgement.
- 5.2.5 The *Holder* is not controlling the actions of the contractor or subcontractors and is not responsible for their performance of the work or their failure to perform.
- 5.2.6 The *Holder* is not directing, nor supervising the work of the contractor, trades, or subcontractors. As part of construction contract administration, the *Holder* observes and reviews the work for general conformance with the contract requirements.
- 5.2.7 The owner is responsible for what they own and the condition it is in, including the presence and remediation of toxic and hazardous substances. Refer to O. Reg. 278/05. The *Holder* may assist the owner in selecting and defining the scope of specialist consultants who provide drawings and specifications relating to the remediation of such substances.

The presence of toxic or hazardous substances of materials is required to be declared by the client at the beginning of the project. Should such disclosure be inaccurate or incomplete, the *Holder* is entitled to be compensated for any additional time or cost required to deal with it.

5.2.8 While the *Holder* is expected to comply with the health and safety regime of any site, *Holders* are not the Constructor as defined in the Occupational Health and Safety Act (OHSA) and O. Reg 213/91, and assume none of the responsibilities of a Constructor. It may be helpful to owners for *Holders* to provide some information about the role of the Constructor, particularly if the owner intends to act as their own contractor or have multiple contractors on site at the same time.

5.2.9 Preparing certificates for the client's lenders on a project where the *Holder* is providing construction phase services to the client is prohibited as it creates a conflict of interest. The client's interests are not the same as the lender's interests. Third-party certification is available from others, with the cost being added to the loan amount or billed directly to the client. *Holders* are often asked to provide this service, which comes with significant potential liability. Such requests should not be agreed to.

5.2.10 The potential for consequential losses is a risk that far exceeds any compensation a *Holder* will receive. The potential is dependent on factors beyond the *Holder's* control, such as the client's timing of the project and the granting of approvals. *Holders* should not face this risk.

5.2.11 Where a holder provides an interpretation or finding in good faith, in accordance with the *Standard of Care*, there should be no liability for doing so.

General Commentary on GC05

Professional liability insurance provides coverage for the *Holder*, employees, partners, directors, and former employees, partners, and directors who rely on such protection and do not carry separate insurance. If clients insist on being able to sue anyone connected to the *Holder* for actions within the scope of PLI, then those persons would require their own insurance policies, and the premiums would add thousands of dollars to the project's costs for little or no appreciable benefit to the client.

Where it is desired to limit the *Holders* liability in contract to the same six-year period long provided to contractors under industry standard CCDC contracts, wording such as the following may be added in Schedule 5.

"To the fullest extent permitted by law and subject to any shorter limitation period prescribed by statute, the *Client* and [*Architect / Licensed Technologist OAA*] each waive and release the other from all claims arising under this *Contract*, except claims for which *Notice in Writing* has been received by one party from the other within a period of six years from the earlier of the date of completion of the *Services* and the date of termination of the *Contract*."

GC06 Termination of Services

6.1 Termination requires a notice period to allow the *Holder* to properly archive the project, and a few days to adjust workload and staff assignments. Termination without cause, or for convenience requires a longer notice period to reflect the greater risk borne by the *Holder*.

There is too much uncertainty to allow a project to be suspended indefinitely. After an aggregate of 60 days, the *Holder* may give notice of termination if they see no reasonable prospect of the project resuming in a timely manner.

Where there is a pattern of the *Holder's* professional advice being ignored or overruled by the client, or a non-technical authority, the client will likely be better served by working with a *Holder* whose professional opinion they respect.

General Commentary on GC06

The *Holder* will incur termination expenses that should be reimbursed if the client terminates for convenience, or for causes not related to the performance of the services by the *Holder*.

GC07 Force Majeure

This GC was added to facilitate the resolution of disputes arising from unpredictable circumstances such as those most recently created as a result of an epidemic or pandemic such as COVID-19. Force Majeure is not an established principle at law and is defined solely by the contract terms and conditions. Note that even where appropriate contract language exists, once an unpredictable event has occurred, and various government imposed restrictions are announced, it would likely be difficult to claim relief due to Force Majeure in contracts signed subsequently; as by then, the effects of the event would no longer be unknown.

GC08 Other Terms of the Contract

8.1 This clause was added for practices based in Ontario who are working with clients on projects in other jurisdictions.

8.2 Schedule 5 is where any relevant information and/or any modifications or additions to the Articles, Definitions, or General Conditions should be located. As well, any attached documents should be referenced there (e.g. "Appendix ____, dated _____, __ pages are attached to and form part of this *Contract*.")

Schedules

Schedule 1 - Services Schedule Legend

Designation of Methods of Calculating Fees

This Services Schedule Legend is to be read in conjunction with and as part of the *Contract*.

This legend is to be used to interpret the abbreviations used in completing Schedules 2, 3, and 4.

Schedules 2, 3, and 4 list individual tasks or scopes of service. For each of these that is to be included in the *Contract*, a means of calculating the fee must be designated..

In the text box in Schedule 1, list all the abbreviations used and their corresponding definitions. The text box is user editable, and is pre-populated with examples as guidance. Edit, delete, or add to the examples to suit the project.

Use of Temporary Designations

The following designations are recommended for use during contract negotiations to flag those items which have not been finalized, but are under consideration. The final version of the contract should have all the temporary designations replaced by a designation indicating what was agreed about the item.

- “TBD” (To Be Determined) is used to flag services which may or may not be required under this *Contract* at this time, but which may be clarified before contract signing. When not needed, it should be replaced by “NI” (Not Included) in the final version of the contract, or by a fee reference if it was decided that the *Holder* would be providing the service.
- “C” is used to identify services which are required for the *Project*, and will be provided by the *Client*, or the *Client’s Consultants*, not by the *Holder*. “C” should be replaced by “NI” in the final version of the contract, or by a fee reference if it was decided that the *Holder* would be providing the service.
- “X” is used as a temporary placeholder to identify those services to be provided, before it is decided who or under which fee reference it will be provided. It should be replaced by a fee reference if it was decided that the *Holder* would be providing the service.

Use of Designations

- The designation “NI” is used to explicitly identify services which are not being provided under this *Contract*.
- The designations of “F1”, “F2”, “F3”, etc. reflect the methods of calculating *Holder’s* fees. They are specific to the project and do not necessarily reflect fee calculations set out on other projects.

Specific lump sum fees for all services cannot always be determined by the time of contract execution; however, a formulae or method of calculating fees for an indeterminate quantum of service on any particular project can be established and agreed to, such as a percentage of the construction cost, time based, or unit rates. It may be appropriate for the fee to begin as hourly rates for preliminary design, then change to a percentage for construction documents, and it could then change again for services during construction. The important thing is for both the client and the *Holder* to have a good comprehension of the extent of the services and the compensation.

It is recommended to include time-based rates fees for the various staff in the practice to be used in the event that time-based services are to be provided or if the client requires unforeseen extra services that are unknown at the time of contract signing.

Below are examples of wording for the common fee types, which can be copied/pasted for use in the appropriate contract Article. Legends can be as noted or can be customized. Careful attention to exact wording for fee calculations is stressed.

Users should include in Schedule 1 an explanation for any abbreviated terms used in the tables such as: NI or TBD. If any other symbol or abbreviation used, it should also be identified.

F1 - Percentage of *Construction Cost* – by Phases.

The services to be provided with a “Fee Reference” of “F1” are included for a fee to be computed as _____ percent (_____) % of the *Construction Cost* by phases.

Fees will be calculated on the agreed estimate of *Construction Cost* at the completion of the schematic design for the schematic design phase, on the agreed estimate of *Construction Cost* at the completion of design development for the design development phase, on the agreed estimate of *Construction Cost* at the completion of the *Construction Documents* for the construction documents phase, on the accepted bid or negotiated price for the bidding phase, and on the actual final cost for the construction phase. Fees for previous phases are not adjusted retroactively if the value of the estimates or actual *Construction Cost* varies as the project progresses.

Where a change to the *Work* will result in a net credit change order (net reduction in the *Construction Cost*), the *Architect* shall be paid for its *Services* related to the change on the basis of hourly rates set out in the fee references Articles.

Where the change to the *Work* will result in a net extra change order (net increase in the *Construction Cost*), the *Architect* may elect to be compensated for its *Services* related to the change either by receiving its percentage fee on the increase in the *Construction Cost* or estimate of *Construction Cost*, or on the basis of the agreed hourly rates. The fee for previously completed work or phases is not retroactively adjusted.

Where scope is added such that the new scope must be developed through previously completed phases for the original scope, the cost of developing the new scope through those phases is to be included in the cost of the new scope.

The F1-type fee – Percentage of *Construction Cost* – by Phases computation is equitable to both parties; whereas the F2-type fee – Percentage of *Construction Cost* – Final introduces significant risk to the parties. (See following)

F2 - Percentage of *Construction Cost* – Final.

The Services to be provided with a “Fee Reference” of “F2” are included for a fee to be computed as _____ percent (_____) % of the final total *Construction Cost*.

Fees will be invoiced based on the estimates of *Construction Cost* and bid price as applicable, as the project progresses. The final invoice will be adjusted based on the fee calculated on the final total *Construction Cost*, less fees previously billed.

Where a change to the *Work* will result in a net credit change order (net reduction in the *Construction Cost*), the *Architect* shall be paid for its *Services* related to the change on the basis of hourly rates set out in the fee references above.

Where the change in the *Work* will result in a net extra change order (net increase in the construction cost), the *Architect* may elect to be compensated for its *Services* related to the change either by receiving its percentage fee on the increase in the *Construction Cost* or *Estimate of Construction Cost*, or on the basis of the agreed hourly rates

If the percentage fee based on the final *Construction Cost* is used for the entire fee, then either party may be subject to a loss. If the final cost is significantly in excess of the last agreed to estimate of *Construction Cost*, the client may be required to pay more than was anticipated. In the alternative, if the final cost is significantly less than was expected, there could be a requirement for the *Holder* to refund to the client fees already billed resulting in a loss to the *Holder*, if the changes result in a net credit. Furthermore, it does not provide an equitable arrangement for compensation when deletions are made or alternatives are incorporated in subsequent phases.

F3 - Fixed Fee

The *Services* to be provided with a Fee Reference of “F3” are included for the lump sum fee stipulated in the Articles.

Fixed fees give the client greater certainty by transferring risk to the *Holder*. Fixed fees may be appropriate where the scope of work is well defined and unexpected site conditions are unlikely. Fixed fees are riskier for renovation projects, for projects requiring multiple approvals by client groups or authorities, or where the number and duration of meetings or presentations are not well defined.

F4 - Hourly Rates

The *Services* to be provided with a “Fee Reference” of “F4” will be invoiced as the *Project* progresses at the standard hourly rates stipulated in the Articles.

Alternatively: ...at the following rates:

Principals	\$_____per hour
Senior staff	\$_____per hour
Intermediate staff	\$_____per hour
Junior staff	\$_____per hour
Clerical	\$_____per hour

Standard hourly rates should be included in the contract so that they are documented as agreed, and can be used if needed, such as for unforeseen circumstances that may result in the need for *Extra Services*. For multi-year projects, it is appropriate to establish an annual inflation rate to be applied to the hourly rates and the dates on which the adjustments apply.

	Per hour
1) Presentations to client/stakeholders	\$.
2) Consultations with client/stakeholder	\$.
3) Site/general review	\$.
4) Consultation with AHJs	\$.

In addition to hourly rates for personnel, hourly rates can be established for tasks of unknown frequency or duration.

F5 - Unit Rates

The *Services* to be provided with a “Fee Reference” of “F5” will be invoiced as the *Project* progresses at the standard unit rates stipulated in the Articles

Alternatively: ...at the following rates:

	Per task/unit
1) Presentations to client/stakeholders	\$.
2) Consultations with client/stakeholders	\$.
3) Site/general review	\$.
4) Consultation with AHJs	\$.

Standard unit rates should be included in the contract so that they are documented as agreed, and can be used if needed such as for unforeseen circumstances referenced that may result in the need for *Extra Services*. For multi-year projects, it is appropriate to establish an annual inflation rate to be applied to the unit rates and the dates on which the adjustments apply.

Schedule 2 – Basic Services

Minor revisions have been made to the scope of services items. Unless the *Holder's* fees are adequately specified in Article A12, indicate in the Fee column at the right side, the fee reference to be used to calculate the fee for each item. The fee references are as defined/explained in Schedule 1.

The scope of services items are listed at a high level for convenience, and anticipate full service for all phases of a complete project. Where the client's requirements are for condition assessment, master planning, feasibility studies, or municipal approvals (zoning amendment, site plan agreement, minor variance) the default Schedule 2 may be replaced with a custom Schedule 2 suitable to the project.

Whether the default or a custom Schedule 2 is used, it is to the benefit of the project that both *Holder* and client have a clear mutual understanding of what is and what isn't included. This is particularly important when the client is not used to dealing with Architects or Licensed Technologists OAA, and when there is pressure to shorten the project timeline or reduce fees.

Pre-Design

Although authorities having jurisdiction provide input and advice during the design phases, there is no guarantee that the input and advice will remain consistent throughout the duration of the project.

If not already done by the client, services at the beginning of a new project may be provided to establish reasonable and congruent parameters of scope, schedule, and budget within which the design work will proceed. Inconsistencies often include a budget that is too low, quality expectations that are too high, or a schedule that is too short for the project anticipated.

Where the available information is questionable or out-of-date, Holders may be asked to prepare measured drawings of the existing conditions.

A condition assessment of existing buildings may be requested. The resulting report would assist the client in determining the scope of work required, and whether to renovate, replace, or relocate.

Design Phases

It is in the schematic design phase that the basic parameters of the project first take shape, decisions are made about the basic configuration of the required spaces, and the impact of applicable law is explored.

In the design development phase, the functional relationships, size and configuration of the spaces, and the responses to various competing and often conflicting constraints are adjusted in an attempt to achieve an optimal result.

Estimates of Construction Cost may be provided by the *Holder* or by an independent consultant. Where desired, the *Estimates of Construction Cost* may be tied to different defined classes of estimates, providing increasing accuracy as the design progresses, allowing for a corresponding reduction in contingency budgets.

Construction Documents Phase

It is in the construction documents phase that the design is represented in drawings and specifications that provide sufficient information and detail for potential contractors to determine pricing and assemble bids, authorities having jurisdiction to review, and contractors to build from. Depending on the project delivery method and time available, there may be one or more issuances of the construction documents (Issued for Permit & Tender together, or Issued for Permit, and Issued for Tender separately). Ensure both *Holder* and client have the same understanding.

Depending on the size or complexity of a project, *Estimates of Construction Cost* may be requested one or more times during this phase in order to confirm that the project is still on target to meet the budget or if the budget needs to be adjusted.

Permits and Approvals

Although there is a space on permit applications for a *Holder* to sign “as agent of the owner”, the owner has serious obligations to a municipality, which the *Holder* should not take on. Refer to Practice Tip PT.08, Application for Building, Demolition, or Conditional Permits - Architect’s Participation in the Permit Process (which is available on the OAA Website) for an expanded discussion. Insurers advise that the situation is to be avoided, simply by having the owner sign the application; they do not have to personally submit the permit application. The standard application for a permit to demolish or construct (building permit) requires that the applicant declare that they have the authority to bind the owner. This should not be undertaken without such authority from the owner in writing.

Keep in mind that most building departments have a policy of only communicating with the applicant, so there may be additional effort required to alert the owner to forward permit-related comments to the *Holder* in a timely manner. If *Holders* are to act as an agent of the owner they should have a signed indemnification from the owner. Wording for this can be obtained from legal counsel or the Pro-Demnity Bulletin regarding it.

For many projects, there are additional approvals needed in addition to the building permit. These may include approvals from local conservation authorities, government ministries (environment, health, education, etc.), the Technical Standards and Safety Association (TSSA), and others.

Clients and *Holders* should carefully consider the responsibilities and liabilities inherent in giving *Holders* agency to represent the client.

Comments provided by authorities having jurisdiction (AHJ) need to be evaluated and may require a timely response from the *Holder*. Where communications are between the AHJ and the client, ensure the client understands the importance of relaying the communications to the *Holder* in a timely manner. Failure to do so may delay the project.

Some approvals processes are straightforward and predictable. Unfortunately, most are not, because they are not exclusively technical, but also political in nature. Some provide for input from neighbours or special interest groups in addition to being subject to changing governmental policies and initiatives. The result is that it is very difficult, if not impossible, to predict accurately how much time or effort will be required before an approval is granted, if it is at all.

It is reasonable for those who will benefit from the approvals being sought to bear the risk and pay the cost of obtaining the approvals. In line with this, seeking a simple fixed fee for approvals is unreasonable. It is more appropriate to seek a fixed fee for the first submission, and then a time-based fee for any resubmissions or revisions required. The client is then in a position to decide whether it still makes sense to proceed with the project as conceived or not.

Negotiation/Bidding Phase

Clients and *Holders* should carefully consider the responsibilities and liabilities inherent in giving *Holders* agency to represent the client.

Some projects are put out for public tender, some are tendered to pre-qualified bidders, and others may be awarded to a selected contractor. Each requires a different level of effort.

Once the contract has been negotiated, the client may need assistance in assembling the components of the construction contract. *Holders* are not lawyers. Clients should obtain legal advice before signing a construction contract. Lawyers may review or prepare amendments or supplementary conditions to the contract. The roles of the *Holder* in the construction contract should match the roles established in the architectural services contract. If they don’t, one contract or the other needs to be revised.

The review of, and commenting on, substitutions proposed by, or requests for information (RFIs) from the contractor as part of bidding or negotiation, or later in the Construction Phase is normally included as long as the number of substitutions, proposed changes or RFIs is reasonable. Excessive numbers of RFIs can indicate that contractors may not have fully read the construction documents or that the contractor is unfamiliar with the type of work required for the project. Expectations (including what is normal and what is excessive) should be discussed with the client.

Shop drawing Review is tied to the requirements of the construction contract. Review those requirements for the form of contract and project delivery being contemplated. Note that in CCDC 2-2020, GC 3.8 clause 7 requires the review to be done "...with reasonable promptness so as to cause no delay in the performance of the Work." It is important to establish a schedule of submissions with the contractor that allows sufficient time for the review of shop drawings and other submittals. This will help avoid situations in which a large number of submissions arrive in a short time, leaving little time for review before it will cause a delay in the performance of the Work. Also, ensure there are provisions in the *Contract Documents* and in the submission schedule to accommodate resubmissions of anything marked "revise and resubmit".

Limited General Review to "Provide General Review services respecting building code matters only, and report in writing to the Client, contractor, and chief building official." is typical of projects where the client is a design-build contractor, and may be used by other clients to keep costs down. It comes with some often unanticipated consequences that may prove problematic for clients. If the Holder is engaged just to do limited General Review for code matters only, they cannot certify payments or Substantial Performance as they would not have the appropriate knowledge of values or the quality of non-code related Work completed at any point during construction. Separation of code and non-code matters is a grey area in many instances and should be avoided if possible.

Full General Review is the preferred option for most projects and provides greater assistance to clients during construction. In this context, "full" refers to the extent of the General Review, that is for all matters relating to general compliance with the contract documents whether the matter pertains to the building code or not. Full general review does not imply full-time general review or full-time representation on site.

In order to certify payment, a *Holder* must have provided full general review services since the start of construction.

Construction Schedule Review by the *Holder* should contain caveats that the review is only an overview, to signify that the *Holder* is not expert in construction means and methods, and that the responsibility for maintaining the schedule and updating it lies with the contractor.

Substantial Performance is no longer included in the new CCDC contracts (since 2020). Remember that under the provisions of the *Construction Act*, if the *Holder* is not the payment certifier, then the *Holder* may not issue the certificate of substantial performance. In the absence of a payment certifier, the client and the contractor may jointly issue the certificate. When issuing the certificate of substantial performance, use only the Form 9 of the *Construction Act*, and enter the information requested on the form. Be particularly careful to enter the correct legal description of the property and not the street address only. Obtain the legal description of the property from the client as per Article A09. Refer also to Practice Tip PT.10 series.

Deemed Completion is separate from Substantial Performance even though both deal with requirements of the *Construction Act* because many short duration projects do not require (skip over) a declaration of Substantial Performance and the required publication, to go directly to Deemed Completion.

Ready-for-Takeover has been added to address this new concept in CCDC construction contracts.

Requests for Information (RFIs) about the contract documents come from contractors. It is the intention that the *Holder* and consultants respond to and process all reasonable RFIs. Note that a response to an RFI may simply be to acknowledge it and advise that an answer will be forthcoming at the appropriate time. In the cases that (in the *Holder's* opinion) many unnecessary RFIs are received (e.g. items which are readily found in the contract documents) it would be advisable to meet with the contractor and client in an attempt to reduce the instances of the issuance and receipt of the unnecessary RFIs.

OAA/OGCA Take-over Procedures Document 100 (which can be specified as requirements in Division 01 of the Project Manual specifications), and the OAA/OGCA Guide to Close-out Procedures are endorsed and recommended for use by the OAA.

Warranty Review should take place about one month prior to the end of the contractor's standard warranty to allow the contractor time to address the warranty issues before the warranty expires. If warranty items become known prior to the warranty review, the information should be promptly provided by the client to the contractor through the *Holder*, so that any continuing damage may be mitigated or prevented.

Text Box

The text box can be used for any additional information required that will fit. If there is not sufficient space, here, the information can be included in Schedules 4 or 5 as appropriate.

If not provided elsewhere, the time based rates for those services that are not included in a fixed or percentage fee can be stated here or in Schedule 4.

Any increase in fee rates over time should be established clearly.

Any services to which the standard rates do not apply should be noted, as should the rates that apply to those services. This might include services in relation to adjudication as such services are likely to be time constrained, requiring evening and weekend work and pulling staff from other projects, causing disruption in the office.

The text box has been pre-populated as an example. It is fully editable by the user.

Schedule 3 – Additional Services

Schedule 3 is provided to list services normally attributable as additional services to those listed in the Basic Services in Schedule 2. The list of Additional Services will depend on the project particulars, the client's capabilities, the presence of other consultants retained by the client, and as the result of negotiations between the client and the *Holder*.

Issued for Construction Drawings - Depending on the changes that result from contract negotiations or permit processes, and on the client's requirement for "As-built" or "Record" document sets, it may be helpful to have the Holder prepare a consolidated "Issued for Construction" set so that all the contractual requirements are to be found in a single set of documents.

Record Drawings - As-built drawings are prepared by the contractors as the project progresses to record differences between what was shown on the drawings and what was built on site. There are legitimate reasons for such differences. Record drawings are prepared at the conclusion of the project by incorporating any as-built information from the contractors, and any change orders into a single updated set of documents. The *Holder* should not be responsible for the failure of the contractor to provide as-built information in a timely manner.

Reference to Schedule 3 of OAA 600 may be useful in prompting discussion with the client about what constitute Additional Services.

Refer also to Schedule 1 and the commentary for Schedule 2 for information about filling in of the schedule. A Fee Reference should be included for each scope of additional service item.

Schedule 4 – Other Services

If the default Schedules 2 and 3 are being used, Schedule 4 is the place to add any additional scope of service items or implement any changes to the scope of service items in the default Schedules 2 and 3 needed for the Project. If customized Schedules 2 and 3 are being used, Schedule 4 may not be needed.

Schedule 5 – Other Terms and Conditions

Schedule 5 is referenced from the Articles and General Conditions. It is the place to add any additional articles of agreement, additional definitions, and any supplementary conditions that are necessary for the requirements of the *Project*.

It is also the place to implement any changes to the contract that are needed for the project, or to allow the contract to be used in a Design-build or other context.

Appendices

Appendix A – Provision of Editable CAD or BIM Files

The Appendix is referenced in the Table of Contents, and should be referenced in Schedule 5. When referenced in Schedule 5, the fee reference for the provision of editable files should be designated in Schedule 3 as well.

In most cases, clients do not require copies of the editable CAD or BIM files to satisfy their needs. A licence for the Instruments of Service will satisfy most clients' legitimate needs. They should be aware that drawings and specifications do age, and that what is compliant with applicable law today may not be tomorrow. Also, there is significant liability associated with providing CAD or BIM files to others for use beyond the original design team. Clearly distinguish among the various reasons for issuing the Instruments of Service (e.g. Issued for Tender, Issued for Permit, Issued for Construction, As-builts, Record Drawings), who provides them, what information they are based on, and what may be an appropriate use.

Legitimate uses for editable files include incorporation of new information into facility management systems, and as a reference for future additions or renovations.

It should be expected that the editable files will include disclaimers to identify the purpose of the editable files, to limit their usage to purposes suitable to the milestone achieved, and to restrict usage to the information that shows up as part of plottable drawing sheets. The latter is in recognition that CAD files often contain obsolete information, partial sketches on frozen layers, or off to the side of the intended drawing, and that not all portions of a BIM model are developed to the same extent. Often, to keep a model lightweight and responsive, only areas to be included in sections or details are fully developed. Other portions are left far more rudimentary, thus limiting their usefulness.

While multiple working copies of the editable files may be circulated as needed among the design team, most of those iterations, in part because they are works in progress, will be of little use to a client. Use Table 1 in the appendix to specify at which milestones the editable files are to be provided to the client and which Fee Reference applies.

Coordinate the milestone items in Table 1 with the scope of work items in Schedules 2 and 3.

BIM Requirements

Consideration should be given to including the IBC BIM Contract Appendix if the provisions of this Appendix are inadequate for the *Project*. Reference to the International Organization for Standardization's ISO 19650 standard may also prove useful.

The Value of Editable CAD or BIM Files

CAD or BIM files do have real value, and provision of such files carries risk for the *Holder* for which they should be fairly compensated and indemnified.

However, such files may not have the value that clients anticipate they have. Clients often think that by providing editable files from *Holder A* to *Holder B* that they will save 100% of the cost of having *Holder B* recreate the files. This is usually not the case. *Holder B* is taking on responsibility for the information they include in the documentation they produce. *Holder B* may need as much time to verify that the drawings from *Holder A* conform to applicable law as was needed by *Holder A*. The *Holder* will also need time to confirm that the drawings and specs meet the client's building program. If they do not, *Holder B* will need to correct the documents, and to be paid for the effort.

There is no single standard for layer naming, colour/line weight representation, or block definitions. It is inefficient to work with drawings created in a different standard than the one used in your office. Depending on the number and complexity of the drawings involved, it may be more efficient to re-create the drawings in your own office standard than to try to work with/learn someone else's office standard. Either way, there is a cost involved. Opting to re-create the drawings allows greater familiarization with the building program, and approximates the typical process of converting the program to a set of drawings while complying with code requirements.

Obtaining *Holder A's* editable files may be helpful in some circumstances, but it is not a panacea, and may be a less effective approach than re-creating the files from scratch with reference to the non-editable instruments of service.

Appendix B – Moral Rights

The Appendix must be selected in the Table of Contents, and listed in Schedule 5.

The creator of a work has moral rights under the *Copyright Act* of Canada. The moral rights are distinct from economic rights, and provide the creator with the right to the artistic integrity of the work. Moral rights are vested in the *Instruments of Service* that express the design, and in the built form (the building) which is the physical expression of the design.

Where a client requests the right to modify the *Holder's* instruments of service, it may be appropriate to waive moral rights in the instruments of service.

Where a client requires the right to modify the *Project* after it is built by renovating or erecting an addition, it may be appropriate to waive moral rights in the building.

Since moral rights vest in the creator of a work, *Holders* should consult with legal counsel about the advisability of including a standard waiver of moral rights in employment agreements and subconsultant contracts.

Once waived, moral rights cannot be reacquired, so it is important to make the right decision about waiving or retaining them.

At the time of writing, the classic moral rights lawsuit in Canada was brought by artist Michael Snow in relation to his sculpture of geese in the Toronto Eaton Centre. "Snow v Eaton Centre Ltd" is interesting reading, with many articles online.

Extra Services

General Commentary

As the need for *Extra Services* arises, prepare a change order to the contract to define the scope and compensation for the *Extra Services*.

The need for *Extra Services* may be:

- .1 caused by instructions of the *Client* that are inconsistent with instructions or written approvals previously given by the *Client*, including revisions made necessary by material adjustments in the *Client's Functional Program* or *Construction Cost Budget*;
- .2 caused by significant changes to the *Project*, including size, quality, complexity, or the *Client's* schedule, including the anticipated dates identified in the Articles;
- .3 caused by changes to the method of bidding or negotiating with the construction parties or the construction delivery method or the form of construction contract as identified in the Articles;
- .4 caused by the enactment of or revision to statutes, regulations, codes, bylaws, or orders by authorities having jurisdiction applicable to the *Work* or *Services* subsequent to the *Effective Date*, which enactment or revisions the *Holder* could not have reasonably anticipated or foreseen;

Holders rely on their knowledge and experience to understand and interpret applicable law and apply it to the design of a project.

- .5 caused by an interpretation or change in interpretation by the authorities having jurisdiction which differs from the *Architect's* reasonable interpretation of statutes, regulations, codes, bylaws, or orders by authorities having jurisdiction, which difference the *Holder* could not have reasonably anticipated or foreseen;

Sometimes in a building department or other authority, the person who reviews a *Holder's* preliminary design is not the person who reviews the permit application or the person who performs the site inspection. Those individuals may hold to differing interpretations. One may accept a design and another may reject it. A similar situation may arise if a senior person within the authority having jurisdiction is promoted or retires and is replaced by a more junior person. In other instances, an authority may be impacted by a court decision and abruptly change their interpretation. In these and other such circumstances, *Holders* should be compensated for the extra work required by differences which could not have been reasonably anticipated or foreseen.

- .6 due the *Client's* failure to render decisions in a timely manner;
- .7 in connection with evaluating substitutions proposed by the contractor that require significant research or effort to evaluate, or in connection with making subsequent revisions to the drawings, specifications, or other documentation resulting from the acceptance of such substitutions;
- .8 caused by the evaluation of an extensive or unreasonable number, size, or complexity of claims or requests for information submitted by the contractor or others in connection with the *Work*, except to the extent any such requests for information result from a lack of appropriate detail, clarity or consistency in the *Instruments of Service*;

The use of the term "extensive" number or size of claims implies that some level of service with regard to claims, disputes, or other matters in question between the client and the contractor relating to the execution or performance of the work is considered part of basic services. However the contract leaves open the question of what is "extensive". During contract negotiations, discuss with the client in order to arrive at a mutual understanding of what is part of basic service and what will be extra services.

- .9 due to replacement of any of the *Work* damaged by fire or other causes beyond the *Architect's* control during construction;

During the course of construction, the *Work* is more vulnerable to unexpected damage from a variety of causes than when it is complete. These causes include fire, wind, precipitation, flood, cold, vandalism, deficient construction, or temporary measures, etc. Services in relation to making good any and all such damage are to be *Extra Services*.

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- .10 made necessary by the default of the contractor, by major defects or deficiencies in the *Work* of the contractor, or by failure of performance by either the *Client* or the contractor under the construction contract;
 - .11 requested by the *Client* in connection with any *Adjudication*, mediation, arbitration, legal proceeding, or other dispute resolution proceeding that is not as between the *Client* and *Architect* under this *Contract*, including in respect of any contract of the *Client* being administered by the *Architect*, and which was not substantially caused by an error or omission of the *Architect* unless the *Architect* is included or joined as a party therein;

Adjudication is new and there has not been sufficient experience with it to know what percentage of projects will require adjudication or whether adjudications will typically take three days or three weeks. As a result any support given to a client related to adjudication should be as an extra service.

- .12 made necessary as a result of any delay to the *Project* to the extent that such delays are not due to the acts or omissions of the *Architect*; or

Should the project extend beyond the dates identified in the contract or in the construction contract for reasons beyond the control of the *Holder*, the *Holder* will be reimbursed by the client for services for the period of the extension. The risk and expense of delays not caused by the *Holder* or those the *Holder* is responsible for should not be borne by the *Holder*. The owner may be in a position to recover such expenses from the contractor or other party who caused the delay.

- .13 made necessary by extension to the duration of the *Project*, including extension of the anticipated dates for construction noted in the contract, except to the extent that any such extension is due to an error or omission of the *Architect* or its *Consultants*;

When deemed appropriate, any of these causes or others may be explicitly added to the contract by including them in Schedule 4.