Canadian Standard Form of Contract between Architect and Consultant

DOCUMENT NINE

2018 Edition

ADAPTED FOR:

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The Royal
Architectural Institute
of Canada

Canadian Standard Form of Contract between Architect and Consultant

DOCUMENT NINE

2018 Edition

This document has been developed by the Royal Architectural institute of Canada (RAIC) on behalf of the architectural profession in Canada.

Enquiries on the application and use of this document should be directed to the Practice Advisors of the appropriate Provincial Association of Architects.

Suggestions on the development of standard contract documents can be forwarded in writing to:

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Contents

Agreement pages AF1 to AF4

A1	Date
A2	Architect
A3	Consultant
A4	Project
A5	Client
A6	Project
A7-A9	Prime Contract
A10	Professional Services
A11	Subconsultants
A12-A14	Fees and Reimbursable Expenses
A15	Retainer
A16-A17	Invoicing
A18	Official Notices
A19	Provision for changes to the design
A20-A23	Insurance
A24-A25	Other Conditions
	Signing page

Definitions pages D1

General Conditions pages GC1 to GC7

GC0	Preamble
GC1	Consultant's Responsibilities and Scope of Services
GC2	Additional Services
GC3	Architect's Responsibilities
GC4	Construction Budget and Construction Cost Estimate for This Part of the Work
GC5	Consultant's Role and Authority During Construction
GC6	Use of Documents
GC7	Standard of Care
GC8	Indemnification
GC9	Limitations of Liability
GC10	Insurance
GC11	Termination and Suspension
GC12	Payments to the Consultant
GC13	Percentage-Based Fee
GC14	Dispute Resolution
GC15	Miscellaneous General Conditions

Schedules

(Attach the appropriate schedule(s) from the list below.)
Schedule A – Consulting Services - Structural (tabular)
Schedule A – Consulting Services - Mechanical (tabular)
Schedule A – Consulting Services - Electrical (tabular)
Schedule A – Consulting Services – Other (tabular)

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Canadian Standard Form of Contract between Architect and Consultant

DOCUMENT NINE

2018 Edition

Agreement

A1 This agreement is made on: _____
(Date)

A2 between the *Architect* _____
(Name)
_____
(Address)
_____
_____
(E-mail) (Fax no.)

A3 and the *Consultant* _____
(Name)
_____
(Address)
_____
_____
(E-mail) (Fax no.)

A4 for consulting *Services* for *This Part of the Project*: _____

A5 The *Architect* has made a contract with the *Client:* _____
(Name)
_____
(Address)
_____

A6 for the following *Project*: _____

A7 The contract with the *Client* identified in Article A5, for the *Project* identified in Article A6, is hereinafter referred to as the *Prime Contract*.

A8 A copy of the *Prime Contract*, including applicable Schedules, is attached to and made part of this contract as Appendix 1. Fee related provisions may be redacted.

A9 Except as expressly otherwise provided in this contract, and to the extent that the provisions of the *Prime Contract* apply to *This Part of the Project*:

.1 the *Architect* shall assume toward the *Consultant* all obligations that the *Client* assumes toward the *Architect* under the *Prime Contract*,

.2 the *Consultant* shall assume toward the *Architect* all obligations that the *Architect* assumes toward the *Client* under the *Prime Contract*,

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.3 the *Architect* shall have the benefit of all rights that the *Owner* has under the *Prime Contract*, and

.4 the *Consultant* shall have the benefit of all rights that the *Architect* has under the *Prime Contract*.

A10 The *Consultant* shall provide the *Services* described in Schedule A – Consulting Services.

A11 The following *sub-consultants* have been or will be engaged by the *Consultant*:

_____ _____

_____ _____

A12 The fee for the *Services*, excluding any *Value Added Taxes*, shall be comprised of one or more of the following as indicated in Schedule A – Services.

.1 A fixed fee of $_____.

.2 A percentage-based fee calculated as _____% of the *Construction Budget*, the *Construction Cost Estimate,* and the *Construction Cost* for *This Part of the Project,* as described in GC 13 – Percentage-Based Fee.

.3 A fee based on time-based rates for personnel employed by the *Consultant* or the *Consultant's sub-consultants* as stated in Schedule C – Time Based Rates.

.4 Other:

A13 Payment of a fixed or percentage fee shall be apportioned to the phases of the *Services* as follows:

.1	Pre-design phase:	_____%
.2	Schematic design phase:	_____%
.3	Design development phase:	_____%
.4	Construction documents phase:	_____%
.5	Bidding or negotiation phase:	_____%
.6	Construction phase:	_____%
.7	Post-construction phase:	_____%
	Total:	100 %

A14 *Reimbursable Expenses* shall be payable on the basis stated in Schedule B – Reimbursable Expenses.

A15 The *Architect* shall pay the *Consultant*, upon execution of this contract, a retaining fee in the amount of $_____, which shall be applied to the *Consultant's* last invoice.

A16 The *Consultant* shall issue invoices for the *Consultant's* fee and *Reimbursable Expenses,* plus *Value Added Taxes,* in accordance with GC 12.1. Invoices shall be issued monthly, unless the *Architect* and the *Consultant* agree otherwise.

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A17 The *Architect* shall invoice the *Client* under the *Prime Contract* on the *Consultant*'s behalf and shall pay the *Consultant*'s invoice within such time as is prescribed by the law of the *Place of the Work* or within ____ days after the *Architect* receives payment from the *Client*, whichever is earlier.

A18 The addresses for official notices in writing between the *Consultant* and the *Architect* shall be as stated in Articles A2 and A3.

A19 If, at any time during provision of the *Services*, the *Construction Cost Estimate* or the lowest compliant bid or the lowest negotiated proposal exceeds the *Construction Budget* for *This Part of the Project,* and the excess is more than ___ %, the provisions of GC 4.2 shall apply.

A20 The professional liability insurance to be carried by the *Consultant* pursuant to GC 10.1 shall be a claims made policy with limits of not less than $ _____ per claim, with an aggregate limit of not less than $ _____ within any policy year. This policy shall be maintained continuously from the commencement of the *Services* and, subject to commercial availability, for a minimum of three years after the *Ready-for-Takeover* date. The *Architect* acknowledges that the actual amount of insurance available at any given time under a claims made policy will be dependent on the aggregate amount of all claims made during a policy year.

[OR]

A21 The *Client* will arrange and pay for project specific professional liability insurance as described in the *Prime Contract*.

[Strike either A20 or A21, as applicable.]

A22 The *Consultant's* liability pursuant to GC 9.1.2 shall be limited to: $_____.

A23 The general liability insurance to be carried by the *Consultant* pursuant to GC 10.2 shall have limits of not less than $ _____ per occurrence. Certificates of insurance certifying the *Consultant's* compliance with the provisions of A20 and A23 are attached to this contract as Appendix 2.

A24 This contract shall be governed by the same laws that govern the *Prime Contract*.

A25 This contract represents the entire and integrated contract between the *Architect* and the *Consultant* and supersedes all prior negotiations, representations, agreements, or contracts, either written or oral. This contract may be amended only in writing signed by the *Architect* and the *Consultant*.

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Architect

_____

(Name of *Architect*)

_____

(Signature)

_____

(Name and title of person signing)

_____

(Signature)

_____

(Name and title of person signing)

Witness

_____

(Signature)

_____

(Name and title of person signing)

Consultant

_____

(Name of *Consultant*)

_____

(Signature)

_____

(Name and title of person signing)

_____

(Signature)

_____

(Name and title of person signing)

Witness

_____

(Signature)

_____

(Name and title of person signing)

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Definitions

Terms in this contract shall be as defined in the *Prime Contract*, except for the following Definitions that apply to this contract. References to the singular shall be considered to include the plural as the context requires.

Additional Services

Additional Services are the services that are not included as *Services* to be provided by the *Consultant* in Schedule A – Consulting Services at the time this contract is made but which, with the written agreement of the *Architect* and *Consultant,* are subsequently added to the *Services* identified in Schedule A – Consulting Services.

Consultant

The *Consultant* is the person or entity identified in Article A3 of the agreement.

Other Consultants

*Other Consultant*s are persons or entities, other than the *Consultant* identified in Article A3 of the agreement, engaged by the *Client* or the *Architect* to provide specialized services or services supplementary to those provided by the *Architect* and the *Consultant*.

Prime Contract

The *Prime Contract* means the contract between the *Architect* and the *Client,* as identified in Article A5 of the agreement.

Services

The *Services* means the services identified in Schedule A – Consulting Services, including those performed by the *Consultant*, the *Consultant's* employees, and any *sub-consultants* engaged by the *Consultant.*

This Part of the Project

This Part of the Project means those elements, systems, or components of the *Project* to which the *Consultant's* discipline or qualifications apply and for which the *Services* are provided, as identified in Article A4 of the agreement.

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General Conditions

GC0 Refer to Prime Contract

0.1 Throughout these General Conditions, "Refer to Prime Contract" means a reference to the corresponding GC of the Prime Contract, but amended to substitute "*Consultant*" for "*Architect*" and "*Architect*" for "*Client*" where each such term is used.

GC1 Consultant's Responsibilities and Scope of Services

1.1 The *Consultant* shall:

.1 perform those *Services* identified as the *Consultant's* responsibilities in Schedule A – Consultant Services for *This Part of the Project*, which form part of the responsibilities of the *Architect* to the *Client* under the *Prime Contract*,

.2 authorize, in writing, a person to act on the *Consultant's* behalf (in the absence of such authorization, the signatory on the agreement is deemed to be the *Consultant's* authorized representative),

.3 engage those *sub-consultants*, if any, identified in Article A11 of the agreement under contracts that incorporate applicable terms and conditions of this contract,

.4 perform the *Services* in manner, sequence, and timing so that they will be coordinated with those of the *Architect* and *Other Consultants* for the *Project*,

.5 provide progress copies of the *Instruments of Service* and other information for which the *Consultant* is responsible to the *Architect* and *Other Consultants* for review and coordination,

.6 coordinate all aspects of *This Part of the Project* and become familiar with aspects of the *Project* designed by the *Architect* and *Other Consultants* as necessary for the proper coordination of *This Part of the Project*,

.7 cooperate with the *Architect* in determining the proper share of the *Construction Cost Estimate* to be allocated to *This Part of the Project,*

.8 ensure that the *Architect* is included in all communications between the *Consultant* and the *Client*, the *Constructor*, and *Other Consultants*, except as otherwise authorized by the *Architect* in writing, and

.9 be an independent contractor for *This Part of the Project*, responsible for methods and means used in performing the *Services* under this contract and shall not be an employee, agent, or partner of, nor be in joint venture with, the *Architect*.

GC2 Additional Services

2.1 Upon recognizing a need to perform *Additional Services,* either the *Consultant* or the *Architect* shall promptly notify the other explaining the facts and circumstances.

2.2 The *Consultant* shall only perform *Additional Services* with the prior written agreement of the *Architect* and the *Consultant.*

GC3 Architect's Responsibilities

3.1 The *Architect's* responsibilities shall include those items identified as *Architect's* responsibilities in Schedule A – Consulting Services.

3.2 The *Architect* shall:

.1 authorize in writing a person to act on the *Architect's* behalf and shall define that person's scope of authority as necessary (in the absence of such authorization, the signatory on the agreement is deemed to be the *Architect's* authorized representative), and

.2 be the coordinating professional who:

.1 manages the communications among all *Consultants* identified in the *Prime Contract*,
.2 provides direction to all *Consultants* identified in the *Prime Contract* as necessary to give effect to all design decisions, and
.3 reviews the services of all *Consultants* identified in the *Prime Contract* to identify matters of concern and monitor *Consultants'* compliance with directions.

GC4 Construction Budget and Construction Cost Estimate for This Part of the Work

4.1 The *Consultant's* initial evaluation of the *Construction Budget* and any preliminary or updated *Construction Cost Estimates* that may be prepared by the *Consultant* for *This Part of the Work* represent the *Consultant's* best judgement. However the *Consultant* cannot and does not warrant or represent that the lowest compliant bid or the lowest negotiated proposal will not vary from the *Construction Cost Estimate* and the *Construction Budget* for *This Part of the Work*.

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4.2 If at any time the *Construction Cost Estimate* or the lowest compliant bid or the lowest negotiated proposal exceeds the *Construction Budget* for *This Part of the Work* by more than the percentage stated in Article A19 of the agreement, the following provisions shall apply:

.1 If the *Client* chooses to co-operate with the *Architect* in decreasing the scope or quality of *This Part of the Work*, and

.2 the overage is not due to extraordinary market conditions or other factors not reasonably foreseeable by or under the control of the *Consultant*, then,

.3 the *Architect* may require the *Consultant* to modify the design, the *Construction Documents*, or provide other *Services* as necessary to reduce the *Construction Cost Estimate* for *This Part of the Work* to within the percentage in excess of the *Construction Budget* as stated in Article A19 of the agreement, in which case the *Consultant* shall perform these *Services* for no additional fee. This shall be the limit of the *Consultant's* responsibility under this GC 4.2.

GC5 Consultant's Role and Authority During Construction

5.1 The *Consultant* shall assist the *Architect* in providing administration of the *Construction Contract.*

5.2 The *Consultant* is not the *Architect*'s nor the *Client's* authorized agent or representative for the purposes of the *Construction Contract.*

5.3 The *Consultant* shall:

.1 perform *General Review* of the *Work* for *This Part of the Project,*

.2 be, in the first instance, the interpreter of the *Construction Contract* for *This Part of the Project*, and shall make written interpretations and findings that are impartial and consistent with the intent of the *Construction Documents,*

.3 have the authority to reject work for *This Part of the Project* that does not conform to the requirements of the *Construction Contract*,

.4 have the authority to require special inspection or testing of work for *This Part of the Project*, whether or not such work has been fabricated, installed or completed, and

.5 have the authority to order minor adjustments in the *Work* for *This Part of the Project* that are consistent with the intent of the *Construction Contract*, when these do not involve an adjustment in the *Construction Cost* or an extension of the *Construction Contract* time.

5.4 The *Consultant* shall assist the *Architect* in the evaluation of the *Constructor's* applications for payment and in the *Architect*'s issuance of certificates for payment. The *Consultant*'s recommendation to the *Architect for the Constructor*'s entitlement to payment for the *Work* of *This Part of the Project* shall constitute a representation by the *Consultant*, based on the *Consultant's General Review* of the *Work* for *This Part of the Project* and on review of the *Constructor's* schedule of values and application for payment, that the *Work* has progressed to the value indicated, that to the best of the *Consultant's* knowledge, information and belief, the *Work* observed during the course of *General Review* is in general conformity with the *Construction Contract*, and that the *Constructor* is entitled to payment in the amount recommended by the *Consultant*.

5.5 The *Consultant* shall not be responsible:

.1 for, nor be responsible for the discovery of, acts or omissions of the *Constructor*, subcontractors, suppliers or any other persons performing any of the *Work*, nor for failure of any of them to carry out the *Work* in accordance with the *Construction Documents,*

.2 for, nor have control, charge, or supervision of construction means, methods, techniques, schedules, sequences or procedures, nor for safety precautions and programs required in connection with the *Work*,

.3 for any and all matters arising from *Toxic or Hazardous Substances or Materials*,

.4 for information provided by product manufacturers, nor

.5 for providing *Services* that involve substantive modification of the *Construction Documents*, except as provided under GC 7.3 of the *Prime Contract* or except as *Additional Services*.

GC6 Refer to Prime Contract but amend to substitute "Consultant" for "Architect", and "Architect" for "Client" where each such term is used in GC6 of the Prime Contract.

GC7 Refer to Prime Contract but amend to substitute "Consultant" for "Architect", and "Architect" for "Client" where each such term is used in GC7 of the Prime Contract.

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GC8 Indemnification

8.1 Subject to GC 9 Limitations of Liability, the *Consultant* and the *Architect* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits or proceedings in respect of claims by a third party, provided such claims are attributable to:

.1 negligent performance of the *Services* by the *Consultant* or by those for whom the *Consultant* is responsible in law, or

.2 a breach of this contract by the party from whom indemnification is sought.

8.2 This GC 8 shall survive suspension, termination or completion of this contract.

GC9 Limitations of Liability

9.1 Any and all claims, whether in contract or tort, which the *Architect* has or may have against the *Consultant* in any way arising out of, or related to, the *Consultant's* duties and responsibilities, including those arising from GC 8 Indemnification, shall be limited in amount to the lesser of:

.1 the amount of insurance coverage provided under Article A20 or A21 of the agreement that is available at the time the claim is made, or

.2 the amount stated in Article A22 of the agreement.

9.2 The *Consultant* shall not be liable, in contract or tort, for:

.1 any alterations to the *Consultant's* design or to the *Construction Documents* made by the *Architect, the Client*, the *Constructor*, or other third parties without the *Consultant's* written approval,

.2 acts, omissions, or errors of the *Architect, the Client, Other Consultants,* the *Constructor*, or other third parties retained by the *Architect* or the *Client*, or

.3 for the result of any interpretation or finding of the *Consultant* rendered in good faith in accordance with the *Construction Documents*.

9.3 The liability of the *Consultant* and the *Architect* with respect to any claims against each other, in contract or in tort, shall be limited to direct damages only and neither party shall have any liability whatsoever for consequential or indirect loss or damage incurred by the other party.

GC10 Insurance

10.1 Unless the *Client* arranges and pays for project specific professional liability insurance as stated in Article A21 of the agreement, the *Consultant* shall carry professional liability insurance under a policy that has limits not less than those stated in Article A20 of the agreement.

10.2 The *Consultant* shall carry general liability insurance under a policy with limits not less than those stated in Article A23 of the agreement, from the date of commencement of the *Services* until one year after the *Ready-for-Takeover* date.

10.3 The *Consultant* shall require all *sub-consultants* engaged by the *Consultant* to carry professional liability insurance and general liability insurance.

10.4 Upon request, insurance policies of the *Consultant* and of *sub-consultants* engaged by the *Consultant* shall be available for the *Architect's* inspection.

10.5 This GC 10 shall survive suspension, termination or completion of this contract.

GC11 Refer to Prime Contract but amend to substitute "Consultant" for "Architect", and "Architect" for "Client" where each such term is used in GC11 of the Prime Contract.

GC12 Payments to the Consultant

12.1 The *Consultant* shall invoice the *Architect* for *Services* performed and *Reimbursable Expenses* incurred based on, as applicable:

.1 the apportionment of a fixed or percentage-based fee for each phase of the *Services* as stated in Article A13 of the agreement and in proportion to progress made within each phase of the *Services,*

.2 time-based rates as stated in Schedule C – Time Based Rates, and

.3 *Reimbursable Expenses* as stated in Schedule B – Reimbursable Expenses.

12.2 If the *Client* does not pay the *Architect's* invoice in full for any reason, the *Architect* shall pay the *Consultant* that portion of the *Architect's* invoice to the *Client* as is allocable to the *Consultant* and for which the *Architect* has received payment from the *Client*.

12.3 If required by lien legislation applicable at the *Place of the Work,* the *Architect's* payments to the *Consultant* may be subject to statutory holdback.

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GC13 Percentage-Based Fee

13.1 This GC 13 shall apply only when the *Consultant's* fee, or a part thereof, is percentage-based as stated in Article A12 of the agreement.

13.2 The basis for calculating the percentage fee shall be as follows:

.1 before a *Construction Cost Estimate* is available, the fee shall be based on the *Construction Budget* for *This Part of the Work* at the time of the invoice,

.2 after a *Construction Cost Estimate* is available, the fee shall be based on the *Construction Cost Estimate* for *This Part of the Work* at the time of the invoice, and

.3 after the *Construction Contract* is entered into, the fee shall be based on the *Construction Cost* for *This Part of the Work* at the time of the invoice.

13.3 The fee shall not be subject to any retroactive adjustments based on increases or decreases to the *Construction Budget* or the *Construction Cost Estimate* as the *Services* progress.

13.4 If the *Client* furnishes labour or material below market cost for *This Part of the Work*, the amounts upon which the fee is calculated shall be adjusted as if all labour and material were paid for at market prices at the time of construction.

GC14 Refer to Prime Contract but amend to substitute "Consultant" for "Architect", and "Architect" for "Client" where each such term is used in GC14 of the Prime Contract.

GC15 Refer to Prime Contract but amend to substitute "Consultant" for "Architect", and "Architect" for "Client" where each such term is used in GC14 of the Prime Contract.

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