

Guide to the Canadian Standard Form of Contract Between Architect and Consultant

DOCUMENT NINE

2007 Edition

Background

This guide is intended to assist both the Consultant and Architect in completing the form and also to provide a better understanding of some of the more important parts of the document. Written suggestions are welcomed by the Royal Architectural Institute of Canada (RAIC).

This is the second edition of the Canadian Standard Form of Contract Between Architect and Consultant, Document Nine. It is intended only to be used in conjunction with the Canadian Standard Form of Contract for Architectural Services, Document Six, or with Canadian Standard Form of Agreement Between Client and Architect Abbreviated Version, Document Seven, or other Client-Architect contracts which have been approved by the RAIC or the provincial or territorial associations of architects.

Document Nine is not a stand-alone contract and shall not to be used without a “Prime Contract” attached as Appendix 1.

Appending a copy of the “Prime Contract” between Client and Architect to this form is encouraged (except for financial or confidential details). Alternatively, only the appropriate or *relevant* portion of the Agreement may be appended.

This form is intended to encourage the consistent use of *written* agreements between Architects and Consultants. This document is meant for use with Consultants who are design professionals, particularly the traditional engineering consultants on a building project (Structural, Mechanical, and Electrical Engineers). “Consultants” might also include Civil Engineers, Acoustic Engineers, and other design professionals, such as other Architects, Landscape Architects, Registered Interior Designers and food service consultants. If the Consultant is another Architect, it is recommended that one of the Schedules of Architect’s Services from Document Six, or its equivalent, be appended under Schedule B: Schedules of Consulting Services and Deliverables.

This contract is *not* intended for Consultants who may have a very limited role; who may not carry professional liability insurance; and who may not be design professionals; including, but not limited to, specification writers, project managers, programmers, CAD technologists, theatre experts, translators, health care specialists, model makers, renderers, etc. A separate agreement should be prepared for these consultants.

Modifications

Generally, modifications can be made by striking out and initialing the portions which are inapplicable and inserting or attaching revised or additional provisions under Article 4, “Other Conditions”. The use of legal assistance in doing any modification is encouraged.

Definitions

It is intended that all definitions and all terms which are used in the Prime or “Parent” Contract carry the same meaning when used in Document Nine. Because Document Nine is intended to be used with any form of Client-Architect Contract, defined terms are **not** highlighted in italics nor capitalized as they are in Canadian Standard Form of Contract for Architectural Services, Document Six or other RAIC contract documents.

The term “Agreement” has been replaced by the term “Contract” to be consistent with Document Six.

Consultant's Services

The Consultant's Services are defined in Article 2.1 and may be better identified and listed by using one of the **optional** Schedules of Consultant's Services and Deliverables and appending the selected Schedule as Schedule B.

The optional Schedules could also be used checklists to assist the Architect and Consultant in identifying the required services and negotiating an appropriate contract. Alternatively the Architect may wish to reference another document. For example:

*Provide services as set out in the *Guideline from the Professional Engineers of Ontario (PEO): Professional Engineers Providing Mechanical and Electrical Engineering Services in Buildings (1997)* Article 2 “Basic mechanical and electrical engineering services”.*

These services must be compatible with those services the Client and Architect have agreed are necessary for the implementation of the project. The Contract between Architect and Client will define the degree of the Consultant's involvement so that input and time can be estimated and the fee arrangements determined.

Ensure that all Consultants understand the full extent and terminology of services required under Construction Phase – Contract Administration of the Prime Contract. For example, “Contract Administration” includes more professional services than the term “Field Review” as defined by the Association of Canadian Engineering Companies (ACEC) and therefore there must be agreement on the extent of services provided by the Consultant during the Construction Phase including certification as per the Prime Contract.

The Consultant's monthly review of the Work for percentage and value for this part of the project must be completed and submitted to the Architect to allow sufficient time for the Architect to submit the monthly Certificates as required.

General Conditions

Article 2.1.1

The role of the Architect must be reviewed with the Consultant as well as the services required of the Consultant for General Review / Field Review and in assisting the Architect in issuing Certificates for Payment.

Article 2.1.4

At the outset of the project, there must be a mutual agreement between the Architect and Consultant with respect to the *number of copies of all documents*, and the *frequency of submissions*.

Article 2.1.5

(Refer to Article GC.3 of Document Six, Canadian Standard Form of Contract for Architectural Services or similar provisions in other approved contracts.)

The Architect and the Consultant must clearly understand each others' responsibilities concerning the Construction Budget and the consulting services which are provided for This Part of the Project. In addition, Consultants must be aware of the provisions of Article GC.3, Construction Budget and Construction Costs, of Document Six.

Article 2.2.2

The standard Prime Contracts such as Documents Six and Seven, stipulate payment provisions: Document Six and Document Seven require payment when invoices are rendered. Both documents provide for interest on unpaid accounts commencing as described in Article A15 of the Agreement Form in Document Six and Article 4.9 of Document Seven.

If the terms of payment differ from the Prime Contract, then the specific terms and conditions must be negotiated with the Consultant and set out under Schedule A, Article A4, Payment Provisions.

Article 3.1

This article requires that the Consultant maintain professional liability insurance, as required under the Prime Agreement. It is good practice to obtain a certificate or proof of insurance for your records and append it under Appendix 2.

Dispute Resolution

The article that previously referenced CCDC 40, *Rules of Mediation and Arbitration of Construction Disputes*, has been deleted to be in keeping with Document Six which has been amended to remove references to CCDC 40. The Dispute Resolution provisions of the Prime Agreement should be applied.

Termination and Suspension

It is intended that all terms and conditions related to Termination and Suspension which are used in the Prime or "Parent" Contract apply to the Consultant. For this reason, there is no General Condition regarding Suspension of the project; however, in the event of non-performance of the Consultant, the Architect may invoke General Condition 3.2. In the event that neither Document Six or Seven are used, the Architect should ensure that the Prime Contract has appropriate terms and conditions for Termination and Suspension.

Completing the Contract Form

Date: The date represents the date of entry into Contract. It may be the date of submission to the Consultant (after authorization from the Client), or the date of actual execution. No professional services under this Contract should be performed prior to the date indicated.

Identification of Parties to the Contract: Parties to this Contract should be identified in the capacity in which the Contract is executed, including the name of the firms and capacity of persons signing, the address of principal office, a designation of the legal status of both parties (e.g. sole proprietor, partnership, joint venture, limited partnership or corporation, etc.), and the discipline of the Consultant.

Date: The second entry for a date is the exact date which appears on the Prime Contract.

Project Description: This description should duplicate identically the description of the project in the Prime Contract.

Professional Services: Describe the type and scope of the services included in this Contract. Furthermore, it is recommended that a Schedule of Consultant's Services and Deliverables be prepared and appended to this Contract as Schedule B.

Other Conditions

(refer also to "Schedules of Services" in Canadian Standard Form of Contract for Architectural Services, Document Six)

Clearly describe additional requirements to the agreement in this Section. Legal assistance is encouraged in drafting Other Conditions or requirements to this Contract.

Some additional provisions could include:

- Additional phases such as pre-design, site analysis, or post-construction, and the services provided for each;
- Additional services, and fee arrangements for them;
- Special sub-consultants as provided in the Consultant's services;
- Requirements for attending meetings with Client and others;
- Requirements for scheduling and approvals;
- Preparation of multiple sets of Construction Documents for separate contracts;
- Construction Delivery method;
- Limits to Construction Cost or Time of performance;
- Extensive or continuous site representation;
- Submission of invoices, accounting procedures and formats and payments to Consultant;
- Modifications to any service.

Schedule A – Fees and Reimbursable Expenses

Article A1.1

The method of calculating fees and expenses must be clearly defined. If the fee is to be:

- Hourly rates:** List all applicable rates for all personnel including principals;
- Multiple of Direct Personnel Expense:** Fees and services shall be based on a multiple of direct personnel expense as described in the Prime Contract and expenses shall be based on the Prime Contract (refer to Articles 4.2 and 4.3 of Document Six). These articles should be referenced or inserted into this Section.
- Fixed Fee:** Insert a sentence spelling out the fee as well as providing a numerical sum, such as

Fees shall be a fixed fee of _____ dollars (\$ _____).

- Percentage of Construction Cost:** Insert the appropriate method of construction contract and the percent:

Fees shall be based on one of the following percentages of Construction Cost.

For the portion of the project to be awarded under:

A single, stipulated sum construction contract: _____ percent (_____ %)

Separate, stipulated sum construction contracts: _____ percent (_____ %)

A single, cost-plus construction contract: _____ percent (%)
 Separate, cost-plus construction contracts: _____ percent (%)

If applicable, insert the percentages of the fees payable for each separate phase of services. For example:

Schematic Design Phase:	Twelve and one half percent (12.5%)
Design Development Phase:	Twelve and one half percent (12.5%)
Construction Documents Phase:	Fifty Percent (50%)
Bidding and Negotiating Phase:	Five percent (5%)
Construction Phase:	Twenty Percent (20%)
<hr/> Total:	<hr/> One hundred percent (100%)

Refer also to the provincial or territorial tariff or schedules of fees for services, if applicable .

Article A2.1

Fees for additional services should be clearly defined as described above for Hourly Rates or Direct Personnel Expense.

Lien Legislation

Payment provisions should be reviewed with the lien legislation applicable in the Place of the Work as holdbacks for professionals are required in some jurisdictions. (the referenced provisions are not applicable in British Columbia)

Schedule B – Schedule of Consultant's Services and Deliverables

Prepare and append a Schedule of Consultant's Services and Deliverables

Appendix 1 – Prime Contract

Append a copy of the "Prime Contract" between Client and Architect to this form (except for financial or confidential details). Alternatively, only the *relevant* portion of the Contract may be appended, including Schedules of Services and Client Responsibilities.

Appendix 2 – Professional Liability Insurance

Append a copy of the Consultant's Certificate of Insurance