

# Risk Management Advisory

## ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY INSURANCE

### Agreement forms

*Clients often want to use their own contract forms, purchase orders, oral agreements or continuing service agreements to contract for professional services. Clearly, each of these options presents risks that must be addressed. The relationship between the design consultant and the client, the quality of the services being provided by the design consultant and the level of communication between parties all factor into the determination of those risks. The use of ad hoc agreements may create ambiguities that could exacerbate those risks. Conversely, a standard form of professional services agreement can provide protection for both the design consultant and the client, helping to reduce their risk.*

*The Association of Consulting Engineering Companies-Canada (ACEC) and the Royal Architectural Institute of Canada (RAIC) offer a variety of contract forms that correspond to most types of project delivery and to varying levels of service. In most instances, Victor Canada strongly recommends the use of these standard forms that both make the rights and responsibilities of each party clear and unequivocal, and avert some of the pitfalls that might stem from the use of ad hoc documents. At the very least, we recommend that you educate your client and yourself about these documents and discuss the pros and perceived cons of using specific provisions of a standard form of agreement.*

#### The value of a written agreement

A detailed, written agreement between the design consultant and the client can prevent confusion, uncertainty and dissatisfaction. The contract establishes the scope of services, the overall relationship, the method and frequency of communication, the standard of care, and the rights and responsibilities of both parties. The likelihood of misunderstandings, scope creep, disputes and litigation increases significantly if the contract is not put into writing or does not accurately

represent the agreement between the parties. The individuals negotiating the contract are often not the same individuals doing the work, therefore communicating the contract and scope of work to the entire project team is crucial.

All forms of agreements should clearly express the intent of the parties. If contract language is confusing, it cannot be followed as a guide for providing professional services. Terms, if not well-defined, revert to their dictionary meaning and may create obligations far different from the meaning assumed by the design consultant.



The characteristics of the following agreement forms present special concerns.

#### Client-generated forms:

Client-generated forms should be examined closely to determine if they include an acceptable business term and scope definition. Basic elements of a realistic professional services agreement are: a standard of care; equity in the assignment of duties, authority and risk; a clearly defined scope of services; and language that is unequivocal.

### Oral agreements:

Although some firms may have practised successfully without written agreements, such oral contractual relationships—while usually valid and binding—often result in an ambiguous interpretation of the scope of services and inconsistent levels of expectations on the part of each party. In our experience, claims involving oral agreements tend to take longer and cost more to resolve.

### Purchase orders:

Most purchase orders are intended for product procurement and include product liability or express warranty provisions inappropriate for professional services. They also seldom adequately identify the scope of professional services.

### Continuing service contracts:

A long-term service arrangement with a client can provide challenges involving statutes of limitations and duties relating to changes in codes or standards, and result in risk far exceeding the negotiated compensation.

Using oral agreements and providing services under purchase order arrangements should be considered with caution. You and your client can memorialize an oral agreement in a short-form contract. A purchase order can be made to reference the terms and conditions of a professional services agreement that you have negotiated with your client to supersede the product liability and warranty language that most purchase orders contain. Continuing service agreements need to be carefully detailed to allow an adjustment in scope and fee for changed circumstances and to prevent the risk from greatly exceeding the fee.

Taking simple steps such as these will go a long way to reducing the likelihood of needless misunderstandings between parties and to ensuring the project's successful completion.

### Sources of consensus agreement forms

Both ACEC and RAIC offer a number of standard contract forms for the convenience of their members. ACEC resources include standard agreements between client and engineer, engineer and subconsultant and a project management document, to name a few.

RAIC distributes standard contract documents, including a Canadian standard form of contract for architectural services (Document Six) and a short-form agreement between client and architect (Document Eight).

For more information, please visit [acec.ca](http://acec.ca) or [raic.org](http://raic.org).

**Visit us at [victorinsurance.ca](http://victorinsurance.ca) to learn more.**

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