

# Agreements Checklist for Architects and Licensed Interior Designers Consulting Architects of Alberta

## Entity

- First, get the entity right. An agreement does you no good if it is binding the wrong professional entity.
- You may not be covered in the event of a dispute if the entity named in the contract is not the same as the one covered.

## Standard of Care

- As a professional, you are expected to exercise the standard of care ordinarily exercised by other members of the profession under similar circumstances, at the same time and in a similar locale.
- This standard of care does NOT require PERFECTION.
- Increasing the standard of care above this industry standard in your agreement may result in your actions not being covered by insurance.

## Negligence

- All professional liability insurance policies ONLY cover NEGLIGENT errors and omissions.
- You must make sure that your agreement only holds you liable for NEGLIGENT errors and omissions – not all errors and omissions.

## Escalatory Language

- Proposals should not include statements that elevate the Standard of Care. Assume that the promises you make in proposals will be enforceable in a dispute.
- e.g. “Our exceptional /senior expertise/highly accurate construction documents/coordination/quality control will ensure low change orders”
- Make sure your marketing team is aware of this requirement as well.

## Indemnity

- Compensation due to another party for loss or damages upon the occurrence of a specific event.
- Indemnity clauses MUST be tied to our negligence.

## Limitation of Liability

- The maximum liability of the Consultant on the project. It IS recommended to list a maximum.
- Acceptable limitations of liability:
  - » Amount of your fee (on smaller projects)
  - » Pre-determined amount (ie. \$250K or a reasonable higher amount)
  - » Insurance coverage available at the time of settlement

## Timeliness

- Delete: “time is of the essence”
- Delete: guarantees regarding schedule and/or construction cost
- Delete: any liquidated damages tied to schedule and/or construction cost
- Replace with: “The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices.”

## Liquidated Damages

- Consultant responsibility for knock-on costs resulting from circumstances in the project.
- Liquidated damages for delays may not be considered negligent and therefore MAY NOT BE COVERED by your firm’s PL insurance.
- Best review option is to delete any responsibility for liquidated damages if possible.

## Budget

- The Agreement describes our obligations concerning delivery within budget:
  - » A range within which the construction price must fall
  - » Our obligations at each milestone
  - » The design and bid contingencies
- Be prepared to deliver on what the contract obliges your firm to, and set up a management protocol to address your obligations – at every project stage, not just tender.

## General Conformance

- Make sure the language of the contract does NOT commit you to:
  - » Supervise
  - » Inspect
  - » Approve submittals
  - » Ensure total compliance with construction documents
- The contractor is responsible for building in general conformance with the documents. We are responsible for administering the construction contract

## Scope of Work

- Understand the details of the scope of work required and determine the appropriate fee for that scope. The CAA Fee and Scope Guidelines are an excellent reference.
- Review the agreement and confirm that it matches your proposal
- Be clear on what constitutes additional services
- Contract language that describes the scope of work should be narrow and specific

## Payment

- Make sure requirements for payment are clear.
- What are the consequences of late payment: Stop work? Interest? Termination?
- Be sure you are able to terminate the agreement if you are not paid.
- Check for alignment with Prompt Pay legislation.

## Set-off Clauses

- Don’t accept any provision that gives the Client power to withhold fees or to make unilateral determinations of responsibility for damages.
- Client should only be able to withhold if they are determined through a legal process or both parties agree.

## Dispute Resolution

- Common steps in dispute resolution: negotiation, elevation, mediation, arbitration, litigation.
- Try to eliminate arbitration - it can be unpredictable in its outcome.
- Be sure your agreement gives you the right to litigation

## Termination

- When is the client entitled to terminate? Breach of contract? For convenience? When are we entitled to terminate? Non payment?
- Be sure it lays out what happens when the contract is terminated:
  - » Who owns the deliverables?
  - » Indemnity for Reuse of Documents
  - » Liability for costs arising from termination?
- Termination rights should be reciprocal.

## Sub-consultant Relationships

- Bind the Sub-Consultant to the Prime Agreement
- Sub-Consultant liability must be as defined in the Prime Agreement

## Insurance

- No matter what the client agreement says ... Professional Liability Insurance only covers negligence.
- Complex insurance terms need to be reviewed by your insurers.
- Some clients require Project Specific Insurance Policies: use caution, these have a very high rate of claims.
- Make sure insurance requirements are synchronized with your sub-consultant agreements.

## Agreements

- Does your firm use standard agreements?
- RAIC Document 6 is industry-standard for architects, and is quite fair and balanced
- AAA + RAIC developed LID10
- Develop your own standard agreements with legal review?
- Be cautious signing client agreements without external review