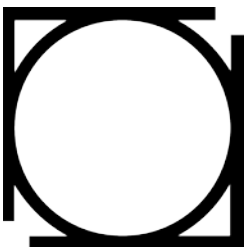


OAA 600

2021 GUIDE

Version 1.1, September 2022

Guide to the Standard 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 600 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
1.1	September 2022	Grammar correction and consistency with OAA 800-2021 GUIDE to accompany OAA 600-2021 Version 1.1
1.0	June 2022	Original issue to accompany OAA 600-2021 Version 1.0

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Note: Changes to the text from previous versions will be identified in this guide by a vertical line in the right margin alongside the applicable paragraph.

Introduction

The 2013 versions of the OAA standard client contracts OAA 600, 601, 602, and 603 have been updated, improved, and reissued as a single format where either the default OAA developed or custom scope of services schedules may be used. These contracts and the Guide to OAA 600-2021 contracts are prepared by the Ontario Association of Architects for use by licensed OAA members and their clients. The Guide is provided to assist both parties 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 600-2021 A for use by Architects and OAA 600-2021 LT for use by Licensed Technologists OAA. For simplicity, the excerpts from the contract which are included in this Guide are taken from OAA 600-2021 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 were 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.

Background & Changes

Process:

OAA Practice Advisory Services (PAS) began a review of the OAA 600-2013 *Standard 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 600-2021. However, the process continued, culminating in OAA Council approving a Practice Resource Committee recommendation in September 2021.

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 2013 version was released;
- amend sections that have been found to be problematic;
- identify from RFPs and similar documents those clauses most commonly amended by client-authored supplementary conditions and consider balanced revisions to reduce the number of supplementary conditions proposed by clients;
- new look and naming convention as well as compliance with accessibility standards;
- provide the contract as a secure fillable (fill-in-the-blanks) type document;
- obtain client input 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

-
- combine Instructions & Commentary into one guide document, reformatted for clarity with text and colour variation, and appropriate new content addressing revisions to the OAA standard contract.

The Most Visible Change is Format:

The most visible change to the new version of OAA 600 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 secure contract, and the OAA-provided attachments (schedules and appendices) are 'fill-in-the-blank' PDF documents. Members are no longer required to deal with the schedules of services being in GC2 and GC3 in OAA 600 and in GC13 or elsewhere in OAA 601.

Changes to 'A' and 'B' Schedules from the Previous 2013 Versions:

The descriptions of services from GC2 and GC3 were used, 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.

Addressing Custom Services:

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 OAA-provided full service 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 shorter OAA 800-2021 *Standard Short Form of Contract for Architect's Services* better suited for situations where OAA 600 is not appropriate. It is intended that the OAA provided schedules may be used with OAA 800 as well.

Contracts and Attachments Provided Only as PDF:

The contracts are provided in secure 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. The attachments (schedules and appendices) are in editable PDF format. Supplementary Conditions and Amendments can still be added easily by using Schedule 5, which is referenced in GC18 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, all the editable fields and text boxes have been moved out of the General Conditions and placed either in the Agreement or in the Schedules. The user then only needs to look at the secure contract, and the attachments to see how the contract as a whole has been defined. 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 suggested wording for some common situations encountered where special terms and conditions are appropriate.

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 2013 versions:

1. Copyright notice added to restrict authorized use of OAA 600 to the time period it is available on the OAA Website.
2. The changes and additions made throughout required the renumbering of many Articles and General Conditions along with any references to them. They are too numerous to identify.
3. Added Ready-for-Takeover to list of anticipated dates. (A07)
4. Wording modified and grammar clarified. (A08, A09)
5. Added identification of the maximum variation between cost estimate and bid or negotiated contract price. (A11)
6. Added professional liability insurance requirements. (A12)
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 or amendments.

Availability and Use of Older Versions of OAA 600

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

The current versions of OAA 600-2013 will remain available on the OAA Website for a transition period. This transition period is to allow users to become familiar with OAA 600-2021, and to develop any needed supplementary conditions. Once the OAA 600-2013 contracts are removed from the website, permission to use them will also have been rescinded.

The OAA 600-2008 version has long been unavailable on the OAA Website and no one has permission to use it for new contracts.

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 600-2021 Contract

OAA 600-2021 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.

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. 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 reintroduced, superseding the integral scope of services item lists that had been incorporated in tables in GC2 Basic Services, and GC3 Additional Services. The content of the tables have been modified. This was done to simplify the maintenance of the OAA 600 contracts, to allow for the development of new versions of the schedules for use with different project delivery types, and to encourage the use of the schedules with the OAA 800 series of short form contracts. In addition, there has been a regrouping of the General Conditions (GC), the introduction of new General Conditions, and the signing page has been moved to the end of the Agreement.

Where a member develops their own scopes of services, 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 Schedules 2 and 3, the additional scopes 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 that 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 to be amendments or supplementary conditions to the construction contracts.

Any amendments to the OAA 600 contract such as revised wording, deletions, or additions should be documented in Schedule 5 as referenced in GC18 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 requirements for confidentiality, conflict of interest, licensing of instruments of service, insurance, and indemnification from the head contract to the subcontract. Holders should consider using OAA 900-2021 if they hire the subconsultants for a project.

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 2, 3, 4, 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.

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. If applicable, attach and/or make reference to an agreed to functional program or design brief.

A05 Owner

This would be applicable in situations such as when the *Holder* is engaged by a professional engineer, a project manager or a 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 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

Refer to the Definitions to understand all the components that make up the total *Construction Cost Budget* and GC06.2 for what is to be included in the *Client's* budget and enter the dollar value in the space provided. Schedule 2 Scope of *Basic Services* items 2.1.3, .4, and .5 describe the process for initial reviews and agreements on the scope and budget.

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 them may affect the fee calculation, any extra services, and/or the *Estimate of Construction Cost* as noted in Article A10, GC04.1.14 and GC12.9. These dates are used to establish the initial schedule for both design and construction, and by extension, the duration of this contract.

In Ontario, the requirements for substantial performance of a construction contract are embedded in the *Construction Act*, and apply to any contract for an improvement to a property.

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*. Mark the other option as N/A.

A08 Delivery Method and Construction Contract

Enter the anticipated construction delivery method and form of construction contract. These are important as fees and services may require adjustments due to a change in the delivery method or construction contract. For example, if the anticipated construction contract is stipulated sum under CCDC 2, and the client changes it to construction management, there could be an adjustment to the services required by the *Holder*, such as preparing and issuing multiple bid packages and/or administering multiple trade contracts each with their own payment certification. See also GC04.1.3

A09 Permitted Budget Exceedance

The accuracy of cost estimating for anything as complex as a building has so many factors at play that are in many ways beyond the control of the client or the consultants, including the complexity and timing of the Project, and extraordinary market conditions such as economic and political volatility. This means it is reasonable to expect some variance between the budget and the results of bidding or negotiations. In recognition of this, an agreed variance from the budget should be established. This variance is referred to as the *Permitted Budget Exceedance*. The traditional variance is expected to be up to 15%. Whatever value is agreed to, the client should have the value of the *Construction Cost Budget* + *Permitted Budget Exceedance* + *Contingencies* available to undertake the *Project*.

Clients may be tempted to reduce the *Permitted Budget Exceedance* to 10 or even 5% or less in order to better manage their funds. In many ways, this is a false economy. The lower the *Permitted Budget Exceedance*, the greater the risk to the *Holder*. There are two primary responses to the increased risk: 1) increase the total fee to compensate for the risk, and 2) design to 85 or 90% of the budget to reduce the risk. The result is either increased cost or less building than may have been possible had the risk been more equitably apportioned.

A10 Reliance on Initial Information

This Article describes a critical basic premise of which both the *Client* and *Holder* need to be cognizant. 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.

A11 Consultants

Identify by discipline and company name the *Consultants* engaged by the *Holder* in Article A11.1 and those engaged by the *Client* in Article A11.2. Two text boxes are provided for additional space. These are the *Consultants* whose services the parties have agreed will be coordinated by the *Holder*. (Refer to definition of *Consultant Coordination*, GC01.1.4, 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.

Refer to GC05.4.6 and .7 for *Client's* responsibility to engage *Consultants* with terms and conditions compatible with this *Contract*.

The *Client* and the *Holder* should both receive evidence of current certificates of the above insurances carried by the consultants and evidence of insurance renewal confirmations. Holders should consider using OAA 900-2021 for contracts with their consultants.

A12 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".

Item .5 in the Article A12 list (legal description) 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 and should be provided at the beginning of a project rather than waiting until around the time of substantial performance. 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.

A13 Review of Information and Site

It is prudent soon after the start of work on a *Project* for the *Holder* and other consultants to review the information provided by the *Client* and to review the site itself to generally confirm the information provided and the existing state of affairs on the site. Such reviews should be carried out according to the *Standard of Care* to the extent permitted by any restrictions imposed on timing and access. Such reviews may result in defining extra services that are needed to provide basic information about the site.

A14 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. The limits set in this Article should be established by the *Client* at a level appropriate for the nature of the project, the risks it perceives, 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*. Coordinate this Article with GC09.2. 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, potentially years earlier.

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. In recognition of the high legal costs of litigating insurance claims, it makes sense to set higher limits for the PLI carried by engineers and others.

A15 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 have 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*. Coordinate this Article with GC09.2.

A16 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 commercial use in connection with projects. Coordinate this Article with GC09.2.

A17 Fees for 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. 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 for the project. This third category addresses the confusion that existed in having three types of services but only two categories to which to assign them in the previous versions of the contracts.

The scope of basic and additional services, and the basis for fee calculation is set out in Schedules 2, 3, and 4 referenced in GC02, GC03, and GC04 respectively. Fixed fee amounts and time based (e.g. hourly, daily) or unit rates to be applied to the services should be inserted in Article A17.

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. The legend is commonly: F1, F2, F3, F4, etc., as used in this commentary for the example text. The legend is identified in Article A17 along with the explanatory text. The legend symbols F1, F2, etc., are put into the schedules referenced by GC2.1 and GC3.1 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 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.

The OAA Standard Forms for Extra Services or Contract Change (available on the OAA Website) 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.

A18 Fees for Extra Services

Enter here the terms of payment for those services required but not anticipated at the time of contract signing; where those services are provided under different terms than those in Article A17. Possible terms include the following with which the editable text box is pre-populated:

Fees shall be computed on the basis of the designations in the Fee Reference columns in Schedules 2, 3, and 4 which designations are defined in Schedule 1.

Hourly rates for key personnel/positions:

Principals	\$	.	per hour
Senior staff	\$	.	per hour
Intermediate staff	\$	.	per hour
Junior staff	\$	.	per hour
Clerical	\$	.	per hour

Adjudications are fast-paced processes. To respond in the time frames required, *Holders* providing assistance to clients with adjudications will likely need to work outside normal business hours and disrupt other projects by pulling people with knowledge of the project being adjudicated off the projects they are currently working on. Such effort and disruption cannot be adequately compensated at the normal hourly rates.

The rates for assistance 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* , shall be 200% of those listed above unless agreed otherwise.

On projects that last for several years, it is reasonable to anticipate costs will increase over time. This should be factored into the overall project budget. It is appropriate to adjust the hourly rate to reflect changes in the consumer price index. This may be a less expensive approach than asking that fees be fixed and averaged over the duration of the project.

The rates established above shall be adjusted on the anniversary of the *Contract* according to the annual change as reported quarterly in the Statistics Canada Residential Construction Price Index for the Toronto, Ontario area in Table 18-10-0135-02.

A19 Fee Breakdown by Phase

Enter the percentages appropriate for the *Project* . The standard range and typical percentages used are shown below:

Project Phase	CAD Normal Range	CAD Typical	BIM/IPD Normal Range	BIM/IPD Typical
Pre-design services	varies	varies	varies	varies
Schematic design phase	12 - 18%	12.5%	20 - 25%	20%
Design development phase	12 - 18%	12.5%	20 - 25%	25%
Construction documents phase	45 - 50%	50%	25 - 35%	30%
Bidding or negotiating phase	2.5 - 6.5%	2.5%	2.5 - 5%	2.5%
Construction phase	22.5 - 35%	22.5%	20 - 22.5%	22.5%

With new methods of project design and documentation, such as Building Information Modeling (BIM) or Integrated Project Delivery (IPD), more documentation and design is required to be done in the earlier phases to provide the basis for further development.

A20 Administrative Charge

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, presentations, or reports are required. An alternative would be to provide one copy to the client and have the client reproduce however many copies they need.

A21 Travel Costs

Enter the amount per kilometre that will be invoiced for auto travel.

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”.

Many practices charge for automobile travel only when it is beyond a stipulated distance from the *Holder’s* or *Consultant’s* offices. For purposes of calculating the cost per kilometre for automobile travel (should the client not have his/her own established rates) a fair guide is the published federal government rates which are updated regularly — refer to the [Canadian Revenue Agency \(CRA\) website](#).

A22 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 even if the project is cancelled. 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.

A23 Proper Invoice Contents

The *Construction Act* defines the minimum requirements for the information to be included in a *Proper Invoice*. It also provides for a contract to add additional requirements. Any desired additional requirements such as the *Holder’s* and *Client’s* project numbers are to be listed here. If the definition of *Proper Invoice* as prescribed in the Definition section of the *Contract* does not require any additional requirements, complete by filling in as “Not Applicable”.

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.

A24 Invoicing

Typically, services are invoiced monthly. If invoices are to be issued on some other basis, enter that period or amend the requirements in Schedule 5 with what has been 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 project milestones met. If amending the invoice period, it may be appropriate to also amend the notice period in GC10.2 and 10.3.

A25 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.

A26 Release of Holdback

The *Construction Act* permits the release of accrued holdback monies on a phased basis, upon completion of a designated design phase. Design phase refers to each of the phases of services described as the *Holder's* scope of service under Schedule 2, and Schedule 3 (as may be amended under Schedule 4) that occur prior to the construction phase. To be effective, the contract must specify the design phase or phases after which accrued holdback will be released.

By specifying the applicable design phase or phases in the box provided, the release of holdback may be designated to occur following the completion of all design phases, or upon completion of one or more specific design phases. The choice will depend on the size, duration, and complexity of the project. The cost of processing the paperwork should be weighed against the cost of financing the holdback until the next milestone.

For short-duration projects, it may be appropriate to wait for deemed completion and release of the entire statutory holdback. For longer projects, interim release of holdback upon completion of the construction documents phase may be appropriate. For even longer projects, agreement may be reached for interim release of holdback at the end of more than one designated design phase. For very large projects spanning several years, consider the provisions for yearly release of holdback in the *Construction Act*.

Careful consideration must be given as to how the end of a phase is determined. Is it related to the provision of Instruments of Service at a milestone, to the client's acceptance of the milestone, to a tender package being issued, a tender closing, a contract being awarded, or some other circumstance? Note whether the release of holdback is dependent on the performance of a third party. Avoid situations where any party acting unreasonably or in its own best interests can delay release of holdback. Avoid situations where the milestone triggering release may itself be delayed even though the required work has been done, such as issuing for permit or for tender.

Note that an Application for Release of Holdback is not an Application for Payment, and is therefore not subject to the requirements for a Proper Invoice. The holdback accumulates from the amounts previously invoiced as part of Proper Invoices, and was previously determined to be due and payable except for the requirements of the lien provisions of the *Construction Act*. It would also not make sense for the Application for Release of Holdback to be payable on the 28th day as with Proper Invoices when the lien period does not expire until the 60th day.

A27 Hierarchy and Contract Documents

As in a construction contract, the hierarchy of documents establishes which documents and which parts of the contract govern if there is a discrepancy among them.

List all of the documents that are to be part of the contract. List them in order of priority, with the highest priority document listed first. Include any bid forms not recorded elsewhere that are intended to survive the procurement phase such as confidentiality agreements.

It is considered poor form to include the entirety of an RFP document in the contract, particularly those aspects that apply to the RFP process such as RFP submission format, and mandatory site visits. Done improperly, the RFP terms and condition may take precedence over the negotiated contract terms.

A28 Entire Contract

This Article confirms that this contract, composed of the documents listed in the preceding Article, is the only and entire contract between the parties for the Project.

A29 Amending the Contract

This Article establishes that the contract may be amended, but only in writing by mutual agreement. When a change to the contract is required; either a change in the existing scope or the addition of extra services, refer to the OAA Contract Amendment form.

A30 Signing in Counterparts

To facilitate signing by parties who are not physically present, this Article permits the signing of counterparts. This provides for each party to sign and then exchange identical copies of the contract where sending a single copy back and forth for both parties to sign would be inconvenient or cause undue delay.

A31 Client Review

In order to establish a schedule for the provision of services, time must be allowed for client review and approval of various submissions. Enter here the time to allow in the schedule for client review. Since this could affect the duration of the project, this is ideally included in the RFP documents, and simply transferred here.

A32 Delivery of Notices

Some clients and practices require delivery of notices and invoices/payments to be made to a different location than the client's formal address. Enter here and describe the addresses (physical, email, FTP site, web site, etc.) for delivery of such notices and invoices/payments.

A33 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. Where the client is a couple, both should sign the contract.

Amendments to the Articles of the Agreement (May be included in Schedule 5)

Although rarely used by *Holders*, there are alternate forms of security that may be retained in place of the percentage of the amount payable that is most commonly retained. Where permitted by the *Lien Legislation* and agreed upon between client and *Holder*, wording based on the following may be used.

Axx Form of Holdback

Where permitted by the *Lien Legislation*, instead of being retained in the form of funds, the *Client* agrees to retain the holdback in one more of the following forms:

- letter of credit
- demand-worded holdback repayment bond
- other: _____

Unless otherwise mutually agreed, the *Architect* shall be responsible for providing and maintaining any such holdback security at its expense.

Definitions

Many of the definitions herein are self-explanatory. Guidance is provided where appropriate to explain changes or additions from OAA 600-2013. Defined terms from the contracts are shown in italics with initial capital letters.

Additional Services

Adjudication

Architect

Architects Act

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 of unknown and unpredictable future changes for no allowable 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.

Until the first quarter of 2022, in the case of changes to the *Building Code Act* or the regulations thereunder, there was 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.

Background Intellectual Property

This is defined to distinguish intellectual property of the *Holder* that existed prior to the *Contract* from that which was created in the course of providing the *Services*.

Basic Services

Client

Construction Cost

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 inconsistent with 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 in the OAA contracts had to be revised.

Construction Cost Budget

Construction Documents

Consultant

Consultant Coordination

Typically, *Consultants* are professional engineers with a certificate of authorization, *Holder*s 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 has been made between the coordination of the *Holder's Consultants* as listed in Article A11.1 and the *Client's* other *Consultants* as listed in Article A11.2. The distinction is based on the lack of a contractual relationship between the *Holder* and the *Client's Consultants*. It 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 GC01.1.4, GC09.7, and Practice Tip [PT.27](#) for additional information on coordination.

Contingency

Contract

Contract Documents

Dispute

Effective Date

Electronic Documents

Estimate of Construction Cost

Extra Services

The category *Extra Services* was added to remove the need to redefine basic and additional services.

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*.

Functional Program

Until the publishing of version 3 of the Canadian Handbook of Practice (CHOP), this was known as a Program of Requirements. It has been renamed for consistency with CHOP, to avoid confusing people.

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, [OAA Documents & Publications](#), Regulatory Notice RN.06, 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 and 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.

Licensed Technologist OAA

Lien Legislation

Moral Rights

Notice in Writing

Permitted Budget Exceedance

Place of the Work

Project

Project Management Services

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.

Record Drawings

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 staff -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, not the date the doors open for business. This interpretation is made on the basis that the contractor has no control of the staff -ready date, the retail opening date, or actual tenant occupancy date.

Toxic or Hazardous Substances

Value Added Taxes

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.

Working Day

General Conditions

GC01 Architect's Responsibilities

1.1.1 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.

1.1.6 When the *Holder* states that specific key people will be on the team for the project, the *Holder* is agreeing to keep them on the project or to notify the client if they are to be changed. Of course if a staff member leaves the practice, or is dismissed for cause, the *Holder* cannot be held responsible, but should appoint a comparable replacement where needed. Replacement of key people will likely involve acquiring new staff. It is unreasonable to expect or require a *Holder* to maintain extra staff on the payroll just in case a key person leaves unexpectedly.

1.1.7 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. The existing legal requirement for confidentiality is found in Regulation 27, Section 42 (44) which 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.

1.1.8 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...” Compliance with applicable law requires a *Holder* to retain copies of the information provided to it, and to maintain the confidentiality of it, as long as it is in the *Holder's* possession.

1.1.9 Simply put, the *Holder* shall not place themselves in any conflict of interest position as it relates to carrying out responsibilities related to the services provided.

1.1.10 This clause defines more specifically grounds for termination of the contract by the *Holder*. 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, the client may be better served by someone they have confidence in.

1.1.17 Most of the insurance claims against *Holders* arise from the work of subconsultants. It is a best practice to require the subconsultants to carry appropriate insurance rather than put the *Holder* at sole risk.

GC02 Scope of Architect's Basic Services

The table listing the items comprising the scope of Basic Services that was part of GC 2 in OAA 600-2013 has been moved to the new Schedule 2. The Schedule 2 accompanying this contract may be used as-is. Any work items not already in the schedule may be added in Schedule 4. Alternatively, custom lists of scope of Basic Services items suitable for specific projects, types of projects, or clients may be compiled and substituted for the OAA provided Schedule 2.

Since the Schedules can be amended or substituted as needed, there is no longer a need for separate versions of the contract as were used with OAA 600-2013 and OAA 601-2013 or OAA 602-2013 and OAA 603-2013.

The Basic Services Schedule 2 referenced in GC02.1 is separated from the Additional Services Schedule 3 referenced in GC03.1 to allow a correlation to the percentage fees defined in the RAIC's “*A Guide to Determining Appropriate Fees for the Services of Architects*”, commonly called the RAIC Fee Guide.

The purpose of these schedules is two-fold:

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

As noted in the commentary for Article A17, a specific fee cannot always be determined or fixed in advance, but a formula or method for calculating the fee for a particular service can and needs to be identified.

A legend for fee types to be used in the *Contract* is identified in Schedule 1, and legend designations are to be used in Article A17 and in the tables. The schedules list the services, and on the right, three columns are provided:

1. The first column in the schedules titled “Service Provided” is to be completed by entering a simple yes or no.
2. The second column in the schedules titled “Fee Reference” is to be completed by entering the Fee Reference type established in Schedule 1.
3. The last column can be used for brief notes or reference to numbered notes.

Refer also to the commentary on Schedule 2 about filling in the table.

GC03 Scope of Architect's Additional Services

The table listing the items comprising the scope of Additional Services that was part of GC 3 in OAA 600-2013 has been moved to the new Schedule 3. The Schedule 3 accompanying this contract may be used as-is. Any work items not already in the schedule may be added in Schedule 4. Alternatively, custom lists of scope of Additional Services items suitable for specific projects, types of projects, or clients may be compiled and substituted for the OAA provided Schedule 3.

Since the Schedules can be amended or substituted as needed, there is no longer a need for separate versions as were used with OAA 600-2013 and OAA 601-2013 or OAA 602-2013 and OAA 603-2013.

The Additional Services Schedule 3 referenced by GC03.1 lists services normally considered as services additional to those considered as basic services in the RAIC Fee Guide. There will also be services that are either not applicable, provided by others, or other than those listed depending on the project particulars and as the result of negotiations between the *Client* and the *Holder*.

Refer also to the commentary on Schedule 3 about filling in the table.

GC04 Provision of Extra Services

In addition to the basic and additional services referenced by GC02 and GC03 that were anticipated and agreed to by the time the contract was negotiated, many projects will need extra services — those services neither anticipated nor agreed to by the time the contract was negotiated.

GC04 was written to provide a framework for defining which services are extra to the contract, how the need for extra services may arise, and the above and following clauses are included in the contract to establish an agreed upon protocol in regard to the approval of extra fees for services that become necessary for the project, but which are unforeseen at the time of contract execution.

It is not possible to anticipate and calculate a fee in situations where the extent or timing of services required are unknown or depend on factors beyond the control of the *Holder*. It is unreasonable to expect the calculation in advance of fair and reasonable fees for services that are undefinable or can vary, for example, from a few hours to literally hundreds of hours of professional input.

Minor changes in a project are considered normal and do not typically give rise to requests for extra fees. The cumulative impact of too many minor changes, or even a single material change on the other hand may result in requests for extra fees. Experience and judgement are required to determine when the former becomes the latter.

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

4.1.8 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.

4.1.9 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*.

4.1.11 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.

4.1.13 Should the project extend beyond the dates identified in Article A07 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.

4.1.14 Where the *Client* retains its own *Consultants*, the *Holder* cannot exercise the same degree of influence over them that it does over those *Consultants* it retains directly. If the *Client's Consultants* do not provide their information or instruments of service to the *Holder* or the other *Consultants* or do their required coordination, the *Holder* is entitled to extra fees and time.

GC05 Client's Responsibilities

5.1 A clearly stated *Functional Program* is a key piece of initial information that defines what the client wants. It often contains conflicting requirements (initial cost, life cycle cost, quality, durability) that the *Holder* must consider in developing the design solution.

5.2 It is rare for a budget to remain static. As a design develops, changes in the *Functional Program*, applicable law, interest rates, or the available funds may impact the budget. It is important that the budget be kept realistic and up-to-date.

5.3.1 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.

5.3.2 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.

5.3.3 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.

5.3.4 Authorities may only communicate with applicants. In such cases, it is important that clients understand the need to pass along to the *Holder* pertinent communication from the authorities. Failure to do so may result in delays in approvals processes and to the project.

5.3.5 The more eyes that review construction the better the result. Unless on-site full time (additional service), *Holders* and consultants review construction periodically on a random sampling basis. If clients observe anything that appears to be a problem or that may be covered up prior to the next time the *Holder* or the consultants will be on site, it is to the client's advantage to inform the *Holder* as soon as possible. Standard CCDC construction contracts provide for all communications between client and contractor to flow through the consultant (typically a *Holder*). Accordingly, it should be made clear that the client should not separately and independently instruct the contractor, the contractor's personnel, or the sub trades, especially when it involves changes to the work, and timing or sequence of construction.

5.3.10 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.

5.3.11 *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, 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.

5.3.12 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*.

GC06 Budget, Estimates and Construction Cost

It is the *Holder's* responsibility to design to the agreed upon *Construction Cost Budget* within the *Permitted Budget Exceedance*; subject to factors beyond the *Holder's* control.

6.7 Note that the supply chain disruptions and widely fluctuating prices that have resulted either directly or indirectly from an epidemic or pandemic such as COVID-19 are the very sort of things that constitute "extraordinary market conditions or other factors not reasonably foreseeable by or under the control of" a *Holder*.

6.8 Where a cost consultant is engaged by the client, the scope of client's estimator's services should be compared to services in the contract and where applicable revisions to GC06 or other parts of the contract should be made using Schedule 5.

Holders are entitled to rely on cost estimates prepared by the client's consultant. Where the client's consultant determines that a design is within the *Construction Cost Budget* plus the *Permitted Budget Exceedance*, but the lowest compliant bid or negotiated price is higher, the *Holder* shall be paid for any services required to reduce the project cost. If the client's consultant's estimate was inaccurate, the client should seek to recover any additional expense from the cost consultant, not from the *Holder*.

GC07 Construction Phase Services

7.2 Despite being hired by the client, perhaps acting as the client's agent, acting on the client's behalf and administering a contract defined in part by documents created by the *Holder* for the client; 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 the project.

7.3 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.

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

GC08 Copyright and Use of Documents

8.1 Some 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 *Holders* 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, *Holders* will need a licence from the client to use any of them on any future project.

8.3 This is to avoid the *Holder* having the sole responsibility to confirm permission to use information provided by the client.

8.6 This constitutes a licensing agreement for the *Instruments of Service*.

8.6.3 While a design and its representations may be unique, software is often generic and for the sake of usability shares 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.

8.6.4 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 directly to the *Holder's* client.

8.7 The granting of the licence is subject to the terms and conditions noted in 8.7.

8.8 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.

8.9 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 be unsuitable for use at any other 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

The 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 wording similar to the following may be added to Schedule 5, and used rather than assigning the copyright:

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

GC09 Indemnification and Liability of the Architect

9.1 *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 to 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.

9.2 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.

In most instances, it is only necessary to provide the certificate of insurance available from Pro-Demnity and other insurers, with commercially sensitive information removed or blacked out.

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.

9.3 Professional Liability Insurance is only available on a claims made basis. This means that no matter what insurance was available previously, 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.

9.4 This clause provides for increasing insurance coverage during the course of the project if the client desires.

9.6.1 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.

9.6.2 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.

9.6.3 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.

9.6.4 The owner is responsible for what they own and the condition it is in, including the presence and remediation of toxic and hazardous substances. 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. Refer to O. Reg. 278/05. 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.

9.6.5 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, 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.

9.6.6 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.

9.6.7 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.

9.8 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.

9.10 This clause serves to limit the *Holders* liability in contract to the same six-year period long provided to contractors under industry standard CCDC contracts.

9.11 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 from any additional time or cost required to deal with it.

GC10 Suspension of Services

10.1 Contractors have become more diligent in requiring clients to demonstrate financial capability for funding the project. This is reflected as a contractual provision in CCDC documents. Prudent *Holders* similarly exercise good practice and satisfy themselves that their clients have the capacity to meet the financial commitments to the project and the *Holder*. This GC pertains to an event occurring after this due diligence has been performed, causing a change in the client's ability to meet its obligations. It also applies in situations where funding approval has been delayed as happens on projects for public clients.

10.2 Clients have to 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.

10.3.2 Refer to the OAA Regulatory Notice RN.09 related to this situation.

10.6 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.

10.7 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.

GC11 Termination of Services

11.1 This has been revised to incorporate the Ready-for-Takeover concept introduced in CCDC 2-2020.

11.3 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 for convenience requires a longer notice period to reflect the greater risk borne by the *Holder*.

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

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

11.10, 11, 12 The *Holder* is entitled to termination expenses should the client terminate for causes not related to the performance of the services by the *Holder*.

GC12 Payments to the Architect

12.1 The *Holder* should review for reasonableness the invoices submitted by its subconsultants prior to including them in its billing to the client.

12.2 This clause anticipates a prime contract between the *Holder* and the owner. In situations where the *Holder* is not the prime consultant or where the *Holder* is retained by the contractor as in a Design-Build project, this clause will need to be modified to be consistent with the *Construction Act*.

In the event that the client fails to pay a Proper Invoice in accordance with the requirements for prompt payment under the *Construction Act*, it is recommended that the *Holder* give careful consideration to the implications and obtain advice from legal counsel. Non-payment by the client may also impact the *Holder's* obligation to give notice or to pay its subconsultants. In all scenarios, the terms and conditions for prompt payment under the *Construction Act* govern.

12.5 Amounts of a proper invoice that are in dispute and are later determined to be payable are subject to interest as defined in Article A25.

12.8 If a decision is made to reduce or change the scope of work after a portion of the project has been designed in whole or in part, the *Holder* is to be paid for that effort whether or not it is incorporated into the final project. The *Holder* is also entitled to be paid for efforts in relation to the revised scope of work.

12.11 The *Construction Act* provides for the release of the statutory holdback on *Holder's* fees at the end of a designated design phase for contracts where the procurement process commenced on or after July 1, 2018. This is of great benefit on projects of a longer duration; however, care must be taken to preserve lien rights in a timely fashion where necessary.

Note that an application for release of holdback is not an application for payment. The amount of the holdback has accumulated over time as it was included in the previous monthly applications for payment and was approved for payment with each monthly application. An application for release of holdback is not subject to the requirements for Proper Invoices. The timeframes involved in prompt payment are incompatible with the lien periods.

Where there are separate contracts for the design and construction aspects of the Project, the period of lien rights for each contract will expire and not extend into the subsequent contract(s).

Be aware that there is no provision in the *Construction Act* for the *Holder* to be substantially performed as there is for construction contractors. There is only completion. Care should be taken to establish the end date when the remaining holdback may be applied for. There have been interpretations which stand up legally that *Holder's* services are not complete until total completion of the *Work* or 12 months after the contractor's substantial performance date whichever is the later. For this reason, where permitted by the *Lien Legislation*, it may be in the *Holder's* best interest to add a milestone for the 12-month warranty period of the contractor, and add an interim milestone contemporaneous with the date of the contractor's date of substantial performance to allow for application and release of holdback on the fees for services to that date.

GC13 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.

GC14 Liens

Provisions have been added here to address the *Holder's* responsibility regarding liens relating to design or contract administration services being claimed by those the *Holder* is directly or indirectly responsible for contractually.

The *Client* is responsible to notify the *Holder* in writing of any lien or notice of lien before the *Holder* is required to take action under GC14.

GC15 Right to Audit

Provisions regarding auditing of the *Holder's* services have been consolidated here. The right to audit is limited to services that are provided at an hourly or unit rate, or relate to reimbursable expenses. *Services* provided at a fixed fee, a lump sum, or a percentage of construction cost were either provided or they were not. How much effort went into the provision of such services and whether or not the *Holder* made a profit on such services is confidential to the *Holder*.

GC16 Dispute Resolution

In Ontario and some other jurisdictions, adjudication of contract disputes is available, and may be mandated for an interim resolution of some disputes not resolved through negotiation. Be aware of the time frames imposed by the applicable legislation. They may be very short. The use of mediation or arbitration to resolve disputes under OAA 600 is subject to mutual agreement. *Holders* should consult their insurers before agreeing to a particular dispute resolution process.

GC16.6 addresses issues relative to requirements under the construction contract that deal with alternative dispute resolution and the role and liability of a *Holder* in that process. The OAA and Pro-Demnity Insurance Company advise modifying the pertinent CCDC documents by Supplementary Conditions. Refer to OAA Practice Tip PT.23 series for recommended changes to CCDC documents related to this subject. The words "provisions satisfactory to the architect" would mean the recommended language provided in these Practice Tips or as prepared by the *Holder's* own lawyer.

16.7 *Clients* typically have a right to set-off under common law irrespective of any explicit terms in a contract. In order to avoid exclusion of professional liability insurance coverage requested by the *Client*, it is necessary to declare that agreeing to any contractual set-off provisions does not constitute an acceptance of liability as that would interfere with the insurer mounting a defence against any claim, resulting in possible exclusion of insurance coverage. Such exclusion of coverage is not in the client's, the public's or the *Holder's* interests.

16.8 Since adjudication is intended to provide a speedy interim resolution to disputes, it is appropriate during an adjudication for both parties to continue performing their obligations under the contract.

GC17 Miscellaneous Conditions

17.1 The use of social media applications for the exchange of information between parties is not permitted under the contract due to issues with security, privacy, permanence, the ability to back up, archiving, and other technical issues. In addition, there are a plethora of new and evolving social media applications, and it is unreasonable to expect the parties to be competent in the use of whatever app someone else is using at any particular time or to expect the parties to monitor multiple social media platforms all the time.

17.7 By default, this contract is written with projects in Ontario, executed by *Holders* with offices in Ontario, in mind. Should the *Place of the Work* or the *Holder's* offices be outside Ontario, this clause may need revision. Seek legal advice as to what extent the laws of various jurisdictions should apply.

GC18 Other Terms of Contract*

As part of the reorganization of the contract, and to keep the General Conditions as boilerplate text, the editable text box that was in OAA 600-2013 has been moved to Schedule 5, which is referenced from GC18. 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 work. For each of these that is to be included in the *Contract*, a means of calculating the fee must be designated.

In the column labelled "Service / Fee Reference", there is space for an abbreviation to designate how the fee is to be calculated.

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 or hourly 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 the client requires unforeseen extra services as provided for in GC04 arise.

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 phase for the schematic design phase, on the agreed *Estimate of Construction Cost* at the completion of design development phase 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 if the value of the estimates or actual *Construction Cost* varies as the project progresses.

Where a change to the *Work* results in a net credit change order (net reduction in the *Construction Cost*), the *Architect* shall be paid on the basis of hourly rates set out in the fee references above. The fee for previously completed work or phases is not retroactively adjusted.

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* results 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 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 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 in GC04. 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

Many of the items have been edited to reflect the addition of new clauses in the general conditions and in the schedules that have resulted in the renumbering of references.

- .2 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.
- .3 Initial evaluation is a term describing traditional activity at the beginning of a new project to establish reasonable and congruent parameters of scope, schedule, and budget within which the design work proceeds. 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.
- .5 Preliminary concept design is a term introduced to go along with the initial evaluation. There is no definition for preliminary concept design as it could be graphical, geometric, or only a written concept. It is the prelude in the schematic design phase which ends with a full schematic design.
- .7 Where desired, the *Estimates of Construction Cost* may be tied to different defined classes of estimates.
- .18 Although there is a space on permit applications for signing “as agent of the owner” and *Holder*s have in the past done this, 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. 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 *Holder*s 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.
- .19 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.
- .20 Clients and *Holder*s should carefully consider the responsibilities and liabilities inherent in giving *Holder*s agency to represent the client.
- .21 Comments provided by authorities having jurisdiction need to be evaluated and may require a response from the *Holder*.
- .22 Prequalification has been identified as a separate task so that it can be explicitly included or excluded and the fee basis clearly established.
- .23.4 The review of and commenting on substitutions proposed by the contractor as part of bidding or negotiation has been identified as a separate task so that it can be explicitly included or excluded and the fee basis established. Being a separate task also serves as a prompt to remind *Holder*s to discuss expectations (including what is normal and what is excessive) with the client.
- .24-.25 Previous versions of OAA 600 included a Limited General Review clause to “Provide General Review services respecting building code matters only, and report in writing to the Client, contractor, and chief building official.” This is typical of projects where the client is a design-build contractor, and often used by other clients such as residential condominium clients to keep costs down. It comes with some 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 the amount, value or the quality of non-code related *Work* completed at any point during construction. Limited general review will also involve

reviewing shop drawings which involve code related matters. Separation of code and non-code matters is a grey area in many instances and should be avoided if possible.

- .25 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 or not 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.
- .28 The review of the construction schedule 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.
- .30 In order to certify payment, a *Holder* must have provided full general review services since the start of construction.
- .32 The review of shop drawings is tied to the requirements of the construction contract. Review those requirements for the form of contract identified in Article A08.2. 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”.
- .34 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 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.
- .37 The new CCDC contracts (since 2020) no longer include provisions relating to Substantial Performance. Remember that under the provisions of the *Construction Act*, if the *Holder* is not the payment certifier, they 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 GC05.3.5. Refer also to Practice Tip PT.10 series.
- .38 Deemed Completion is separate from Substantial Performance even though both deal with requirements of the *Construction Act* because many contractors during short duration projects do not request a declaration of Substantial Performance, but wait for Deemed Completion to request release of statutory holdback. Often this is because the cost of publication and the paperwork involved is more than the cost of waiting an extra month or so for the release.
- .39 This item has been renamed to better reflect what it is, rather than when it is to be provided.
- .40 The OAA recommends the use of the appropriate version of 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.
- .41 The 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 to the contractor so that any continuing damage may be mitigated or prevented.

Use the comments column to reference items in the “End Notes” text box at the end of the schedule.

Schedule 3 – Additional Services

Many of the items have been edited to reflect the addition of new clauses in general conditions and in the schedules which have resulted in the renumbering or references.

Listed in Schedule 3, which is referenced in GC03.1, are services normally attributable as additional services to those listed in the Basic Services in Schedule 2 referenced in GC02.1. There will be services that are either not applicable or that are provided by others or are other than those listed in the schedule depending on the project particulars and as the result of negotiations between the client and the *Holder*.

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.

The former item “Client’s Own Forces - Coordinate work performed by the Client’s own forces and coordinate the services required in connection with construction performed and equipment supplied by the Client.” has been removed from the schedule as it is dealt with in the coordination of construction activities which are the contractor’s responsibility, and not with the coordination of consultants or administration of the prime construction contract.

- .2 This item was added to explicitly identify condition assessment of existing facilities as a separate task.
- .9 Cash Flow Projection was added as a project management task.
- .10 Enhanced Coordination was added in anticipation of a proposed legislative requirement for the client to name a coordinator of professionals in addition to the usual coordination done by *Holders*.
- .15, .16 The FF&E item has been split into separate analysis/assessment and design/installation review.
- .24 The provision of editable CAD/BIM files if selected is tied to the licensing and indemnification provisions of Appendix A.
- .25 The options for waiving of moral rights are contained in Appendix B.
- .26 Due to the extent of unknowns with these types of services, potential objections by members of the public, and the discretionary authority of those giving approvals, hourly rate fees are recommended.
- .28 Clarify responsibilities for additional printing and distribution costs for additional bid packages.
- .30 For purposes of calculating this service, “extensive” is taken to mean on-site representation beyond the periodic part-time presence on site that is required as a *Basic Service*. Define the level of representation required which may include a full-time Clerk of the works. Where this is required, allow for the provision of suitable temporary space in the construction site office.
- .31 Providing the documentation to support the release of holdback for completed subcontracts is included in this item.
- .32 Projects involving phased occupancy of portions of the *Project* require additional site and field work. This normally calls for services related to partial occupancy of the project and close-out on more than one occasion. *Basic Services* assume one occupancy at substantial performance/ready-for-takeover or at completion of the project. Additional work is required to carry out services related to occupancy in cases of multiple occupied phases of the work.
- .35 Ready-for-Takeover has been added to address this new concept in CCDC construction contracts. It has been added as an *Additional Service*, because it is not a basic service in the RAIC Fee Guide, and because it is in addition to *Substantial Performance*, not in replacement of it. The requirements of the Lien Legislation related to *Substantial Performance* must still be complied with even if they no longer serve as a contract milestone.
- .38 An item is added for updated specifications as a separate and distinct activity from providing updated drawings.
- .40 Commissioning activity will result in the *Holder* being involved in more meetings and coordination activities than anticipated in *Basic Services*.

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- .41 Assisting clients to fulfill the notice of non-payment requirements of the *Construction Act* was added. This service may or may not be required depending on the actions of the contractor and the client.
 - .42 Adjudication under the *Construction Act* is intended to bring speedy resolution to disputes in the construction industry. As a result, once initiated, adjudication moves at a fast pace. To meet the mandatory deadlines and provide assistance to clients, it is expected that *Holders* will have to work overtime on evenings and weekends, and may need to pull the people most familiar with a project being adjudicated off the projects they are currently working on. This is disruptive to those projects and will likely require that staff on those projects work additional hours to keep those projects moving. In recognition of this time-critical and disruptive process over which the *Holder* does not have control, compensation should be above normal hourly rate.
 - .43 Unless selected here, services in relation to artefacts discovered on site are not part of the *Services* provided.

Use the comments column to reference items in the “End Notes” text box at the end of the schedule.

Schedule 4 – Other Services

Schedule 4 is referenced from the General Conditions. If the default Schedules 2 and 3 are being used, it is the place to add any additional or implement any changes to scope of work items 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 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, in Article A18, and from Schedule 3 item 3.1.24. When selected, the fee reference for the provision of editable files will be found in Schedule 3.

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 or 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.

In Table 1, coordinate items:

1.3 with Schedule 3, 3.1.21,

1.6 with Schedule 3, 3.1.24,

1.7 with Schedule 3, 3.1.30.

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 Article A27 to be included in the contract.

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.