

Contractual Shift: Contract Revisions Reflect Industry Best Practices



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The ConsensusDocs Coalition, an unprecedented coalition of 40 leading design and construction industry associations, recently published the 2016 comprehensive revisions to many of its prime and subcontract agreements. Contracts are the foundation of every project, and ConsensusDocs' mission is to publish contracts that reflect and promote the objectives of all parties, versus individual stakeholders, to advance the best interests of the project.

The revised contracts address changes and best-practice industry developments, including design, construction, insurance, legal, technology and terminology.

"As the industry transitions, so must our documents," explains Philip E. Beck, partner, Smith, Currie & Hancock LLP, and former chair (2014–2015), ConsensusDocs Content Advisory Council. "These documents must facilitate more collaborative, integrated, sustainable, technology-driven project delivery approaches that build on lean, green and sustainable principles. The Coalition is focused on more practical, shorter and succinct contracts that emphasize clarity and transparency."

That's why the Coalition has and will continue to publish new and revise existing ConsensusDocs contract forms so that industry stakeholders can be assured that their projects have the best foundation possible.

Carrie L. Ciliberto, Esq., deputy executive director and counsel with ConsensusDocs, says, "While none of

the revisions reflect a major shift in the philosophy or guiding principles behind ConsensusDocs, they do include revisions and improvements designed to keep pace with industry changes and best practices."

The revised documents clarify and expand on the following:

Termination for Convenience: Circumstances under which a termination for convenience is permitted, circumstances under which a termination for default can be converted to a termination for convenience, and the potential consequences of doing so, are revised.

Schedule: References are added to critical path method scheduling concepts and principles.

Changes and Directives: Accommodate changes with no time or cost impact and expand the term to encompass owners' written directives.

Indemnification: Requires indemnification for intentional acts and clarifies the definition of "others."

Insurance: Default is for the constructor, rather than the owner, to purchase the builder's risk insurance policy.

Bonding: Bond penal sum will no longer automatically float with changes to the contract amount.

Payment: Revises "cost of the work" applicable to work performed on a cost-reimbursable basis, as well as changes concerning contingent payment.

Dispute Resolution: A check-the-box option is provided for parties to select who will administer any mediation.

Owner/Design Professional Relationship: Eliminates language that could have been interpreted to create a fiduciary relationship between the owner and its design professional.

The comprehensive revisions to various key ConsensusDocs forms represent the culmination of thousands of volunteer hours invested by the ConsensusDocs Content

Advisory Council, the significant contributions and support of the 40 member organizations, as well as invaluable feedback of industry participants, attorneys and other design, construction, insurance and surety professionals. ■

What's New in ConsensusDocs

Just Published:

- 200 Owner & Constructor Agreement
- 205 Owner & Constructor Short Form Agreement
- 240 Owner & Design Professional Agreement
- 750 Constructor & Subcontractor Agreement
- 751 Constructor & Subcontractor Short Form Agreement

Coming in Early 2017:

- 235 Owner & Constructor Short Form Agreement (Cost of Work)
- 245 Owner & Design Professional Short Form Agreement
- 410 Owner & Design-Builder Agreement (Cost of Work Plus Fee with GMP)
- 415 Owner & Design-Builder Agreement (Lump Sum)
- 420 Design-Builder and Design Professional Agreement
- 450 Design-Builder & Subcontractor Agreement
- 460 Design-Builder & Subcontract Agreement (Cost Plus with GMP)
- 500 Owner & Construction Manager Agreement (GMP with Preconstruction Services Option)

