



Client Service Agreements

Our lawyer, Denise Robertson of Mills & Mills LLP, has contributed the following example of a Client Service Agreement. She writes:

This Article is not to be considered legal advice relating to specific facts or situations. If you have specific concerns or questions, please contact Denise E. Robertson, Mills & Mills LLP (Telephone: 416-682-71398 or Email: denise.robertson@millandmills.ca).

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CLIENT SERVICES AGREEMENTS: The Top Ten Provisions Denise E. Robertson September, 2011

No matter the size of the client engagement always clearly document the scope of the work, the price to be paid, limitation of liability and other special terms or conditions respecting the work. This gives you and the Client an opportunity to clarify and confirm precisely the scope of the work to be performed from the outset. Misunderstanding or disagreements can be clarified through this process. Time spent draft and reviewing a contract will often pay off even if the project is small.

Below is a list of the TOP TEN items to be certain to include in Client Agreements:

1. Proper Identification of Parties

If your company is incorporated, the Agreement must be in the name of the company and not you personally to limit your personal liability. It is also important that the Client be properly identified and that you know the correct person is providing instructions.

2. Scope of Services/ Additional Services

The Scope of Services is the provision that describes the specific work you are going to complete. The scope must be clearly defined and detail what you are committing to. At this stage of the contract negotiation, you will be able to clarify any misunderstandings and ensure that the Client understands what he or she is going to

get. Managing client expectation is crucial to your services and it begins with the Agreement.

When the Client requests additional services that are not included in the original Scope of Services, such additional services must also be clearly described and agreed to in writing.

3. Pricing Structure

There are a variety of ways that you may be able to charge for services. For example, you may charge a flat fee or an hourly rate or some form of a combined flat fee and hourly rate.

A good approach to dealing with fees includes obtaining an initial retainer deposit from the Client when the Agreement is signed. The retainer can be held by you until the contract is complete and then it can be applied to your final invoice.

The Agreement should also outline who is responsible for the payment of certain expenses and other disbursements, state whether HST is payable and state whether there is interest on outstanding accounts.

4. Client Responsibilities

You may have to rely on information provided or actions taken by the Client. If there is crucial information that the Client is to provide or crucial actions the Client is to take, they should be specifically outlined in the Agreement.

5. Warranties and Confidentiality

Representations or warranties should be limited to what is in your control.

You should not make any representations or warranties about the quality or timeliness of work conducted by third parties or about the quality of goods or materials supplied. If there is a delay, a defect or incompetence, the Client should look to the supplier of the goods or services and not to you for legal remedy.

During your provision of services, you will learn a lot about your Clients, both personally and professionally. The Agreement should include a provision that you agree to maintain all personal information that you obtain about the Client strictly confidential and that you will not disclose the confidential information to any third party unless you are required by law to do so.

6. Independent Contractors

When your role is one of independent consultant, it is important that the Agreement include a provision that you are an independent contractor retained by the Client to provide services and not an employee of the Client.

7. Termination and Suspension of the Agreement

In order to protect both you and your Client, your Agreement should have provisions describing how the Agreement may be terminated or suspended. For example, an Agreement may be terminated if the Client fails to pay or you fail to perform the services or either party becomes bankrupt.

Good termination provisions build in timelines to remedy defaults. For example, the Client must give 15 days' notice to you that the Client intends to terminate the Agreement if you fail to remedy your default under the Agreement.

It is also important to include a detailed description of what happens upon termination. Most important being that you will render your final invoice and the Client will pay. The Agreement should also set out what happens to your work upon termination.

From time to time, clients change their minds about projects, run out of funds for the project or simply need to delay the project and in these circumstances, the project may need to be suspended for a particular period of time. A suspension clause in an Agreement should set out that the Client must give you written notice, make payment of all fees and disbursements incurred to terminate the Agreement if the Client has completely abandoned the project. Specific timelines about the length of project suspension and when you can terminate should be included.

8. Insurance and Liability

You need to consider whether you should carry liability insurance in order to protect yourself and your business. Agreements may specifically state the amount of insurance to be carried and provide that any additional insurance required by the Client should be obtained and paid for by the Client.

To further protect you, Agreements can also include a statement regarding the release of liability. For example, the Client agrees to release you from any and all liability that you might have to the Client for any amounts in excess of the fees paid by the Client to you or the amount payable under your insurance policy (if any), whichever is less. Inclusion of this type of provision may prevent the Client from being able to sue for more than what the Client has actually paid under the Agreement. An exception to this release may be if you were negligent or fraudulent in the performance of the services.

9. Ownership of Intellectual Property

Unless you and the Client have agreed otherwise, the copyright in the work created for the project belongs to you. Even though this is a general rule, in order to avoid any future claims in the copyright by the Client, it is important that it also be clearly stated in the Agreement. If you agree to assign the copyright to the Client in exchange for a higher fee, for example, such agreement must be in writing for it to be enforceable.

Other intellectual property provisions that may need to be considered include the right to photograph and publish pictures of the completed project, the right to use the

project to promote yourself, the right to enter the project into award competitions, and that the Client has no right to reproduce the work without your prior written consent.

10. Dispute Resolution

Often the best dispute resolution provisions to include in a Client Services Agreement is one that describes an escalating process and gives you and the Client the options to pursue a remedy in the appropriate forum. For example, the first approach to dispute resolution can be informal negotiation in good faith. If that does not resolve the dispute and the value of the dispute is less than \$25,000 or if the value of the dispute is greater than \$25,000, the issue may be submitted to arbitration before a single arbitrator. Arbitration can be an expensive process, but it is efficient and may result in the fast resolution of the dispute.

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