

# Contract Administration<sup>1</sup>

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<sup>1</sup> This chapter has been adapted from parts of Laurence M. Olivo & Jean Fitzgerald, *Fundamentals of Contract Law*, 3rd ed (Toronto: Emond Montgomery, 2012).

*The following supplement is meant to accompany Tort and Contract Law for Legal Professionals (formerly Tort and Contract Law for Paralegals). It contains additional information about contracts, as well as five sample contracts with accompanying questions. This supplement comes with an instructor's guide.*

—Editor, July 2024

If you work as a law clerk, you may have to prepare a contract for execution. Once a contract is ready to be signed, meanwhile, there may be issues of administration that arise. Some of the various issues associated with contract execution and administration are discussed below.

## How Do the Parties Execute a Contract?

To execute a contract is to sign it. If the contract is to be signed manually in hard copy, the person to be bound, or the attorney (a person with power of attorney to sign contracts on behalf of the person granting the power of attorney), or the person with signing authority for an artificial being (the manager of a limited company, for example) signs the contract using their own signature. While a handwritten signature is preferable in the event that forgery becomes an issue, a stamped signature or initial may suffice.

A mark will be used where the person is illiterate and cannot write their name. In that case, the person marks an "X" and under it you should state: "Allen Smith, by his mark." It is a good idea to have this type of signature witnessed.

## What Needs to Be Done If a Contract Is Under Seal?

If the contract is under seal, ideally the person being bound should sign in addition to affixing a seal, even though signatures are not required in theory. But seals, if they are gummed wafers, do fall off, and even if they stay affixed to the document, they do not identify the person to be bound. Having the person sign the document thus provides backup for the seal. Many people use a gummed wafer as a seal, but you can simply draw a circle and label it "LS" and that will suffice. Evidence of an intention to seal a contract is typically sufficient to prove that the parties intended the document to be under seal, even if the seal falls off. This is an important feature in a contract lacking in consideration, which, without the seal, would be unenforceable. From a practical point of view, drawing a seal labelled "LS" may be the best protection against problems arising from seals falling off the document. Another protection would be to photocopy the signed agreement, especially the page with the seals and signatures. Although it is not required for a sealed document, you may wish to have a witness to each signature should there later be a dispute about whether a party actually sealed or signed a document.

## Can the Parties Use Electronic Signatures?

A contract may also be signed electronically on an e-document by simply typing the name of the party to be bound, usually in quotation marks, and often followed by the phrase “signed electronically” in quotation marks or parentheses. In some cases, the parties may use more sophisticated encrypted signature systems. Ultimately, it is up to the parties to set the rules for using electronic signatures, and electronic signatures are generally deemed to be equivalent to written ones. The Ontario legislation also recognizes electronic equivalents for sealed contracts.

## When Do Parties Sign a Contract?

Generally, parties do not have to be present together to sign a contract. One party may sign, and their lawyer may send it to the other party’s lawyer to have the other party sign. This is the usual case where the parties are in different locations or where they seek to avoid being in the same room—for example, in the case of a separation agreement.

## Where on the Document Should the Signatures Appear?

The usual practice is to have the parties sign at the bottom of the last page (sometimes referred to as the “foot” of the document). However, that is not much protection against fraud, as a page may be added or one may be taken out and another substituted. There are a number of things that may be done to protect against some of the simpler forms of tampering:

- A recital may be inserted just before the signatures, stating that the contract consists of “this and the preceding 9 pages.”
- The parties may initial each page, including all appendices.
- Where there are blank spaces on a page, the drafter may insert a horizontal line below the last printed line higher up on the page, together with a horizontal line lower down on the page where the text begins again, the two horizontal lines being connected by a diagonal line, looking like a large, hand-drawn “Z.”

However, bear in mind that these techniques will not be much protection against a determined and sophisticated fraudster.

## What Form of a Party’s Name Should Be Used?

A party to a contract may have a name for which there is no English or French equivalent. Often such individuals will “Canadianize” their names or render their names phonetically but using the standard Western alphabet.

The general rule is to use the standard Western alphabet and use the name the party uses legally. So, if Alessandro Manzoni uses the name Sam Manson, but has Alessandro Manzoni on his driver's licence, his so-called legal name, then that is what he should use. For added certainty, where the parties are identified on page 1, the description can read "Alessandro Manzoni, also known as Sam Manson."

A married woman who normally uses her husband's last name may use that name in her signature if that is her normal practice and her other "official documents" reflect that. If her practice is to use her birth name, then she may use it. The type of contract may determine the form used. For example, there is less concern over use of a married name by a woman for a two-week holiday tour than there would be over a contract for the sale of land. If there is some uncertainty as to which form to use, the inclusion of "also known as" in the identification of the parties on page 1 may suffice, either where the parties are named or in a recital at the beginning of the contract.

## Who May Be a Witness?

Even where a witness is not required, it is a good idea for the party to be bound to sign the contract with a witness present. The witness then signs next to the signature of the party to be bound. A witness should be someone who has reached the age of majority, is not mentally incapable, and has no conflict of interest with any of the parties to the contract—which usually means the witness has no interest, direct or indirect, in the contract.

A witness is supposed to be able to say that they were present when the party whose signature was required signed the contract. The contract cannot be signed by a party and then signed later by a witness who was not present and did not see the party sign. In some cases, the witness will also sign an affidavit of execution—an affidavit that says that the witness is over the age of majority and was present and saw the party sign the contract in their presence. Affidavits of execution are often required for real estate transactions and for wills, depending on the province.

## How Do You Correct Errors in a Contract?

A document may be amended by drawing a line through an error and writing in the correction, with the parties initialling the change. More substantial changes that go beyond typographical or grammatical errors should be dealt with by amending the contract and attaching the amendment as an appendix. An amendment to an agreement should be subject to the same formalities as the original contract itself—so that a contract under seal would have the attached amendment also executed under seal.

## What Do You Need to Do to Safeguard and Preserve the Original Signed Contract?

With the advent of electronic documents, virtually all contracts are created on a word processor. As the terms are negotiated and the contract goes through multiple stages, each draft should have a clear, identifying file name, usually using numbers to denote each separate draft. The last draft—the one that is actually final and to be signed—

should have the word “final” or some other word or symbol in the file name to identify it as the final product. That way, the file can be easily stored or archived. You may have a separate electronic folder for all final contract copies, or you may have a separate file for all documentation for that contract—there is no fixed rule for this, and much depends on how an office is organized, the nature of the business, and the type of contract involved.

It is also a good practice to keep hardcopy files, and to back up the file with the contract onto other disk drives or data storage systems in case the hard drive containing the contract file is damaged.

Further, as contracts typically contain private or privileged information, electronic files should be kept securely, perhaps requiring passwords to open the relevant folder or file. Again, office practice will dictate if this should be done, and, if so, how.

You may also wish to use the contract as a precedent for similar contracts or wish to share it with colleagues. To avoid breaching confidentiality requirements, the names of the parties and other identifying or confidential information should be deleted from the contract, including any relevant metadata, prior to using the contract as a precedent in another scenario.

## If a Client Is Hesitant to Sign a Contract, What Should You Do?

Sometimes a law clerk is asked to oversee contract signing formalities, on the assumption that the client has been advised and is ready and willing to sign. But if the client is unsure or uncertain about the terms or the impact of the contract, the lawyer responsible for the file should be accessible to answer the client’s questions and address any concerns. Reassuring the client, or explaining the provisions of the contract, is something that should be done by a lawyer and not a law clerk.

### REVIEW QUESTIONS

Gina is a law clerk who is arranging to have a client come in to sign a commercial lease in a shopping mall.

1. Gina sets up the appointment for the client to come in but then discovers she has a dental appointment at the same time. She signs her name in the space for a witness next to where the client will sign the contract and leaves instructions for the junior clerk to meet with the client. Is this okay?
2. The client was born in the Republic of Georgia, and his name is Josef Djugashvili. His birth certificate shows his name written in the Cyrillic alphabet. He is generally known in business as Joe Steel, but his Ontario driver’s licence says Josef Djugashvili. How should he be named in the contract?
3. This is a commercial long-term lease, and it is to be under seal. What can you use for a seal if Mr Djugashvili doesn’t have a signet ring with his family crest on it and you have run short of sealing wax?

# Dog Walking Contract

The parties to this contract and agreement are:

**Full Legal Names:** \_\_\_\_\_

Identity / Social Insurance Number / Other Number (Specify): \_\_\_\_\_

Physical Address: \_\_\_\_\_

(Hereinafter referred to as "the Owner")

AND

**Full Legal Names:** \_\_\_\_\_

Identity / Social Insurance Number / Other Number (Specify): \_\_\_\_\_

Physical Address: \_\_\_\_\_

(Hereinafter referred to as "the Walker")

The parties choose the above stated addresses as their physical addresses at which legal proceedings may be instituted.

Whereas the Owner wishes to engage the Walker, the Walker agrees to undertake the services under the terms and provisions defined in this Dog Walking Contract as well as the **Owner's Information** sheet, **Pet Information** sheet(s), and the **Veterinary Release Form** which shall all become part of this Contract. Any reference to dogs or pets in this contract shall refer to those specified on the Pet Information sheet(s).

## 1. Relationship and Responsibilities

1.1. It is expressly understood that the Owner retains the services of the Walker as an Independent Contractor and not as an employee. The Walker shall be responsible for his/her insurance and all statutory declarations and payments with regard to income tax and VAT where applicable.

1.2. The Walker undertakes to perform the agreed-on services in an attentive, reliable, and caring manner, and the Owner undertakes to provide all necessary information to assist in this performance.

1.3. The Walker undertakes to notify the Owner of any occurrence pertaining to the dog which may be relevant to the care and well-being of the dog.

1.4. The Walker will be supplied with a scooper and waste bags and will duly remove the dog's feces from all public places.

1.5. The Walker reserves the right to walk other compatible dogs at the same time but undertakes to limit the number of dogs walked with one person to 6 (six).

1.6. The Owner will provide suitable harnesses, collars, and leads as approved by the Walker as well as coats or muzzles, if required.

1.7. The Walker shall not be obliged to perform any other duties except those specified on the Owner's Information sheet and Pet Information sheet.

## 2. Compensation

2.1. The Walker shall be paid the amount of \$\_\_\_\_\_ (\_\_\_\_\_ dollars) per walk.

2.2. A monthly retainer of \$\_\_\_\_\_ (\_\_\_\_\_ dollars) shall be payable in advance and payment of the balance effected within 3 (three) days of receipt of the account for the outstanding balance at the end of every month.

## 3. Duration

3.1. This Dog Walking Contract shall come into effect on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and shall:

A. Terminate on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

## 4. Cancellation or Early Termination

4.1. Either party may terminate this Dog Walking Contract a minimum of 24 (twenty-four) hours prior to the first scheduled visit without incurring penalties or damages.

4.2. Cancellation by the Owner of scheduled walks with less than 24 hours' notice may be charged at the full rate or rescheduled at the discretion of the Walker.

4.3. Where the Walker as sole proprietor needs to cancel a scheduled walk due to unforeseen circumstances, he/she may appoint a substitute Walker with the written approval of the Owner and any difference in the fees charged shall be for the account of the Walker.

4.4. Should any dog become aggressive or dangerous, the Walker may terminate this dog walking contract with immediate effect.

The contract provides for the exchange of valuable consideration. See pp 159-66.

For a discussion of exclusion clauses, see pp 220-25.

4.5. Any wrongful or misleading information in the Owner's Information or Pet Information sheets may constitute a breach of terms of this Dog Walking Contract and be grounds for instant termination thereof.

4.6. Termination under the circumstances described in 4.4 or 4.5 above shall not entitle the Owner to any refunds nor relief of any outstanding payments due.

## **5. Liability**

5.1. The Walker will carry liability insurance relative to the services performed for the Owner. A copy of the insurance policy has been made available to the Owner, and the Owner acknowledges that he/she is familiar with its content.

5.2. The Walker accepts no liability for any breach of security or loss of or damage to the Owner's property if any other person has access to the property during the term of this agreement.

5.3. The Walker shall not be liable for any mishap of whatsoever nature which may befall a dog or caused by a dog who has unsupervised access to the outdoors.

5.4. The Owner shall be liable for all medical expenses and damages resulting from an injury to the Walker caused by the dog as well as damage to the Owner's property.

5.5. The Walker is released from all liability related to transporting the dog(s) to and from any veterinary clinic or kennel, the medical treatment of the dog(s), and the expense thereof.

## **6. Indemnification**

The parties agree to indemnify and hold harmless each other as well as respective employees, successors, and assigns from any and all claims arising from either party's willful or negligent conduct.

## **7. Emergencies**

In the event of an emergency, the Walker shall contact the Owner at the numbers provided to confirm the Owner's choice of action. If the Owner cannot be reached timeously, the Walker is authorized to:

7.1. Transport the dog(s) to the listed veterinarian;

7.2. Request onsite treatment from a veterinarian;

7.3. Transport the dog(s) to an emergency clinic if the previous two options are not feasible.

## **8. Security**

The Walker warrants to keep safe and confidential all keys, remote control entry devices, access codes, and personal information of the Owner and to return same to the Owner at the end of the contract period or immediately upon demand.

## **9. Relaxation of Terms**

No relaxation, indulgence, waiver, or release by any party of any of the rights in terms of this agreement on one occasion shall prevent the subsequent enforcement of such rights and shall not be deemed to be a waiver of any subsequent breach of any of the terms.

## **10. Whole Agreement**

This Dog Walking Contract and Owner's Information sheet, Pet Information sheet(s), and the Veterinary Release Form attached constitute the sole and entire agreement between the parties with regard to the subject matter hereof, and the parties waive the right to rely on any alleged expressed or implied provision not contained therein. Any alteration to this agreement must be in writing and signed by both parties.

See the discussion of the parol evidence rule, pp 213-18.

## **11. Assignment**

No party may assign any of its rights or delegate or assign any of its obligations in terms of this Dog Walking Contract without the prior written consent of the other party, except where otherwise stated.

See pp 233-37 for a discussion of assignment.

## **12. Binding Effect**

The terms of this Contract shall be binding upon and accrue to the benefit and be enforceable by either party's successors, legal representatives, and assigns.

## **13. Governing Law**

This Contract and Agreement shall be construed, interpreted, and governed in accordance with the laws of the Province/Territory of \_\_\_\_\_, and should any provision of this Contract be judged by an appropriate court as invalid, it shall not affect any of the remaining provisions whatsoever.

See p 299 for a discussion of choice of law clauses.

#### 14. General

The parties agree that any or all parts of this agreement may be submitted to the other party in legible and recordable electronic form and upon acknowledgement of receipt by the receiving party shall become valid parts of the agreement.

Paragraph headings are for convenience of reference only and are not intended to have any effect in the interpretation or determining of rights or obligations under this agreement.

Where appropriate words signifying one gender shall include the other and words signifying the singular shall include the plural and vice versa.

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_ by the Owner who warrants his/her authority to enter into this agreement.

Owner's Signature: \_\_\_\_\_

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_ by the Walker who warrants his/her authority to enter into this agreement.

Walker's Signature: \_\_\_\_\_

Source: Free Legal Documents, <<https://www.free-legal-document.com>>.

## REVIEW QUESTIONS

1. While the dog walker's status as an employee or independent contractor cannot be defined simply by what is stated in a contract, why are the parties concerned with their relationship? What would the legal significance be of the dog walker being considered an employee?
2. Section 1.5 provides that the dog walker may walk other "compatible" dogs at the same time as the owner's dog. Assume that the owner has taken issue with the dog walker also walking a German Shepherd at the same time as the owner's poodle. How would a court interpret compatibility?
3. Assume that the parties signed the contract but did not do so under seal. Would this affect the enforceability of the contract?
4. Your client, Mary, is a dog walker who has signed the contract with a client for the summer (May–August) of 2024. Mary has decided, however, to go back to school up North in September and wants to take August off to prepare for her move out of town. The dog owner is unhappy and wants to sue Mary for breach of contract and seek the remedy of specific performance. Would the dog owner succeed in claiming such a remedy?

## Sales Agreement

**This Agreement (“Agreement”) is made and entered into on August 1, 2024 between Billy’s Barbecue Inc. (the “Seller”) and Simryn Anand (the “Buyer”).**

- 1. Description of the Barbecue** The Seller agrees to sell to the Buyer a new Napoleon Prestige Pro 825 RSBI gas grill barbecue (the “Barbecue”).
- 2. Purchase Price** The total purchase price for the Barbecue is \$3,500 to be paid by the Buyer to the Seller upon delivery of the Barbecue. The purchase price includes the Barbecue, a full tank of propane, and delivery. Assembly and installation are not included in the total purchase price.
- 3. Payment Method** The Buyer shall make the payment in the form of cash.
- 4. Delivery and Transfer of Ownership** The Seller agrees to deliver the Barbecue to the Buyer at the Buyer’s home at 1234 Durie Avenue, Toronto, Ontario on or before August 1, 2024 at 1:00 p.m.
- 5. Warranties** The Buyer agrees to waive all warranties, express or implied, including but not limited to implied warranties of merchantability and fitness for purpose, to the fullest extent permissible by law.
- 6. Governing Law** This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario. The Buyer and Seller agree that any action arising out of or relating to this Agreement shall be filed in the courts of the Province of Ontario and the Buyer submits to the jurisdiction of such courts.
- 7. Entire Agreement** This Agreement represents the entire understanding between the parties with respect to the subject matter hereof, and supersedes all previous oral or written agreements, negotiations, understandings, representations, and statements between the parties relating to the subject matter of this Agreement.

### 8. Signatures IN WITNESS WHEREOF,

**Seller:**

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Billy’s Barbecue Inc.

**Buyer:**

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Simryn Anand

**Date:** July 18, 2024

See pp 159-66 for a discussion of consideration.

See pp 300-5 for a discussion of implied terms found in the *Sale of Goods Act*, RSO 1990, c S.1.

See p 299 for a discussion of choice of law clauses.

See pp 213-18 for a discussion of the parol evidence rule.

## REVIEW QUESTIONS

1. Assume that the Seller in the above case, Billy's Barbecue Inc, is a retailer of barbecues, and that Simryn purchased the barbecue for her home by visiting the retailer's showroom and speaking to a salesperson. The specific barbecue that was ultimately delivered to Simryn came in a sealed box from the retailer's warehouse.

After taking delivery of the barbecue, Simryn discovered that the propane hose had cracked and needed to be replaced at a cost of \$100. When she asked the retailer to provide a replacement, they pointed to section 5 of the Agreement, pursuant to which all warranties were waived. As such, they claim that it is not their responsibility to replace the hose. Does Simryn have any argument against the Seller?
2. Assume that when the barbecue was delivered, Simryn asked the person making the delivery to assemble and connect the barbecue to the gas tank. The delivery person responded that assembly was not included in the purchase. Simryn however, claims that she believed, pursuant to the conversation she had with the salesperson, that the barbecue would be assembled once delivered.

Is assembly a term of the contract?
3. Assume that the barbecue is delivered as per the Agreement, but with an empty propane tank. Simryn thus claims that the Agreement has been breached and refuses to accept delivery. Has the Seller breached the contract? Can Simryn refuse delivery?
4. Assume that prior to delivery, the Seller in the above contract contacted Simryn to say that it had run out of barbecues (it sold more than it had in inventory), and as a result the contract was frustrated. The Seller thus claimed that it had no obligation to deliver a barbecue. Meanwhile, Simryn claims breach of contract and wants to pursue the remedy of specific performance. Which party is correct?

## Performance Contract

Between Axis Theatre Society

(hereafter referred to as Axis Theatre Company) and

Bloor West High School, 1234 Bloor Street West, Toronto, ON

(hereafter referred to as the Sponsor)

Contact: Leanne Smith, Teacher

Phone: 416-123-4567

1. Axis Theatre Company agrees to perform the production The Lion King on October 5, 2024 at 7:00 p.m. and October 6, 2024 at 2:00 p.m. in the Sponsor's auditorium located at 1234 Bloor Street West, Toronto, ON.
2. In consideration of the above-mentioned services, the Sponsor agrees to pay Axis Theatre Company the amount of \$5,000, plus \$650 HST. Total remuneration: \$5,650.
3. The Sponsor understands that the performance(s) must **start on time**. The Sponsor understands that Axis Theatre Company engages members of the Canadian Actors' Equity Association (CAEA), under the terms of the Canadian Theatre Agreement. Performance times have been carefully scheduled so that Axis Theatre Company will **not** incur extra costs by violating the CAEA's rules for its members' lunch hours and for adequate travel time between schools/theatres.
4. One signed copy of the contract is to be sent back to Axis Theatre Company with a **non-refundable deposit** in the amount of \$650. Deposit monies will be used to offset the sizable preproduction costs incurred in mounting this production.
5. The Sponsor agrees that a cheque representing the balance owing of \$5,000 will be made available at the completion of the last performance indicated on this contract. Cheques must be payable to **Axis Theatre Company**.
6. The Sponsor agrees to meet the technical requirements (if any) for Axis Theatre Company as listed on the attached addendum entitled "Technical Requirements." (Technical Requirements will be sent with the Study Guide.)
7. Axis Theatre Company will provide advance copy on the company (as requested) as well as Study Guides for educational presentations at no additional cost to the Sponsor. This **does not include house programs or posters**, unless otherwise stipulated in an attached addendum entitled "Publicity/Promotional Requirements."

See Law Clerk supplement in regard to parties signing a contract separately.

8. The Sponsor agrees to prevent the photographing, broadcasting, filming, or reproduction by any other devices of the Axis Theatre Company performance(s), unless given prior consent by authorized Axis Theatre Company personnel.

9. For special clauses and considerations, please see any attached addenda.

10. FORCE MAJEURE: If any performance or part thereof is prevented, rendered impossible or infeasible by any act or regulation by any public authority or bureau, civil tumult, civil strike, epidemic, interruption in or delay of transportation services, war conditions, or emergencies, fire or any cause beyond the control of the parties, it is understood and agreed that there shall be no claim for damage by either party to this Agreement and both their obligations herein shall be deemed waived.

11. Cancellation: Sponsors who cancel this contract less than 30 days in advance of the first performance (Force Majeure notwithstanding) will forfeit the deposit payable and may be asked to cover the costs incurred by Axis Theatre Company as a result of the cancellation.

Signed this 1st day of September, 2024

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Per Sponsor (Signature)                      Rosanna Ciulla for Axis Theatre Company

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Please print name here

See the discussions of frustration and force majeure clauses on pp 280-89.

## REVIEW QUESTIONS

1. Assume that a few days prior to the first performance, the school is destroyed by a fire, making it impossible for the performance to take place. What would be the effect of the fire on the parties' obligations?
2. Knowing that the performance was going to be popular and that ticket demand would exceed capacity, the school decided to record the performance without the consent of the theatre company and post the entire performance on their website. According to the theatre company, tickets to another performance of the same production a few weeks later in October sold poorly because patrons watched the recording online and decided not to buy tickets. Can the theatre company sue the school?
3. Assume that Axis sent a copy of the contract to the school for signing without any addenda on September 1, 2024. While the theatre company

had prepared an addendum stating that the school was responsible for purchasing a costume for the performance at a cost of \$1,000, the theatre forgot to send the addendum to the school when the contract was prepared. As a result, the school didn't know of the addendum when they signed it on September 1.

After the school signed (without having seen the addendum), it sent the contract to Axis for signing. The theatre company signed the contract on September 2 but later realized that it had forgotten to include the addendum. Thus, the theatre company stapled the addendum to the contract on September 3 and sent a copy of the signed contract along with the addendum to the school on that date. The school now refuses to pay for the costume, while Axis insists that it is part of the contract. Who is correct, and how could such a scenario be avoided?

# Renovation Contract

## Between

Contractor (name of company) \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Project manager \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Business Number \_\_\_\_\_

Municipal Business License #, if applicable \_\_\_\_\_

## and

Owner(s) \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Project address (if different from above) \_\_\_\_\_

### 1. Contract Documents

(a) This Contract form

(b) Drawings attached and/or referenced herein (if any)  
\_\_\_\_\_  
\_\_\_\_\_

(c) Specifications attached and/or referenced herein (if any)  
\_\_\_\_\_  
\_\_\_\_\_

(d) Additional documents signed by both parties during the course of this Contract. Extras and deletions to be documented on a Change Order Form and signed by both parties.

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(e) Other

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Omissions in the Contract Documents and any work requested in variance to the Contract Documents are considered extra to the Contract and are not included in the Contract Price. Any additional work, required due to site conditions known to the Owner and not disclosed to the Contractor, or which could not be reasonably anticipated by the Contractor, are not included in the Contract Price and shall be extra to the Contract Price.

## 2. Description of Work

Unless otherwise stated, the Contractor agrees to supply all materials, labour and supervision to perform the Work as (choose one):

\_\_\_\_\_ Described below

\_\_\_\_\_ Described in the attached Work Schedule

a. The Work entails the following

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b. The Work does NOT include the following

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c. Permits

Work will be undertaken under the following permits which will be provided and paid for by the Owner or the Contractor as designated below.

	Owner	Contractor
(i) Zoning variance	_____	_____
(ii) Demolition permit	_____	_____
(iii) Building permit	_____	_____
(iv) Electrical permit	_____	_____
(v) Plumbing permit	_____	_____
(vi) Other	_____	_____

Any such permit obtained by the Contractor will be conveyed to the Owner within \_\_\_\_\_ days of receipt by the Contractor.

The following parties (specify Contractor or Owner) will contact the appropriate authorities for inspections:

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d. Subtrades

The Contractor will use the following subtrades during the performance of the Work as listed below (company name and service provided):

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If any subtrade listed above subsequently becomes unavailable for the Work, the Contractor will provide a suitable replacement, for Owner's approval prior to the subtrade commencing work.

Nothing contained in the Contract Documents is intended to, nor shall it, create any contractual relation between the Owner and any subtrade. The Contractor agrees that it is responsible for the enforcement of all material provisions of all subcontracts.

### **3. Timing**

Work to commence on or before (date) \_\_\_\_\_

Substantial Completion on or before (date) \_\_\_\_\_

Full Completion on or before (date) \_\_\_\_\_

Substantial Completion means that the Work has been completed to such a percentage completion as is specified for substantial completion or substantial performance of such Work in the applicable legislation of the province where the Project is situated, that the Work has been completed to the point where it is ready for use for the intended purpose, and that an occupancy permit, where required, has been issued.

All time limits stated in this Contract are of the essence. Notwithstanding the foregoing, any delay in Substantial Completion or Full Completion of the Work (as the case may be) in accordance with the Contract Documents will be considered an excusable delay if arising from causes beyond the Contractor's control and not reasonably foreseeable by the Contractor with the use of the Contractor's best professional efforts. Excusable delays include but are not limited to such events as labour disputes, unavailability of materials, delays in obtaining a permit, fire, natural disaster, unfavourable weather conditions, delays (other than delays arising out of Contractor's breach of this Contract) by, or breach by any subtrades; or any delay by Owner of processing proposed changes, delays resulting from inaccuracies in information provided by the Owner, or delays resulting from the performance of tasks described in section 2b.

In the event of the occurrence of an excusable delay, Owner shall grant appropriate extensions to cover such periods of delays. Owner shall have no obligation to grant extensions if delays were not excusable delays, or otherwise resulted, directly or indirectly, from the Contractor's breach of this Contract. Where a delay occurs, the Contractor must inform the Owner at the earliest possible date of such occurrence, the reason for the delay and anticipated amended dates of completion.

The Contractor and Owner agree that should the Contractor not be able to commence the Work within \_\_\_\_\_ days from the commencement date specified in this Section, due to causes beyond the Contractor's control such as inability to obtain a building permit, then the Contractor or the Owner may cancel the Contract on written notice mailed to or delivered to the address of the other party shown in this Contract. The Contractor's liability to the Owner shall be limited to the refund of any monies paid by the Owner to the Contractor, less any cost incurred by the Contractor as previously agreed to by the Owner as specified below.

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#### 4. Terms of Payment

The Contract price is to be calculated as follows (select one):

(a) Stipulated fixed cost basis (all inclusive) \$\_\_\_\_\_, plus GST/HST Payments shall be due and payable as outlined in the Payment Schedule.

(b) Cost plus \_\_\_\_\_% of cost, plus GST/HST Payments shall be due on a bi-weekly \_\_\_\_\_ or monthly \_\_\_\_\_ basis (check one).

(c) Cost plus fixed fee of \$\_\_\_\_\_, plus GST/HST

Payment shall be due and payable as outlined in the Payment Schedule. A percentage of the fixed fee shall be paid on the presentation of each billing and shall be proportionate to the percentage of work completed for that billing period.

### 5. Payment Schedule

The Owner will make payments to the Contractor, minus a \_\_\_\_\_% holdback as required by provincial construction lien legislation, as follows:

	Gross	Payment	Holdback
Signing of Contract	\$ _____	\$ _____	\$ _____
Start-up of Work	_____	_____	_____
Upon completion of _____	_____	_____	_____
Upon completion of _____	_____	_____	_____
Upon completion of _____	_____	_____	_____
Substantial Completion	_____	_____	_____
Full Completion	_____	_____	_____
_____ % Holdback for _____ days after completion	_____	_____	_____
TOTAL	_____	_____	_____

Payment is due within \_\_\_\_\_ days of invoicing. Interest of \_\_\_\_\_% per annum, or the maximum rate allowable by law, whichever is less, will be charged on unpaid invoices after the due date.

All payments are subject to applicable legislation and shall be made in accordance with provisions of this Contract and the provisions of any applicable legislation. All payments must be made to the Contractor. Any payment to a subcontractor is not deemed a payment to the Contractor.

## 6. Changes in Work

The Owner may make changes by altering, adding to, or deducting from the Work, with the Contract and Contract Price being adjusted accordingly. Changes to the Work require a written Change Order Form, signed by both the Owner and the Contractor.

(a) **Extras** will be calculated in the following manner (check one):

- (1) \_\_\_\_\_ Material cost plus hourly rate of \$ \_\_\_\_\_
- (2) \_\_\_\_\_ Labour and material cost plus \_\_\_\_\_%
- (3) \_\_\_\_\_ A lump sum to be agreed on in advance by both parties.

Extras are payable upon (check one):

- (1) \_\_\_\_\_ Signing the Change Order
- (2) \_\_\_\_\_ Invoicing pursuant to the Change Order
- (3) \_\_\_\_\_ Completion of work specified in Change Order less \_\_\_\_\_% holdback in all cases.

(b) **Deletions** will be calculated on a cost less \_\_\_\_\_% basis, to be deducted from the relevant or next scheduled payment.

## 7. Utilities and Washroom Facilities

The Contractor and the Owner agree that responsibility for the provision of utilities and facilities to meet work and worker requirements will be assumed in the following manner:

	Owner	Contractor
(a) Water	_____	_____
(b) Electricity	_____	_____
(c) Washroom	_____	_____
(d) Other	_____	_____
_____	_____	_____

## **8. Standards of Work**

The Contractor agrees to supply all labour, materials and supervision to complete the Work in accordance with the Contract Documents.

The Contractor agrees to undertake all Work diligently in a good and workmanlike manner, in accordance with good quality residential standards and practices, and in compliance with any applicable Building Code and all other authorities having jurisdiction.

The Owner accepts that there may be inconveniences from time to time, and the Contractor agrees to keep such inconveniences to a reasonable minimum. It is the responsibility of the Owner to take reasonable steps to provide a work area free of household obstructions, and to remove or protect household items in areas where it may be reasonably anticipated by the Owner that they may be subject to dust, damage or vibrations.

The Contractor agrees to keep the site orderly and reasonably free of debris. At the completion of the project, the Contractor shall clean the property and leave it fit for use. All equipment, materials, rubbish and similar material incidental to the project shall be removed by the Contractor.

## **9. Warranty**

The Contractor shall correct, at its' own expense, any defects in the Work due to faulty materials and/or workmanship pursuant to this Contract for a period of \_\_\_\_\_ year(s) from the date of Full Completion.

The Owner shall give the Contractor written notice of such defects within a reasonable time, and in any event within the warranty period.

Special conditions limiting/affecting this warranty (if any)

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The Contractor will convey to Owner any warranties by manufacturers or suppliers on individual materials, products or systems supplied by Contractor under this Contract.

The Contractor does not warrant labour and/or materials supplied by the Owner or the Owner's subcontractors. The Contractor shall protect the Work, the Owner's property and the property of third parties from damage occasioned by the performance of its obligations under the Contract Documents.

## **10. Insurance**

Prior to commencing the Work, the Contractor agrees to provide, maintain and pay for insurance during the time the Work is being performed, including commercial general liability in the minimum amount of \$1,000,000 against claims for damages for personal injury or property damage by reason of anything done or not done by the Contractor, its employees or agents, in connection with the performance of this Contract. The Contractor will also provide proof of automobile liability insurance. The Contractor is responsible for all materials on site provided by the Contractor for the Work in this Contract until installed.

See pp 120-21 for a discussion of insurance.

## **11. Compliance with Workers' Compensation and Other Laws**

The Contractor agrees to provide evidence of compliance by the Contractor's own company and any of the Contractor's subcontractors with all requirements for registration and payments due under the province's workers' compensation statute.

The Contractor also agrees to comply with all laws, ordinances, rules, regulations, codes and orders in force during the performance of the Contract which relate to the preservation of public health or construction safety.

## **12. Other Contractors**

Owner reserves the right to let separate contracts in connection with the Work or to do certain work by Owner's own forces as specified in Description of Work.

The Contractor shall include in his work co-ordination with Owner's separate contractors or forces, and Owner shall pay the Contractor \$ \_\_\_\_\_ for coordination of same.

## **13. Default by Owner**

In the event that (a) the Owner does not perform its obligations under this Contract in accordance with the terms of this Contract and has not corrected the default within \_\_\_ days of written notice by the Contractor, or (b) the Owner becomes bankrupt or makes a general assignment for the benefit of its creditors, or if a receiver of the Owner is appointed, or (c) if the Work is stopped as a result of a court order, then the Contractor may cease work and treat the contract as repudiated forthwith on the occurrence of such default. In such event, an accounting shall be made between the Owner and the Contractor, and the Contractor shall be entitled to payment for such parts of the Work as are completed at the time of default.

#### 14. Default by Contractor

In the event that (a) the Contractor does not perform the Work in accordance with the terms of this Contract and has not corrected the default within \_\_\_\_\_ days of written notice by the Owner, or (b) the Contractor becomes bankrupt or makes a general assignment for the benefit of its creditors, or if a receiver of the Contractor is appointed, then the Owner may finish the Work in accordance with the plans and specifications as the Owner may deem expedient, but without undue delay or expense.

In such event, the Contractor shall not be entitled to any further payment under this Contract, but upon completion of the Work, an accounting shall be made between the Owner and the Contractor. If the unpaid balance on the Contract Price shall exceed the expense of finishing the Work, the Owner shall pay the Contractor for such parts of the work as were payable or completed at the time of the default. However, if such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

#### 15. Signs

The Owner agrees to permit the Contractor to display a sign on the project site until completion.

This Contract shall not be assigned, in whole or in part, without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed.

This Contract shall be governed by and construed in accordance with the laws of the Province of Alberta. Owner agrees that any claim or cause of action must be resolved exclusively in the courts of Alberta and to submit to the personal jurisdiction of such courts.

The Contractor assures that there is not now any claim, action, contract, rule or other circumstance which may interfere with the Contractor's ability to perform its obligations under this contract.

_____	_____	_____
Owner	Date	Witness
_____	_____	_____
Owner	Date	Witness
_____	_____	_____
Contractor	Date	Witness

Source: Canada Mortgage and Housing Corporation (CMHC). Sample renovation contract, revised 2008. Reproduced with the consent of CMHC. All other uses and reproductions of this material are expressly prohibited.

See p 299 for a discussion of governing law clauses.

## REVIEW QUESTIONS

1. You are located in Toronto and have hired a renovation company to renovate your home using the above contract as a template. Pursuant to section 3, the work must be substantially completed by September 2024, in time for the start of the new school year. However, the contractor is unable to meet this timing for reasons that do not qualify as an excusable delay and, as such, the contractor has breached the contract. As a result of the breach, you decided to stay at a hotel nearby at a cost of \$200/night for sixty nights (\$12,000). According to the contractor, however, you could have extended your stay at a rented furnished apartment in the same neighbourhood for \$2,500 per month. What amount of damages would you be entitled to, and what kind of contractual language could avoid such a dispute?
2. Your client hired a contractor to renovate their kitchen and bathroom. Your client signed a contract using the above as a template, with the total payment set at \$30,000. However, your client is not happy with the quality of the contractor's work, claiming that the contractor used the wrong tile in the bathroom and that faulty plumbing has caused leaks under the kitchen sink. Having paid the contractor in full, your client now wants to sue for \$5,000, being the cost incurred to remedy the problems. You have sued in Toronto, but the contractor has brought a motion to dismiss the action. On what basis has the contractor brought such a motion?
3. You have signed a contract using the above as a template in connection with a renovation of your home. During the renovations, the contractor replaced some roof shingles that had come loose. Unfortunately, the contractor did so negligently, and the roof has now collapsed, causing \$20,000 worth of damage. While you have sued, the contractor claims that it has no assets and will be unable to pay, even if you are successful in your lawsuit. Meanwhile, your home insurance refuses to cover damages caused by third party contractors. What aspect of the contract may assist you in this scenario?

# Employment Contract

## TEMPLATE FIXED-TERM EMPLOYMENT AGREEMENT

[DATE]

[NAME OF EMPLOYEE]

Dear [NAME OF EMPLOYEE]:

We are pleased to offer you fixed-term employment in the position of [POSITION] at [EMPLOYER] commencing on [DATE].

This letter sets out the terms and conditions of your employment with [EMPLOYER]. Please read it carefully. Once it has been signed by you, this letter will constitute your binding Employment Agreement (the "Agreement").

### 1. Term of Employment

Your employment with [EMPLOYER] will commence on [START DATE] and will end on [END DATE], unless it is ended earlier in accordance with the Early Termination of Employment provision in this Agreement.

### 2. Scope of Employment

You will be employed in the position of [TITLE] in the [DEPARTMENT], and you will report to [MANAGER FULL NAME]. Your duties, responsibilities, and reporting relationship may be amended from time to time at the sole discretion of [EMPLOYER] without impacting the other terms and provisions of this Agreement.

### 3. Salary

Your annual salary will be [COMPENSATION], less all applicable statutory withholdings, deductions, and remittances. Your wages will be paid [INSERT FREQUENCY ACCORDING TO EMPLOYER'S PAYROLL PRACTICES] by [INSERT PAYMENT METHOD].

### 4. Vacation

You will be entitled to vacation time and pay in accordance with the Ontario *Employment Standards Act, 2000*, as amended from time to time (the "ESA"). The timing of your vacations must be pre-approved by your supervisor. [EMPLOYER] reserves the right to schedule vacations in accordance with its operational requirements.

## **5. Benefits**

You will be eligible to participate in the [EMPLOYER'S] benefit plans, as amended from time to time and subject to the terms of the plans.

## **6. Employee Devotion to [EMPLOYER]**

You will devote your full time, attention, and energies to the business of [EMPLOYER] and, during this employment, will not engage in any other business activity that conflicts with your duty to [EMPLOYER], regardless of whether such activity is pursued for profit, gain, or other pecuniary advantage.

## **7. Policies, Procedures, Rules & Regulations**

It is a term and condition of your employment with [EMPLOYER] that you will comply with [EMPLOYER'S] policies, procedures, rules, and regulations as may be amended from time to time.

## **8. Confidentiality & Non-Disclosure**

You acknowledge and agree that [EMPLOYER'S] confidential and proprietary information is valuable information that [EMPLOYER] is entitled to protect and that the disclosure of this information to third parties would be highly detrimental to the best interests of [EMPLOYER]. You agree that you will not at any time nor in any manner, except where required or authorized by law or authorized in advance by [EMPLOYER] in writing, divulge, disclose, or communicate to any person, firm, or corporation any information concerning any matters affecting or relating to [EMPLOYER'S] operations and affairs.

## **9. End of Employment**

This Agreement and your employment will automatically terminate at the end of the last day specified as the term of the contract, unless it is terminated earlier by you or [EMPLOYER] in accordance with the clause below or extended by the agreement of both parties in writing. Upon the automatic termination of this Agreement on [CONTRACT END DATE], you will not be entitled to any notice of termination or pay in lieu thereof.

## **10. Early Termination of Employment**

Notwithstanding any other provision in this Agreement, your employment may terminate at any time prior to [CONTRACT END DATE] as outlined below.

The first three months of your employment will constitute a probationary period during which both you and the Firm will assess your suitability for the position. Your employment may be terminated for any reason during the probationary period without notice or pay in lieu thereof, except as may be required to meet the minimum requirements of the ESA.

Following the successful completion of your probationary period, your employment with [EMPLOYER] may cease in any of the following ways:

- (a) You may resign from your employment by providing [EMPLOYER] with two (2) weeks of written notice. In its sole discretion, [EMPLOYER] may require you to work some or all of your notice period, or may provide you with pay in lieu of notice for any portion of the notice period for which you are not required to work;
- (b) [EMPLOYER] may terminate your employment at any time, without notice or pay in lieu thereof, for "just cause." For the purposes of this Agreement, "just cause" means any action or omission by you that, under the provisions of the ESA, would entitle [EMPLOYER] to terminate your employment without providing notice of termination or pay in lieu thereof; or
- (c) [EMPLOYER] may terminate your employment at any time, in its sole and absolute discretion, upon providing you with only your minimum entitlements to notice of termination (or pay in lieu thereof or any combination thereof), benefit continuation, and severance pay, if any, pursuant to the ESA.

Following the cessation of your employment for any reason, you will be provided with all outstanding wages and vacation pay in accordance with the ESA.

Any payments made pursuant to the foregoing paragraphs are subject to applicable withholdings and deductions.

If your entitlements under any part of this Agreement are less than your minimum entitlements under the ESA, you will receive your minimum entitlements under the ESA, instead of under this Agreement. In that case, the specific ESA entitlement will be incorporated into this Agreement without impacting the validity or applicability of the remaining parts of this Agreement.

For certainty, it is the intention of both you and [EMPLOYER] that your entitlements upon the termination of your employment will be governed by this Agreement instead of the common law. For further certainty, it is the parties' intention that your entitlements under the foregoing paragraphs will be your entire entitlement upon the termination of your employment and are inclusive of any and all common law, contractual, and/or statutory entitlements including notice of termination, pay in lieu of notice, benefit continuation, and vacation pay.

We encourage you to visit the Ministry of Labour's website to obtain information about the ESA before signing this Agreement. The current link for the website is: <https://www.labour.gov.on.ca/english/es/>.

### **11. Return of Property**

Upon the termination of your employment, you will at once deliver or cause to be delivered to [EMPLOYER] all documents or other property belonging to [EMPLOYER], or for which [EMPLOYER] is liable to others, that are in your possession, charge, control, or custody, including any copies thereof.

### **12. Non-Disparagement**

You agree not to make or publish written or oral statements (including, but not limited to, derogatory comments, allegations, reports, or opinions) that are disparaging, deleterious, or damaging to the integrity, reputation, or goodwill of [EMPLOYER], its employees, elected representatives, or other representatives.

### **13. Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario, Canada. The parties attorn to and submit to the jurisdiction of the courts of Ontario with respect to any matter arising under this Agreement or related to this Agreement.

See p 299 for a discussion of governing law clauses.

### **14. Severability**

If any covenant, provision, or restriction contained in this Agreement is found by a Court of competent jurisdiction to be void or unenforceable in whole or in part, it will not affect or impair the validity of any other covenant, provision, or restriction and, without limitation, each of the covenants, provisions, and restrictions contained herein is hereby declared to be a separate and distinct covenant, provision, or restriction.

### **15. Entire Agreement**

This Agreement constitutes the entire agreement between you and [EMPLOYER] with respect to your employment. Any and all previous agreements, understandings, negotiations, and discussions, written or oral, express or implied, between the parties or on their behalf, relating to your employment with [EMPLOYER] are terminated and cancelled.

See pp 213-17 for a discussion of the parol evidence rule.

### **16. Amendments and Waiver**

No amendments to this Agreement will be valid or binding unless set forth in writing and duly executed by both you and [EMPLOYER]. No waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach waived.

See pp 233-37 for a discussion of assignment.

**17. Successors and Assigns**

This Agreement may not be assigned by you. You agree that this Agreement and the rights and obligations hereunder may, without further consent from you, be assigned by [EMPLOYER] to any entity which succeeds to all or substantially all of the operations, assets, or property of [EMPLOYER].

**18. Acknowledgment**

You confirm that you have read this Agreement and fully understand it. You further confirm that you have had the opportunity to consider this Agreement and have been provided with the opportunity to obtain independent legal advice with respect to its terms.

[EMPLOYER] is committed to meeting the needs of all individuals in accordance with the Ontario *Accessibility for Ontarians with Disabilities Act* and the Ontario *Human Rights Code*. Please advise if you require information about [EMPLOYER'S] accessibility policies and practices.

If you agree to the above terms and conditions, please acknowledge your agreement by signing this letter and returning it to me. If you have any questions regarding this offer, please contact me.

We look forward to working with you and to all of the contributions you will make to our success.

Yours truly,

[NAME]

[CONTACT INFORMATION]

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I confirm that I have read this Agreement, that I fully understand it, and that this Agreement establishes the terms and conditions of my employment. I further confirm that I have had the opportunity to consider this Agreement and have been provided with the opportunity to obtain independent legal advice with respect to its terms.

[NAME]

Signature: \_\_\_\_\_

Date:

Source: Courtesy of Daina Search.

## REVIEW QUESTIONS

1. You have signed an employment agreement that uses the above as a template. One day, you receive a phone call from a recruiter from a competing company who offers you a higher salary to leave your job and start with their company. When you tell them that you are required to give your employer notice under your employment agreement, they respond that they need you to start the next day regardless of what your employment agreement says. They even offer you a large bonus if you start immediately. If you quit without any notice, would your employer have any claim against your new employer?
2. Your client, who is 17 years old, signs a contract using the above template to work at a store at a popular shopping mall. Your client has decided after his first day that the job is not what he was expecting and wants to repudiate the contract using the argument that because he is a minor, he lacked the capacity to contract. Would this argument succeed?
3. What is the purpose of section 18 of the contract, which states that the employee has read and understands the Agreement?

