

ConsensusDocs[®]
Keeping You Ahead of the Curve

ConsensusDocs Guidebook

ConsensusDocs 240 – Agreement Between Owner and Design Professional

2016 Edition



ConsensusDocs[®]
Keeping You Ahead of the Curve

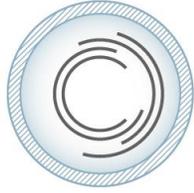
Copyright © 2016

by

ConsensusDocs LLC

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission in writing from the publisher. Requests for permission to make copies of any part of this publication should be mailed to:

Permissions
ConsensusDocs
2300 Wilson Blvd., Suite 300
Arlington, VA 22201



Introduction to the ConsensusDocs Guidebook

ConsensusDocs is the product of leading construction associations, dedicated to identifying and utilizing best practices in the construction industry for standard construction contracts. The 36 participating associations represent Design Professionals, Owners, Constructors, Subcontractors, and Sureties that literally spell the DOCS in ConsensusDocs. ConsensusDocs contracts and forms attempt to fairly and appropriately allocate risks to the Party in the position to manage and control the risk. The practices articulated in the documents are forward-thinking, and may not always represent the status quo, but rather a better path forward to achieve project results. The goal of the multi-disciplined drafters was to create documents that best place the Parties to a construction contract in a position to complete a project on time and on budget with the highest possibility of avoiding claims.

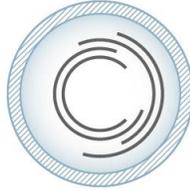
By starting with better standard documents that possess buy-in from all stakeholders in the design and construction industry, you reduce your transaction time and costs in reaching a final Agreement. By using fairer contracts helps eliminate unnecessary risk contingencies and thereby better pricing. In addition, “fill-in-the-blanks” are intended to lead to productive discussions about how particular risks should be allocated on specific projects before a contract is finalized.

Also, the ConsensusDocs catalog includes complete “families” of documents for each project delivery method that provide a coordinated set of Agreements and complimentary administrative forms. There also are short form agreements that address the Owner-Constructor (205), the Owner-Design Professional (245), and the Constructor-Subcontractor contractual relationships in a more abbreviated manner than do the standard Agreements (ConsensusDocs 200, 240, and 750 respectively).

In this Guidebook you will find comments by individual associations regarding particular contract documents. These comments are organized by numeric sequence of the ConsensusDocs contract documents. The overview sections highlight issues and innovative features of the documents generally. Association comments are expressions by an association to its association membership. These comments highlight provisions or alert their membership to consider possible project-specific modifications to a consensus standard Agreement or form. ConsensusDocs contracts covered in this release of this Guidebook include the 200; 200.1; 200.2; 200.4; 200.5; 205; 220; 221; 235; 240; 246; 297; 298; 299; 300; 301; 310; 410; 415; 450; 460; 498; 500; 702; 702.1; 703; 710; 750; 751; 752; 803 and 842. The following exhibits exist for ConsensusDocs 300: Responsibility Matrix Sample, Risk Pool Plan - Template #1, and Risk Pool Plan - Template #2.

Please note that there has been a significant number of editing changes and section renumbering between the 2007 and 2011 versions that give the appearance that more substantive changes were made in the 2011 update than is actually the case. Consequently, a highlight sheet of changes was created to better pinpoint substantive changes. The 2011 update highlights sheet can be found [here](#) for free on the internet.

Lastly, the ConsensusDocs coalition organizations and ConsensusDocs staff are deeply indebted to the hard work of the many the seasoned professionals who contributed countless hours in the creation of the ConsensusDocs contracts as well as this Guidebook. Their collective experience represents hundreds of years of practical experience in the construction field. Contributor names can be found at the conclusion of this Guidebook.



Comments regarding ConsensusDocs 240* **Agreement Between Owner and Design Professional**

Overview:

This standard agreement was comprehensively updated in January of 2011. The revisions were made to reflect the best practices, respond to industry feedback, and provide consistent terminology within the ConsensusDocs library of documents. You may access a sample redline of the 2007 and 2011 editions as a sample document of the CD 240 at <http://www.ConsensusDocs.org/Catalog/generalcontracting>

Definitions (§2.5): Consider adding a definition of the Owner's Program means an initial description of the Owner's objectives that shall include budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

Additional Services (§3.3): In §3.3.20, the reference to “§3.2.8.6” should be “§3.2.8.7.”

Information and Services Provided by Owner (§4.1): In §4.1.1.3, strike “allies” and substitute “alleys.”

Schedule of Exhibits (ARTICLE 11): Delete the reference to “Exhibit E: Dispute Resolution Menu.” This reference is being struck due to the fact that this information is already incorporated into the document (see ARTICLE 8).

* This publication is designed to provide information in regard to the subject matter covered. It is published with the understanding that the publisher, endorsers of ConsensusDocs and contributors to this Guidebook are not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional advice is required, the services of a competent professional person should be sought.



AGC Comments for ConsensusDocs 240:

(Additional Comments by AGC can be found on AGC's website at members only page of http://www.agc.org/galleries/members-only/AGC-only_ConsensusDocs_Guidebook.pdf for many of the ConsensusDocs documents.)

Standard of Care (§2.1): The relationship of the Parties, the standard of care governing the Design Professional's performance, the extent of the Agreement, and the definition of key terms, such as Services and Work, are described in this article.

Owner's Program (§2.5.1.1): The Owner's Program is an initial description of the Owner's objectives that shall include budgetary and time criteria, space requirements and relationships, flexibility and expendability requirements, special equipment and systems, and site requirements.

Disruptions (§3.2.8.8): Always good to get interpretations in writing but in this standard agreement it is not being made an absolute requirement, as certain communications are verbal.

Financial Information (§3.8): The Design Professional has the right to request and receive evidence of the Owner's financial ability to pay for Services. Such evidence is a condition precedent to the Design Professional commencing or Continuing Services.

Information and Services (§4.1): This Section details the information, such as site surveys, legal descriptions and reports of environmental conditions, and services required by the Owner.

Indemnity, Insurance and Waiver of Subrogation (ARTICLE 7): This Section relates the Design Professional's indemnity obligation for bodily injury and property damage. Contractual indemnity is governed by state law and states differ as to the types of indemnification agreements they will enforce. Consultation with legal and insurance counsel with knowledge of the jurisdiction is recommended.

Property Insurance (§7.3): Under this provision, the Owner is to provide property insurance for the Project that includes the Design Professional as a named insured.

Continuance of Services and Payment (§9.1): The Design Professional is expected to continue performance of the Work and the Owner is expected to continue payment for Work performed during any dispute resolution proceedings.

Statute of Limitation (§9.5.3): This section provides for the consolidation of dispute resolution procedures in all contracts relating to the Work.

Lien Rights (§9.7): This provision relates that the dispute resolution procedures shall not waive the Design Professional's lien rights.



COAA Comments for ConsensusDocs 240:

(Additional comments on this document can be found at COAA’s website, www.coaa.org, in the members-only area.)

Review of Contractor’s Submittals (§3.2.8.1): Add to the end of the first sentence “or as otherwise provided in the specifications.”

Processing Changes in the Work (§3.2.8.2): The A/E ought to be responsible for preparing design documentation for change orders (ASIs, etc.) and soliciting change order prices not just for evaluating the cost proposal.

Limited Mutual Waiver of Consequential Damages (§5.4): The ConsensusDocs mutual waiver of consequential damages provision represents a positive departure from similar provisions found in other contract forms commonly used in the industry. Consequential damages are one of the most important subjects for an owner to be familiar with in the construction context. COAA highly recommends that every owner seek the advice of competent local construction counsel prior to executing this contract containing waivers of consequential damages. Owners should assess the consequential damages risks associated with each project. Potential outcomes of the assessment could include but are not limited to a decision that the risks are small and consequential damages can be waived, that the risks can be captured through liquidated damages or that the risks are such that the Owner is not willing to waive consequential damages.

Insurance (§§7.2–7.3): You should review with competent local counsel or risk managers especially coverage limits and the additional insured provisions. Failure to carefully contemplate the handling of these exposures could result in significant unanticipated losses.

Miscellaneous Provisions (ARTICLE 10): Owners should receive Ownership of all project documents including copyrights and that the contract be amended to provide for that alternative.