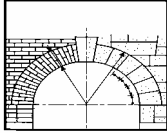




Program endorsed by



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Highlight Sheet

Architects and Engineers Program Risk Management Credit

Introduction

ENCON recognizes that some firms are taking progressive risk management steps, and ENCON is looking to reward those firms accordingly. ENCON also hopes that the Risk Management Credit will serve as an incentive for those firms who do not place risk management as high on their priority list as they should.

ENCON's Risk Management Credit offers eligible insureds the option of receiving a deductible credit of up to \$25,000 if they implement certain "best practices" in the engagement and performance of professional services. The Risk Management Credit is designed to reduce the frequency and severity of claims, make claims more defensible, and provide a mechanism to reward insureds for their risk management efforts.

As noted above, the Risk Management Credit encourages the use of a set of best practices, long recommended throughout the design and construction industry. Receipt of the Risk Management Credit is predicated on the insured's documented satisfaction of a "baseline" condition — the timely execution of a written professional services agreement — plus any **three of five** best practices conditions. The policy language establishing these conditions, their rationale and appropriate documentation demonstrating compliance are described in detail on the following pages.

Condition 1: Payment Terms/Invoicing and Interprofessional Agreements/Insurance Certificates

***Your** written agreement with **your** client specified payment terms, including a schedule of when payments were to be paid to **you**, which **you** consistently followed and enforced, or documented **your** attempt to do so.*

Rationale: Unclear or unspecified payment terms and untimely billing and collection of accounts commonly precipitate claims and counterclaims among contracting parties. By requiring clients to make timely payments for services rendered and by taking action to collect accounts when payments are overdue, insureds may have an opportunity to identify and cure problems or unmet expectations. Left unaddressed, such problems often result in claims.

and

*Prior to the performance of the agreed-to **professional services** giving rise to the **claim**, **you** executed a separate written agreement with and, where appropriate, attempted to obtain certificates of insurance evidencing both Professional Liability and General Liability from each architect, engineer, landscape architect, land surveyor, contractor, project manager or construction manager **you** engaged or who engaged **you**.*

Rationale: Interprofessional agreements are often oral, not written. Putting pen to paper encourages the parties to address and memorialize the complete terms of their agreement. It also helps the parties avoid unco-ordinated contracts and mismatched expectations. Insurance certificates help demonstrate and confirm financial responsibility and compliance with applicable contract terms.

Condition 2: Pre-Project Planning

*You engaged with **your** client in a structured and regularly documented, pre-project planning process that produced a project definition document or package that substantially addressed the following project parameters (only “a” through “c” are required to satisfy this condition for study-and-report-only contracts):*

- a. *Project objectives (e.g., business, economic, aesthetic, other)*
- b. *Project constraints (e.g., budget, schedule, regulatory, other)*
- c. *Bases for the design/investigation (e.g., site data/requirements, utilities data/requirements, facility programming/requirements, equipment/technology requirements, alternatives to be considered)*
- d. *Project execution approach (e.g., staging, procurement strategy, delivery method, other)*
- e. *Project monitoring and control procedures (e.g., quality, cost, schedule, other)*

Rationale: Claims experience has clearly demonstrated the benefits of pre-project planning. These include better definitions of risks, increased predictability of cost and schedule, better achievement of business goals, improved operational performance, and fewer changes and disputes.

Condition 3: Internal/External Peer Review

*Prior to delivery to **your** client of the instruments or deliverables of **your professional services**, a documented, independent peer review was completed, internally or externally, by a qualified professional to assess the likelihood that such instruments or deliverables would satisfy **your** client’s objectives and would be in conformance with good professional practice.*

Rationale: One of the best ways to minimize client dissatisfaction, anticipate problems and control the quality of design documentation is through investing in a documented internal or external peer review. By definition, an “independent” review cannot be conducted by the person technically responsible for the services or documents being reviewed.

Condition 4: Constructability Review

*You engaged with representatives of the project owner, entities responsible for construction and any other project stakeholders **you** deemed appropriate in a structured and regularly, documented constructability review process that provided for the timely integration of construction input into project planning, design and field operations.*

Rationale: Research by the construction industry demonstrates that incorporating construction knowledge and experience into the planning and design of a project can reduce costs and schedule time and improve the safety of field operations.

Condition 5: Submittal Management

*You maintained a regularly documented construction phase submittal log indicating the as-planned and actual dates **you** received and responded to every submittal and the action taken.*

Rationale: A submittal log that tracks as-planned and actual submittal dates is a powerful project management tool that can be used to mitigate the insured's exposure to contractor delay damage claims. It also forces the contractor to submit a submittal schedule, co-ordinated with the contractor's construction schedule, for the design professional's approval.

Policyholder Eligibility and Participation

Insured participation in the Risk Management Credit is optional, with no underwriting penalties for not participating. Large firm restrictions applicable to participation in the Risk Management Credit are as follows:

- Firms with annual gross billings in excess of \$20 million are not eligible to participate in the Risk Management Credit. In those cases, the credit will be deleted by endorsement.
- Firms with annual gross billings less than \$20 million and who have a deductible applicable to defence cost or a deductible in excess of \$50,000 will not be eligible.

If you opt for the Risk Management Credit, your policy will be endorsed with the following:

“Your deductible obligation as shown in Item 5 on the Declarations is reduced to \$ _____ for any claim where, within sixty (60) days of the date of our request, you provide us with a copy of the written agreement that was executed by you and your client prior to your performance of the agreed-to professional services giving rise to such claim and you demonstrate, to our reasonable satisfaction, your compliance with any three of the following five conditions:”

Administration of the Risk Management Credit

Following an insured's written notice of a claim, ENCON will confirm that a claim file has been opened and will ask whether the insured intends to apply for the Risk Management Credit. If the insured advises ENCON that it intends to do so, ENCON will request that the insured complete the “Application for Risk Management Credit” and submit the application and the following documentation to ENCON, within 60 days:

- A copy of the written agreement that was executed by the insured and client prior to the performance of the agreed-to professional services giving rise to the claim.
- Documentation demonstrating, to ENCON's reasonable satisfaction, that the insured had implemented three of the five best practices conditions described under this guide and in the policy endorsement.

The descriptions of “appropriate compliance documentation” are meant to assist insureds in implementing best practices and in demonstrating their compliance with the Risk Management Credit conditions. From an evaluation standpoint, the substantive content of the documentation, rather than its specific form, will determine compliance. However, the documentation should be well organized and clearly keyed to each applicable Risk Management Credit condition.

How to Obtain Additional Information

To obtain additional information concerning ENCON's Risk Management Credit, or to obtain other information about ENCON's professional liability insurance program, please call 800-267-6684 or visit our website at www.encon.ca.

This document is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the plan described. Please remember only the insurance policy can give actual terms, coverages, amounts, conditions and exclusions.