Agreement Basics Test

True or False

1. The Agreement Basics Document emphasis is on business practice.

2. Since most written agreements increase our liability, therefore it is best not to have an agreement.

3. The provisions within an agreement will affect day to day professional practice decisions during the project.

4. Agreements must be written to be enforced.

5. A written agreement can be changed by your actions during the project.

6. An unsigned written agreement maybe valid.

7. Verbal assurances made by the client but not documented become part of the agreement.

8. Written agreements can increase your responsibilities and raise the standard of care to a higher level and your professional liability policy may not cover your defense or losses in the event of a claim.

9. Written agreements should contain a well-defined scope of services.

10. The four elements of an agreement are:

    - There must be a mutual promise (offer and acceptance) between parties to the agreement
    - There must be mutual consideration or exchange of value between the parties, usually fees for services.
    - The agreement cannot be for an illegal purpose or activity.
    - The parties to the agreement are competent to enter into it. Competent generally means that the parties have the authority to enter into the agreement.

11. Most professional services agreements contain these sections:

    - Initial Information
    - Scope of services
    - Schedule

- Professional fees and reimbursables
- General terms and conditions

12. Not all attorneys are familiar with engineering agreement language used in our profession.
13. Standard form agreements have been well reviewed by the insurance industry so there is no real benefit for review by your insurance agent.
14. Your firm's professional liability insurance policy will cover all losses resulting from a breach of the contract unrelated to professional negligence.
15. Agreements are not required if you are not receiving a fee for services.
16. A primary reason for having an agreement is that negotiating the agreement gives you insight into your client's expectations, your role and responsibilities, the roles and responsibilities of others and the nature of the project.
17. A written agreement provides you with the opportunity to include a Limitation of Liability and/or Claim Validation provision.
18. When another professional engineer was involved with the project before your involvement, you should proceed without knowing the previous engineer's role and reason that the engineer is not continuing with the project.
19. After completing the design and construction documents, there is little benefit or need to continue providing services during the construction phase.
20. When your agreement is a sub-agreement, there is usually no need to be concerned about any of the provisions of the prime agreement.
21. A primary way to avoid a claim is to avoid projects where you cannot meet the expectations of the client, owners and the public.
22. Other project team members, such as contractors, subcontractors, material suppliers, fabricators, architects, other consultants, construction managers, attorneys, risk managers generally understand the role and responsibilities of the engineer.
23. The ordinary standard of care requires compliance with the jurisdiction's applicable codes and standards.
24. The best way to document your scope of services is to include it as a part of a clearly written agreement.
25. Every project is unique and a customized written scope of services is an important part of negotiating expectations with our client.

26. When the scope of the project changes, it is best to not have a nickel and dime attitude and address the issue with your client when the time is right and appropriate.
27. In writing your scope of services it is best to avoid open ended statements such as “perform **all** necessary services …. .
28. In your written scope of services, you should include services and deliverables that you think should be performed as part of your professional responsibilities in meeting the standard of care.
29. In your written scope of services include key definitions of those services as well as related services to be provided by others.
30. Use the term “engineer’s opinion of probable construction cost” instead of engineer’s cost estimate in your contract.
31. The need to define information that will be supplied by others to complete your services can be deferred until the project is better defined.
32. It is acceptable to seal plans prepared by others provided the work was prepared under you direct control and you have checked the work.
33. You should not accept a project scope unless it includes the ability to periodically observe construction for general conformance to the design concepts expressed in the contract documents.
34. Designs that will be repeated, such as a house design for a residential subdivision that will be used on many lots, often may significantly increase your exposure to claims.
35. You should not take on responsibility for other consultants’ professional services on the project unless they are your sub-consultant.
36. If a contractor recommends deleting the Engineer or Design Team as an “additional insured”, that should be acceptable since it really does not provide much protection for the Engineer.
37. Since liquidated damages apply only to construction contractors, the Engineer should not concern itself with liquidated damages.
38. It is good practice not to review non-required submittals during construction phase services and return them to the sender within the agreed turnaround time, marked not reviewed – outside scope.
39. Limitation of Liability (LoL) clauses are never accepted by a client.
40. Claim validation clauses are intended to avoid claims without merit.
41. Binding arbitration dispute resolution provisions should be avoided.

42. Using standard agreements such as the EJCDC and ACEC/CASE structural engineering agreements is good professional practice, provided appropriate modifications are added to meet the project requirements.
43. More often than not, client supplied agreements are weighted heavily in favor of the client, including obligations that fall well outside the coverage provided by your insurance.
44. Clauses stating that “time is of the essence” in your agreement may be interpreted as a guarantee of schedule performance.
45. It is acceptable to have a statement in the agreement that you will perform services in a “non-negligent manner.”
46. Include in your written scope of services a provision that the documents cannot be used to construct another project or be modified.
47. There are generally two primary types of termination clauses, termination for convenience and termination for cause.
48. Indemnity provisions in client supplied agreements often include an attempt to shift risk from the client to you, are complicated and need to be reviewed by an attorney or your insurer.
49. In an agreement supplied by your client, carefully consider any provisions or requirements that get added by a lender or funding agency.
50. In a design-build project, in almost cases the client develops the agreement and you need to consult an attorney for review.

Answer Sheet

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