



# Sample Contract

Design Professionals of **Canada**

## Professional Practice Series #3

### Background to this Project

*These Standard Terms & Conditions are the result a long and tedious process, which has benefited from the efforts, contributions, and input of various individuals and organisations.*

*This project initially grew out of workshops held by DesCan Winnipeg (formerly the Manitoba Chapter of the GDC) at which a draft "sample contract" was compiled which incorporated the issues, concerns, and best practice of several dozen designer and client participants. This draft was subsequently reviewed by a prominent copyright lawyer, leading to further development, consolidation and refinement. Finally, the revised draft was reviewed and edited by a litigation lawyer. In the process of developing these Standard Terms & Conditions, we have drawn from precedent documents used effectively for several decades by established design offices, and have researched parallel documents from sister organisations in England, the USA, Germany, and Switzerland as well as guide documents from the International Council of Design (Ico-D). These Standard Terms and Conditions were compiled by Robert L. Peters, F.DesCan. Legal fees were jointly donated by Robert's firm Circle Design Incorporated and DesCan Winnipeg.*

*This document has been written to be understandable and to be as "friendly" as possible, while clearly spelling out and protecting the rights of both contracting parties. In the opinion of several lawyers who have reviewed these Standard Terms & Conditions, this is a solid boilerplate document. Like most things in life, however, this document will no doubt benefit from ongoing review, refinement, and improvement. To this end, please address comments and suggestions to [director@descan.ca](mailto:director@descan.ca).*

*Electronic versions of this document are available to DesCan Members in good standing through the National Secretariat or in the members only area of [www.descan.ca](http://www.descan.ca) in PDF and InDesign file formats.*

### Standard Terms & Conditions

This document has been developed for the Design Professionals of Canada (DesCan), forming a boilerplate for a Pro Forma Agreement between the Designer and the Client. This document is provided for the exclusive use of Members in good standing of the DesCan.

### Why Develop Standard Terms & Conditions?

DesCan's goal in developing and disseminating these Standard Terms and Conditions is to assist graphic designers in improving the effectiveness of their contractual documents—benefiting both individual designers, as well as the graphic design profession. It will prove useful to freelance designers, to design offices, and to schools wishing to enhance their teaching of professional practice in the area of graphic design.

### Good Fences Make Good Neighbours

A contract is an agreement. A fundamental tool of business, an agreement is simply a promise or a set of promises which the law can enforce. An agreement comes into existence by one party making an offer, and by another party accepting the offer. A written agreement is obviously better than an oral agreement, because it is more enforceable. The best time to enter into an agreement is at the beginning of a project when both parties are getting along (and when

it may seem that a written agreement may not be necessary). Usually, a good agreement between a Designer and a Client will act in a preemptive manner, and through the formal commitment between the two parties, both will feel a sense of obligation which may help avoid many of the potential problems and pitfalls that can arise during the course of a design project. In the same way that "good fences make good neighbours," good agreements make good Clients, or at least make Clients be good.

### Recommendations on Using These Standard Terms & Conditions

- Read these Standard Terms & Conditions carefully, and make sure that you understand them and the implications to both you and your Client of subscribing to them.
- Be aware of liability that you as the Designer take on by the conditions you agree to, for example, under the clause "Warranty," where the Client is assured that the Designer's work is original.
- Discuss your project estimate and negotiate specific details with the Client before preparing a detailed written agreement which includes these Standard Terms & Conditions—this allows the Client to concentrate on the main project criteria and parameters before getting "bogged down" in the detail of these Standard Terms and Conditions.
- Do not use these Standard Terms & Conditions for complex or long-term projects. For example, projects involving retainer-based relationships, payment of royalties, multimedia, etc. may require a lengthier customised agreement.
- Although these Standard Terms & Conditions have been carefully researched and compiled, they are not a replacement for legal counsel. Have your lawyer review your agreements.
- These Standard Terms & Conditions are just that—a standard. You can customise or modify this in any way you choose to suit the individual needs or requirements of the contracting Designer or Client. Again, you are advised to consult a lawyer with regard to modification of these Standard Terms & Conditions.
- Besides serving their primary purpose as the boilerplate for simple but effective proposal/agreements, these Standard Terms & Conditions may be used in several other ways: as a stand-alone document for reference; as a starting point for negotiation; and as a basis for more complex, customised agreements.

### Written Agreements Using These Standard Terms & Conditions

When the Client and the Designer are ready to enter into an agreement (usually after the design services, fees, schedule, use and rights, etc. have been discussed) the Designer can draw up an Agreement on letterhead, attaching the Standard Terms and Conditions. The Designer and the Client should each sign two copies of the document (if possible in each other's presence) with each party receiving a fully executed copy. Refer to the Sample Agreement.

Alternatively, the Designer may draft a written Proposal describing the work to be performed, fees, etc. with attached Standard Terms & Conditions, and may ask for written acceptance of this Proposal by the Client. Either way constitutes a written agreement between the Client and the Designer.

When text for the Standard Terms & Conditions is incorporated into a written Agreement (usually on the Designer's letterhead) it must, at a minimum, include the following elements:

- Proper legal names and addresses of both Designer and Client
- The date
- Name of the project
- **Services\*** (a description of work to be performed, project stages, the number of presentations that are included, the type of artwork, Designer responsibilities, etc.)
- **Client Responsibilities** (a list of what the Client is to provide, or is responsible for)
- **Use and Rights\*** (a description of specific usage limitations, for example: for a limited period of time, in certain media only, in a certain geographic area only, etc. and a description of what the Client will receive or own in the way of tangibles, for example: reflective/camera ready art and negatives only, editable digital files, etc., and a clear description of whether these rights and tangibles are being assigned [sold] or licensed [leased] to the Client, etc. Note that it is important to spell out clearly here what the Client is to receive—if not specified, the boilerplate in the section "Copyright and Ownership" indicates that the Designer retains all rights and all tangible materials. Most Clients of course will not

agree to this—it is important that the Client's needs are met, and this will vary with each Client and project type. For example, a Client will almost always want master artwork and digital files for a new logo, but will likely not insist on receiving digital files for an annual report or corporate publication. Specific use and rights need to be discussed and negotiated at the outset of a project and stated here in order to avoid problems.)

- A time schedule for the project
- **Fees\*** (a description of fees for the work described under "Services," what taxes are additional or included, set stages in the project at which fees will be billed [if applicable], etc.)
- **Expenses\*** (an estimate and description of expected out-of-pocket expenses and disbursements, a specific percentage surcharge which will be applied to cover account handling and supervision (e.g.20%), and what taxes are additional or included)
- **Terms of Payment\*** (a description of the advance required at the start of the project, further specific terms of payment, etc.)
- A statement of agreement between the two contracting parties which includes the legal names of both parties, the project name, a statement that reads "For due remuneration as detailed in this agreement, the Designer will provide services to the Client as set out herein. This agreement forms a part of and is subject to the Standard Terms & Conditions attached.", and space for the date of signing and the authorised signatures of both parties.

*\* These elements are referred to specifically in the boilerplate Standard Terms & Conditions, and must appear in a written Agreement which incorporates or refers to the Standard Terms & Conditions. These elements should not be renamed unless the boilerplate is edited to reflect such renaming.*

In addition to these basic elements, the Agreement could include any additional information the Designer desires such as background information, design criteria, an outline of project procedure, a list of services to be performed by third parties under the supervision of the Designer, etc., etc..

Text for the Standard Terms & Conditions can be formatted as part of the Designer's agreement template (by capturing the keystrokes of the Standard Terms & Conditions document below), or by copying the two page Standard Terms & Conditions pre-formatted document onto letterhead. Refer to the Standard Terms & Conditions.

Okay, after all that preamble, following is the Sample Agreement and Standard Terms & Conditions.

**Sample Agreement**  
**(attach to Standard Terms & Conditions)**  
**1/8**

1 January 2024

ABC-1234

Jane Doe  
ABC Company Ltd.  
123 Any Street  
Any City, Any Province  
A1B 2C3

Dear Ms. Doe,

**Re: Design of Graphic Identity, Signage Graphics and Packaging**

Enclosed please find two copies of our proposal/agreement outlining the design services as discussed at our initial meeting on Tuesday, December 21 and as per our estimate of 2 January 2024.

Please review, sign and return the two enclosed documents to Good Design along with a cheque for the deposit. We will then countersign the agreements and return your copy and a receipt to you for your records. Please call John Hancock, our client services director, or myself if you have any questions.

We look forward to working with you in developing an effective, cohesive graphic identity for ABC Company Ltd.

Sincerely,

John Henry <sup>CDP</sup>  
Design Director

enclosure

**Good Design Incorporated**  
987 Any Street  
Any City, Any Province  
Canada, X7Y 8Z9

gooddesign.ca  
987.654.3210  
designers@gooddesign.ca

1 January 2024  
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ABC Company Ltd.  
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Dear Ms. Doe,

**Re: Design of Graphic Identity, Signage Graphics and Packaging**

*Background*

ABC Company Ltd. has been in the retail whatever business for 11 years, operating out of its current location on 123 Any Street in Any City. The business is now relocating to a European-style village mall in nearby Generic Square. ABC Company Ltd. is an independent family run whatever business that prides itself in delivering a quality service and offering a good selection of merchandise to its customers. The business has a well established and loyal clientele, and is held in high regard by its peers in the whatever field.

ABC Company Ltd. wishes to develop a new graphic identity to coincide with its move to new premises, to apply this new identity consistently to all of its visual representations, and to strengthen its visibility and retail presence in Any City. To this end, ABC Company Ltd. is seeking the services of a graphic design firm, and in response, Good Design Incorporated (the Designer) has prepared this proposal to provide design services to ABC Company Ltd. (the Client).

*Services*

Based on initial meetings and a preliminary assessment of existing materials used by the Client, the Designer proposes to perform the following design services:

Phase 1 – Graphic Identity

- design of a distinctive graphic identity (logotype)
- creation of digital masters and master reflective artwork for the logotype
- development of basic standards for the graphic identity
- design of core stationery (business card, letterhead and envelopes)

Phase 2 – Signage Graphics

- design of graphics for three exterior sign panels for existing fixtures incorporating the new graphic identity (two facade signs and a double panel on Generic Square’s free standing pylon sign)

Phase 3 – Packaging

- application of the graphic identity to four gift boxes and a cloth gift bag
- application of the identity to paper and plastic merchandise bags

**Project Procedure**

- Initial briefing by the Client.
- Analysis and assessment.
- Preparation of design criteria.
- Ideation and concept development.
- Layout of individual items.
- Presentation of mockups to Client for review and approval.
- Preparation of production specifications and mechanicals or electronic files.
- Preparation of final proofs, for approval by Client.
- Supplier sourcing, liaison and tendering.
- Production supervision.

**Client to Provide**

- Thorough briefing at the outset of the project.
- Appointment of a sole representative authorised to provide information, act on behalf of the Client, and provide approvals.
- Supply of precedent materials and information on competitors, for reference.
- Specific information and plans re: signage and packaging.
- Timely input and approval as necessary.

**Use and Rights**

Upon payment in full of all fees and disbursements the Designer shall grant the Client unlimited reproduction rights for all approved final designs and shall transfer ownership of camera-ready artwork, mechanicals, negatives and reproduction specifications to the Client. Other than digital masters for the logotype and stationery templates (which will be supplied to the Client in a suitable digital file format), all computer disks, electronic files, software documents, fonts, and digital materials generated by the Designer in the course of this project, and copyright pertaining to same, remain the property of the Designer.

**Time Schedule**

A schedule compatible with the Client's timing requirements will be established at the outset of the project, with project commencement contingent upon prompt acceptance of this proposal, and with anticipated completion before the end of October 2024. All dates and time schedules are contingent upon prompt project commencement and timely Client input as required.

**Fees**

Fees are for work to be carried out and materials to be created as set out in this agreement as to Services:

Phase 1: \$	8,600
Phase 2: \$	2,400
Phase 3: \$	3,000
Fee Total: \$	14,000

Sales taxes (GST@ 5% and PST@ 7%) are additional, as applicable. Fees are based on estimates of designer hours at prevailing studio rates. Design services beyond those outlined in this proposal are available if/as required, and will be charged for at prevailing studio rates.

**Good Design Incorporated**

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Any City, Any Province  
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**Expenses**

The Client shall reimburse the Designer for all expenditures incurred by the Designer with respect to this project. Disbursements and out-of-pocket expenses are billed at cost plus a percentage surcharge of 20% for account handling and supervision. Please allow an estimated amount of \$500 for disbursements such as typography, disk output, proofs, studio materials, and couriers. Sales taxes (GST@ 7% and PST@ 7%) are additional, as applicable.

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**Terms of Payment**

An advance of \$8,265 against the total payable is required at project commencement, representing 1/2 of the estimated total of fees, expenses and taxes (\$7,000 fees. + \$250 expenses + \$507.50 GST + \$507.50 PST= \$8,265). The balance of fees are due upon receipt of invoice issued monthly for services rendered to date, and upon completion of the project.

**Implementation**

The Designer's services do not include implementation or third party contracts for services such as printing, packaging production, or sign fabrication and erection.

Agreement made as of \_\_\_\_\_, 2024

between ABC Company Ltd., (herein referred to as the Client)

and Good Design Incorporated (herein referred to as the Designer)

concerning this project referred to as:

Design of Graphic Identity, Signage Graphics and Packaging

For due remuneration as detailed in this agreement, the Designer will provide services to the Client as set out herein. This agreement forms a part of and is subject to the standard terms and conditions attached.

ABC Company Ltd.,

per: \_\_\_\_\_

Good Design Incorporated,

per: \_\_\_\_\_



**Standard Terms & Conditions**

These standard terms and conditions are in accordance with the recognised and standard practices of the graphic design profession, and provide the basis for an efficacious working relationship between the Designer and the Client, and form an integral part of the agreement between the Designer and the Client.

**Professional Standing**

- The Designer subscribes to and abides by the code of ethics and professional standards of the Design Professionals of Canada (DesCan).
- The Designer reserves the right to refuse any project or part thereof connected with activities or practices which the Designer may deem to be detrimental to the general public, to the environment, or to the reputation of the Designer or the Society.

**Use of Work**

- The work carried out and materials created during the course of this project shall not be used for any purpose other than that which is set out in the agreement as to Use and Rights without prior approval of the Designer.
- In no circumstances may work in rough form be used or published by the Client as finished work or be used as a basis for completion by others, without the prior written consent of the Designer.

**Copyright and Ownership**

- Unless otherwise stated herein, all services provided and materials created in the course of this project by the Designer shall be for the exclusive use and benefit of the Client, other than for the promotional use of the Designer.
- The Designer is the first owner of all work or materials created during the course of this project. Copyright and other intellectual property rights, and all drawings, mockups, models, artwork, specifications, computer disks, electronic files, software documents and all other tangible materials, including preliminary concepts, accepted or rejected elements, works in progress, and finished materials which have been created or furnished by the Designer during the course of this project shall remain the exclusive property of the Designer unless otherwise specifically assigned in writing.
- As set out in the agreement as to Use and Rights and upon payment in full of all fees and disbursements, the Client is entitled to these specific usage rights for the purpose of reproduction of approved final designs, after which all materials shall be returned, unaltered, to the Designer within 30 days of use.
- Unless otherwise stated, the Designer retains the moral rights to all work created in the course of this project.

- All intellectual property rights and materials shall remain the property of the Designer, whether assigned or not, until all the Designer's invoices are paid in full.
- If the Client wishes to make additional use of the materials or ideas obtained therefrom, the Client agrees to seek permission from the Designer and to make such further payments as are agreed to by both parties at that time.
- Rejected designs shall remain the exclusive property of the Designer.
- The Designer retains all rights for use of the work or materials created in the course of this project in any new media or mediums which may emerge in the future.
- Where copyright or other intellectual property rights are acquired by the Client, the Designer shall, when requested, assist in the application for design and copyright registration. The costs of such assistance and action shall be borne solely by the Client.

**Conditions of Engagement**

- Fee quotations and proposals are subject to amendment or withdrawal by the Designer at any time prior to the signing of an agreement between the Client and the Designer.
- A signed agreement or other written confirmation of contract is required prior to the start of the project.
- The Client and the Designer each represent that they have full power and authority to enter into this agreement and that this agreement is binding upon the Client and Designer and enforceable in accordance with its terms.
- This agreement represents the entire agreement between the Client and the Designer, and may only be changed or modified in writing and with the approval of both parties.
- Neither the Client nor the Designer may assign or transfer their interest in this agreement without the written consent of the other.
- This agreement shall be binding upon both parties and their heirs, successors, personal representatives, and assigns.
- The waiver of a breach of any of the provisions of this agreement shall not be construed as a continuing waiver of other breaches or other provisions hereof.
- Schedules or time estimates are subject to change upon notification in writing by either party.
- Unless otherwise stated, the amount of written notice to be given by either party shall be two weeks.

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**Confidentiality**

- The Client agrees to provide any and all information having direct bearing on the successful outcome of the project, and to inform the Designer in writing of any portion of the project which is confidential.
- The Designer agrees to treat such information as confidential.

**Compensation**

- The Client shall pay the Designer an advance against the total fees payable as set out in the agreement as to Fees and Terms of Payment. This advance shall be applied to services as performed from the outset of the project until such time as services performed exceed the advance amount, at which point the Client will be invoiced for services rendered to date.
- The Client shall pay the remainder of the fees upon receipt of invoice, net 30 days on approved credit. Thereafter interest will be charged on overdue accounts at a rate of 2% per month.
- When a project is longer than 30 days, invoices shall be issued monthly for services rendered to date, or at set stages in the project as set out in the agreement as to Fees.

**Disbursements**

- The Client shall reimburse the Designer for all out-of-pocket expenses and disbursements incurred by the Designer in the course of this project as set out in the agreement as to Expenses. These expenses shall be billed at cost plus a percentage surcharge for account handling and supervision as indicated.
- Typical out-of-pocket expenses include, but are not limited to: typography; photostats and copies; presentation and artwork materials; digital proofs; digital file conversions; fax, modem and long-distance telephone charges; couriers, postage and shipping; and travel.
- Estimates for reimbursable expenses are for planning and budgeting purposes only. The Designer shall strive to work within stated budgets, but is not liable if expenses exceed estimates as a result of changes to the project's parameters.
- Upon the Client's request at the start of the project, records of all expenses shall be retained by the Designer and shall be made available to the Client for review upon completion of the project.

**Third-Party Contracts**

- The Designer may act on behalf of the Client to contract with other individuals or companies, to provide additional services such as, but not limited to writing, photography, illustration, pre-press services, printing, fabrication, programming, or manufacturing. The Client agrees to be bound by any terms and conditions of such contracts, including credits and usage rights, with respect to reproduction of the materials that may be claimed by these third parties.

**Rushed or Prolonged Work**

- Any work required in advance of an agreed schedule or timetable, any shortening of the contract period, or additional fees and expenses incurred during a project due to Client delays or extensions shall be charged and paid for at an additional rate agreed to in advance, or, failing agreement, at a reasonable rate to be determined at the discretion of the Designer.

**Materials Provided by the Client**

- The Client shall provide accurate and complete information and materials to the Designer, and guarantees and warrants that all materials are owned by the Client or that the Client has all necessary rights, including copyright and waiver of moral rights in such materials, to permit the Designer to use them for the project.
- All copy, photographs, artwork and other source materials submitted by the Client shall be of professional quality and in a form suitable for reproduction without further preparation or alteration. An additional charge may be made when materials are submitted by the Client in such a form which prevents them from being readily utilised.
- Copy provided by the Client on disk or as electronic files shall be readily usable. If the Client has specific requirements for how electronic files are to be prepared, the Client shall inform the Designer of same at the outset of the project.
- The Designer shall return all materials provided by the Client within 30 days after project completion and payment of all invoices.

**Client Approval**

- The Client shall appoint a sole representative with full authority to provide necessary information required by the Designer and to provide reasonable approvals.
- The Client shall proofread and approve all elements of final designs. Approval must be provided before production can continue. Corrections, if required, shall be identified on proofs, artwork, facsimiles, or drawings and are to be returned to the Designers marked "O.K." or "O.K. with correction," with the name or initials of the individual duly authorised to pass on same. If a copy of the revisions is required, a request must be made when the above mentioned articles are returned to the Designer.

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**Production**

- On all work where the Client assumes responsibility for production, printed proofs, cutting copies, prototypes and shop models must be approved by the Designer prior to use. The Designer shall be available at reasonable times to provide advice during the production period and for approval of minor modifications of the project which may be required.
- When the Designer is engaged in a supervisory capacity and assumes responsibility for production on behalf of the Client, the Client agrees to abide by decisions made by the Designer.
- When the Designer assumes responsibility for production, both the Designer and the Client shall be governed by recognised trade standards and customs.

**Revisions and Additions**

- Any revisions, additions, or alterations to the project modifying the terms of the agreement as the Services to be performed and not included in any fee specified, shall be billed as additional services. Such additional services shall include, but shall not be limited to, changes in the extent of work, changes in the complexity of any elements of the project, and any changes made after approval has been given for a specific stage of design, documentation, or preparation of artwork.
- The Designer shall keep the Client informed of additional services that are required, and shall request the Client's approval for any additional services which cause the total fees to exceed the fixed or estimated fees set forth in this agreement.

**Storage and Access**

- The Designer shall retain and store all final electronic files, finished artwork, drawings, and specifications for which specific reproduction rights have been granted, for a minimum period of 12 months after completion of the project. Upon expiration of this period, all such materials may be destroyed by the Designer, upon reasonable notification to the Client. The Designer is not responsible for information or materials lost or destroyed due to disk failure or other unforeseeable hazards.
- The Client shall have reasonable access to all stored materials for the purpose of review, and shall pay the Designer a reasonable fee for de-archiving or retrieving materials, should expenses be incurred.

**Modifications**

- No modifications or alterations to any designs or other work created by the Designer shall be made without written consent of the Designer. In the event that reprints are required, these shall not differ in any way from the originals supplied without the written consent of the Designer. Any modifications or alterations shall be carried out by or under the supervision of the Designer and shall be paid at a rate agreed to by both parties in advance.

**Design Credits**

- The Designer shall be entitled to claim authorship of a design, and a published or manufactured work shall bear a credit to the Designer at the discretion of the Designer. The Designer's consent in writing shall be obtained before the Designer's name is reproduced in any finished product or otherwise published by the Client.

**Samples and Copies**

- The Client shall provide the Designer with a reasonable number of samples, specimens, or photographs of each printed or manufactured design. These samples shall represent the highest quality of work produced.
- The designer shall have the right to use samples and make copies for publication, exhibition or other promotional purposes.

**Warranty**

- The Designer warrants that the work provided to the Client by the Designer is original. The Designer agrees to indemnify the Client in the event of any claim based on the breach of this warranty.

**Liability**

- The Designer is not responsible for errors or omissions in any work produced as per the Client's "O.K.". No financial responsibility is assumed by the Designer for errors or damages resulting from such errors.
- The Client will indemnify, defend, and save harmless the Designer against any claim, damages and expense, actions or causes of action arising from or prompted by the use of any material supplied to the Designer by the Client or its agents.

- All property belonging to the Client or its agents which is handled and stored by the Designer shall be done so at the Client's own risk.

- The Designer is not responsible for delays in delivery caused by acts of God, strikes, fires, floods or any other similar circumstances beyond the Designer's control.

**Arbitration**

- Either party may request that any dispute arising out of this agreement may be submitted to binding arbitration before a mutually agreed upon arbitrator. The arbitrator's decision or award shall be final.

**Termination**

- This agreement shall be terminated if either the Client or the Designer commits a breach and fails to remedy the breach within 14 days of receiving written notification from the other party specifying the breach and requiring its remedy.

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- On termination or postponement of this project, or any part of it, for any reason, the Client shall pay the Designer for the work completed to date, together with all expenses incurred. Any advance of fees will be credited against the amount due.
- In the event of termination, the Designer shall retain the copyright even if the fees agreed to in advance have included the assignment of the copyright.

**Applicable Law**

- This agreement and all terms and conditions shall be governed and construed in accordance with the laws of Canada and the laws of the province of the Designer's principal place of business.

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*director@descan.ca*

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