

---

# **ASSOCIATION OF CANADIAN ENGINEERING COMPANIES**

## **GUIDE TO THE ENGINEERING AGREEMENT BETWEEN CLIENT AND ENGINEER – DOCUMENT 31 – 2009**

---

### **Rights and Privileges**

This document is published under copyright by the Association of Canadian Engineering Companies (ACEC). It may not be reproduced or transmitted, in whole or in part, in any form or by any means without the expressed permission of ACEC.

*1981  
Revised 1991  
Addendum 1996  
Revised 2009*

---

## TABLE OF CONTENTS

A.	PREFACE .....	1
B.	ACKNOWLEDGEMENTS .....	1
C.	HOW TO USE THIS GUIDE .....	2
	Purpose.....	2
	Format.....	2
	Content .....	3
	Use of Supplementary Conditions .....	3
D.	AGREEMENT.....	4
E.	DEFINITIONS .....	4
F.	GENERAL CONDITIONS .....	4
G.	SCHEDULE A – ENGINEER’S SCOPE OF SERVICES.....	4
H.	SCHEDULE B – FEES AND REIMBURSABLE EXPENSES .....	4
I.	SPECIFIC COMMENTS REGARDING DOCUMENT 31 - 2009 .....	5
	AGREEMENT SECTION OF THE DOCUMENT.....	5
	DEFINITIONS .....	6
	GENERAL CONDITIONS .....	7
	SCHEDULE A – ENGINEER’S SCOPE OF SERVICES.....	22
	SCHEDULE B – FEES AND REIMBURSABLE EXPENSES .....	25

---

## **A. PREFACE**

These Guidelines were first prepared and issued to the various provincial engineering Associations more than twenty-five years ago, along with a new standard Client / Engineer contract known as Document 31. Since that time, there have been numerous developments in engineering and construction contracts and in the law which have had a significant impact on the practice of engineering and construction in Canada. These developments have been taken into account in the new 2009 edition of Document 31.

The overriding philosophy behind Document 31 continues to be provision of an equitable agreement between Client and Engineer that protects the interests of both.

## **B. ACKNOWLEDGEMENTS**

ACEC gratefully acknowledges the contribution of the following towards the publication of Document 31 and this Guide:

The ACEC Contract Committee

Chris Dunham, Chair  
David H. Kauffman, principal author

Committee Members

Nancy Belding	CH2M Hill Canada Limited
Chris Dunham	Dillon Consulting Limited
Derek Holloway	Encon Group Inc
Wayne Irwin	Dillon Consulting Limited
David H. Kauffman	De Grandpré Chait LLP
Jean-Luc Larocque	Dessau Soprin Inc
Charles Leonard	Black & McDonald
Mark Mitchell	Stantec Inc
Owen Pawson	Miller Thomson LLP
Louis-Martin Richer	Genivar GPM Inc.
Bryan Shapiro	Shapiro Hankinson & Knutson LLP
Jane Sidnell	Fraser Milner Casgrain LLP
Dave Thompson	KTA Structural Engineers

ACEC Administration

Jeff Morrison, President  
Susie Grynol, Director, Public Affairs and Business Practices  
Claude Paul Boivin, past President

---

## C. HOW TO USE THIS GUIDE

### Purpose

This Guide should be read by Clients as well as Engineers since Document 31 is intended to provide the Client with a clear understanding of the Engineering Agreement and to protect the Client in the design and construction process. Engineers are encouraged to give their Clients a copy of the Guide when introducing them to Document 31.

This Guide provides supplementary and explanatory information for the preparation and use of the 2009 edition of ACEC Document 31 – ENGINEERING AGREEMENT BETWEEN CLIENT AND ENGINEER.

Document 31 was prepared primarily for the following circumstances:

- where the Project is small to medium-sized;
- where the Engineer is the lead (prime) consultant, with the responsibility of directing other design professionals, being the first interpreter of Contract Documents, issuing certifications for payment, substantial performance of the work, etc.;
- where the Engineer is not the lead consultant, but one of several consultants retained by the Client;
- where construction is involved;
- where no construction is involved (e.g., feasibility studies, front-end engineering design, etc.);
- where the Services provided by the Engineer form part of a larger Project that extends beyond the scope of the Services to be provided by the Engineer.

### Format

Document 31 was created in 1981 and was last revised in 1996. From a presentation standpoint, the following guidelines were used in preparing the 2009 edition of Document 31:

- defined terms are capitalized and italicized;
- the document is gender neutral;
- “Plain English” is used as much as possible;
- the active tense, rather than the passive tense, is used throughout;

- 
- Schedules are used to identify and describe the Services and Fees;
  - the former distinction between “Basic Services” and “Additional Services” has not been retained. If a change to the Services is required, then Services may be added or reduced by means of a change order;
  - the document can be executed either in paper or electronic form;
  - for the first time, the document is available in English or French.

## **Content**

The Engineering Agreement between Client and Engineer is comprised of five basic parts:

- Agreement
- Definitions
- General Conditions
- Schedule A – Engineer’s Scope of Services
- Schedule B – Fees and Reimbursable Expenses.

Great care should be taken when modifying Document 31. A well thought-out reason lies behind each provision. A change in one place or an addition in another may create an ambiguity or produce an unintended result. Any significant alteration should be carefully considered and perhaps reviewed by legal counsel to ascertain its effect, to avoid inconsistencies with other parts of the Engineering Agreement that may lead to disputes and to ensure that the changes do not have the unintended effect of voiding or departing from the terms of the Engineer’s errors and omissions insurance policy.

## **Use of Supplementary Conditions**

Document 31 - 2009 presents engineering industry terms and conditions that are lawful, equitable and easily understood. Over time, users become familiar with the contents of the printed text.

Circumstances may arise where Document 31 – 2009 needs to be modified because certain provisions do not apply or require elaboration or change. Such modifications should not be made by notations added to the printed text or by striking out the printed text with which the users have become familiar. Rather, changes should be made by means of a separate document, generally referred to as Supplementary Conditions (or Supplementary General Conditions or Special Conditions). In this manner, the Supplementary Conditions stand out and clearly identify all deviations from the standard terms and conditions set out in the printed text of Document 31 - 2009.

Additionally, changes cannot be made to the electronic version of the Document, except to a limited extent in certain designed areas or fields.

---

For these reasons, the printed text should be left as it is, with all changes to the text (other than in the designated areas or fields) being made in Supplementary Conditions.

#### **D. AGREEMENT**

The Agreement portion of the Engineering Agreement identifies the basic contractual information necessary to create a contract between the Client and the Engineer. It identifies the parties, the project, the documentation that comprises the Engineering Agreement, the Services to be provided, the Fees and payment provisions, the language of the Agreement, successor parties, and also contains the signatory pages.

#### **E. DEFINITIONS**

The Definitions identify those terms and expressions that have a specific meaning through Document 31. Definitions are capitalized and/or italicized in the Engineering Agreement.

#### **F. GENERAL CONDITIONS**

The General Conditions of the Engineering Agreement contain the specific terms and conditions that determine the rights, duties, obligations and liabilities of the parties.

#### **G. SCHEDULE A – ENGINEER’S SCOPE OF SERVICES**

Schedule A identifies the Services the Engineer will provide under the Engineering Agreement. The scope of Services is presented in a listing format where the parties check those Services that are included or, for clarity, are not included in the Engineering Agreement. Space has been left to allow users to add other Services, comments or clarifications. Alternatively, users may replace the pages included in Schedule A with their own documentation describing the Services.

#### **H. SCHEDULE B – FEES AND REIMBURSABLE EXPENSES**

Schedule B identifies the methodology for determining the Fees and Reimbursable Expenses payable by the Client to the Engineer for the Services. Schedule B contains standard forms for the Client and Engineer to use. Space has been left to allow users to add other arrangements, comments or clarifications regarding Fees and Reimbursable Expenses. Alternatively, users

---

may replace Schedule B with their own documentation regarding Fees and Reimbursable Expenses.

## **I. SPECIFIC COMMENTS REGARDING DOCUMENT 31 - 2009**

### **AGREEMENT SECTION OF THE DOCUMENT**

The Agreement section of the document provides the key information that is necessary for the execution of the contract, such as:

- Date of the Agreement
- Names and Addresses of the parties
- A short description of the Project and the Place of the Work
- Documents that form the Agreement
- Interest applicable to unpaid invoices
- Addresses for receipt of Notices
- Signatory pages.

#### **Date of the Agreement**

The Engineering Agreement is dated “as of” a given date. This allows the contracting parties the option of using the actual signature date or, if they choose, to select an earlier date in order to take into account those situations where the Engineer has performed some Services before the Engineering Agreement is signed by the parties or of using a later date if the Services of the Engineer are not required until later.

#### **The Parties**

Care should be taken to insert the full and proper legal names of the Client and Engineer on the first page of the Agreement.

#### **Article A-3 - Engineering Agreement Documents**

Identify and list all documents to be incorporated into the Engineering Agreement. The list may include such items as Supplementary Conditions, other schedules, offers of service, submissions and proposals, arrangement for

---

---

compensation and other documentation concerning the mandate. The additional documents should be clearly described on the list. When inserting offers of service, submissions and proposals into the Engineering Agreement, it is important to ensure that these documents are not in conflict with the Engineer's mandate and responsibilities that are specified elsewhere in the Engineering Agreement. To the extent possible, avoid including documents which conflict with other parts of the Engineering Agreement. Try not to rely upon a hierarchy of documents (see GC 1.1) to resolve conflicts among the documents.

### **Article A-5 – Payment**

Insert the interest rate that is payable on overdue accounts. The duration of most Engineering projects is such that a fixed interest rate is practical. This is the simplest method for calculating interest. However, the parties may agree to a variable interest rate that is based on published reference rates (e.g., a certain percentage over the reference rate of a specific banking institution or Bank of Canada rate). An amendment to include a variable rate would require a change to Article 5.3 which should be made in Supplementary Conditions.

### **DEFINITIONS**

Document 31 contains definitions commonly found in Canadian construction industry contracts, such as the CCDC suite of contracts. Also included are definitions that are somewhat unique to Document 31. The following are comments on some of the Definitions.

#### **5. Construction Cost**

This definition is included in the event that the parties wish to base the Fee of the Engineer upon the cost of the Work. "**Work**" means the total construction and related services required under the Construction Contract (Definition 25). Work and related services included in the Construction Contract represent essentially the direct costs of construction.

#### **8. Coordinate or Coordination**

A definition has been added to clearly define the intent of the terms Coordinate or Coordination within the context of Document 31.

---

## **9. Engineering Agreement vis-à-vis 1. Construction Contract**

The definitions strive to distinguish, on the one hand, contracts between the Client and Contractor and, on the other hand, contracts between the Client and the Engineer. The contract between the Client and the Engineer is referred to as the *Engineering Agreement*. The contract between the Client and a Contractor is referred to as the *Construction Contract*.

The same distinction extends to documents: **10. Engineering Documents** vis-à-vis **3. Construction Contract Documents**. *Engineering Documents* has been added as a definition to identify the written instruments of service prepared by or on behalf of the Engineer for the execution of the Work. They may or may not be contained in the *Construction Contract Documents*.

## **18. Services**

The Engineering Agreement refers to Services without categorizing and dividing them into either Basic Services or Additional Services, as happened in the past or as some other organizations continue to do. The Agreement covers, simply said, the identified Services to be provided by the Engineer. Whether or not they are titled Basic or Additional is not relevant.

## **20. Sub-Consultant of the Engineer vis-à-vis 6. Consultant of the Client**

The Engineer may retain a Sub-Consultant. The Client may retain other consultants directly. To avoid the persistent problem of confusing these consultancy and sub-consultancy relationships, Document 31 refers to these parties in unmistakable fashion as either "Sub-Consultants of the Engineer" or as Consultants of the Client".

## **22. Suspension Expenses and 23. Termination Expenses**

Separate definitions have been added to identify the differences between expenses incurred for suspension of Services and those for termination of Services.

## **GENERAL CONDITIONS**

The General Conditions contain the specific terms and conditions of the Engineering Agreement.

As previously mentioned, where the General Conditions need to be amended, the parties should prepare Supplementary Conditions that supersede or

---

supplement the standard clauses set out in the General Conditions. A reference to these Supplementary Conditions should be listed in Article A-3 - ENGINEERING AGREEMENT DOCUMENTS. The hierarchy of documents outlined in General Condition GC 1.1 ensures that the Supplementary Conditions take precedence over the General Conditions in the event of a conflict of interpretation between the two.

## **Part 1 Agreement Documents**

**Part 1** delineates rules for the interpretation of the Engineering Agreement. It should be read in conjunction with Part 2 – LAW OF THE CONTRACT.

**GC 1.1** provides a hierarchy of the various documents making up the Engineering Agreement. When a conflict occurs within the various parts of the Engineering Agreement, GC 1.1 provides a rule of interpretation for resolving the conflict.

**GC 1.5.** Should users wish to refer to regulations and codes that are not the latest published versions of such regulations and codes as of the signature date of the Engineering Agreement, the correct reference date should be set out in Supplementary Conditions.

## **Part 2 Law of the Contract**

**Part 2** delineates the laws governing the interpretation of the Engineering Agreement.

**GC 2.1** states that the law of the Place of the Work will govern the interpretation of the Engineering Agreement in the event of a conflict as to its meaning. The governing law is that of the province or territory in which the work occurs, as well as federal laws applicable within that province. In rare situations, the Place of the Work may extend beyond the borders of one province or territory into other jurisdictions, specially if the Engineer is providing studies or designs for multiple locations. In this event, users should choose the law of a particular province or territory to govern the interpretation of the Engineering Agreement and the choice should be documented in Supplementary Conditions. Should an actual dispute arise, GC 15.6 provides that the parties agree to submit the matter to the exclusive jurisdiction of the courts in the Place of the Work if a dispute is to be resolved by the courts, or to mediation or arbitration at the Place of the Work if a dispute is to be resolved by mediation or arbitration.

**GC 2.2** has been added because the Engineer has a duty under law or under the rules governing the profession of engineering to inform the Client of the nature, extent and cost of the Services to be provided by the Engineer and to alert the

---

Client to the obligations which the Client assumes under the Engineering Agreement.

## **Part 5 Engineer's Responsibilities**

**Part 5** delineates in general terms the responsibilities of the Engineer and their parameters.

**GC 5.1** reminds users that the Engineer's obligation to respect the law and particularly any legislation governing the practice of engineering is paramount. No provision of the contract may prevent the Engineer from obeying the law.

**GC 5.2** indicates that Services must be provided with the degree of care, skill and diligence normally provided by engineers in the performance of comparable services for similar projects. The objective of this provision is to avoid specifying standards of care and skill ("first-class", "state of the art", "highest standards", "in accordance with best practices", etc.) that are excessively rigorous or impossible to define and difficult to measure.

**GC 5.7** applies to a situation where the Client asks the Engineer to utilize equipment or materials furnished by the Client, the characteristics or soundness of which may be unknown to the Engineer. At the request of the Engineer, the Client must have such equipment or materials tested. If the Client refuses, the Client alone is responsible for the consequences. Although GC 5.7 does not say so, an Engineer should protest in writing and refuse to use equipment or materials furnished by the Client that present safety concerns.

**GC 5.8** indicates that the Engineer may rely upon information and data that is furnished by the Client or by a Consultant of the Client. The Consultant of the Client is likely to be a professional, whose work the Engineer is not expected to redo. If the Client does not wish the Engineer to rely upon the accuracy of information or data supplied by the Client or a Consultant of the Client, the parties should say so expressly in Supplementary Conditions. GC 5.9 and GC 6.3 are complementary.

**GC 5.9** allows the Engineer to rely upon data from government authorities and public utilities and upon data and specifications from manufacturers and suppliers. In the event the Client does not wish the Engineer to rely upon such data and specifications, the parties should say so in Supplementary Conditions. GC 5.8 and GC 6.3 are complementary.

**GC 5.10** says that the Engineer is not responsible for manufacturing defects in equipment or materials procured by the Engineer on behalf of the Client. Where the Engineer procures equipment or materials on behalf of the Client, the Engineer often acts as the agent of the Client, with the Client (either directly or

---

indirectly through the Engineer) ordering and paying for the equipment and materials. In that latter event, GC 6.7 also applies. Under GC 6.7, the Client is responsible for the authorized actions of the Engineer who is acting as an agent of the Client.

**GC 5.12** addresses the situation where the Engineer (assuming the Engineer is not obliged to provide site Construction Administration Services) visits the site at the request of the Client and the Owner subsequently claims that the Engineer failed to detect a problem that was not connected to the purpose of the visit. If the Client wants to hold the Engineer accountable for matters relating to the declared purpose of the visit, GC 5.12 requires the Client to make a written request to the Engineer to attend at the site for the purpose specified by the Client, as long as the Engineer is competent to handle the request and as long as the request falls within the Services to be provided by the Engineer. This written request clarifies the objectives of the visit and resultant responsibilities of the parties. In some Canadian jurisdictions, a building permit will not be issued unless the Engineer has an existing contractual mandate to provide site Construction Administration Services.

## **Part 6 Client's Responsibilities**

**Part 6** delineates in general terms the responsibilities of the Client and their parameters.

**GC 6.3** should be read in conjunction with GC 5.8 and GC 5.9 regarding the ability of the Engineer to rely upon documents furnished by the Client, authorities, utilities and manufacturers.

**GC 6.5** allows the Engineer to terminate the contract should the Client fail to provide information or to retain the services of other specialists that are necessary in order for the Engineer to properly perform the Services under the Engineering Agreement (GC 6.4). The Engineer has the option of terminating the Engineering Agreement (e.g., where the Engineer considers that safety or other considerations warrant termination) or continuing without such information or other specialists but at the risk of the Client (e.g., where safety or other direct consequences are not involved).

**GC 6.7** covers situations where the Client asks the Engineer to procure equipment or materials or to hire trade contractors or labourers on behalf of the Owner. As suggested in CG 6.7, the Engineer should require a written authorization from the Client to proceed with the procurement, making it clear that the Engineer is acting as agent for the Client. This authorization should be communicated to the suppliers, trade contractors or workers that the Engineer has been asked to solicit or hire. By acting as agent, the Client remains responsible for the payment and other obligations that are owed to the suppliers,

---

trade contractors or workers. The Engineer is only responsible should the Engineer exceed the terms of the procurement mandate.

**GC 6.12** and **GC 6.13** address a troublesome area for engineers. A Client should not expect the Engineer to provide advice of a legal nature. Engineers often assist in organizing complex documents such as calls for tender, requests for proposals/information/qualifications and construction contracts containing terms and conditions of a juridical or legal nature that may affect the liability and risks of the parties to such documents. In assembling, interpreting and recommending these documents, an Engineer does not and should not intimate that such documents are compliant with prevailing laws. An Engineer should not dispense legal opinions or draft legal documents nor is the Engineer insured for dispensing legal opinions or drafting legal documents. The Client alone is responsible for obtaining legal advice regarding the validity of such documents and the procedures set out in such documents.

Another concern relates to recommendations made by the Engineer. It is appropriate for Engineers to provide recommendations to Clients. However, Engineers in several instances throughout Canada have been held responsible for recommendations that were given without adequate investigation or proper consideration of legal issues or for providing advice to the Client regarding the award of contracts without taking into account the applicable criteria and prerequisites. When called upon to provide a recommendation, an Engineer should limit such assistance to factual issues within the competency of the Engineer. The Client is responsible for seeking legal advice and for decisions relating to the award of contracts.

**GC 6.17** mentions that obtaining approvals, licenses and permits is a Client responsibility, as this activity does not normally form part of an Engineer's Services. The Engineer may assist in this regard, however, if such assistance is included in the Scope of Services (see Schedule A-1, 1.15).

## **Part 7 Construction Administration**

This Part of the Engineering Agreement applies only when the Construction Administration Services set out in Schedule A-7 – SERVICES have been checked as being included in the Engineering Agreement. If no Schedule A-7 – SERVICES are included, Part 7 of the Engineering Agreement does not apply even if it remains in the document.

**GC 7.2** states that Construction Administration Services provided by the Engineer are for the benefit of the Client. That is, the Engineer, in providing the Services, is not working for the Contractor, the architect or others involved in the project. Rather, the Engineer is working on behalf of the Client.

---

**GC 7.3** says that the Engineer is authorized to act on behalf of the Client within the scope of the agreed Services. Conversely, GC 7.3 implies that the Engineer is not obliged to perform Construction Administration Services that are not checked off in Schedule A-7. Should the Client wish the Engineer to perform additional Construction Administration Services after the Engineering Agreement has been signed, the Engineer and Client should mutually agree upon a change order authorizing the additional Services.

**GC 7.5** requires communications between the Client or Consultant of the Client, on the one hand, and the Contractor, on the other hand, to be transmitted *via* the Engineer, unless otherwise provided. The qualification “unless otherwise provided” is added because sometimes the Engineer will be the lead (prime) consultant and responsible for the majority of such communications or, at other times, the Engineer may not be the lead consultant so that communications between the Client and Consultants of the Client may be communicated to the Contractor by the architect or by other design professionals.

**GC 7.6**, in the same vein as GC 7.5, also uses the qualification “unless otherwise provided in the Construction Contract” at the end of the paragraph. The qualification contemplates a situation where the Engineer is the lead professional under the Construction Contract. For example, the Construction Contract may name the architect as being the first interpreter of the Contract Documents. Most likely, however, the Engineer will be the first interpreter of the Engineering Documents – but not necessarily. Hence, the qualification in this paragraph.

**GC 7.8** refers to the Engineer’s visits to the site. In the absence of a specific request by the Client to observe a particular issue (in this regard, see GC 5.12), visits by the Engineer to the site are intended to assess the general conformity of the Work to the Engineering Documents. An Engineer should refrain from commenting upon other Work that does not form part of the Engineer’s site review or mandate or which exceeds the Engineer’s competence. GC 7.8 also alerts the Client not to rely upon comments of the Engineer regarding Work which the Engineer did not review. If the Client wishes the Engineer to observe other aspects of the Work, GC 7.8 requires the Client to provide a written notice to the Engineer to conduct a review of other parts of the Work. This written notice clarifies the objectives of the review and resultant responsibilities of the parties.

Document 31 - 2009 mentions that the Engineer’s visits to the site are for the purpose of a “review” of the work for general conformity with the Engineering Documents. The previous edition of Document 31 said that the purpose was to “inspect” the Work. Inspection (as opposed to a “review”) connotes a more detailed examination to determine general conformity of the Work. Absent a specific written request by the Client to conduct an inspection, Document 31 - 2009 prefers the expression “review”. We recommend the consistent use of the expressions “to review” or “a review” in the Engineering Documents or

---

Supplementary Conditions to the Engineering Agreement or in other communication regarding Document 31.

**GC 7.11** instructs that the Contractor bears the primary responsibility for the proper performance of the Work. A Contractor may not rely upon the Engineer to detect defects in the performance of the Work by the Contractor. Nevertheless, the Engineer charged with supervisory duties under the Engineering Agreement may be responsible to the Client for not having detected a Contractor's defective workmanship. The purpose of GC 7.11 is to alert the Owner that the Contractor and Consultants of the Client have a primary responsibility to the Client for the proper performance of their work or services, even if the Engineer has certain oversight responsibilities under the Engineering Agreement.

**GC 7.12**, in the same vein as GC 7.8, specifies that the Engineer will "review" shop drawings for the limited purpose of ascertaining that the shop drawings generally conform with explicitly stated project requirements.

Shop drawings often contain information that is not directly related to the design aspects contained within the Engineering Documents. For example, shop drawings may contain information that concern fabrication processes or construction techniques in the field, which are outside the scope of the Engineer's duties and responsibilities. The Engineer should avoid wording his review of these submissions in such a way as to indicate his outright "approval" of the shop drawing submitted for review, which is tantamount to assuming full responsibility for them. The term "review" is suggested instead of "approve". Needless to say, professionals reviewing shop drawings should take the review procedure very seriously, as the rationale and purpose for the review is the protection of the Client.

**GC 7.13** deals with close-out drawings, such as "record drawings" or "as-built drawings", and the like. Record drawings and as-built plans may originate with the Engineer alone or they may be a compilation of plans, specifications, change orders and other documents and information prepared or provided by the Engineer and others, including the Contractor. Where the Engineer has to compile record drawings, as-built drawings and the like from different sources, GC 7.13 points out that the Engineer is not responsible for verifying the accuracy of the material submitted for compilation. Should an Owner require the Engineer to verify the accuracy of the compilation, this additional Service should be added to Schedule A – SERVICES with suitable compensation under Schedule B – FEES AND REIMBURSABLE EXPENSES.

## **Part 8     Certifications by the Engineer**

During the course of providing Services, the Engineer may be required by contract or by legislation to certify certain events, actions or results. Part 8

---

delineates in general terms some of the rights, obligations and limitations relating to certifications.

**GC 8.2** is a nonspecific clause that deals with all types of certifications that an Engineer may be required to give as part of the Services. Certifications may include the issuance of a certificate of substantial performance, a certificate of final completion and certificates for payment under the Construction Contract; the issuance of a range of certificates under the Contract Documents; or the issuance of certificates, attestations of compliance, letters of assurance, etc., required by local authorities and utilities. GC 8.2 requires the Engineer to issue such certificates with the degree of care, skill and diligence normally provided by engineers issuing comparable certifications for similar projects and based upon data reasonably available to the Engineer. This imposes upon the Engineer the duty to exercise reasonable diligence when issuing such certificates based upon information available to the Engineer from its own records or from others, while alerting the Client to the fact that the certification does not guarantee complete accuracy. An Engineer must bear in mind that guaranties and warranties – concepts that can be related to certifications – are excluded under most professional liability insurance policies.

**GC 8.3, 8.4** and **8.5** all deal with certificates for payment. These provisions may not apply when an architect or another design professional, and not the Engineer, is responsible under the Construction Contract Document to act as the payment certifier or as the lead consultant.

## **Part 9 Construction Cost and Time Estimates**

**Part 9** of the Engineering Agreement delineates some of the obligations and limitations that apply when the Engineer provides estimates relating to Construction Cost or Construction Contract Time – if providing such estimates forms part of the Services.

With the considerable variability in costs throughout the construction industry, providing estimates regarding Construction Cost or Construction Contract Time is an area of considerable risk for the Engineer. Engineers are reminded that professional liability insurance policies usually specifically exclude coverage for cost estimates which are exceeded. The Engineer must demonstrate that the estimate is a reasonable one. The estimate must take into account all reasonably known relevant factors, such as the cost of labour and materials, the scope of the project as initially envisaged by the Client, the inflation rate current at the time of the estimates, the complexity of the project, etc.

Good practice requires the Engineer to put estimates in writing. Estimates should be appropriately qualified to reflect the uncertainties inherent in estimates. The Engineer must appreciate that the Client may rely upon these estimates in

---

deciding upon the economic feasibility of the project. In turn, the Client must appreciate that the Engineer cannot guarantee the accuracy of the estimates. The services of a quantity surveyor may be required where the accuracy of an estimate as to quantities is an issue.

**GC 9.2** clarifies to users that these estimates are subject to change. Estimates should always be revised and updated on a continuing basis throughout the course of the Work.

## **Part 10 Termination and Suspension**

**Part 10** delineates in general terms the rights and entitlements of the parties where the Engineering Agreement is suspended or terminated. A decision to suspend or terminate the Engineering Agreement, whether taken by the Owner or the Engineer, is a momentous measure that should be taken carefully and after seeking legal advice.

**GC 10.2** covers the unfortunate circumstance of the death or incapacity of an Engineer who is a sole practitioner. Unlike an Engineer practising with a firm of engineers, an Engineer who is a sole practitioner may not have anyone who can assist or replace him or her in the event of death or incapacity. Consequently, GC 10.2 grants the Estate of a deceased Engineer or the representatives of an incapacitated Engineer in sole practice the ability to terminate the Engineering Agreement and thereby to be relieved from any further obligations to provide Services. Under these circumstances, the Client also may elect to terminate the Engineering Agreement. This may appear to represent a hardship for the Client who has to find a replacement elsewhere, but the termination clears the way for the Client to expeditiously find a replacement without being bound by the previous Engineering Agreement. Upon termination and payment, the Estate of the deceased Engineer or legal representatives of the Incapacitated Engineer are obliged by the laws governing the engineering profession to surrender the engineering documents in their possession to the Client who, in turn, may remit them to the replacement Engineer. GC 10.2 refers to the 'serious incapacity' of the Engineer, without attempting to define that expression. Any definition is problematic when circumstances may greatly vary. Both the length and the nature of the incapacity are factors. A definition based solely on length or solely on the seriousness of the incapacity may not be fair under all circumstances. Presumably the parties will define the indefinable in a compassionate and reasonable manner. If this issue is of particular concern, the matter may be addressed in Supplementary Conditions.

---

## **Part 11 Ownership and Use of Documents, Patents and Trademarks**

This section delineates the rights and obligations on the parties with respect to the ownership, use and misuse of the Engineering Documents and related proprietary rights of the Engineer. Once an Engineer produces a design, the Engineer has an instant copyright in the design, whether or not the copyright is formally registered.

**GC 11.1** and **GC 11.2** deal with the ownership of Engineering Documents, copyright and other intellectual property rights relating to the Services. Many formulations exist in different types of contracts with design professionals. Document 31 - 2009 takes the position that (a) the Engineering Documents (as defined) are the property of the Engineer, although the Client is entitled to a copy; (b) the copyright in the Engineering Documents and in the executed Work reflecting the Engineering Documents is the property of the Engineer, and (c) the intellectual property rights developed or used by the Engineer in performing the Services remain the property of the Engineer.

**GC 11.3** provides that the Client has a non-exclusive licence to use the copyright and other intellectual property rights of the Engineer resulting from the Engineer's Services for the life of the Project, but solely for purposes of maintenance and repairs of the Project.

**GC 11.4** contains a warranty by the Engineer that the work product of the Engineer does not infringe upon the patents, copyright and other intellectual property rights of other parties. This warranty is important for the Client because an infringement by the Engineer of the intellectual property rights of other parties may lead to complications and possibly legal proceedings that might jeopardize the progress or completion of the Project.

**GC 11.5** complements **GC 11.1**. Provincial laws or the regulations of associations or orders governing Engineers require Engineers to retain copies of their professional work product for varying periods of time.

**GC 11.6** and **GC 11.9** make it clear that the Engineering Documents are project-specific and are not to be used elsewhere without notifying the Engineer and securing the Engineer's consent. If the Client uses them elsewhere, the Client must compensate and indemnify the Engineer. Nonetheless, if the Client proposes to use the Engineering Documents elsewhere, the Engineer may refuse to consent should such use be inappropriate or the Engineer may establish conditions for its use elsewhere.

**GC 11.7** instructs the Client not to alter the Engineering Documents without authorization and, should the Client make or allow an unauthorized alteration, the Client must indemnify the Engineer for any claims arising from the unauthorized alteration. In other words, as **GC 11.7** cautions, the Engineer is not responsible

---

to the Client or to third parties for the consequences resulting from the improper alteration of the Engineering Documents.

**GC 11.8** plainly states that the Client is not entitled to use the Engineering Documents without having paid for them in accordance with the payment provisions of the Engineering Agreement. If the Client fails to pay the Engineer, the Engineer must notify the Client of the Client's default and allow a 30-day delay for correction of the payment default (GC 10.4). Should the Client persists in its default, the Engineer is entitled to (but not obliged to) terminate the Engineering Agreement under GC 10.4. Termination of the Engineering Agreement requires careful consideration as unintended consequences may result.

The Engineer also is entitled, under GC 11.8, to ask a court to issue an injunction to prevent the Client from using the Engineering Documents. Note that there are several types of injunctions, some of a more temporary or interim nature and some of a more permanent nature, which a court may grant in its discretion. Often an injunction is not available where an Engineer may be compensated monetarily and can seek recourse to recover monetary damages. Circumstances may arise, however, where the improper use of Engineering Documents may lead to safety issues or to infringement of intellectual property rights, where monetary compensation does not suffice or is inapplicable and an injunction to stop the use or appropriation of the Engineering Documents is an appropriate recourse.

## **Part 14 Insurance and Liability**

Part 14 deals with risk management, grouping together the provisions in the Engineering Agreement concerning insurance and liability. Very often, clauses regarding the indemnification of one party by the other party are added to a risk management section. The ACEC Contract Committee elected not to include any indemnification provisions in this Engineering Agreement for the principal reason that the right to indemnification exists by law. Indemnification clauses do not add substantively or significantly to the rights and recourses afforded to the parties by the law of the jurisdiction governing the Engineering Agreement (although they may affect procedures and legal and defence costs). Indemnification clauses would add a layer of complexity to the Engineering Agreement that the ACEC Contract Committee considered to be unnecessary.

### Insurance

Document 31 accepts as a basic premise that an Engineer will be insured and that a Client is entitled to know that the Engineer carries a certain amount of insurance which is available to the project envisaged by the Engineering Agreement. An Engineer should consult with an insurance broker or agent to

---

make sure that the policy meets the insurance requirements of Document 31 and to ascertain the adequacy of the Engineer's professional liability practice policy.

**GC 14.1** indicates that an engineer will carry professional liability insurance of \$250,000 per claim and \$500,000 in the aggregate within a policy year. In effect, these are minimum coverage limits. These amounts represent the lowest limits for professional liability insurance required by provincial engineering associations in Canada. Importantly, the coverage limit of \$250,000 per claim in GC 14.1 correlates with a component of the Engineer's limit of liability that is set out in GC 14.5 (b) (ii), a subject discussed in greater detail below.

As previously mentioned, the insurance coverage and limits set out in GC 14.1 should be reviewed by both the Client and the Engineer, in consultation with their insurance consultants, to ensure that the insurance coverage and limits reflected in Document 31 are appropriate for the project in question. If modifications are required, they should be set out in Supplementary Conditions.

**GC 14.2** offers the Client the possibility of increasing the professional liability insurance limits. At the Client's request, the Engineer must undertake to apply for the enhanced limits, if available, and the Client will pay the premium.

**GC 14.3** addresses a situation where the Engineer carries a professional liability practice policy of insurance that exceeds the minimum coverage limits that the Engineer must maintain under GC 14.1 of \$250,000 per claim and \$500,000 in the aggregate. For avoidance of doubt, GC 14.3 clarifies that the portion of the coverage under a practice policy which exceeds the minimum limits of coverage set out in GC 14.1 are not available to the Client. The Client must recognize that the Engineer likely is involved in multiple projects, so that it is not in the interest of the Engineer to dedicate all of its available insurance coverage to a single project. A Client who wishes to increase the coverage limits or the nature of the coverage for a specific project can request the Engineer to increase the coverage for that specific project at the expense of the Client under the mechanism set out at GC 14.2.

**GC 14.4** addresses a situation where the Engineer provides engineering, procurement or construction management services for a construction or renovation project. Few construction or renovation projects proceed without having in place typical construction insurance (namely liability insurance, often on a wrap-up basis, and broad form / builder's risk property insurance), whether provided by the Owner or the Contractor. Under many typical construction contracts, the construction insurance provided by the Owner or by the Contractor, as the case may be, usually will provide a coverage to the named design professional (or Consultant under CCDC contracts) as an additional insured. The Consultant frequently is the project architect and occasionally the lead (prime) project engineer.

---

This section also requires the Client to make sure that the typical project construction insurance will include the Engineer as an additional insured. Most often, inclusion of the Engineer will not represent an additional charge to the party supporting the premiums. By adding the Engineer as an additional insured under the project construction insurance program, in many instances the insurer will have a duty to defend all of the insured parties, including the Engineer. Even if the Engineer is added as an additional insured, the Engineer nonetheless should maintain its practice insurance and should consult with an insurance adviser to determine whether the Engineer is adequately covered. The project construction insurance program maintained by the Client will not cover the Engineer for errors and omissions/professional liability claims.

### Limitation of Liability

The nature of the engineering profession is such that errors and omissions do occur with varying consequences. These mistakes can put the Engineer at risk. The risk exposure of an Engineer on a project is not proportional to the revenue expectations of the Engineer from the project. That is, the fees earned by the Engineer are most likely to be disproportionately low compared to the monetary damages an Engineer would face to repair or compensate the Owner for the consequences of a mistake. An Engineer cannot risk the survival of its firm each time the Engineer enters into a contract by accepting full liability for the direct and indirect consequences of a professional error committed during the course of the project. By means of the limitation of liability provision in the Engineering Agreement, the Engineer and the Client share the risk. Below the agreed limitation of liability threshold, the Engineer alone supports the risk. Above the limitation of liability threshold, the Client supports the risk.

**GC 14.5** represents an important limitation of the Engineer's liability under the Engineering Agreement. Most provinces will permit the Engineer to limit liability, provided that the limitation is reasonable. Reasonableness often is a function of circumstances. For example, a limitation of liability based upon fees earned may be reasonable towards the end of a project, when earned fees are significant, and unreasonable at the beginning of a project when earned fees are nominal; a limitation of liability based upon proceeds of insurance may be unreasonable if there are no proceeds; a limitation of liability based upon a monetary threshold may be unreasonable if the monetary limit is unconscionably low.

With this perspective in mind, GC 14.5 of Document 31 establishes a limitation of liability that has two components: the first is a monetary limit and the second is an obligation to re-perform deficient Services. The first component, the monetary limit, is equal either to the amount of insurance required to be maintained under GC 14.1 (and GC 14.2, if applicable) or, if the claim is not covered by insurance, to the amount of \$250,000. This arrangement should reassure the Engineer and the Client that most claims against the Engineer alleging professional negligence are likely to be covered by the Engineer's professional negligence insurer. An

---

Owner who wishes to increase this component of the Engineer's limit of liability may do so by requiring the Engineer to subscribe for increased professional liability insurance in the manner provided for in GC 14.2. Where insurance does not cover the claim (because of the nature of the Services provided or because of the Engineer's failure to pay the premiums, etc.), then an uninsured claim against the Engineer is limited to the identical amount of \$250,000.

Over and above the first component of the limitation of liability, the Engineer also must re-perform any defective Services at the Engineer's expense. The Engineer benefits for several reasons in re-performing any defective Services rather than have such defective Services being re-performed by another engineer: the Engineer presumably can do so more quickly and less expensively than a replacement engineer and the Engineer, notwithstanding the error, is more likely to remain as the project engineer by correcting the defective Services.

The introductory paragraph to GC 14.5 clarifies that the Engineer's limitation of liability extends as well to the employees, agents, representatives and sub-consultants of the Engineer. Additionally, the introductory paragraph indicates that the Client cannot circumvent the Engineer's contractual limitation of liability, mutually agreed upon by the Client and Engineer in the Engineering Agreement, by making a claim against the Engineer based upon tort, negligence or under another theory of extra-contractual liability.

Despite the general lawfulness of a clear and reasonable limitation of liability provision, the Engineer must be aware that the protection of a limitation of liability is not usually available where the Engineer is grossly negligent, commits an intentional fault, acts fraudulently or is deemed to be liable by a statutory provision of strict liability.

**GC 14.7** reinforces the position (briefly mentioned in the introductory paragraph to GC 14.5), that in the event of a claim under the Engineering Contract only the engineering firm, whether a corporation or partnership, is liable. Individual members, shareholders or partners, employees or agents of the engineering firm are not liable. In the case of a partnership, however, the Engineer should seek advice from legal or accounting advisers to determine whether and to what extent an individual engineer may be exposed for partnership liabilities under the laws of the province governing the partnership. The position taken in GC 14.7 also is important because only the engineering firm, not the individual engineer, is responsible to the Client for the fault of the individual engineer who is employed or retained by the engineering firm (even though an individual engineer who signs or seals plans, specifications or reports may be personally accountable to authorities, regulators and the professional associations that have jurisdiction over the Engineer).

**GC 14.8** limits the liability of each party to the other to direct damages. Terms such as direct damages or indirect damages are impossible to define. Drawing a

---

line between direct damages and indirect damages is difficult and grey areas will abound. For that reason, examples of indirect damages (such as loss of profit, revenue, production, business, etc.) are expressed in GC 14.8 as a guideline.

**GC 14.9** clarifies that the Engineer is not responsible for dealing with Hazardous Substances, unless the parties explicitly agree otherwise in the scope of Services. The precautionary language in GC 14.9 is warranted because dealing with Hazardous Substances represents a high degree of risk which the parties should explicitly address in describing the Services. Special insurance requirements and costs associated with Hazardous Substances may have to be taken into account in Supplementary Conditions.

**GC 14.10** represents a reciprocal indemnity provision based upon the concept of proportionality of responsibility. The Client and the Engineer mutually agree to indemnify each other to the extent of their respective fault or negligence for claims of third parties, claims for breach of contractual obligations under the Engineering Agreement or for negligent or faulty acts or omissions. The obligation of the Engineer to indemnify the Client is subject to the limit of liability set out in GC 14.5.

Although good practice requires Engineers to carry commercial general liability, automobile liability insurance and, depending upon circumstances, other types of insurance (and possibly supplementary or umbrella insurance), they have not been included in Document 31. Some Clients may require the Engineer to provide specific types or levels of insurance, and those requirements may be included in Supplementary Conditions.

## **Part 15 Dispute Resolution**

This Engineering Agreement follows the dispute resolution chronology of negotiation, followed by mediation, followed by a choice between arbitration or litigation (adjudication). We recognize that good faith negotiation is the optimum mechanism. Mediation, by definition, is non binding. It is relatively inexpensive and expeditious. Should neither good faith negotiation or mediation succeed, the Client or the Engineer may refer the unresolved dispute to the courts or, by mutually agreement, to binding arbitration or to another form of dispute resolution. During roughly the last 40 years, arbitration was promoted in preference to litigation (adjudication) because arbitration was said to be simpler, swifter and less costly. Such has not proven universally to be the case. Although many Canadian construction contracts continue to propose binding arbitration where negotiation and mediation are unsuccessful, a recent trend in the United States and elsewhere is to revert to litigation as the default procedure where negotiation (and often mediation or conciliation) fails. Users who wish to modify the dispute resolution procedures set out in Part 15, should do so in Supplementary Conditions.

---

**GC 15.4** proposes that the parties utilize the *CCDC 40 – Rules for Mediation and Arbitration of Construction Disputes* to determine the ground rules for a mediation or an arbitration under Document 31. However, in one aspect GC 15.4 departs from the *CCDC 40 – Rules for Mediation and Arbitration* by stipulating that, in the case of arbitration, the arbitration will be conducted by a single arbitrator and not by a panel of three arbitrators. Document 31 has taken this position because arbitration before a panel of three arbitrators tends to be a cumbersome, lengthy and expensive process that is unwarranted save in the case of major projects. The parties are at liberty to propose different rules for mediation and arbitration other than CCDC 40 or to revert to arbitration before a panel of three arbitrators should they choose, which choice should be set out in Supplementary Conditions.

**GC 15.6** indicates that mediation, arbitration or litigation will occur at the Place of the Work, regardless of where the Client or the Engineer is located. Most likely, the Contractor, trades or others who may be involved in a dispute as participants or as witnesses are more readily available at the Place of the Work than if proceedings occurred wherever the Client or the Engineer is located.

## **Part 16 Payment**

This Part of the Engineering Agreement establishes the payment provisions for Service provided by the Engineer. It includes references as to how to handle disputed Fees and Reimbursable Expenses and how to deal with changes in Services.

## **SCHEDULE A – ENGINEER’S SCOPE OF SERVICES**

### **General**

In this Schedule, the Client and Engineer identify the scope of Services to be provided by the Engineer.

### **Use of the Tables**

Schedule A contains a series of modular tables listing typical Services provided by the Engineer. For intuitive convenience, the tables follow the order of a construction project that commences at the planning stage and leads to construction and close-out of the project. The layout and content of these tables is organized so that users are able to select those Services that are directly applicable to the project in hand. Since the tables are modular, an Engineer can use those tables which are appropriate to a limited scope of Services (e.g.,

---

Services related only to a study, or only to Construction Contract Administration or only to design).

The format of the tables in Schedule A obliges the Client and the Engineer to identify both those Services that are included and, for avoidance of doubt, those Services that which are not included. This is accomplished by selecting the appropriate box in the table for each specific Service or group of Services. Parties are required to initial each page of Schedule A.

The tables in Schedule A are not an exhaustive listing of all potential Services, but a reasonable reflection of Services for typical projects, whether or not involving construction. Users may modify or add to the lists in the tables as they deem necessary for their specific project. Space is provided for the users to insert additional Services or clarifications where necessary.

### **Replacement Pages**

Alternatively, the Client and Engineer may consider replacing any or all of the individual pages contained in Schedule A with their own lists or documentation outlining the *Engineer's Scope of Services*. Users are cautioned that any such additional or replacement pages or documents must properly reflect and describe the Client's and Engineer's understanding of the Services to be provided. Any documents that are added physically to, or incorporated by reference into, the Engineering Agreement should be noted at Article-3 - ENGINEERING AGREEMENTS DOCUMENTS or in Supplementary Conditions.

Additional or replacement pages or documents should not include contractual conditions that are normally a part of the General Conditions of the Engineering Agreement (for example changes to limitations of liability, insurance criteria, ownership of documents, etc). Document 31 – 2009 is organized so that the Agreement and the General Conditions take precedence over the Schedules. Conflicts may occur if additional or replacement pages or documents also contain general conditions that conflict with the General Conditions (or with any Supplementary Conditions agreed to by the Parties) of Document 31. As previously mentioned, proper contract drafting requires any additional or modified contractual conditions to be included in Supplementary Conditions.

### **Factors for Consideration**

When determining the Services to be provided, the parties should take into account that:

- a) the identified Services are predicated, where construction is involved, upon the Client entering into a single Construction

---

Contract. If multiple Construction Contracts are involved, the resulting complications of coordination, site safety and extra costs for the Engineer should be addressed in Supplementary Conditions;

- b) some identified Services are a function of whether the Engineer is acting either:
  - i) as the lead (prime) professional who has overall Project responsibilities; or
  - ii) as an Engineer who is subordinate to the lead (prime) professional. In the latter situation, the particular Services of the Engineer are limited to the Engineer's specialization under the Engineering Agreement.

### **Grouped Services**

In some tables of Services, various individual tasks have been combined into a single activity. For example in the list for *A-3 Conceptual Design Services*, all individual tasks [set out in (a) to (h)] are bundled into a single selection. In considering typical engineering projects, the ACEC Contracts Committee recognized that, in some circumstances, individual tasks are not normally performed in isolation from others. If users of the Engineering Agreement wish to unbundle some of these inclusive lists, then a hand marked-up sheet may be prepared including or excluding the individual tasks within a given grouping of Services.

### **Construction Services**

For the construction phase of a project, the Client and Engineer need to identify the level of Services to be provided. A typical project may include *Construction Administration Service (A-7 of Schedule A)*, *Construction Contract Resident Services (A-8 of Schedule A)*, and *Post Construction Engineering Services (A-9 of Schedule A)*. *Construction Administration Services* do not necessarily include *Construction Contract Resident Services* or *Post Construction Services*. Each is a distinct and separate activity that users need to select as being included in or excluded from the scope of Services.

*Construction Administration Services* normally include services related to Certifications by the Engineer.

---

*Construction Contract Resident Services* are considered to be “resident” or “at site” Services when the Engineer has office facilities and assigned staff on site full time for a continuous work period. Normally *Construction Contract Resident Services* support *Construction Administration Services* provided by the Engineer, but in some circumstances *Construction Contract Resident Services* may be provided by the Client, or a Consultant of the Client.

*Post Construction Engineering Services* are those services that normally occur after a construction contract has been “substantially performed”; as such term is defined in appropriate lien legislation or in the Construction Contract.

## **SCHEDULE B – FEES AND REIMBURSABLE EXPENSES**

### **General**

In Schedule B, the Client and Engineer identify the methodology for determining the Engineer’s remuneration for Services provided. Parties must initial each page of Schedule B.

When determining the Fees, the parties should take into account that:

- a) when construction is involved, Fees are predicated upon the Client entering into a single Construction Contract. If multiple Construction Contracts are involved, the resulting complications of coordination, site safety and the like may engender extra costs for the Engineer that should be addressed in Schedule B ;
- b) some Fees are a function of whether the Engineer is acting either:
  - i) as the lead (prime) professional with overall Project responsibilities; or
  - ii) as an Engineer who is subordinate to the lead professional.

Schedule B includes a series of tables presenting typical methodologies, based on hourly rates, fixed fees, and percentages of Construction Cost, for identifying or calculating fees for the Services provided by the Engineer. The tables contained in Schedule B are not an exhaustive listing of all potential fee calculation methodologies. Users of the Engineering Agreement may modify or add to the lists as they deem necessary for their specific project. Space is provided for the users to insert additional arrangements or clarifications where necessary.

---

## Replacement Pages

Alternatively, the Client and Engineer may consider replacing any or all of the individual pages contained in Schedule B with their own lists or documentation outlining the Engineer's Fees and Reimbursable Expenses. Users are cautioned that any such additional or replacement pages or documents must properly reflect and describe the Client's and Engineer's understanding of the Fees and Reimbursable Expenses. Any documents that are added either physically to, or incorporated by reference into, the Engineering Agreement should be noted at Article-3 - ENGINEERING AGREEMENTS DOCUMENTS or in Supplementary Conditions.

Additional or replacement pages or documents should not include contractual conditions that are normally a part of the General Conditions of the Engineering Agreement.

### B 1 Fees for Services

Schedule B includes a summary table at B 1 indicating which calculation methodology the parties have selected for a specific Service activity included in Schedule A – *Engineer's Scope of Services*.

Schedule B also includes a clear statement that Value Added Taxes are not included in Fees and Reimbursable Expenses, which is a standard practice in the industry. (Value Added Taxes are applicable, but are supplemental to Fees and Reimbursable Expenses. Normally, they should be shown as separate amounts on billings.)

#### B 1.1 Hourly Rate Fees

In sub-section B 1.1 dealing with *Hourly Rate Fees*, a typical list of staffing positions is included, with a provision for inserting the agreed corresponding hourly rates. This list may be amended by identifying alternate naming conventions for staffing positions or names of specific staff in the extra space to be found at the end of B 1.1.

Hourly Rates may require periodic adjustment due to the duration of a specific project. The sub-section includes a methodology for identifying the intent of the parties in these circumstances.

It should be noted that a remuneration calculation methodology based on salary multipliers is not included in Document 31 – 2009. The ACEC Contract Committee concluded that the rare use of this methodology in Projects of a medium and small size as well as concerns that divulging salary information may

---

infringe privacy legislation, are sufficient reasons to preclude this methodology from consideration in a standard Document.

## **B 1.2 Fixed Fees**

In sub-section B 1.2 dealing with *Fixed Fees*, a typical calculation methodology presents a single fixed fee, apportioned according to separate milestones or tasks that are measurable and defined. The users set the milestones. They may include the completion of a specific Service identified in Schedule A – *Engineer's Scope of Services* or a specific deliverable such as issuance of a report or set of drawings. As long as the milestone task or milestone deliverable is clearly identified and measurable, then it is may be included as a milestone date or event in the allocation methodology.

Where the Agreement requires the Engineer to provide advisory Services that cannot be measured or quantified in advance, such Services normally are invoiced on an hourly fee basis. They are not normally invoiced on a fixed fee basis unless there is a clear understanding between the Client and the Engineer to that effect. That understanding should be carefully documented in Schedule B or in Supplementary Conditions to the Engineering Agreement.

Fixed Fees may require periodic adjustment due to the duration of a specific project. The sub-section includes a methodology for identifying the intent of the parties in these circumstances.

## **B 1.3 Fee Based on Percentage of Construction Cost**

Document 31 – 2009 includes a fee calculation methodology based on a percentage of Construction Cost. The prevalence of this method for calculating fees varies across the country and the drafting committee deemed it appropriate to include some guidance as to its use and interpretation.

This calculation methodology is only appropriate where the intent of the project is to construct. This methodology is obviously inappropriate for consultations, studies, front end engineering design projects, etc., where construction is not immediately involved. Nor is this calculation methodology normally applicable to *Advisory Services, Engineering Project Services, Construction Contract Resident Services, or Post Construction Engineering Services*.

Where fees due to the Engineer are based on a percentage of the Construction Cost, the Fees need to be apportioned according to the various typical phases of the project. A method for determining the calculation of Construction Costs at each phase is included in B 1.3. The basis for the calculation changes with each phase of the Project. For that reason, the ACEC Contract Committee did not feel

---

it necessary to include a provision for amending the calculation methodology over the course of the Project.

## **B 2 Reimbursable Expenses**

Reimbursable Expenses are those costs and expenses related to the Services that are not normally included in the Fees, but which are a direct consequence of the provision of the Services.

Document 31 – 2009 includes a listing of typical costs and expenses that may fall into this category. Users may modify this list in the allotted space or by adding additional pages to Schedule B or in the Supplementary Conditions.

Administering the tabulation, back-up and invoicing of Reimbursable Expenses generates an overhead cost for the Engineer that is normally compensated by adding a percentage mark-up to cover office and administrative costs. This mark-up is mentioned in the introductory paragraph of B 2.

\*\*\*