



ASSOCIATION OF CONSULTING  
ENGINEERING COMPANIES | CANADA

**ASSOCIATION OF CONSULTING ENGINEERING COMPANIES-CANADA**

**DOCUMENT NO. 36 - 2012**

**ENGINEERING AGREEMENT BETWEEN CLIENT AND ENGINEER  
FOR STUDIES AND REPORTS**

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Users are advised to first consult with legal counsel prior to agreeing to any changes to the agreement outlined in this document.

1984  
Revised 1986  
Revised 2012

## **INTRODUCTION TO DOCUMENT 36**

This document is for use between an engineer and client to provide advice in connection with the analysis of the client's requirements. It is ideal for professional services that do not lead design or construction related situations.

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**ENGINEERING AGREEMENT BETWEEN CLIENT AND ENGINEER**

dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

by and between:

*(Insert legal name and address)*

hereinafter called the “*Client*”

**and:**

*(Insert legal name and address)*

hereinafter called the “*Engineer*”.

**AGREEMENT**

The *Client* and *Engineer* agree as follows:

**A-1 THE SERVICES**

1.1 The *Engineer* will provide *Services* in connection with the following *Project*:

*(Insert a short description of the Project)*

The location of the *Project* (the “*Place of the Project*”) is as follows:

*(Insert the address, location or legal description for the Project)*

1.2 The *Engineer* will provide *Services* for the *Project* in accordance with Schedule A – ENGINEER’S SCOPE OF SERVICES.

- 1.3 Any change to the *Services* listed in Schedule A – ENGINEER’S SCOPE OF SERVICES will be made by written order signed by both parties identifying the change plus adjustments, if any, to the *Engineer’s Fees* and *Reimbursable Expenses* and time for completion of the *Services*.

#### **A-2 AGREEMENT AND AMENDMENTS**

- 2.1 This *Engineering Agreement* constitutes the entire agreement between the *Client* and the *Engineer* relating to the *Project*, and supersedes all prior agreements between them, whether written or oral, respecting the *Services*. No other terms, conditions or warranties, whether express or implied, form a part of this *Engineering Agreement*.
- 2.2 This *Engineering Agreement* may be amended only by a written document signed by both the *Client* and the *Engineer*.

#### **A-3 ENGINEERING AGREEMENT DOCUMENTS**

- 3.1 The following sections and documents form part of and are incorporated into the *Engineering Agreement*:
- Agreement
  - Definitions
  - General Conditions
  - Schedule A - ENGINEER’S SCOPE OF SERVICES
  - Schedule B - FEES AND REIMBURSABLE EXPENSES

Other documents:

\*

*\*(Insert here, attaching additional pages if required, a list of all other sections and documents, including any supplementary conditions, other schedules and lists that are to be incorporated into the Engineering Agreement.)*

#### **A-4 FEES AND REIMBURSABLE EXPENSES**

- 4.1 The *Fees* for the *Services* of the *Engineer* are set forth in Schedule B – FEES AND REIMBURSABLE EXPENSES.
- 4.2 *Reimbursable Expenses* are the costs and charges identified in Schedule B – FEES AND REIMBURSABLE EXPENSES that are incurred by the *Engineer* in performing the *Services*.

**A-5 PAYMENT**

- 5.1 The *Client* will pay to the *Engineer* the *Fees* and *Reimbursable Expenses* set out in this *Engineering Agreement*.
- 5.2 The *Engineer* will issue monthly invoices for *Fees* and *Reimbursable Expenses*, together with applicable *Value Added Taxes*.
- 5.3 The *Engineer's* invoices are due when presented. Invoices unpaid by the *Client* 30 days after presentation will bear interest of \_\_\_\_\_ % per annum calculated monthly.

**A-6 NOTICES**

- 6.1 A *Notice* will be addressed to the recipient at the address set out below. The delivery of a *Notice* will be by personal delivery, receipted courier delivery or by facsimile. A *Notice* delivered by one party in accordance with this *Engineering Agreement* will be deemed to have been received by the other party on the first *Working Day* after actual delivery. An address for a party may be changed by *Notice* to the other party setting out the new address in accordance with this Article.
- 6.2 Although the parties may use electronic communications for the purposes of general communication, e-mail will not be used for delivery of a *Notice*.
- 6.3 The addresses for the parties are as follows:

*Client\**

*(name of Client)\**

*(address)*

*(facsimile number)*

*Engineer\**

*(name of Engineer)\**

*(address)*

*(facsimile number)*

*\*(If it is intended that a specific individual or officer must receive the Notice, indicate that individual's name and/or office.)*

**A-7 LANGUAGE OF THE CONTRACT**

- 7.1 *(For use in the Province of Quebec.)* The parties confirm their wish that this *Engineering Agreement* as well as any other related documents including future amendments, *Notices* and correspondence be drawn in English. Parts of the *Engineering Agreement* may be included as available in English or in French or both, according to the language or languages in which they originally were drawn.

*Les parties confirment leur volonté que cette convention de même que tous les documents s'y rattachant, y compris tous amendements, avis et correspondance futures, soient rédigés en anglais. Des portions de la Convention d'ingénierie sont incluses telles que disponibles, soit en français ou en anglais ou les deux, selon la langue ou les langues dans lesquelles la portion pertinente de la Convention d'ingénierie aura été rédigée à l'origine.*

**A-8 SUCCESSION**

- 8.1 This *Engineering Agreement* will inure to the benefit of and be binding upon the parties, and upon their executors, administrators, successors and permitted assigns.

*(Signatures next follow)*

**IN WITNESS WHEREOF** the parties hereto have executed this *Engineering Agreement* as of the day and year first above written.

**CLIENT**

**WITNESS**

*(only required where the Client is an individual)*

*name of Client*

*signature*

*signature*

*name and title of person signing*

*name and title of person signing*

*signature*

*signature*

*name and title of person signing*

*name and title of person signing*

**ENGINEER**

**WITNESS**

*(only required where the Engineer is an individual)*

*name of Engineer*

*signature*

*signature*

*name and title of person signing*

*name and title of person signing*

*signature*

*signature*

*name and title of person signing*

*name and title of person signing*

*Where legal jurisdiction, local practice, or Client or Engineer requirements calls for:*

- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Engineering Agreement for and on behalf of the corporation or partnership; or*
- (b) the affixing of a corporate seal, this Engineering Agreement should be properly sealed.*



## DEFINITIONS

**1. Consultant or Consultant of the Client**

*Consultant* or *Consultant of the Client* means a registered or licensed professional engineer, architect, or other specialist engaged directly by the *Client* other than the *Engineer* or *Sub-Consultants of the Engineer*.

**2. Coordinate or Coordination**

*Coordinate* or *Coordination*, when referring to the *Services* of the *Engineer*, means the management and supervision of communications between the *Engineer* and a *Sub-Consultant* or a *Consultant of the Client*.

**3. Engineering Agreement or Agreement**

*Engineering Agreement* or *Agreement* means this agreement between the *Client* and the *Engineer*, including all of the documents identified in Article A-3 ENGINEERING AGREEMENT DOCUMENTS and any amendments thereto.

**4. Engineering Documents**

*Engineering Documents* means drawings, plans, models, designs, specifications, reports, photographs, computer software if proprietary to the *Engineer*, surveys, calculations and other data, including computer print outs, used in connection with the *Project*, and which were prepared by or on behalf of the *Engineer* and are instruments of service for the execution of the *Project*.

**5. Fees**

*Fees* means those fees that are identified in Schedule B – FEES AND REIMBURSABLE EXPENSES and which are payable by the *Client* to the *Engineer*.

**6. Notice**

*Notice* means a written communication between the parties that is delivered in accordance with the provisions of Article A-6 – RECEIPT OF AND ADDRESSES FOR NOTICES. Use of the verb “**to notify**” means to send a *Notice* in the above manner.

**7. Place of the Project**

*Place of the Project* means the designated site or location of the *Project* identified in this *Engineering Agreement*.

**8. Project**

*Project* means the total endeavour contemplated in this *Engineering Agreement* of which the *Services* may be the whole or a part.

**9. Project Budget**

*Project Budget* means the estimated cost of the *Project*, including the *Services* and other professional services.

**10. Reimbursable Expenses**

*Reimbursable Expenses* means those expenses that are identified in Schedule B – FEES AND REIMBURSABLE EXPENSES and which are payable by the *Client* to the *Engineer*.

**11. Services**

*Services* means those services that are identified in Schedule A – ENGINEER’S SCOPE OF SERVICES.

**12. Sub-Consultant or Sub-Consultant of the Engineer**

*Sub-Consultant* or *Sub-Consultant of the Engineer* means any registered or licensed professional engineer, architect, or other specialist engaged by the *Engineer* to perform a discreet scope of services in connection with the *Project*, but does not include employees of the *Engineer* or consultants working under a personal services agreement with the *Engineer*.

**13. Suspension Expenses**

*Suspension Expenses* means expenses incurred by the *Engineer*, including demobilization and remobilization expenses, which are directly attributable to suspension of the *Services* by the *Client*.

**14. Termination Expenses**

*Termination Expenses* means expenses incurred by the *Engineer* which are directly attributable to termination of the *Services* and include the *Engineer’s* expenses reasonably and necessarily incurred in winding down the *Services*.

**15. Value Added Taxes**

*Value Added Taxes* means such sum as levied upon the *Fee* and *Reimbursable Expenses* by a Federal, Provincial or Territorial Government and is computed as a percentage of the same and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the payment or collection of which is imposed by legislation.

**16. Working Day**

*Working Day* means a day other than a Saturday, Sunday, statutory holiday or statutory vacation day that is observed by the construction industry in the area of the *Place of the Project*. Reference to a day, other than a *Working Day*, indicates a calendar day.

## GENERAL CONDITIONS

### PART 1 AGREEMENT DOCUMENTS

- GC 1.1 If there is a conflict within the *Engineering Agreement*, the order of priority of the documents which make up the *Engineering Agreement*, from highest to lowest, will be:
- (a) Agreement;
  - (b) Definitions;
  - (c) Any supplementary conditions to the General Conditions;
  - (d) General Conditions;
  - (e) Schedule A – ENGINEER’S SCOPE OF SERVICES;
  - (f) Schedule B – FEES AND REIMBURSABLE EXPENSES;
  - (g) Other schedules to the *Engineering Agreement*.
- GC 1.2 The documents which make up the *Engineering Agreement* are complementary, and what is required by any one will be as binding as if required by all.
- GC 1.3 Words and abbreviations with well known technical or trade meanings are used in the *Engineering Agreement Documents* in accordance with such recognized meanings.
- GC 1.4 References in the *Engineering Agreement Documents* to the singular will be considered to include the plural as the context requires.
- GC 1.5 References in the *Engineering Agreement Documents* to regulations and codes are considered to be references to the latest published version as of the signature date of the *Engineering Agreement*, unless otherwise indicated.

### PART 2 LAW OF THE CONTRACT

- GC 2.1 The law of the *Place of the Project* will govern the interpretation of the *Engineering Agreement*.
- GC 2.2 The *Client* acknowledges receipt of sufficient information from the *Engineer*, including information concerning the *Fees* and *Services* of the *Engineer*, so as to allow the *Client* to assess the nature, extent and cost of the *Services* of the *Engineer* and the obligations which the *Client* assumes under this *Engineering Agreement*.

**PART 3 RIGHTS AND REMEDIES**

- GC 3.1 Except as expressly provided in the *Engineering Agreement*, the duties and obligations imposed by the *Engineering Agreement* and the rights and remedies available thereunder will be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- GC 3.2 No action or failure to act by the *Client* or *Engineer* will constitute a waiver of a right or duty afforded or imposed under this *Engineering Agreement*, except as may be specifically specified in writing.

**PART 4 ASSIGNMENT**

- GC 4.1 Neither party may assign this *Engineering Agreement* in whole or part without the written consent of the other, which consent will not be unreasonably withheld.

**PART 5 ENGINEER'S RESPONSIBILITIES**

- GC 5.1 The *Engineer* is bound by the legislation governing the *Engineer's* profession. Nothing in this *Engineering Agreement* requires the *Engineer* to derogate from obligations prescribed by law that are binding upon the *Engineer*.
- GC 5.2 The *Engineer* will provide the *Services* in accordance with this *Engineering Agreement* and with the degree of care, skill, and diligence normally provided by engineers in the performance of comparable services in respect of projects of a similar nature to that contemplated by this *Engineering Agreement*.
- GC 5.3 The *Engineer* will maintain records of *Reimbursable Expenses* and time records for *Services* performed for which the *Fee* is computed on an hourly basis. These records will be maintained to acceptable accounting standards and made available to the *Client* at mutually convenient times during the term of this *Engineering Agreement* and for a period not exceeding one year following completion of the *Services*.
- GC 5.4 The *Engineer* will not be responsible for:
- (a) acts or omissions of the *Consultant of the Client* or any other consultant; or
  - (b) for the advice of any independent expert engaged by the *Client* whether or not recommended by the *Engineer*.
- GC 5.5 The *Engineer* may engage *Sub-Consultants* to enable the *Engineer* to provide the *Services*. Should the *Client* reasonably object to a *Sub-Consultant* engaged by the *Engineer*, the *Client* may request the *Engineer* to replace the *Sub-Consultant*. In this event, the *Client* will pay all costs resulting from termination and replacement of that *Sub-Consultant* and the parties will adjust the *Fees* and time for completion of the *Services* to take into account the termination and replacement.

- GC 5.6 The *Engineer* will *Coordinate* the activities of its *Sub-Consultants*.
- GC 5.7 The *Engineer* is entitled to rely upon the accuracy and completeness of information and data furnished by the *Client*, including information and data originating from a *Consultant of the Client*, whether such *Consultant* is engaged at the request of the *Engineer*, the *Client* or otherwise.
- GC 5.8 The *Engineer* is entitled to rely upon the accuracy and completeness of records, information, data and specifications furnished by:
- (a) government authorities and public utilities; and
  - (b) by manufacturers and suppliers of equipment, material or supplies.
- Should such records, information, data, and specifications prove to be erroneous or inaccurate the *Engineer* is entitled to make the necessary changes to the *Engineering Documents* at the expense of the *Client*.
- GC 5.9 The *Engineer* is not responsible for manufacturing defects in equipment, material or supplies specified or recommended by the *Engineer*.

## **PART 6 CLIENT'S RESPONSIBILITIES**

- GC 6.1 The *Client* will promptly fulfill all of the *Client's* responsibilities so as not to impede the *Engineer's* orderly performance of the *Services*.
- GC 6.2 The *Client* will fully advise the *Engineer* in writing of the *Client's* requirements in connection with the *Project*, including the *Project Budget* and time constraints of the *Client*.
- GC 6.3 The *Client*, when so *notified* by the *Engineer*, will make available to the *Engineer* all information or data pertinent to the *Project* which is required by the *Engineer* to perform the *Services*.
- GC 6.4 The *Client*, when so *notified* by the *Engineer*, will directly engage the services of one or more specialists to provide information or to perform ancillary services that are necessary to enable the *Engineer* to carry out the *Services*. Ancillary services may include, but are not limited to, topographic surveys and mapping of the *Place of the Project*, site services reports, technical investigations, geotechnical reports, quantity surveys and testing services. The parties will jointly agree on the selection of any such specialist.
- GC 6.5 Should the *Client* not provide the information required by the *Engineer* to perform the *Services* as mentioned in GC 6.3 or not accept the request of the *Engineer* to engage specialists as mentioned in GC 6.4, the *Engineer* will be entitled at the *Engineer's* option and upon a further *Notice* to the *Client* either to terminate this *Engineering Agreement* or to be relieved of any responsibility for the consequences of the *Client's* decision not to provide the information or to engage specialists as requested by the *Engineer*.

- GC 6.6 The *Client* will ensure that *Consultants of the Client* have adequate professional liability insurance, commensurate with the services they will provide for the *Project*.
- GC 6.7 Should the *Engineer* be required to act as the agent of the *Client* in order to perform some of the *Services*, the *Client* will authorize the *Engineer* in writing to act as the *Client's* agent for such purposes as may be necessary.
- GC 6.8 The *Client* will promptly consider requests by the *Engineer* for directions or decisions and inform the *Engineer* of the *Client's* direction or decision within a reasonable time so as not to delay the *Services*.
- GC 6.9 The *Client* will pay the *Engineer* as provided in this *Engineering Agreement*.
- GC 6.10 The *Client* will provide those legal, accounting, insurance, bonding and other counselling services which are necessary for the preparation of tenders or requests for proposals and the like or for the performance of other *Services* of the *Engineer*. If the *Client* is unable to provide such counselling services and requests the *Engineer* to do so, the *Client* will reimburse the *Engineer* for expenses incurred in obtaining any such counselling services.
- GC 6.11 The *Client* is responsible for obtaining legal advice regarding tenders, requests for a proposal or information, bids, contract awards and the like, regarding the *Project*. The *Client* is responsible for decisions relating to the issuance, validity or award of tenders, proposals or bids and for the resulting consequences, even where the *Services* require the *Engineer* to review or assist in the preparation of tenders, proposals or bids and the like or to make recommendations regarding them or regarding the qualification or selection of bidders.
- GC 6.12 The *Client* will arrange where necessary for the *Engineer's* access to the *Place of the Project* or other required locations to enable the *Engineer* to perform the *Services*.
- GC 6.13 The *Client* will designate in writing an individual to act as the *Client's* representative who will have authority to transmit instructions to and receive information from the *Engineer*.
- GC 6.14 The *Client* will promptly *notify* the *Engineer* whenever the *Client* or the *Client's* representative becomes aware of any defects or deficiencies in the *Services*, the *Engineering Documents* or in the *Construction Contract Documents*.
- GC 6.15 The *Client* will obtain any required approvals, licences, and permits from municipal, governmental or other authorities having jurisdiction over the *Project* so as not to delay the *Engineer* in the performance of the *Services*.
- GC 6.16 The *Client* will not enter into contracts with *Consultants of the Client* or *Contractors* that are incompatible or inconsistent with the *Services* to be provided under this *Engineering Agreement*.

## **PART 7 TERMINATION AND SUSPENSION**

- GC 7.1 This *Engineering Agreement* is terminated on the earliest of:

- (a) the date when the *Engineer* has performed all of the *Services*; or
  - (b) the date of termination if termination occurs in accordance with this PART 7 TERMINATION AND SUSPENSION.
- GC 7.2 If the *Engineer* is a natural person practicing alone (and not part of a company or a partnership) and should the *Engineer* die or become seriously incapacitated before having supplied all of the *Services*, either the *Client* or the estate or legal representative of the *Engineer* may terminate this *Engineering Agreement* upon *Notice* to the other, with effect from the date of decease or, in the case of serious incapacity, from the date of the *Notice* of termination.
- GC 7.3 If the *Engineer* is in material default in the performance of any of the *Engineer's* obligations under this *Engineering Agreement*, the *Client* will *notify* the *Engineer* that the default must be corrected. If the *Engineer* does not correct the default within 30 days after receipt of such *Notice* or if the *Engineer* does not take reasonable steps to correct the default if the default is not susceptible of immediate correction, the *Client* may terminate this *Engineering Agreement* upon further *Notice* to the *Engineer*, without prejudice to any other rights or recourses of the *Client*. Such termination will not release the *Client* from its obligation to pay all *Fees* and *Reimbursable Expenses* incurred by the *Engineer* up to the date of termination in the manner provided in this *Engineering Agreement*.
- GC 7.4 If the *Client* is in material default in the performance of any of the *Client's* obligations set forth in this *Engineering Agreement*, including but not limited to the non-payment of *Fees* and *Reimbursable Expenses* of the *Engineer* in the manner specified in this *Engineering Agreement*, the *Engineer* will *notify* the *Client* that the default must be corrected. If the *Client* does not correct the default within 30 days after receipt of such *Notice*, the *Engineer* may terminate this *Engineering Agreement* upon further *Notice* to the *Client*. In such event, the *Client* will promptly pay the *Fees* and *Reimbursable Expenses* of the *Engineer* that are incurred and unpaid as of the date of such termination, plus the *Termination Expenses*, without prejudice to any other rights or recourses of the *Engineer*.
- GC 7.5 If the *Client* is unwilling or unable to proceed with the *Project*, the *Client* may suspend or terminate this *Engineering Agreement* by *Notice* of 30 days to the *Engineer*. Upon receipt of such *Notice*, the *Engineer* will perform no further *Services* other than those reasonably necessary to suspend or terminate that portion of the *Project* for which the *Engineer* is responsible. In such event, the *Client* will pay all of the *Fees* and *Reimbursable Expenses* incurred by the *Engineer* up to the date of suspension or termination, plus the *Suspension Expenses* or *Termination Expenses*, as the case may be, in the manner provided for in this *Engineering Agreement*.
- GC 7.6 If the *Client* suspends performance of the *Services* at any time for more than 30 consecutive or non-consecutive days through no fault of the *Engineer*, then the *Engineer* may choose to terminate this *Engineering Agreement* upon *Notice* to the *Client*. In this event, the *Client* will promptly pay the *Fees* and *Reimbursable Expenses* of the *Engineer* that are incurred and unpaid as of the date of such termination, plus the *Termination Expenses*, without prejudice to any other rights or recourses of the *Engineer*.

**PART 8 OWNERSHIP AND USE OF DOCUMENTS, PATENTS AND TRADEMARKS**

- GC 8.1 The *Engineering Documents* are the property of the *Engineer* and the *Engineer* reserves the copyright therein. The *Client* is entitled to keep a copy of the *Engineering Documents* for its records.
- GC 8.2 The *Engineer* retains ownership of all patents, trademarks, copyrights, industrial or other intellectual property rights resulting from the *Services* or from concepts, products, or processes which are developed or first reduced to practice by the *Engineer* in performing the *Services*. The *Client* will not use, infringe or appropriate such proprietary rights without the prior consent and compensation of the *Engineer*.
- GC 8.3 Provided the *Fees* and *Reimbursable Expenses* of the *Engineer* are paid, the *Client* will have a non-exclusive license to use any proprietary concept, product or process of the *Engineer* which relates to or results from the *Services* for the life of the *Project* and solely for purposes of its maintenance and repair.
- GC 8.4 The *Engineering Documents* are not to be used on any other project without the prior written consent and compensation of the *Engineer*.
- GC 8.5 Should the *Client* use the *Engineering Documents* or provide them to third parties for purposes other than in connection with the *Project* without *notifying* the *Engineer* and without the *Engineer's* prior written consent, the *Engineer* will be entitled either to compensation for such improper use or to prevent such improper use, or to both. The *Client* will indemnify the *Engineer* against claims and costs (including legal costs) associated with such improper use. In no event will the *Engineer* be responsible for the consequences of any such improper use.
- GC 8.6 Should the *Client* alter the *Engineering Documents* without *notifying* the *Engineer* and without the *Engineer's* prior written consent, the *Client* will indemnify the *Engineer* against claims and costs (including legal costs) associated with such improper alteration. In no event will the *Engineer* be responsible for the consequences of any such improper alteration.
- GC 8.7 The *Client* may not use the *Engineering Documents* without having paid the *Fees* and *Reimbursable Expenses* of the *Engineer*. The *Engineer* is entitled to injunctive relief should the *Engineering Documents* be used without payment of the *Fees* and *Reimbursement Expenses* provided for in this *Engineering Agreement*.
- GC 8.8 The *Engineer* will retain the original of the *Engineering Documents* which are generated by the *Engineer*, including computer-generated designs relating thereto, but excluding any models or graphic presentations specifically commissioned and paid for by the *Client*.

**PART 9 CODES AND BY-LAWS**

- GC 9.1 In the event the *Services* require the *Engineer* to interpret codes and by-laws as they apply to the *Project*, the *Engineer* will interpret them as they exist at the time that the *Services* are performed to the best of the *Engineer's* ability. As the *Project* progresses, codes and by-laws may change or the interpretation by an authority having jurisdiction may differ from the



interpretation of the *Engineer*. In this event, the *Client* will compensate the *Engineer* for any additional *Services* of the *Engineer* that are required in order to have the *Project* conform to such changes or interpretations.

## **PART 10 PROJECT CONFIDENTIALITY**

GC 10.1 Information regarding the design, functionality, equipment, management, costs, or progress of the *Project* is confidential where one party has *notified* the other party of the confidential or proprietary nature of such information and where such information is not public knowledge. The parties agree not to disclose confidential information to third parties, except to the extent required for performance of the *Services* or where required by law or by mutual consent of the parties.

## **PART 11 INSURANCE AND LIABILITY**

GC 11.1 The *Engineer* will carry professional liability insurance of \$250,000 per claim and \$500,000 in the aggregate within any policy year. Coverage will be maintained continuously from the commencement of the *Services* until completion or termination of the *Services* and, subject to availability at reasonable cost, for 2 years after completion or termination of the *Services*.

GC 11.2 If the *Engineer* carries professional liability insurance for amounts greater than those specified in GC 11.1, such insurance will be available under this *Engineering Agreement* only up to the amount specified in GC 11.1.

GC 11.3 The *Engineer's* liability for claims which the *Client* has or may have against the *Engineer* or the *Engineer's* employees, agents, representatives and *Sub-Consultants* under this *Agreement*, whether these claims arise in contract, tort, negligence or under any other theory of liability, will be limited, notwithstanding any other provisions in this *Engineering Agreement*:

- (a) to claims brought within the limitation period prescribed by law in the jurisdiction in which the *Project* is located or, where permitted by law, within 2 years of completion or termination of the *Services*, whichever occurs first; and
- (b) to re-performance of defective *Services* by the *Engineer*, plus:
  - (i) where claims are covered by insurance under section GC 11.1; or
  - (ii) where claims are not covered by insurance under section GC 11.1 - to the amount of \$250,000.

GC 11.4 The *Engineer* will not be liable for the failure of any manufactured product or any manufactured or factory assembled system of components to perform in accordance with the manufacturer's specifications, product literature, or written documentation.

GC 11.5 Where the *Engineer* is a corporation or partnership, the *Client* and *Consultants of the Client* will limit any claim the *Client* may have to the corporation or partnership, without liability on

the part of any officer, director, member, employee, or agent of such corporation or partnership.

- GC 11.6 The *Client's* and the *Engineer's* liability with respect to any claim against each other will be limited to direct damages only and neither party will have any liability whatsoever for consequential or indirect loss or damage (such as, but not limited to, claims for loss of profit, revenue, production, business, contracts or opportunity and increased cost of capital, financing or overhead) incurred by the other party.
- GC 11.7 Subject to the limitations of liability set out in this *Engineering Agreement*, each party will indemnify the other party, to the extent of the fault or negligence of the indemnifying party, for damages and costs (including reasonable legal fees) resulting from:
- (a) claims of third parties; or
  - (b) a breach of contractual obligations under this *Engineering Agreement* by the indemnifying party or anyone for whom that party is responsible; or
  - (c) negligent or faulty acts or omissions of the indemnifying party or anyone for whom that party is responsible.

## **PART 12 DISPUTE RESOLUTION**

- GC 12.1 The parties will make reasonable efforts to resolve disputes arising under this *Engineering Agreement* by amicable negotiations. They agree to provide frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations, without prejudice to their rights and recourses.
- GC 12.2 If a dispute has not been resolved by negotiations, either party may request that the dispute be resolved by mediation by *notifying* the other party that it wishes the dispute to be resolved by mediation. If the parties are unable to agree upon the choice of a mediator, either party may apply to a superior court in the jurisdiction where the *Project* is located to appoint a mediator.
- GC 12.3 If one party does not agree to mediation or should mediation not resolve the dispute, either party may refer the unresolved dispute to the courts or, upon mutual agreement, to any other form of dispute resolution, including binding arbitration.
- GC 12.4 Unless the parties otherwise agree, any mediation or arbitration under this *Agreement* will be conducted in accordance with the latest edition of CCDC 40 - Rules for Mediation and Arbitration of Construction Disputes, as applied to and compatible with this *Engineering Agreement*, save that arbitration will be limited to a single arbitrator.
- GC 12.5 Any endeavour to resolve disputes arising out of this *Engineering Agreement* by negotiation, mediation or other means of dispute resolution, including arbitration, will be conducted on a confidential basis.
- GC 12.6 The parties will submit to the exclusive jurisdiction of the courts in *Place of the Project* if a dispute is to be resolved by the courts, or if the dispute is referred to mediation or arbitration,

such mediation or arbitration will be held at a location within the jurisdiction of the *Place of the Project*.

### **PART 13 PAYMENT**

- GC 13.1 The *Client* will pay to the *Engineer* the amount of the *Fees* and *Reimbursable Expenses* of the *Engineer* together with applicable *Value Added Taxes*, when invoiced by the *Engineer* for *Services* which have been rendered, in accordance with Article A5 – PAYMENT and Schedule B – FEES AND REIMBURSABLE EXPENSES.
- GC 13.2 In the event the *Client* disputes in good faith a portion of the *Fees* and *Reimbursable Expenses* invoiced by the *Engineer*, the *Client* will pay the uncontested portion within the prescribed time.
- GC 13.3 Disputes regarding *Fees* and *Reimbursable Expenses* of the *Engineer* will be resolved in the manner specified in PART 12 - DISPUTE RESOLUTION.
- GC 13.4 Should the *Client* request a change to the *Project* which requires the *Engineer* to provide additional *Services* beyond those contemplated at the time the *Engineering Agreement* is signed, before undertaking such additional *Services* the *Client* and the *Engineer* will agree in writing upon the *Engineer's* remuneration and time for providing the additional *Services*. Failing an agreement with the *Client*, the *Client* will pay the *Engineer* for the additional *Services* at the hourly rates set out in Schedule B – FEES AND REIMBURSABLE EXPENSES and any additional *Reimbursable Expenses* incurred, and grant a reasonable extension of time to the *Engineer* for the performance of the additional *Services*.
- GC 13.5 Should the *Client* request a change to the *Project* which renders useless a part of the *Services* already provided, the *Client* nonetheless will pay the *Engineer* in accordance with this *Engineering Agreement* for *Services* already provided which the change has rendered useless.
- GC 13.6 Should it prove necessary for the *Engineer* to rework or revise the *Engineering Documents* forming part of the *Services* for reasons which the *Engineer* could not reasonably foresee when the *Engineering Agreement* was signed, or owing to the default or the insolvency of the *Client*, or as a result of the *Client's* suspension of the *Services* on the *Project*, the *Client* will pay the *Engineer* for any reworked or revised *Engineering Documents* at the hourly rates set out in Schedule B – FEES AND REIMBURSABLE EXPENSES.

### **PART 14 SEVERABILITY**

- GC 14.1 If any provision of this *Engineering Agreement* is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision will be severed from this *Engineering Agreement* and the other provisions of this *Engineering Agreement* will remain in full force and effect.

*(End of the General Conditions. Schedules A and B next follow.)*

**SCHEDULES TO ACEC DOCUMENT 36**

**ENGINEERING AGREEMENT**

**BETWEEN CLIENT AND ENGINEER FOR STUDIES AND REPORTS**

**SCHEDULE A - ENGINEER'S SCOPE OF SERVICES**

**A 1. Project Definition**

The *Project* is described as follows:

*(Enter a detailed description of the project including definition of the Client's requirements, project deliverables and scheduling.)*

Initials	
<i>Client</i>	<i>Engineer</i>

**A 2. Services Required of the Engineer**

The *Client* requires the *Engineer* to provide the following *Services* for the *Project* described in Appendix Section A 1- Project Definition. The *Engineer* WILL PROVIDE those *Services* described below that are marked (X) in the column entitled YES and WILL NOT PROVIDE those *Services* which are marked (X) in the column entitled NO.

Description of Services		Yes	No
2.1	Consultation with the <i>Client</i> to define and clarify the <i>Client's</i> requirements for the <i>Project</i> .		
2.2	Compilation and analysis of existing background information provided by the <i>Client</i> .		
2.3	Identification of or arrangement for additional background information and services to be provided by the <i>Client</i> .		
2.4	Completion of the studies and/or preparation of the required reports in compliance with the <i>Project</i> definition.		
2.5	Assistance in the preparation of pre-construction <i>Project</i> operating cost budgets.		
2.6	Preparation for and/or attendance at a public participation or information program.		
2.7	Preparation for and/or participation in value engineering program studies.		
2.8	Preparation of reports relating to the <i>Client's</i> long-range plans.		
2.9	Preparation of operational studies.		
2.10	Provision of renderings.		
2.11	Provision of models.		
2.12	Provision of technical representation at meetings.		
2.13	Preparation of <i>Project</i> commissioning and start-up procedures.		
2.14	Preparation of applications and supporting documents for governmental grants, loans, and subsidies.		

Initials	
<i>Client</i>	<i>Engineer</i>

Description of Services		Yes	No
2.15	Assistance in obtaining required approvals, licences and permits from governmental authorities having jurisdiction over the <i>Project</i> .		
2.16	Arrangement for the translation of documents into a language other than the language of this <i>Engineering Agreement</i>		
2.17	Investigation of specified conditions (such as failures, accidents, groundwater and drainage issues, stability, etc.).		
2.18	Assistance in litigation, arbitration, negotiation, or other legal or administrative proceedings on behalf of the <i>Client</i> , including preparation or review of expert reports and expert testimony and all necessary preparation in respect thereof.		
2.19	Provision of peer review of documents provided by <i>Consultants of the Client</i> .		
2.20	Preparation of an engineering and <i>Project</i> implementation program based upon: a) the <i>Client's</i> written instructions regarding the <i>Project</i> requirements, b) the <i>Client's Project Budget</i> , and c) the <i>Client's</i> time constraints		
2.21	Preparation of a statement of requirements and <i>Project</i> design criteria to be used in the design process.		
2.22	Coordination of <i>Consultants of the Client</i> (where the <i>Engineer</i> is the lead professional).		
2.23	Participation in or preparation of specified <i>Project</i> feasibility studies.		
2.24	Preparation of and/or participation in environmental assessments and impact studies.		
2.25	Review of environmental assessments and impact studies prepared by others.		
2.26	Assistance in obtaining approvals of authorities having jurisdiction over the <i>Project</i> .		

Initials	
<i>Client</i>	<i>Engineer</i>

**Description of Services (Cont'd)**

*Enter here any other Services or references to them in documents (i.e. such as assisting the Client with Requests for Proposals, Terms of Reference, Statements of Requirements, or Engineering Requests for Proposal for Services) describing the scope of other services for the Project. Attach additional pages if required.*

Initials	
<i>Client</i>	<i>Engineer</i>



**SCHEDULE B – FEES AND REIMBURSABLE EXPENSES**

**B 1. Fees for Services**

The following table identifies the method for determining the *Fees* due to the *Engineer* under this *Engineering Agreement* for the *Services* described in Schedule A:

Engineer’s Services (Refer to Schedule A)		Select Fee Basis Applicable to this Agreement	
		Hourly Rate Fees (B 1.1)	Fixed Fees (B 1.2)
A 2	Services Required of the Engineer		

Refer to Sections B 1.1 and B 1.2 for a detailed description of the method for calculating the *Fees* due to the *Engineer*.

*Reimbursable Expenses* (Section B 2) are additional to the *Fees* due to the *Engineer*.

*Value added taxes* are not included in *Fees* and *Reimbursable Expenses*.

**B 1.1. Hourly Rate Fees**

Hourly Rate *Fees* will be calculated on an hourly basis as the *Project* progresses at the following rates:

- a) Principals \$ per hour
- b) Senior staff \$ per hour
- c) Intermediate staff \$ per hour
- d) Junior staff \$ per hour
- e) Clerical \$ per hour
- f) \$ per hour
- g) \$ per hour
- h) \$ per hour

The rates in this table will be applicable for (*select one*):

the duration of the *Engineering Agreement*

twelve months from the effective date of this *Agreement* at which time the rates will be increased by % , unless otherwise agreed in writing by the parties

other (*specify*)

Initials	
<i>Client</i>	<i>Engineer</i>

*(Enter additional provisions below. Append extra pages if required.)*

**B 1.2. Fixed Fees**

*Fees* for the project will be calculated as a fixed fee of \$ \_\_\_\_\_, appportioned as follows:

	Percentage	Milestone/Task
•	% of fee for	
•	% of fee for	
•	% of fee for	
•	% of fee for	
•	% of fee for	
•	% of fee for	
•	% of fee for	

The *Fees* in this table will be applicable for (*select one*):

the duration of the *Engineering Agreement*

twelve months from the effective date of this *Agreement* at which time the rates will be increased by \_\_\_\_\_%, unless otherwise agreed in writing by the parties

other (specify)

Initials	
<i>Client</i>	<i>Engineer</i>

*(Enter additional provisions below. Append extra pages if required.)*

**B 2. Reimbursable Expenses**

*Reimbursable Expenses* incurred by the *Engineer* in carrying out the *Services* are subject to a mark-up of % to cover office and administrative costs of the *Engineer* - unless otherwise agreed as follows:

*(if applicable, indicate alternate methods for determining Reimbursable Expenses)*

*Reimbursable Expenses* include the following expenses where incurred in relation to the performance of the *Services*:

- Transport, subsistence, and lodging in connection with the *Project* beyond                      kilometres of the *Engineer's* office. Use of vehicles will be charged at \$                      per kilometre.
- Long distance telephone and facsimile communications.
- Reproduction of information, drawings, specifications, and other documents necessary to the *Project*.
- Testing services.
- Courier and messenger services.
- Fees paid for securing approvals, permits, or licences from regulatory agencies having jurisdiction over the *Project*.
- Providing and maintaining *Project* site offices, telephones, facsimile as required for use by the *Engineer* and *Sub-Consultants of the Engineer*.
- Advertising incidental to the *Project*.
- Obtaining necessary legal, accounting, insurance, bonding, and other counselling services pertaining to the *Project*.

Initials	
<i>Client</i>	<i>Engineer</i>

- Specialized *Project* specific computer hardware and software charges and related expenses as agreed to between the *Client* and the *Engineer*.
- Customs, excise, or any other taxes incurred by the Engineer with respect to the *Services*, but excluding *Value Added Taxes*.
- Fees and disbursements of *Sub-consultants* required in the performance of the *Services* where not included in the *Fees* in connection with the *Project*.
- Costs incurred by the *Engineer* in the performance of *Services* in connection with the *Project* where the *Engineer* has obtained the prior written approval of the *Client*.

*Enter below additional descriptions to be used. Append additional sheets if required.*

Initials	
<i>Client</i>	<i>Engineer</i>