



ASSOCIATION OF CONSULTING  
ENGINEERING COMPANIES | CANADA

**ASSOCIATION OF CONSULTING ENGINEERING COMPANIES–CANADA**

**DOCUMENT NO. 39 - 2018**

**AGREEMENT BETWEEN OWNER AND ADVISING (OWNER’S) ENGINEER  
FOR DESIGN-BUILD PROJECTS**

### **Rights and Privileges**

This document is published under copyright by the Association of Consulting Engineering Companies–Canada (ACEC). Permission is granted exclusively to ACEC members to copy and/or distribute this document for its intended use. Users contemplating changes to the agreement outlined in this document may, and are encouraged to, append supplementary conditions to the document.

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

1999  
Revised 2012  
Revised 2018

## INTRODUCTION TO DOCUMENT 39

1. An *Owner* may not have the knowledge, expertise or experience to manage a design-build project. The *Owner* may seek to retain the services of a professional engineer (called the *Advising Engineer*) to provide advice to the *Owner* with respect to management of a design-build project. A design-build project may take many forms, whether it be a traditional Design-Build (DB) project or one being performed under an Engineering, Procurement and Construction (EPC) or Engineering, Procurement and Construction Management (EPCM) or the DB component of a Public-Private Partnership (PPP) delivery method, where the project is taken from the initial planning through construction by using a single design-constructor team. Document 39 is a contract that can be used by an *Owner* to retain a professional engineer to provide advice to the *Owner* with respect to management of a design-build project.
2. Document 39 is suitable for use in both private sector and public sector projects.
3. Design-Build projects tend to be larger in scope and value than regular construction projects. Consequently, Document 39 is adjusted for use in connection with larger project. This is reflected throughout the Document. Notably, the levels of insurance and limitation of liability are greater than those found in other ACEC contract document forms.
4. Attention should be paid to the words *Work* and *Project*. The DB *Work* may be only part of the *Project*. Should the *Owner* retain the professional engineer to advise on the *Project* as a whole, Document 39 would have to be expanded to cover advisory services beyond the scope of the DB *Work*.
5. A *Design-Builder* utilizes its own architects and engineers to provide the design and supervision services required for the DB *Work*. Accordingly, Document 39 assumes that the *Advising Engineer* will NOT be providing design or supervision services but will be sufficiently informed as to progress so as to be able to certify payments and completion.
6. Document 39 should not be used where an *Owner* retains the services of a party who is not a professional engineer to provide the functions contained in Document 39 (for instance, the insurance and liability provisions are not suitable to non-engineers).
7. Document 39 is based upon the ACEC Document 31 suite of documents in form and structure, but in some areas the content differs significantly as previously mentioned. As is the case with the entire ACEC suite of contract documents, Document 39 may be modified by means of supplementary conditions to take into account project specific issues.
8. Schedule A – ADVISING ENGINEERS SCOPE OF SERVICES and Schedule B – FEES AND REIMBURSABLE EXPENSES have been adjusted generically for design-build projects. The scope of services for the multiple types of design-build projects may vary considerably. Users have the ability to adjust these Schedules in the spaces allotted within the Schedules for changes or users may replace them by means of their own scope of services and fee schedules.

**TABLE OF CONTENTS**

<b>AGREEMENT .....</b>	<b>1</b>	<b>GENERAL CONDITIONS .....</b>	<b>10</b>
A-1 The Services .....	1	Part 1 Agreement Documents.....	10
A-2 Agreement and Amendments .....	2	Part 2 Law of the Contract .....	10
A-3 Agreement Documents .....	2	Part 3 Rights and Remedies.....	11
A-4 Fees and Reimbursable Expenses .....	2	Part 4 Assignment .....	11
A-5 Payment.....	3	Part 5 Advising Engineer’s Responsibilities....	11
A-6 Notices .....	3	Part 6 Owner’s Responsibilities .....	13
A-7 Language of the Contract .....	4	Part 7 Administration, Coordination and Field Services .....	15
A-8 Succession .....	4	Part 8 Certifications by the Advising Engineer	16
<b>DEFINITIONS .....</b>	<b>6</b>	Part 9 Preliminary Cost and Time Estimates....	17
1. Advising Engineer Documents.....	6	Part 10 Termination and Suspension.....	17
2. Agreement .....	6	Part 11 Ownership and Use of Documents, Patents and Trademarks.....	18
3. Consultant or Consultant of the Owner.....	6	Part 12 Project Ownership, Identification and Confidentiality .....	19
4. Contract Documents.....	6	Part 13 Insurance and Liability .....	19
5. Coordinate or Coordination.....	6	Part 14 Dispute Resolution.....	21
6. Cost of the Work .....	6	Part 15 Payment .....	22
7. Design-Build Contract .....	7	Part 16 Severability .....	22
8. Design-Builder .....	7		
9. Fees .....	7	<b>SCHEDULE A – ADVISING ENGINEER’S SCOPE OF SERVICES.....</b>	<b>A-1</b>
10. Field Services .....	7		
11. Hazardous Substances .....	7	<b>SCHEDULE B - FEES AND REIMBIRSABLE EXPENSES.....</b>	<b>B-1</b>
12. Notice .....	7		
13. Owner's Statement of Requirements .....	8		
14. Place of the Work.....	8		
15. Project .....	8		
16. Reimbursable Expenses.....	8		
17. Services .....	8		
18. Shop Drawings.....	8		
19. Sub-Consultant or Sub-Consultant of the Advising Engineer.....	8		
20. Substantial Performance of the Work .....	8		
21. Suspension Expenses .....	8		
22. Termination Expenses.....	9		
23. Value Added Taxes .....	9		
24. Work.....	9		
25. Working Day.....	9		

**AGREEMENT BETWEEN OWNER AND ADVISING ENGINEER FOR DESIGN-BUILD PROJECTS**

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

by and between:

*(Insert legal name and address)*

hereinafter called the “*Owner*”

**and:**

*(Insert legal name and address)*

hereinafter called the “*Advising Engineer*”.

**AGREEMENT**

The *Owner* and *Advising Engineer* agree as follows:

**A-1 THE SERVICES**

1.1 The *Advising 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 Work*”) is as follows:

*(Insert the address, location or legal description of the site of the Work)*

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

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

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

- 2.1 This *Agreement* constitutes the entire agreement between the *Owner* and the *Advising Engineer* relating to the *Work*, 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 *Agreement*.
- 2.2 This *Agreement* may be amended only by a written document signed by both the *Owner* and the *Advising Engineer*.

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

- 3.1 The following sections and documents form part of and are incorporated into the *Agreement*:

- Agreement
- Definitions
- General Conditions
- Schedule A – ADVISING 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 Agreement.)*

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

- 4.1 The *Fees* for the *Services* of the *Advising 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 *Advising Engineer* in performing the *Services*.

**A-5 PAYMENT**

- 5.1 The *Owner* will pay to the *Advising Engineer* the *Fees* and *Reimbursable Expenses* set out in this *Agreement*.
- 5.2 The *Advising Engineer* will issue monthly invoices for *Fees* and *Reimbursable Expenses*, together with applicable *Value Added Taxes*.
- 5.3 The *Advising Engineer's* invoices are due when presented. Invoices unpaid by the *Owner* 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 *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:

*Owner*\*

*(name of Owner)*\*

*(address)*

*(facsimile number)*

*Advising Engineer*\*

*(name of Advising 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 *Agreement* as well as any other related documents including future amendments, *Notices* and correspondence be drawn in English. Parts of the *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 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 aura été rédigée à l'origine.*

**A-8 SUCCESSION**

- 8.1 This *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 *Agreement* as of the day and year first above written.

**OWNER**

**WITNESS**

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

*name of Owner*

*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*

**ADVISING ENGINEER**

**WITNESS**

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

*name of Advising 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 Owner or Advising 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 Agreement for and on behalf of the corporation or partnership; or*
- (b) the affixing of a corporate seal, this Agreement should be properly sealed.*



## DEFINITIONS

### 1. **Advising Engineer Documents**

*Advising Engineer Documents* means drawings, plans, models, designs, specifications, reports, photographs, computer software if proprietary to the *Advising Engineer*, surveys, calculations and other data, including computer print outs, whether contained in the *Owner's Statement of Requirements*, or elsewhere in connection with the *Work*, and which were prepared by or on behalf of the *Advising Engineer* with respect to the *Work* or as instruments of service for the execution of the *Work*.

### 2. **Agreement**

*Agreement* means this *Agreement* between the *Owner* and the *Advising Engineer*, including all of the documents identified in Article A-3 AGREEMENT DOCUMENTS and any amendments thereto.

### 3. **Consultant or Consultant of the Owner**

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

### 4. **Contract Documents**

*Contract Documents* means all of the documents relating to the *Design-Build Contract*, including the agreement, definitions, the general conditions, the supplementary conditions if any, the *Owner's Statement of Requirements*, and all of the drawings, specifications, reports and documents that are prepared by or for the *Design-Builder* based on the *Design-Build Contract*.

### 5. **Coordinate or Coordination**

*Coordinate* or *Coordination*, when referring to the *Services* of the *Advising Engineer*, means the management and supervision of communications between the *Advising Engineer* and *Sub-Consultants of the Advising Engineer* or *Consultants of the Owner*.

### 6. **Cost of the Work**

*Cost of the Work* means the total cost to the *Owner* for the design and construction of the *Work*, and includes without duplication:

- (a) all materials, equipment, labour and professional design services (other than professional services directly engaged by the *Owner*), as well as overhead and profit, provided in accordance with the *Contract Documents*;
- (b) the cost of activities by the *Owner* for: construction; procurement and purchase of materials, equipment and labour; and provision of professional and technical services, at the request of or in lieu of the *Design-Builder* or which are directly connected to and necessary for the performance of the *Work* of the *Design-Builder*;
- (c) the value of new or old materials provided by the *Owner* to the *Design-Builder*;
- (d) the value of any deletions made by the *Owner* from the scope of the *Work* after the *Design-Builder* has completed a design for those deleted items of the *Work*; and

- (e) the value of any monetary damages or set offs retained by the *Owner* the with respect to the *Work*;

but does not include:

- (f) the cost of other *Project* activities not identified in the foregoing;
- (g) *Fees and Reimbursable Expenses* of the *Advising Engineer*;
- (h) the fees and reimbursable expenses of the *Consultant of the Owner*;
- (i) the salary of the *Owner's* representative or other salary and administrative costs of the *Owner*;
- (j) the cost of land and any related rights, easements and servitudes.

## **7. Design-Build Contract**

*Design-Build Contract* means the contract entered into between the *Owner* and the *Design-Builder* whereby the *Design-Builder* agrees to provide the design and construction of the *Work* including, the production, provision or procurement of design, labour, materials, products, equipment and services necessary for the execution of the *Work*.

## **8. Design-Builder**

*Design-Builder* is the party entering into a *Design-Build Contract* with the *Owner* for the design and construction of the *Work*.

## **9. Fees**

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

## **10. Field Services**

*Field Services* means those *Services*, if any, identified in Schedule A – ADVISING ENGINEER'S SCOPE OF SERVICES.

## **11. Hazardous Substances**

*Hazardous Substances* means any toxic or hazardous solid, liquid, gaseous, thermal, or electromagnetic irritant or contaminant, and includes, without limitation, pollutants, moulds, and hazardous and special materials and wastes whether or not defined as such in any federal, provincial, territorial, or municipal laws, statutes, or regulations.

## **12. Independent Quality Assurance Testing**

*Independent Quality Assurance Testing* means testing and/or inspection carried out on behalf of the *Owner* and coordinated by the *Advising Engineer* for the purpose of systematic or periodic monitoring and evaluation of the construction *Work* to provide assurance that the standards of quality are in general conformance with the *Contract Documents*.

## **13. Notice**

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

**14. Owner's Statement of Requirements**

*Owner's Statement of Requirements* consists of the *Owner's* total written program of requirements, including functional, aesthetic, design, budgetary, time, environmental and construction requirements for the *Work*.

**15. Place of the Work**

*Place of the Work* means a site or location where the construction *Work* transpires as part of the *Project*.

**16. Project**

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

**17. Reimbursable Expenses**

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

**18. Services**

*Services* means the services identified in Schedule A – ADVISING ENGINEER'S SCOPE OF SERVICES, and includes any other *Services* added by the parties in accordance with paragraph 1.3 of Article A-1 SERVICES.

**19. Shop Drawings**

*Shop Drawings* means drawings, diagrams, illustrations, schedules, performance charts, technical brochures, and other data that are to be provided by the *Design-Builder* or by others to illustrate details of a portion of the construction *Work*.

**20. Sub-Consultant or Sub-Consultant of the Advising Engineer**

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

**21. Substantial Performance of the Work**

*Substantial Performance of the Work* means, where defined in the lien legislation applicable to the *Place of the Work*, the meaning given to that term in the lien legislation. If such legislation is not in force or does not contain such definition or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* will have been reached when the construction *Work* is ready for use or is being used for the purpose intended and is so certified by the *Advising Engineer* or by another certifier appointed by the *Owner*.

**22. Suspension Expenses**

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

**23. Termination Expenses**

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

**24. Value Added Taxes**

*Value Added Taxes* means such sum as shall be levied upon the *Fee, Reimbursable Expenses* or the *Work* 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.

**25. Work**

*Work* means all or part of the scope of the design services and construction work to be provided under the *Design-Build Contract*, including design and other professional and related services (sometimes referred to as “**design Work**”) and construction and related services, labour, materials, products and equipment (sometimes referred to as “**construction Work**”). The *Work* does not include design, construction and other activities regarding the *Project* performed by other professionals, contractors or service providers who are engaged by the *Owner*, unless these activities are provided at the request of the *Design-Builder* or in lieu of performance by the *Design-Builder* or unless these activities are directly connected to and necessarily incidental to the performance of the *Work* of the *Design-Builder*.

**26. 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 Work*. 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 this *Agreement*, the order of priority of the documents which make up this *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 – ADVISING ENGINEER’S SCOPE OF SERVICES;
- (f) Schedule B – FEES AND REIMBURSABLE EXPENSES;
- (g) Other schedules to this *Agreement*.

GC 1.2 The documents which make up this *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 this *Agreement* in accordance with such recognized meanings.

GC 1.4 References in this *Agreement* to the singular will be considered to include the plural as the context requires.

GC 1.5 References in this *Agreement* to regulations and codes are considered to be references to the latest published version as of the signature date of this *Agreement*, unless otherwise indicated.

### PART 2 LAW OF THE CONTRACT

GC 2.1 The law of the *Place of the Work* will govern the interpretation of this *Agreement*.

GC 2.2 The *Owner* acknowledges receipt of sufficient information from the *Advising Engineer*, including information concerning the *Fees* and *Services* of the *Advising Engineer*, so as to allow the *Owner* to assess the nature, extent and cost of the *Services* of the *Advising Engineer* and the obligations which the *Owner* assumes under this *Agreement*.

### PART 3 RIGHTS AND REMEDIES

GC 3.1 Except as expressly provided in the *Agreement*, the duties and obligations imposed by this *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 *Owner* or *Advising Engineer* will constitute a waiver of a right or duty afforded or imposed under this *Agreement*, except as may be specifically specified in writing.

#### **PART 4 ASSIGNMENT**

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

#### **PART 5 ADVISING ENGINEER'S RESPONSIBILITIES**

GC 5.1 The *Advising Engineer* is bound by the legislation governing the *Advising Engineer's* profession. Nothing in this *Agreement* requires the *Advising Engineer* to derogate from obligations prescribed by law that are binding upon the *Advising Engineer*.

GC 5.2 The *Advising Engineer* will provide the *Services* in accordance with this *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 *Agreement*.

GC 5.3 The *Advising 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 *Owner* at mutually convenient times during the term of this *Agreement* and for a period not exceeding one year following completion of the *Services*.

GC 5.4 The *Advising Engineer* will:

- (a) not be responsible for the performance of either the design *Work* or the construction *Work* by the *Design-Builder*, its subcontractors, suppliers or by any other contractors or for the failure of any of them to carry out the design *Work* or the construction *Work* in accordance with the *Contract Documents*;
- (b) not be responsible for, nor control, direct or supervise, the concepts and designs or the construction methods, means, techniques, sequences or procedures of the *Design-Builder* and those for whom the *Design-Builder* is responsible. The *Design-Builder* alone is responsible for quality control and quality assurance of the design *Work* and the construction *Work*;
- (c) not be responsible for acts or omissions or performance of any *Consultant of the Owner* or of any design or other consultant of the *Design-Builder*, subcontractors, suppliers or any other contractor; nor for the interpretation of building codes and legislation and by-laws concerning zoning, construction and other areas;

- (d) not be responsible for safety precautions and programs required in connection with the *Work* or for general site safety at the *Place of the Work* under applicable health and construction safety legislation at the *Place of the Work*;
  - (e) not be responsible for the advice of any independent expert engaged either by the *Owner* or the *Design-Builder*, whether or not recommended by the *Advising Engineer*; and
  - (f) not be responsible to make making exhaustive or continuous on-site reviews.
- GC 5.5 The *Advising Engineer* may engage *Sub-Consultants* to enable the *Advising Engineer* to provide the *Services*. Should the *Owner* reasonably object to a *Sub-Consultant* engaged by the *Advising Engineer*, the *Owner* may request the *Advising Engineer* to replace the *Sub-Consultant*. In this event, the *Owner* 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 *Advising Engineer* will *Coordinate* the activities of its *Sub-Consultants*.
- GC 5.7 The *Advising Engineer* has discretion, where the *Owner* provides equipment or materials for the *Work*, to request the *Owner* to arrange that items to be used or installed in the *Work* first be tested or verified before being used for the purposes intended by the *Owner* or be validated by an appropriate certificate of compliance.
- GC 5.8 The *Advising Engineer* is entitled to rely upon the accuracy and completeness of information and data furnished by the *Owner*, including information and data originating from a *Consultant of the Owner*, whether such *Consultant* is engaged at the request of the *Advising Engineer*, the *Owner* or otherwise.
- GC 5.9 The *Advising 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) manufacturers and suppliers of equipment, material or supplies.
- Should such records, information, data, and specifications prove to be erroneous or inaccurate, the *Advising Engineer* is entitled to make the necessary changes to the *Advising Engineer Documents* at the expense of the *Owner*.
- GC 5.10 The *Advising Engineer* is not responsible for manufacturing defects in equipment, material or supplies specified or recommended by the *Advising Engineer* or the *Design-Builder*.
- GC 5.11 The *Advising Engineer* will not accept a commission or other compensation from a manufacturer, supplier, consultant or contractor involved in the *Project*. The *Advising Engineer* will have no financial interest in the materials or equipment specified or recommended by the *Advising Engineer* as part of the *Services*. However, ownership of less

than 1% of the securities issued by a company whose securities are traded on a recognized securities exchange will not be deemed to constitute a financial interest.

## **PART 6 OWNER'S RESPONSIBILITIES**

- GC 6.1 The *Owner* will promptly fulfill all of the *Owner's* responsibilities so as not to impede the *Advising Engineer's* orderly performance of the *Services*.
- GC 6.2 The *Owner* will fully advise the *Advising Engineer* in writing of the *Owner's* requirements in connection with the *Project*, including the project budget and time constraints of the *Owner*.
- GC 6.3 The *Owner*, when so *notified* by the *Advising Engineer*, will make available to the *Advising Engineer* all information or data pertinent to the *Project* which is required by the *Advising Engineer* to perform the *Services*.
- GC 6.4 The *Owner*, when so *notified* by the *Advising 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 *Advising Engineer* to carry out the *Services*. Ancillary services may include, but are not limited to, topographic surveys and mapping of the *Place of the Work*, site services reports, technical investigations, geotechnical reports, quantity surveys and *Independent Quality Assurance Testing*. The parties will jointly agree on the selection of any such specialist.
- GC 6.5 Should the *Owner* not provide the information required by the *Advising Engineer* to perform the *Services* as mentioned in GC 6.3 or not accept the request of the *Advising Engineer* to engage specialists as mentioned in GC 6.4, the *Advising Engineer* will be entitled at the *Advising Engineer's* option and upon a further *Notice* to the *Owner* either to terminate this *Agreement* or to be relieved of any responsibility for the consequences of the *Owner's* decision not to provide the information or to engage specialists as requested by the *Advising Engineer*.
- GC 6.6 The *Owner* will ensure that *Consultants of the Owner* and the *Design-Builder* have adequate professional liability insurance, commensurate with the services they will provide for the *Project* and the *Work*.
- GC 6.7 Should the *Advising Engineer* be required to act as the agent of the *Owner* in order to perform some of the *Services*, the *Owner* will authorize the *Advising Engineer* in writing to act as the *Owner's* agent for such purposes as may be necessary. Where the *Advising Engineer* acts as the *Owner's* agent pursuant to a written authorization, the *Owner* is responsible for the authorized actions of the *Advising Engineer* as agent of the *Owner* and will indemnify the *Advising Engineer* against third party claims and for damages and expenses, including reasonable legal fees, incurred by the *Advising Engineer*.
- GC 6.8 The *Owner* will promptly consider requests by the *Advising Engineer* for directions or decisions and diligently inform the *Advising Engineer* of the *Owner's* direction or decision within a reasonable time so as not to delay the *Services*.
- GC 6.9 The *Owner* will pay the *Advising Engineer* as provided in this *Agreement*.



- GC 6.10 The *Owner*, at the request of the *Advising Engineer*, will furnish reasonable evidence to the *Advising Engineer* that financial arrangements have been made to fulfill the *Owner's* payment obligations under this *Agreement* before signing this *Agreement*, and promptly from time to time thereafter.
- GC 6.11 The *Owner* will *notify* the *Advising Engineer* of any material change in the *Owner's* financial arrangements that affect the *Owner's* ability to fulfill the *Owner's* payment obligations under this *Agreement*.
- GC 6.12 The *Owner* will provide those legal, accounting, insurance, bonding and other counselling services which are necessary for the preparation of tenders or requests for proposals and other procurement documents or for the performance of other *Services* of the *Advising Engineer*. If the *Owner* is unable to provide such counselling services, the *Owner* may request the *Advising Engineer* to do so on its behalf and in its name and expense. The *Owner* will reimburse the *Advising Engineer* for expenses incurred in securing any such counselling services.
- GC 6.13 The *Owner* is responsible for obtaining legal advice regarding tenders, requests for a proposal or information, bids, contract awards and other procurement documents regarding the *Work*. The *Owner* 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 *Advising Engineer* to review or assist in the preparation of tenders, proposals or bids and other procurement documents or to make recommendations regarding them or regarding the qualification or selection of bidders.
- GC 6.14 The *Owner* will arrange where necessary for the *Advising Engineer's* access to the *Place of the Work* or other required locations to enable the *Advising Engineer* to perform the *Services*.
- GC 6.15 The *Owner* will designate in writing an individual to act as the *Owner's* representative who will have authority to transmit instructions to and receive information from the *Advising Engineer*.
- GC 6.16 The *Owner* will promptly *notify* the *Advising Engineer* whenever the *Owner* or the *Owner's* representative becomes aware of any defects or deficiencies in the *Services*, or the *Advising Engineer Documents*.
- GC 6.17 The *Owner* will obtain required approvals, licences, and permits from municipal, governmental or other authorities having jurisdiction over the *Project* so as not to delay the *Advising Engineer* in the performance of the *Services*.
- GC 6.18 The *Owner* will not enter into contracts with *Consultants of the Owner* or *Design-Builder* that are incompatible or inconsistent with the *Services* to be provided under this *Agreement*.

## **PART 7 ADMINISTRATION, COORDINATION AND FIELD SERVICES**

- GC 7.1 This PART 7 ADMINISTRATION, COORDINATION AND FIELD SERVICES applies only when and to the extent that the *Advising Engineer* provides such *Project* administration,

- Coordination and Field Services* as are contemplated under Schedule A – ADVISING ENGINEER’S SCOPE OF SERVICES.
- GC 7.2 Authority for administration, *Coordination and Field Services* will reside in the *Advising Engineer* only to the extent provided for in this *Agreement* and in the *Design-Build Contract*.
- GC 7.3 All *Notices*, instructions, requests, claims or other design or construction-related communications between the *Owner*, *Design-Builder* and *Consultants of the Owner* will be made by or through the *Advising Engineer*.
- GC 7.4 The *Advising Engineer*, acting in a fair and impartial manner, will make findings or decisions on claims of the *Owner* or of the *Design-Builder* under the *Design-Build Contract*, and on all matters relating to the interpretation of the *Contract Documents*.
- GC 7.5 The *Advising Engineer* will *Coordinate* the activities of its *Sub-Consultants* as well as those of the *Consultants of the Owner* involved in the *Work* under this PART 7 ADMINISTRATION, COORDINATION AND FIELD SERVICES.
- GC 7.6 The *Advising Engineer* is not responsible for the administrative, coordination, scheduling or other obligations of the *Design-Builder* under the *Design-Build Contract*.
- GC 7.7 *Field Services* of the *Advising Engineer* are provided for the benefit of the *Owner*, not for the benefit of the *Design-Builder*. *Field Services* provided by the *Advising Engineer* are not a guarantee or warranty of the *Design-Builder's Work*, and the *Design-Builder* alone is responsible for the proper performance of the *Work*.
- GC 7.8 In providing *Field Services*, the *Advising Engineer* will apply such selective oversight and sampling procedures of the design and construction *Work* as the *Advising Engineer*, in its discretion, considers necessary to enable the *Advising Engineer* to ascertain whether the *Design-Builder* is designing and constructing the *Work* in general conformity with the *Contract Documents*.
- GC 7.9 Acceptance by the *Advising Engineer* of the *Work* of the *Design-Builder* or of the services of the *Consultants of the Owner*, whether express or implied, is only for purposes of ascertaining the general conformance of such *Work* or services with the *Contract Documents* and will not relieve the *Design-Builder* or the *Consultants of the Owner* from their responsibilities for the proper performance of such *Work* or services. Further, the *Advising Engineer* is not responsible to the *Owner* or to the *Design-Builder* or to the *Consultants of the Owner* for the means, methods, techniques, sequences, procedures and use of equipment, of any nature whatsoever, whether reviewed by the *Advising Engineer* or not, which are employed by the *Design-Builder* or by the *Consultants of the Owner* in designing, executing or administering any phases of the *Work*, or for the commissioning or operational start-up of any plant, machinery or equipment or for health and safety precautions and programs incidental thereto.

**PART 8 CERTIFICATIONS BY THE ADVISING ENGINEER**

- GC 8.1 This PART 8 CERTIFICATIONS BY THE ADVISING ENGINEER applies only when and to the extent that the *Advising Engineer* is required to issue certifications under Schedule A – ADVISING ENGINEER’S SCOPE OF SERVICES.
- GC 8.2 The *Advising Engineer* will issue those certifications which the *Advising Engineer* is required to give as part of the *Services* with the degree of care, skill, and diligence normally provided by engineers issuing comparable certifications in respect of projects of a similar nature to that contemplated by this *Agreement*, based upon data reasonably available to the *Advising Engineer*.
- GC 8.3 If included in the *Services*, the *Advising Engineer*’s issuance of a certificate for payment constitutes a representation by the *Advising Engineer* to the *Owner*, based on the *Services* performed by the *Advising Engineer* and on review of the *Design-Builder*’s schedule of values and applications for payment, that, to the best of the *Advising Engineer*’s information and belief:
- (a) the *Work* has progressed to the value indicated;
  - (b) *Work* observed by the *Advising Engineer* conforms generally with the *Contract Documents*; and
  - (c) the *Design-Builder* is entitled to payment in the amount certified.
- GC 8.4 The *Advising Engineer*’s issuance of a certificate for payment is subject to:
- (a) the *Advising Engineer*’s obligation under this *Agreement* to review the *Work*, to the extent specified in the *Services*, as it progresses for general conformance with the *Contract Documents*;
  - (b) the results of any subsequent inspections, tests or quality and performance reports required by the *Contract Documents*;
  - (c) correction of deviations from the *Contract Documents* detected prior to completion or after completion, as the case may be; and
  - (d) any specific qualifications stated in the certificate for payment.
- GC 8.5 The *Advising Engineer*’s issuance of a certificate for payment is not a representation that the *Advising Engineer* has inquired into the *Design-Builder*’s:
- (a) use or allocation of monies paid on account of the contract price specified in the *Design-Build Contract*; or
  - (b) compliance with obligations imposed on the *Design-Builder* by law, including requirements of workplace health and safety legislation or of lien legislation governing the *Place of the Work*.

**PART 9 PRELIMINARY COST AND TIME ESTIMATES**

- GC 9.1 This PART 9 - PRELIMINARY COST AND TIME ESTIMATES applies only in the event the *Services* require the *Advising Engineer* to provide the *Owner* with a preliminary estimate of the *Cost of the Work* or the time and overall schedule for the *Work* to be performed by the *Design-Builder*, to assist the *Owner* with its initial planning for the *Project*.
- GC 9.2 The parties acknowledge that any such preliminary estimates by the *Advising Engineer* are, by their very nature, approximate, subject to change and contingent upon factors, including market forces, over which the *Advising Engineer* has no control. The *Advising Engineer* does not guarantee the accuracy of such estimates.

**PART 10 TERMINATION AND SUSPENSION**

- GC 10.1 This *Agreement* is terminated on the earliest of:
- (a) the date when the *Advising Engineer* has performed all of the *Services*; or
  - (b) the date of termination if termination occurs in accordance with this GC 10 TERMINATION AND SUSPENSION.
- GC 10.2 If the *Advising Engineer* is a natural person practicing alone (and not part of a company or a partnership) and should the *Advising Engineer* die or become seriously incapacitated before having supplied all of the *Services*, either the *Owner* or the estate or legal representative of the *Advising Engineer* may terminate this *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 10.3 If the *Advising Engineer* is in material default in the performance of any of the *Advising Engineer's* obligations under this *Agreement*, the *Owner* will *notify* the *Advising Engineer* that the default must be corrected. If the *Advising Engineer* does not correct the default within 30 days after receipt of such *Notice* or if the *Advising Engineer* does not take reasonable steps to correct the default if the default is not susceptible of immediate correction, the *Owner* may terminate this *Agreement* upon further *Notice* to the *Advising Engineer*, without prejudice to any other rights or recourses of the *Owner*. Such termination will not release the *Owner* from its obligation to pay all *Fees* and *Reimbursable Expenses* incurred by the *Advising Engineer* up to the date of termination in the manner provided in this *Agreement*.
- GC 10.4 If the *Owner* is in material default in the performance of any of the *Owner's* obligations set forth in this *Agreement*, including but not limited to the non-payment of *Fees* and *Reimbursable Expenses* of the *Advising Engineer* in the manner specified in this *Agreement*, the *Advising Engineer* will *notify* the *Owner* that the default must be corrected. If the *Owner* does not correct the default within 30 days after receipt of such *Notice*, the *Advising Engineer* may elect upon further *Notice* to the *Owner* to suspend its provision of the *Services* or to terminate this *Agreement*. In the event the *Advising Engineer* elects to suspend, the *Owner* will promptly pay the *Fees* and *Reimbursable Expenses* of the *Advising Engineer* that are incurred and unpaid as of the date of such suspension, plus the *Suspension Expenses*. In the

- event the *Advising Engineer* elects to terminate, the *Owner* will promptly pay the *Fees* and *Reimbursable Expenses* of the *Advising 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 *Advising Engineer*.
- GC 10.5 If the *Owner* is unwilling or unable to proceed with the *Work*, the *Owner* may suspend or terminate this *Agreement* by *Notice* of 30 days to the *Advising Engineer*. Upon receipt of such *Notice*, the *Advising Engineer* will perform no further *Services* other than those reasonably necessary to suspend or terminate that portion of the *Work* for which the *Advising Engineer* is providing the *Services*. In such event, the *Owner* will pay all of the *Fees* and *Reimbursable Expenses* incurred by the *Advising 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 *Agreement*.
- GC 10.6 If the *Owner* suspends performance of the *Services* at any time for more than 30 consecutive or non-consecutive days through no fault of the *Advising Engineer*, then the *Advising Engineer* may choose to terminate this *Agreement* upon *Notice* to the *Owner*. In this event, the *Owner* will promptly pay the *Fees* and *Reimbursable Expenses* of the *Advising 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 *Advising Engineer*.

## **PART 11 OWNERSHIP AND USE OF DOCUMENTS, PATENTS AND TRADEMARKS**

- GC 11.1 The *Advising Engineer Documents* are the property of the *Advising Engineer*, whether the *Work* is executed or not. The *Advising Engineer* reserves the copyright therein and in the *Work* executed therefrom. The *Owner* is entitled to keep an original copy of the *Advising Engineer Documents* for its records.
- GC 11.2 The *Advising 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 *Advising Engineer* in performing the *Services*. The *Owner* will not use, infringe or appropriate such proprietary rights without the prior consent and compensation of the *Advising Engineer*.
- GC 11.3 Provided the *Fees* and *Reimbursable Expenses* of the *Advising Engineer* are paid, the *Owner* will have a non-exclusive license to use any proprietary concept, product or process of the *Advising 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 11.4 The *Advising Engineer* warrants that the *Advising Engineer Documents* developed by the *Advising Engineer* under this *Agreement* will not infringe the patent, copyright, trade mark or other intellectual property rights of another person.
- GC 11.5 Should the *Owner* use the *Advising Engineer Documents* or provide them to third parties for purposes other than in connection with the *Project* without *notifying* the *Advising Engineer* and without the *Advising Engineer's* prior written consent, the *Advising Engineer* will be entitled either to compensation for such improper use or to prevent such improper use, or to

- both. The *Owner* will indemnify the *Advising Engineer* against claims and costs (including legal costs) associated with such improper use. In no event will the *Advising Engineer* be responsible for the consequences of any such improper use.
- GC 11.6 Should the *Owner* alter the *Advising Engineer Documents* without *notifying* the *Advising Engineer* and without the *Advising Engineer's* prior written consent, the *Owner* will indemnify the *Advising Engineer* against claims and costs (including legal costs) associated with such improper alteration. In no event will the *Advising Engineer* be responsible for the consequences of any such improper alteration.
- GC 11.7 The *Owner* may not use the *Advising Engineer Documents* without having paid the *Fees* and *Reimbursable Expenses* of the *Advising Engineer*. The *Advising Engineer* is entitled to injunctive relief should the *Advising Engineer Documents* be used without payment of the *Fees* and *Reimbursement Expenses* provided for in this *Agreement*.
- GC 11.8 The *Advising Engineer Documents* are not to be used on any other project without the prior written consent and compensation of the *Advising Engineer*.

## **PART 12 PROJECT OWNERSHIP, IDENTIFICATION AND CONFIDENTIALITY**

- GC 12.1 The *Owner* represents to the *Advising Engineer* that the *Owner* is the owner of the *Place of the Work*. If the *Owner* is not the property owner, the *Owner* will *notify* the *Advising Engineer* of the identity of the property owner before signature of this *Agreement*.
- GC 12.2 The *Advising Engineer* will be identified on *Project* signage and promotional material whenever other *Project* design professionals are mentioned. The *Advising Engineer* may refer to the *Project* in the *Advising Engineer's* promotional material.
- GC 12.3 Information regarding the design, functionality, equipment, management, costs, or progress of the *Project* or the *Work* 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 13 INSURANCE AND LIABILITY**

- GC 13.1 The *Advising Engineer* will carry professional liability insurance of \$1,000,000 per claim and \$1,000,000 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 13.2 If the *Advising Engineer* carries professional liability insurance for amounts greater than those specified in GC 13.1, such insurance will be available under this *Agreement* only up to the amount specified in GC 13.1.

- GC 13.3 Where the *Work* involves construction, the *Owner* will provide or arrange for *Project* specific liability (wrap-up) insurance and property (“broad form”/builder’s risk) insurance in respect of the *Work* and include the *Advising Engineer* as an additional insured.
- GC 13.4 The *Advising Engineer’s* liability for claims which the *Owner* has or may have against the *Advising Engineer* or the *Advising 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 provision of this *Agreement*:
- (a) firstly, 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) secondly:
    - (i) where claims are covered by insurance under section GC 13.1, to the amount of such insurance; or
    - (ii) where claims are not covered by insurance under section GC 13.1, to the amount of \$250,000.
- GC 13.5 The *Advising 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 13.6 Where the *Advising Engineer* is a corporation or partnership, the *Owner* and *Consultants of the Owner* will limit any claim they 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 13.7 The liability of each party with respect to a claim against each other is 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 13.8 The *Advising Engineer* is not responsible for the identification, reporting, analysis, evaluation, presence, handling, removal or disposal of *Hazardous Substances* at or adjacent to the *Place of the Work*, unless specified in Schedule A – ADVISING ENGINEER’S SCOPE OF SERVICES, or for the exposure of persons, property or the environment to *Hazardous Substances* at or adjacent to the *Place of the Work*.
- GC 13.9 Subject to the limitations of liability set out in this *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 arising from the fault or negligence of the indemnifying party, save that the *Owner* will indemnify the *Advising Engineer* against any third party claims resulting in whole or in part from the *Services* provided by the *Advising Engineer* in accordance with its authority and duties under this *Agreement*; and
- (b) a breach of contractual obligations under this *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 14 DISPUTE RESOLUTION**

- GC 14.1 The parties will make reasonable efforts to resolve disputes arising under this *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 14.2 If a dispute has not been resolved by negotiations, either party may require the dispute to 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 14.3 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 14.4 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 *Agreement*, save that arbitration will be limited to a single arbitrator.
- GC 14.5 Any endeavour to resolve disputes arising out of this *Agreement* by negotiation, mediation or other means of dispute resolution, including arbitration, will be conducted on a confidential basis.
- GC 14.6 The parties will submit to the exclusive jurisdiction of the courts at the *Place of the Work* 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 Work*.

## **PART 15 PAYMENT**

- GC 15.1 The *Owner* will pay to the *Advising Engineer* the amount of the *Fees* and *Reimbursable Expenses* of the *Advising Engineer* together with applicable *Value Added Taxes*, when



- invoiced by the *Advising Engineer* for *Services* which have been rendered, in accordance with Article A5 – PAYMENT and Schedule B – FEES AND REIMBURSABLE EXPENSES.
- GC 15.2 In the event the *Owner* disputes in good faith a portion of the *Fees* and *Reimbursable Expenses* invoiced by the *Advising Engineer*, the *Owner* will pay the uncontested portion within the prescribed time.
- GC 15.3 Disputes regarding *Fees* and *Reimbursable Expenses* of the *Advising Engineer* will be resolved in the manner specified in PART 14 - DISPUTE RESOLUTION.
- GC 15.4 Where the *Advising Engineer* provides *Services*, including *Field Services* if applicable, which extend beyond the period contemplated at the time this *Agreement* was signed, the *Advising Engineer* will *notify* the *Owner* and, upon mutual agreement of the parties, the *Fees* of the *Advising Engineer* will be increased in order to take into account the extended time required for providing such *Services*.
- GC 15.5 Should the *Owner* request a change to the *Project* or *Work* which requires the *Advising Engineer* to provide additional *Services* beyond those contemplated at the time this *Agreement* is signed, before undertaking such additional *Services* the *Owner* and the *Advising Engineer* will agree in writing upon the *Advising Engineer's* remuneration and time for providing the additional *Services*. Failing an agreement with the *Owner*, the *Owner* will pay the *Advising 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 *Advising Engineer* for the performance of the additional *Services*.
- GC 15.6 Should it prove necessary for the *Advising Engineer* to rework or revise the *Advising Engineer Documents* or to provide further *Services* for reasons which the *Advising Engineer* could not reasonably foresee when this *Agreement* was signed, or owing to the default or the insolvency of the *Owner* or the *Design-Builder*, or as a result of the *Owner's* suspension of the *Services* or *Work* regarding the *Project*, or because of damage to the construction *Work* by fire or some other cause, the *Owner* will pay the *Advising Engineer* for any reworked or revised *Advising Engineer Documents* at the hourly rates set out in Schedule B – FEES AND REIMBURSABLE EXPENSES.

## **PART 16 SEVERABILITY**

- GC 16.1 If any provision of this *Agreement* is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision will be severed from this *Agreement* and the other provisions of this *Agreement* will remain in force and effect.

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

**SCHEDULES TO ACEC DOCUMENT 39**

**AGREEMENT BETWEEN OWNER AND ADVISING (OWNER'S) ENGINEER  
FOR DESIGN-BUILD PROJECTS**

**SCHEDULE A - ADVISING ENGINEER’S SCOPE OF SERVICES**

The *Advising Engineer* WILL PROVIDE the *Services* next described that are marked (X) in the column entitled YES and WILL NOT PROVIDE the *Services* which are marked (X) in the column entitled NO.

**A-1 Consulting and Advisory Services**

	Description of Services	Yes	No
Those <b>Consulting and Advisory Services</b> which are next identified:			
1.1	With the <i>Owner's</i> written authorization, acting as the <i>Owner's</i> limited agent in connection with the <i>Work</i> .		
1.2	Assist the <i>Owner</i> in identifying the scope of the design and construction <i>Work</i> , and assist in drafting the <i>Owner's Statement of Requirements</i> . Such <i>Services</i> may also include the preparation of conceptual designs, performance specifications, functional requirements, outline specifications and preliminary drawings (specify as necessary).		
1.3	Advise the <i>Owner</i> in writing as to further investigative activities which in its opinion are necessary or desirable, and as agent for and on behalf of the <i>Owner</i> , and with the <i>Owner's</i> prior written approval, engage and monitor <i>Consultants of the Owner</i> to perform such investigative activities at the <i>Owner's</i> expense.		
	<i>Enter here any additional Consulting and Advisory Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**A-2 Tender Procurement Services**

	Description of Services	Yes	No
Those <b>Tender Procurement Services</b> which are next identified:			
2.1	Assist in the preparation of qualification and expression of interest documents for the selection of a prospective design-builder.		
2.2	Review responses to the <i>Owner's</i> qualification and expression of interest requests.		
2.3	Assist in the preparation of tender or bidding proposal (RFP) documents.		
2.4	Review proposals submitted and advise the <i>Owner</i> with respect to the <i>Owner's</i> selection of the <i>Design-Builder</i> .		
2.5	Assist in the preparation of the <i>Design-Build Contract</i> and modify the <i>Owner's Statement of Requirements</i> as necessary.		
	<i>Enter here any additional Tender Procurement Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**A-3 Design Review Services**

	<b>Description of Services</b>	<b>Yes</b>	<b>No</b>
Those <b>Design Review Services</b> which are next identified:			
3.1	Review all designs, and for-construction drawings and specifications, and any amendments to such documents in order to advise the <i>Owner</i> whether such documents generally conform with the <i>Owner's Statement Of Requirements</i> and the requirements of the <i>Design-Build Contract</i> .		
3.2	Review all proposed scope of <i>Work</i> changes with respect to general conformance with the requirements of the <i>Design-Build Contract</i> and the <i>Owner's Statement of Requirements</i> .		
3.3	Attend the <i>Owner's</i> periodic design and coordination meetings with the <i>Design-Builder</i> and with <i>Consultants of the Owner</i> and <i>Sub-Consultants</i> .		
3.4	Review of the <i>Design-Builder's</i> proposed procedures (including the means, methods, techniques, sequences, processes and scheduling of the design and construction of the <i>Work</i> by the <i>Design-Builder</i> ), and operational plans (such as, where applicable, the schedule for all design and construction <i>Work</i> of the <i>Design-Builder</i> within the overall <i>Project</i> schedule, documentation for <i>Project</i> certifications, a quality assurance/quality control program, training program, operating and maintenance manuals, etc.), which will be provided to the <i>Advising Engineer</i> in writing to assist the <i>Advising Engineer</i> in monitoring the <i>Work</i> of the <i>Design-Builder</i> , and advise the <i>Owner</i> as to whether same are in general conformance with the requirements of the <i>Design-Build Contract</i> .		
	<i>Enter here any additional Design Review Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**A-4 Services during performance of the Work**

	Description of Services	Yes	No
Those <b>Services during performance of the Work</b> which are next identified:			
4.1	Where required by the <i>Advising Engineer</i> during this phase of the <i>Services</i> , obtain advice, data and information from <i>Consultants of the Owner</i> retained directly by the <i>Owner</i> .		
4.2	Review drawings prepared during performance of the design <i>Work</i> by the <i>Design-Builder</i> to ascertain whether they are generally complete and whether they have been prepared in general conformance with the requirements of the <i>Contract Documents</i> .		
4.3	Review <i>Shop Drawings</i> submitted by the <i>Design-Builder</i> or by others for the purpose of ascertaining whether the information set forth therein generally conforms with the design intent for the <i>Work</i> , to the extent that the intent has been set out in the <i>Contract Documents</i> .		
4.4	Interpret the <i>Contract Documents</i> when requested to do so by the <i>Owner</i> or by the <i>Design-Builder</i> and render an initial finding.		
4.5	Attend meetings between the <i>Owner</i> and the <i>Design-Builder</i> and <i>Consultants of the Owner</i> necessary to the coordination of the design, construction and <i>Field Services</i> for the <i>Work</i> .		
4.6	Prepare and issue contract administration documentation as necessary during the course of <i>Work</i> by the <i>Design-Builder</i> .		
4.7	Review applications by the <i>Design-Builder</i> for progress and final payments.		
4.8	Certification of the <i>Design-Builder's</i> application for progress and final payments where the <i>Advising Engineer</i> is the payment certifier, subject to PART 8 – CERTIFICATIONS BY THE ADVISING ENGINEER.		
4.9	Subject to applicable lien legislation at the <i>Place of the Work</i> , conduct reviews of the construction <i>Work</i> to ascertain its substantial completion, noting defects and deficiencies observed in the construction <i>Work</i> . <i>Notify</i> the <i>Design-Builder</i> thereof and review the correction of same when completed by the <i>Design-Builder</i> .		
4.10	Certification of <i>Substantial Performance of the Work</i> under the <i>Design-Build Contract</i> , subject to PART 8 – CERTIFICATIONS BY THE ADVISING ENGINEER		

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

	Description of Services	Yes	No
Those <b>Services during performance of the Work</b> which are next identified:			
4.11	Conduct reviews of the construction <i>Work</i> to ascertain final completion, noting remaining defects and deficiencies observed in the construction <i>Work</i> . <i>Notify the Design-Builder</i> thereof and review the correction of same when completed by the <i>Design-Builder</i> .		
4.12	Certification of final performance of the construction <i>Work</i> under the <i>Design-Build Contract</i> , subject to PART 8 – CERTIFICATIONS BY THE ADVISING ENGINEER		
	<i>Enter here any additional Services during performance of the Work or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**A-5 Field Services**

	Description of Services	Yes	No
Those <b>Field Services</b> which are next identified:			
5.1	Visit the <i>Design-Builder's</i> offices and the <i>Place of the Work</i> as frequently as the <i>Advising Engineer</i> , in its discretion, considers necessary to enable it to ascertain whether the <i>Design-Builder</i> is carrying out the design and construction of the <i>Work</i> in general conformity with the <i>Contract Documents</i> .		
5.2	Establish the work scope of a specialist sub-consultant retained to conduct <i>Independent Quality Assurance Testing</i> to ascertain whether the <i>Design Builder</i> is both providing materials and carrying out construction of the <i>Work</i> in general conformance with the <i>Contract Documents</i> .		
5.3	Co-ordinate the design and <i>Field Services</i> activities of all <i>Consultants of the Owner</i> and <i>Sub-Consultants</i> on the <i>Project</i> .		
5.4	Monitor general conformance of the <i>Work</i> performed by the <i>Design-Builder</i> with the <i>Contract Documents</i> including the design <i>Work</i> and procedures for the construction <i>Work</i> and keep the <i>Owner</i> informed through periodic written reports.		
5.5	Attend performance testing sessions in order to advise the <i>Owner</i> whether the performance testing is in general conformance with the requirements of the <i>Contract Documents</i> .		
5.6	Review the correction of defects and deficiencies in the construction <i>Work</i> by the <i>Design-Builder</i> for general conformance with the requirements of the <i>Contract Documents</i> .		
	<i>Enter here any additional Field Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Owner</i>	<i>Advising Engineer</i>



**A-6 Post-Construction Services**

	Description of Services	Yes	No
Those <b>Post-Construction Services</b> which are next identified:			
6.1	Conduct a final review of the construction <i>Work</i> prior to the expiration of the <i>Design-Builder's</i> warranty period and advise the <i>Design-Builder</i> and the <i>Owner</i> in writing as to continuing or newly observed defects or deficiencies in the construction <i>Work</i> or to any non-conformance of the construction <i>Work</i> or the design <i>Work</i> to the <i>Contract Documents</i> .		
	<i>Enter here any additional Post-Construction Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**A-7 Additional Services**

The following additional *Advising Engineer's Services* are not necessarily typical or customary. They are additional to the *Services* of the *Advising Engineer* set forth in sections A-1 through A-6 of Schedule A – ADVISING ENGINEER’S SCOPE OF SERVICES.

The *Advising Engineer* WILL ONLY PROVIDE the additional *Services* marked YES below following a written request of the *Owner* and for which the *Advising Engineer* will be compensated according to Schedule B – FEES AND REIMBURSABLE EXPENSES. The *Advising Engineer* WILL NOT BE OBLIGED TO PROVIDE any of the additional *Services* marked NO below unless the *Advising Engineer* and the *Owner* reach a separate agreement in writing with regard to any of the additional *Services* marked NO.

	Description of Services	Yes	No
Those <b>Additional Services</b> which are next identified:			
7.1	Prepare reports relating to the <i>Owner's</i> long-range or other plans not included in basic <i>Services</i> .		
7.2	Identify property needs, prepare property acquisition drawings and assist the <i>Owner</i> in the property acquisition for the <i>Project</i> .		
7.3	Assist with the preparation of detailed pre-construction <i>Project</i> operating cost budgets or whole-life cost estimates.		
7.4	Prepare applications and supporting documents for governmental grants, loans or advances in connection with the <i>Work</i> .		
7.5	Prepare applications and supporting documents for governmental grants, loans or advances in connection with the <i>Project</i> .		
7.6	Review environmental assessments and impact studies, and assist the <i>Owner</i> with obtaining approvals of authorities having jurisdiction over the environmental aspects of the <i>Work</i> .		
7.7	Review environmental assessments and impact studies, and assist the <i>Owner</i> with obtaining approvals of authorities having jurisdiction over the environmental aspects of the <i>Project</i> .		
7.8	On the <i>Owner's</i> behalf, obtain approvals, licences and permits from municipal and governmental authorities having jurisdiction over the <i>Project</i> or the <i>Work</i> .		
7.9	Provide renderings or models for the <i>Owner's</i> use.		

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

	<b>Description of Services</b>	<b>Yes</b>	<b>No</b>
Those <b>Additional Services</b> which are next identified:			
7.10	Attend public consultation sessions, open houses or political meetings.		
7.11	Prepare documents for alternative prices requested by the <i>Owner</i> relating to portions of the <i>Project</i> not awarded to the <i>Design-Builder</i> .		
7.12	Provide special analysis of the <i>Owner's</i> needs, such as an operational analysis and prepare operating or maintenance manuals, operating drawings or charts.		
7.13	Prepare for and attend special reviews and testing of the <i>Work</i> .		
7.14	Prepare bills of materials, and measure quantities of construction <i>Work</i> performed.		
7.15	Provide scheduling <i>Services</i> during construction.		
7.16	Provide equipment and materials procurement <i>Services</i> before or during construction.		
7.17	Prepare record or as-built drawings based upon information from the <i>Design-Builder</i> .		
7.18	Provide furnishing drawings.		
7.19	Assist in negotiation, mediation, litigation, arbitration or other legal or administrative proceedings on behalf of the <i>Owner</i> , and as required in preparations in respect thereof.		
	<i>Enter here any other Additional Services or references to them in documents such as Requests for Proposals, Terms of Reference, or Statements of Requirements. Attach additional pages if required.</i>		

Initials	
<i>Owner</i>	<i>Advising 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 *Advising Engineer* under this *Agreement* for the *Services* described in Schedule A:

Advising 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)	Fees as % of Cost of the Work (B-1.3)
A-1	Consulting and Advisory Services			N/A
A-2	Tender Procurement Services			N/A
A-3	Design Review Services			
A-4	Services During Performance of the Work			
A-5	Field Services			
A-6	Post-Construction Services			
A-7	Additional Services			

Refer to Section B-1.1, B-1.2, and B-1.3 for a detailed description of the method for calculating the *Fees* due to the *Advising Engineer*.

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

*Value Added Taxes* are not included in *Fees* and *Reimbursable Expenses*.

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**B-1.1 Hourly Rate Fees**

Hourly Rate *Fees* will be calculated on an hourly basis as the *Work* 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 *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*)

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

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**B-1.2 Fixed Fees**

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

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

The fixed *Fees* will be applicable for (*select one*):

the duration of the *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)

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

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**B-1.3 Fees Based on Percentage of Cost of the Work**

Fees will be calculated as \_\_\_\_\_ % of the *Cost of the Work*, apportioned as follows:  
 (where not applicable, insert Nil or N/A)

- A-3 - Design Review Services %
- A-4 - Services During Performance of the Work %
- A-5 - Field Services %
- A-6 - Post-Construction Services %
- A-7 - Additional Services %
- TOTAL FEE %

Fees based on a percentage of the *Cost of the Work* are NOT applicable to the following *Services* which should be calculated either on an Hourly Rate Basis (Section B-1.1) or a Fixed Fee Basis (Section B-1.2):

- A-1 - Consulting and Advisory Services
- A-2 - Tender Procurement Services

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

Initials	
<i>Owner</i>	<i>Advising Engineer</i>

**B-2 Reimbursable Expenses**

*Reimbursable Expenses* incurred by the *Advising Engineer* in carrying out the *Services* are subject to a mark-up of \_\_\_\_\_ % to cover office and administrative costs of the *Advising 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 *Services* beyond kilometres of the *Advising 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* or the *Work*.
- 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 *Advising Engineer* and *Sub-Consultants of the Advising Engineer*.
- Advertising incidental to the *Project* or the *Work*.
- Obtaining necessary legal, accounting, insurance, bonding, and other counselling services pertaining to the *Project* or the *Work*.
- Specialized *Project* specific computer hardware and software charges and related expenses as agreed to between the *Owner* and the *Advising Engineer*.
- Customs, excise, or any other taxes incurred by the *Advising 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 *Advising Engineer* in the performance of *Services* in connection with the *Project* or the *Work* where the *Advising Engineer* has obtained the prior written approval of the *Owner*.

Initials	
<i>Owner</i>	<i>Advising Engineer</i>



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

Initials	
<i>Owner</i>	<i>Advising Engineer</i>