

# Professional Services Agreement

Agreement No.: \_\_\_\_\_

Project Name: \_\_\_\_\_

File: \_\_\_\_\_

**This Agreement**, made this \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and \_\_\_\_\_.

**Between:**

“The Government of Saskatchewan as represented by “(insert government Ministry or agency name)”;  
( hereinafter called the “*Client*”)

**And**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the "Consultant").

(sometimes collectively called the “Parties” and individually the “Party”)

**Whereas** the *Client* has requested the *Consultant* to perform Services as hereinafter set out and the *Consultant* has agreed to perform such Services subject to the terms and conditions hereinafter contained.

**Now Therefore**, the *Client* and the *Consultant* in consideration of their mutual covenants contained herein, **Agree as Follows:**

**1. Definitions**

- |                    |   |
|--------------------|---|
| Administrator      | means the person designated from time to time by the Client as responsible for the administration of the Agreement to exercise such power, authority, or discretion as required under the Agreement |
| Agreement          | means this document outlining the terms and conditions that exist between the <i>Client</i> and the <i>Consultant</i> for the provision of Services and the fees for such Services                  |
| Contract Documents | means this Agreement, Schedule A - Scope of Work, Schedule B – Contract Pricing, Schedule C – Privacy, Schedule D – Deviations from the Terms and   |

Conditions, Schedule E – Insurance, Addenda, Request and Response to Request for Proposals, and Acceptance of Proposal together with all written amendments, modifications, and supplements to such documents and all written authorizations signed by the Client and the Consultant amending, deleting, or adding to the Services

Services	means the <i>Consultant's</i> duties and responsibilities as set forth in “Schedule A”
Specifications	means the written technical descriptions of materials, equipment, construction systems, standards, drawings, and workmanship as applied to the Services
Subcontractor	means a person or firm having a contract with the Consultant for part of the Services and includes any person or firm having a contract with a Subcontractor for part of the Services

## **2. Interpretation**

In the event of a conflict, as determined by the Administrator, between the Agreement, and the Schedules attached hereto, the parties agree that the provisions of the Schedules shall govern over the content of the Agreement.

## **3. Independent Contractor**

Nothing in this Agreement shall be construed as rendering the Consultant an employee, servant or agent of the Client. The Consultant has no authority to act as an agent of the Client and will not hold itself out as an agent of the Client.

## **4. Scope of Work**

The Consultant shall perform the services. All work relating to the Services shall be performed under the direction of a Professional Engineer or Geoscientist registered and in good standing with the Association of Professional Engineers and Geoscientists of Saskatchewan (APEGS).

The Consultant shall comply with applicable codes and legislation affecting the performance of the Services and shall give all notices, pay all fees and taxes, and obtain all required permits specific to the Consultant's Services.

The Consultant agrees to provide to the Client progress reports as set out in Schedule A.

## **5. Existing Data**

The Client shall provide to the Consultant all the reports, data, studies, plans, specifications, documents and other information which are relevant to the Services. The Consultant shall be entitled to rely upon the reports, data, studies, plans, specifications, documents and other information provided by the Client or others in performing the Services and the Consultant assumes no responsibility or liability for the accuracy or completeness of such unless otherwise stated in Schedule A.

## **6. Standard of Care and Performance**

Services performed by the Consultant will be conducted in a manner that meets or exceeds that level of care and skill ordinarily exercised by members of the Engineering and Geoscience professions currently practicing under similar conditions in the same locality, subject to the time limits and physical constraints applicable to the Services.

The Consultant shall, at a minimum, apply and adhere to the standards and Specifications provided by the Client as well as industry standards and specifications. The Consultant

shall use its professional judgment and discretion in deciding when to exceed those standards.

## **7. Changes**

Either the Client or the Consultant may, by written notice to the other Party, identify changes in the Services (as described in Schedule A). If an addition or deletion from the Services is agreed to and authorized by the Client, the contract price and time schedule shall be adjusted by negotiation between the Client and the Consultant to reflect the value of the Services added or deleted and the impact on the time to perform the Services. The Consultant shall not proceed with any change without written authorization signed by the Client.

## **8. Safety**

The Consultant shall be responsible only for its activities and that of its employees and Subcontractors with respect to jobsite safety and shall have no responsibility for means, methods, sequences, techniques or procedures of construction. Nothing in this agreement shall imply that the Consultant has any responsibility for job site safety unless otherwise set out in Schedule A.

## **9. Approvals**

The Client agrees to give due consideration to all plans, drawings specifications, reports, proposals and other information provided by the Consultant and agrees to make any decisions which it is required to make in connection therewith within a reasonable time so as not to delay the Consultant's performance of the Services. The Consultant must provide any information, advice or recommendations as may reasonably be required by the Client for the purposes of making the decision. Such decisions shall be at the sole discretion of the Client.

## **10. Time of the Essence**

Time shall be of the essence in this Agreement.

## **11. Time Schedule**

The Consultant shall, when required by the Administrator, prepare and update a time schedule in a format acceptable to the Administrator indicating the timing of the performance of the Services.

## **12. Delays**

The Consultant shall perform the Services and adhere to the time schedules at all times, including during any disputes with the Client, unless both parties agree otherwise in writing.

If performance of the Services is affected by causes beyond the Consultant's reasonable control:

- A) the schedule will be equitably adjusted by mutual agreement of the Parties, and
- B) compensation, arising from the delay, will be reviewed by the Parties and may be adjusted by mutual agreement of the Parties.

## **13. Team**

The Consultant shall provide a chart describing the key personnel and Subcontractor(s) the Consultant intends to use to provide the Services and the allocation of the work amongst those personnel.

The Consultant shall not change the key personnel or Subcontractor(s) providing the Services or the tasks assigned to such personnel unless:

- i. such personnel or Subcontractor(s) cease to be employed by the Consultant or any body corporate directly or indirectly controlled by the Consultant; or
- ii. there are delays not caused by the Consultant, and
- iii. the prior written consent of the Administrator is obtained to such change;

In the event a key personnel or Subcontractor(s) change is affected pursuant to this clause, any replacement personnel shall not be appointed unless the prior written consent of the Administrator has been obtained, which consent shall not be unreasonably withheld, conditioned or delayed.

The Consultant shall not employ for the Services any personnel or Subcontractor(s) not qualified for the task assigned.

The Consultant shall, at the written request of the Administrator, promptly remove from the Services any person or Subcontractor engaged in the performance of Services due to their incompetency or improper conduct.

#### **14. Termination**

##### **BY THE CLIENT:**

- A) If the Consultant becomes bankrupt, or insolvent, or a receiver-manager is appointed to manage the assets of its business or if the Consultant breaches any material term of the Agreement or fails to observe, perform or carry out any of its obligation under the Agreement or Services for fourteen (14) days after written notice to remedy such default, the Client may, without further notice, terminate the Agreement; or
- B) The Client may, at its sole discretion, and without prejudice to any other right or remedy it may have, terminate this Agreement or any part of this Agreement or of the Consultant's Services at any time without cause by giving the Consultant thirty (30) days prior written notice of such termination.
- C) Upon the termination of the Services of the Consultant, arising out of (A) or (B) above, the Client may take possession of all materials incidental to the performance of the Services and complete the Services, and the Consultant agrees to return all work in progress and completed work to the possession of the Client provided that the Consultant may keep a copy for its records.

The Consultant shall:

- stop the performance of the Services to the extent directed in the notice of termination;
- assign to the Client upon its request, all rights of the Consultant under contracts with Subcontractors then outstanding;
- terminate to the extent possible and at the Client's request, outstanding contracts with Subcontractors;
- take any other action towards termination of the Services which the Client may direct; and
- promptly deliver to the Client such documents, data, records, studies, drawings and reports relating to the Services as the Client requests provided that the Consultant may keep a copy for its records.

If this Agreement is terminated in accordance with (B) above, the Consultant may submit a final invoice to the Client together with such supporting documentation as would be

required under Section 18. The Client shall, subject to any right of set-off it may have, pay the Consultant for its Services performed to the date of termination based on the lesser of:

- (1) The fee schedule included in Schedule B; and
- (2) The Consultant's documented time and out-of-pocket expenses incurred in performing the Services, billed at the Consultant's standard published rates for such service and expenses.

If this Agreement is terminated in accordance with (A) above, the Consultant may submit a final invoice to the Client together with such supporting documentation as would be required under Section 18.

The Client shall, subject to any right of set-off it may have, including the right of the Client to withhold further payments to the Consultant, until final completion of the Services, inclusive of any costs the Client incurs to have a third party complete said Services, pay the Consultant for its Services performed to the date of termination based on the lesser of:

- (1) The fee schedule included in Schedule B; and
- (2) The Consultant's documented time and out-of-pocket expenses incurred in performing the Services, billed at the Consultant's standard published rates for such service and expenses.

**BY THE CONSULTANT:**

If the Client breaches any material term of the Agreement or fails to observe, perform or carry out any of its obligation under the Agreement or Services for fourteen (14) days after written notice to remedy such default, the Consultant may, without further notice, terminate the Agreement.

If this Agreement is terminated in accordance with above, the Consultant may submit a final invoice to the Client together with such supporting documentation as would be required under Section 18.

Except as herein specifically agreed, under no circumstances shall either Party be liable to the other Party for any consequential damages resulting solely from or arising out of the termination of this Agreement or any part of the Services in accordance with this Section 14.

**15. Intellectual Property, Ownership, Use of Documents**

Unless otherwise provided in Schedule D, the right, title and interest in documents, drawings and materials in any form or format (the Materials), including moral rights, that arise out of the performance of this agreement:

1. in the case of Materials that are developed by the Consultant internally for the purpose of providing the Services, shall belong to the Consultant;
2. in the case of Materials delivered to the Client in the course of providing the Services, shall belong to the Client upon payment by the Client of the invoice amount payable with respect to those Services.

Nothing in this Agreement gives either party any right, title or interest in any Materials provided to it by the other party for the purpose of enabling the party to fulfill its obligations under this Agreement.

**16. Confidentiality/Privacy**

All documents, data, records or information which the Client in any way discloses to the Consultant in connection with this Agreement (the "Confidential Information") shall be kept

confidential and the Consultant shall not use Confidential Information for its own purposes (other than in connection with the performance of the Services) nor shall the Consultant disclose the Confidential Information except as may be specifically authorized by the Client in writing or required by law.

The Client will treat all commercial information provided by the Consultant including payroll data as confidential.

The Consultant and the Client agree that they and any of their affiliates shall not, and shall cause each of their employees, Subcontractors, or agents used to perform the Services, to not use or disclose any Confidential Information for any purpose, commercial or otherwise, other than the performance of the Services for and on behalf of the Client, without the prior express written consent of the other Party, provided; however, that the Consultant and the Client may disclose certain Confidential Information to those employees or Subcontractors participating in the performance of the Services relating to this Agreement, and who have a need to know such Confidential Information for purposes of such performance. The terms of Schedule C shall apply to the Services.

## **17. Publicity**

The Consultant agrees not to make any public statements or comments about the Services or to use information acquired from the Client in relation to the Services on any other project without the express prior written approval of the Client.

## **18. Fees and Payment**

Subject to the terms and conditions herein, the Client agrees to pay to the Consultant the fees as set out in Schedule B attached hereto, and forming part of this Agreement, for performance of the Services. Each invoice submitted by the Consultant shall include such additional or supporting documentation as Client may reasonably request.

Except as otherwise provided in Section 14, the fees set out in the attached Schedule B and authorized changes shall be the only compensation payable from the Client to the Consultant for the performance of the Services including disbursements incurred by the Consultant.

The Consultant will submit monthly invoices to the Client and a final invoice upon completion of Services. The Client shall notify the Consultant within ten (10) days of receipt of invoice of any dispute with the invoice. The Client and the Consultant will promptly resolve any disputed amounts. Payment of undisputed invoice amounts is due upon receipt of invoice by the Client and is past due thirty (30) days from the date of the invoice. If payment of undisputed amounts remains past due sixty (60) days from the date of the invoice, then the Consultant shall have the right to suspend all work relating to the performance of its Services under this Agreement, without prejudice.

Unless the Client is exempt, all the Consultant's invoices shall include the Consultant's Goods and Services Tax registration number and the total amount of Goods and Services Tax charged as a separate item from any charges for Services rendered or expenses for which the Consultant is seeking reimbursement. The Consultant's invoices for Services not containing any or all information required by the Goods and Services Tax legislation to enable the Client to claim an input tax credit shall be considered not to be proper invoices and shall not be payable by the Client until all such information has been provided to the Client by the Consultant.

The Consultant agrees to pay all debts and liabilities incurred in the performance of Services under this Agreement, including the liability to pay the Consultant employees the wages to which they are entitled according to the law.

Prior to commencing the Services and prior to receiving final payment the Consultant shall provide evidence of compliance with the requirements of *The Workers' Compensation Act* including payments due thereunder.

At any time during the term of the Agreement, when requested by the Client, the Consultant shall provide such evidence of compliance by itself and its Subcontractors with the requirements of *The Workers' Compensation Act*.

**19. Insurance**

**General**

Refer to Schedule E for insurance requirements.

**20. Indemnification**

The Consultant agrees to indemnify, defend and save harmless the Client, its ministers, agents, officers, directors and employees from and against all claims, damages, losses, and expenses (including but not limited to reasonable lawyer's fees and legal costs) arising from personal injury, death or damage to third-party person or property to the extent resulting from the Consultant's proven negligent acts, errors or omissions in the performance or non-performance of this Agreement.

The Client agrees to indemnify, defend and save harmless the Consultant, its officers, directors, employees and subcontractors, from and against all claims, damages, losses, and expenses (including but not limited to reasonable lawyer's fees and legal costs) arising from personal injury, death or damage to third-party person or property to the extent resulting from the Client's proven negligent acts, errors or omissions in the performance or non-performance of this Agreement.

Notwithstanding any other clause of this Agreement, neither party shall be liable to the other party for any indirect, special, consequential or incidental damages including, without limitation, loss of use of or loss of profit or loss of anticipated business.

**21. Dispute Resolution**

In the event that any dispute arises between the Consultant and the Client concerning the interpretation or performance of this Agreement, the dispute will be referred in writing by either Party to the following Client and Consultant representatives:

The Client: (Name/Position, contact info)

---

---

The Consultant: (Name/Position, contact info)

---

---

In the event that any dispute cannot be resolved within 30 days by the representatives listed above, the parties agree to submit the dispute to neutral, non-binding mediation before commencing any arbitration or legal proceeding with respect to the dispute. The parties will act in good faith and attend the mediation with representatives who have sufficient authority to resolve the dispute. The parties shall share the cost of the mediation equally. If the parties cannot agree on a mediator, they will each name a mediator and those mediators will choose a third mediator who will have conduct of the mediation. If the parties fail to resolve the dispute by mediation, the mediator shall prepare a written report to the parties setting out the issues in dispute that have not been resolved. Either party may then, by notice to the other party, demand arbitration

of the issues set out in the mediator's report. Unless the parties agree to a different arbitration process, the arbitration shall be governed by *The Arbitration Act, 1992*.

**22. Subcontractors**

Nothing in any contract between the Consultant and a Subcontractor shall create any contractual relationship between a Subcontractor and the Client.

**Notices**

All notices required or permitted to be given hereunder, shall be deemed to be properly given if delivered in writing by hand, facsimile machine, registered mail, or express courier addressed to the Client or the Consultant, as the case may be, at the addresses set forth below, with postage thereon fully prepaid if sent by express courier.

All notices, correspondence, deliverables, and invoices shall be submitted to the Client as indicated below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile No. \_\_\_\_\_

All notices and correspondence shall be submitted to the Consultant as indicated below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile No. \_\_\_\_\_

Notice shall be effective: (i) immediately upon delivery by hand, (ii) upon completed transmission if the written notice is sent by facsimile, properly directed and addressed (provided that the sending Party has an electronic acknowledgement that the facsimile has been received); (iii) 5 business days after written notice is deposited in the federal mail, first class delivery, postage prepaid; or (iv) 3 business days after written notice is deposited for overnight delivery with an established courier service.

**23. Assignment**

The Consultant agrees not to assign or transfer this Agreement or any part without the prior written consent of the Client. Said consent is not to be unreasonably withheld.

The Agreement shall enure to the benefit of and be binding upon the Client and the Consultant and their respective successors and permitted assigns.



**24. Survival of Covenants**

All representations, limitations, expiry and exclusions of liability and releases and indemnities contained in the Contract Documents shall survive final payment, termination or completion of the Agreement.

**25. Remedies Cumulative**

Except as otherwise provided herein, all rights and remedies of the Client and the Consultant may be exercised and continued concurrently or in the alternative, and all such rights and remedies shall be in addition to any right or remedy otherwise available.

No waiver by either Party of any breach by the other Party in the performance of the Agreement shall be deemed to be a waiver of any other breach.

Failure by either Party to exercise any right or remedy arising out of any breach of the Agreement by the other Party shall not constitute a waiver of such right or remedy.

**26. Governing Law**

This Agreement shall be interpreted and the rights of the parties shall be determined in accordance with the laws of the Province of Saskatchewan. Any dispute, action or interpretation of this Agreement shall be brought in a court of competent jurisdiction in the Province of Saskatchewan or through Arbitration, and the parties hereto agree to attorn to the jurisdiction of the courts of the Province of Saskatchewan.

**In Witness Whereof** the parties hereto have executed this Agreement as of the day and year first above written.

**Signed** by the *Consultant*:

\_\_\_\_\_  
**The Consultant**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Witness if not a Corporate Company)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Witness if not a Corporate Company)

**Signed** by the *Client*:

\_\_\_\_\_  
Signature

**SCHEDULE A**

**Scope of Work**

Project Name: \_\_\_\_\_

Description of Services

\_\_\_\_\_

Safety

NOTE: if this is consulting services only (no site work), then this should not be applicable

\_\_\_\_\_

Specifications

\_\_\_\_\_

Schedule

\_\_\_\_\_

Progress Reporting

\_\_\_\_\_

(other)

\_\_\_\_\_

**SCHEDULE B**

Contract Pricing

ITEM	COST

## **SCHEDULE C**

Privacy

---

*(Note: Include privacy terms and conditions)*

## SCHEDULE D

### Deviations from the Terms and Conditions

---

The following deviations amend or supplement the Terms and Conditions of this Agreement:

---

*(Note: Address any potential conflict with the agreement terms and conditions)*

## SCHEDULE E

(Sample Only)

### Insurance

#### **General Liability Insurance**

The Consultant shall provide, maintain and pay for comprehensive general liability insurance coverage for bodily injury, death and damages to property including loss of use thereof with a combined single limit of \_\_\_\_\_ dollars (\$\_\_\_\_\_) inclusive per occurrence and in the aggregate, having a deductible of not more than \_\_\_\_\_ dollars (\$\_\_\_\_\_).

#### **Automobile Liability Insurance**

The Consultant shall provide, maintain and pay for automobile liability insurance covering all owned and non-owned and hired vehicles employed under this Agreement with a limit of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per occurrence and in the aggregate

The general liability insurance shall include coverage for all owned and non-owned licensable vehicles employed under this Agreement.

#### **Aircraft/watercraft Insurance**

If owned or non-owned aircraft or watercraft are used in the performance of the Scope of Work, the Consultant shall provide, maintain and pay for aircraft or watercraft liability insurance coverage of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per seat with an aggregate total of \_\_\_\_\_(\$ ).

#### **Professional Liability Insurance**

The Consultant shall provide, maintain and pay for Professional Liability Insurance in the amount of \_\_\_\_\_dollars (\$\_\_\_\_\_) for a single claim, and in the aggregate.