Municipal Engineers Association / Association of Consulting Engineering Companies – Ontario (MEA/ACEC – ONTARIO)

2024
(Version 4.0)

User Guide for the Client/Engineer Agreement
for Professional Consulting Services

PURPOSE OF THIS USER GUIDE

The MEA and ACEC – ONTARIO have jointly created a copyrighted template that can be used to form an agreement (Agreement) between the Client and the Engineer providing professional consulting services. This User Guide is intended to provide clarification and guidance to municipalities (Client) and engineers (Engineer) who are entering into a contractual agreement for performance of professional consulting services.

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Guidelines for using the Template Client/Engineer Agreement for Professional Consulting Services

These Guidelines consider the Articles of the Client/Engineer Agreement for Professional Consulting Services (the "Agreement"), with a view to explaining their meaning as well as their rationale, where such explanation would be useful to the Client and Engineer.

The Agreement is intended for use by municipalities in Ontario employing professional consultants for performance of engineering services. For the purposes of these Guidelines, consistent with the Definitions of the Agreement, the municipality will be considered the "Client" and the consulting engineer will be considered the "Engineer". The 2024(Version 4.0) of the Agreement has been updated for compliance with the *Construction Act*, RSO 1990, c C.30 in effect as of June 1, 2024, including compliance with the *Construction Act*'s prompt payment and adjudication provisions.

Where parties seek to prepare and enter into a contract using the template Agreement, the Agreement must be carefully examined clause by clause.

The template Agreement is subject to copyright law such that, except for populating the identified fillable fields as indicated in the executable Agreement, no changes or alterations can be made directly to the document. Where the parties agree to make changes, amendments and alterations to any terms of the template Agreement, these changes, amendments and alterations must be set out in a separate document, typically called "Supplementary Conditions".

GUIDELINES

Article 1 – General Conditions

Section 1.1 The Agreement

Subsection 1.1.1 identifies the Contract Documents, being all documents that are intended to form part of the Agreement. By default, the template Agreement provides for the Contract Documents to be comprised of the Recitals, Definitions and Articles of the Agreement as well as Supplementary Conditions, if any. A fillable box is also included so that any additional documents can be listed by the parties. All documents forming part of the Contract Documents should be identified in this Subsection, including any Client requirements, plans or specifications.

Subsection 1.1.1 also sets out the order of priority between the Contract Documents in the event of any conflict between them. Supplementary Conditions prepared by the parties, if any, are given the highest priority because they modify the terms of the template Agreement. If the parties want documents listed in the fillable field to have a higher priority than those listed above, amendment to Subsection 1.1.1 can be made within this editable field.

Section 1.3 Changes and Additional Services

Section 1.3 provides that Changes (including Additional Services) must be agreed by the parties in writing. Where agreement regarding Changes or Additional Services cannot be reached, the Client may direct that the Engineer proceed with the Additional Services with any dispute to be resolved as per the dispute resolution process in Section 1.14.

Where the Engineer intends to claim for an increase to its compensation or the Client intends to claim a credit or reduction in compensation from the Engineer, Subsection 1.3.6 requires that the party give written notice to the other within 10 Business Days. If a party fails to give this notice and that failure prevents the other party from mitigating or minimizing is losses or otherwise causes the other party damage, then the party making the claim is barred from bringing the subject claim.

Section 1.4 Client Obligations

Standard obligations of the Client are set out in Section 1.4, including to provide prompt response to the Engineer's requests for information and to pay for all required consents, approvals, licenses and permits. Subsection 1.4.5 refers to the fillable box included in Article 2 where any additional obligations of the Client agreed to by the parties can be added.

Section 1.5 Staff and Subconsultants

Subsection 1.5.1 requires the Engineer to provide a list of its staff to be employed on the Project and requires that the Engineer give the Client written notice of any changes to such Engineer's Staff.

Subsection 1.5.2 stipulates that the Engineer's engagement of Subconsultants for specialized services must be approved in writing by the Client. It also provides for the Engineer to add a mark-up to the cost of any such services. A reasonable mark-up to cover office administration costs should be applied and is commonly within the range of 5%-10%. In determining the appropriate mark-up, both the project's value and scope should be considered. For example, a higher mark-up percentage is likely more appropriate for smaller projects, while the mark-up percentage would be closer to the lower end of the range for larger projects.

Section 1.6 Contract Documents

Subsection 1.6.3 provides that the Engineer is entitled to rely upon the accuracy and completeness of information provided by the Client. The Engineer is required to notify the Client of any errors, omissions, inconsistencies or discrepancies in the Contract Documents in writing.

Section 1.7 Deliverables, Intellectual Property, Licensing

Section 1.7 sets out the Client's rights for use of the Deliverables prepared by the Engineer as part of the Services. It provides that the Engineer retains ownership of the Deliverables and all of the Engineer's IP (being the Engineer's intellectual property).

The Client is granted a license for use of the Deliverables and any Engineer's IP therein under Subsection 1.7.3.1 for constructing, using, occupying, maintaining, repairing, renovating, altering and adding to the Work and the Project.

The option to grant the Client additional license rights is also available if these options are chosen to "apply" by the parties. Where Subsection 1.7.3.2 is chosen to "apply", the Client is granted further license to use the Deliverables and any Engineer's IP therein for other works or projects of the Client and where Subsection 1.7.3.3 is chosen to "apply" the Client is granted the right to grant Sublicenses to Other Municipalities for use of the Deliverables and any Engineer's IP therein for the works and projects of any such Other Municipalities.

A form of Sublicense for use by the Client when granting any such Sublicense is included as Schedule 1 to this User Guide.

All license rights granted to the Client are subject to conditions set out in Subsection 1.7.4, which include that the Engineer is not liable for any use of the Deliverables and any Engineer's IP therein for any location other than the Site or for any work or project other than the Work or the Project for which the Deliverables were intended. A form of notice for use as required by Subsection 1.7.4.4 is included as Schedule 2 to this User Guide.

Section 1.8 Confidential Data and Publication

Subsection 1.8.1 provides that the parties will not disclose information identified as confidential and may not use confidential information for any other project without the prior written consent of the other party.

Subsection 1.8.2 provides that the Engineer requires consent from the Client prior to publishing any information on the Project.

Section 1.10 Time for Performance and Delays (including Force Majeure)

The Engineer agrees to commence the Services by the date to be filled in by the parties and to complete the Services upon the later of a stipulated date or a stipulated period of time after completion or abandonment of the Work, each as filled in by the parties.

Force Majeure has been defined to capture any event outside a party's reasonable control that causes delay or inability to perform obligations. To constitute an event of Force Majeure, all criteria within the definition must be met, including that the event could not have been reasonable prevented, overcome or removed by the party using commercially reasonable efforts and due diligence. Pursuant to Subsection 1.10.4, neither party is liable for delay or failure in performance caused by a Force Majeure

event. The Client, however, is not relieved of its payment obligations due to a Force Majeure event. Pursuant to Subsection 1.11.2, where an event of Force Majeure continues for a period of 90 calendar days or more, the parties must agree upon terms and conditions for the Engineer's resumption of Services.

Section 1.12 Indemnification

Subsection 1.12.1 provides a reasonable indemnification from the Engineer in favour of the Client for Claims (as defined) caused by the Engineer's negligence or breach of the Agreement. Because an obligation of the Engineer to "defend" the Client can give rise to liability for defense costs before the Engineer's liability, if any, has been determined, language has instead been included in Subsection 1.12.1 to make clear that, where the Engineer is determined to be liable, this liability includes the obligation to reimburse the Client for all legal fees incurred on a full indemnity basis.

Subsections 1.12.3 to 1.12.5 set out reasonable limitations to the parties' liability under the Agreement, including an exclusion of the parties' liability for Consequential Damages (defined to include lost profits) (Subsection 1.12.3), caps to the parties' liability for Claims (Subsection 1.12.4) and an exclusion of personal liability for the parties' shareholders, officers, directors and employees (Subsection 1.12.5).

While the approach taken is considered reasonable and balanced for most projects and scope of services, if and when it is determined by the parties that the nature of the subject Project and Services necessitates different sharing of liability between the Client and Engineer, any such changes would need to be made through Supplementary Conditions.

Section 1.13 Insurance

The parties are to insert in the blanks provided, the limits of insurance the Engineer is required to carry. The Engineer is required to provide proof of insurance upon request and it is generally recommended that Clients obtain bona fide certificates of insurance from the Engineer.

Where a municipality has established policies regarding the amount of insurance to be carried by a professional consultant, these amounts should be used. For those municipalities without such policies the following is suggested:

    (a)   Comprehensive General Liability:

            Aggregate coverage for, Bodily Injury, Property Damage, Completed Operations should not be less than $2,000,000.

    (b)   Automobile Insurance:

            If applicable to the services, $2,000,000 aggregate limit, for owned, non -owned, hired and leased vehicles.

    (c)   Professional Liability Insurance

            Coverage should be determined on a sliding scale dependent on the scope and value of the engineering services. For example, where the services entail feasibility studies only, and there is no potential for any bodily injury or property damage issues, the minimum $250,000 per claim $500,000 in the aggregate limit should be sufficient. For design services, if fees are under $25,000 a $500,000 per claim limit with a $1,000,000

aggregate can be considered. If Engineer`s fee are excess of $25,000 or services are in a high risk areas, such as geotechnical/structural/environmental, coverage should be minimum of $1,000,000. For larger projects, where fees are excess of $100,000 a $2,000,000 limit should be considered. For very large or high risk projects, a $5,000,000 limit is appropriate. If increased coverage is required by the Client, (from what the engineer normally carries) the Engineer may request additional payment under Section 3.2.

(d)   Cyber Liability Insurance, to be requested if there is exposure to confidential or personal data.

(e)   Other coverages may be required, such as:

- Environmental Liability

- Watercraft Liability

- Aviation or Drone Liability

- Umbrella or Excess Liability

Section 1.14 Dispute Resolution

Section 1.14 outlines the process to be followed for resolution of any dispute between the Engineer and Client. The process provides first for negotiation followed by mediation, unless either party elects by written notice to forego mediation. Any dispute not resolved by negotiation or mediation can be referred by either party to arbitration, but where neither party refers the dispute to arbitration, the dispute may be resolved by the courts. Subsection 1.14.5 states that nothing in the Agreement prevents the parties from referring a dispute to adjudication under the Construction Act.

Subsection 1.15.2 Assignment

This subsection states neither party may assign the Agreement to another party without prior written consent of the other party.

Subsection 1.15.3 Previous Agreements

This subsection confirms that the Agreement supersedes any and all previous agreements.

Subsection 1.15.4 Approval by Authorities

This subsection clarifies that the Client's written authorization is required before the Engineer may apply for approvals to authorities having jurisdiction.

Subsection 1.15.5 Additional Conditions

Any special requirement regarding insurance, WSIB, permits, approvals, AODA, etc. for the Project for Client approved policies should be included under this Subsection.

Article 2 – Services

Section 2.1 Services to be provided by the Engineer

Services to be provided by the Engineer in addition to those set out in Article 1 are to be identified here. This can be done by adding reference to the applicable sections of the proposal submitted by the Engineer or by adding a specific description of the services directly in the space provided.

Section 2.2 Exclusions from Services to be provided by the Engineer

Any activities not included in the Services to be provided by the Engineer are to be identified here. This may include identification of assumptions forming the basis of the Engineer's proposal for performance of the Services that, if changed, would give rise to the need for Additional Services. These exclusions can be identified by adding reference to the applicable sections of the proposal submitted by the Engineer or by adding a specific description of the exclusions directly in the space provided.

Section 2.3 Responsibilities of the Client

Responsibilities of the Client in addition to those set out in Article 1 are to be identified here by adding a description of such obligations directly in the space provided.

Article 3 – Fees and Disbursements

Section 3.1 Basis of Payment for the Agreement

Section 3.1.1 is where the parties specify how the Engineer will be compensated for the Services and provides for selection of one of the following basis of payment options:

- Percentage of Cost Basis

- Time Basis

- Upset Cost Limit Basis

- Lump Sum Basis

The basis of payment must be selected from the options available in the fillable field. Only one methodology is intended to apply throughout the Agreement. Changes to the payment terms may be required through Supplementary Conditions where more than one basis of payment is intended to be used.

Where compensation of the Engineer is on a "percentage cost", "time" or "upset cost limit" basis, the Engineer is entitled to compensation for reasonable expenses and disbursements at the actual cost plus an administrative charge to be specified by the parties in the space provided. Reimbursable Expenses commonly have an administrative charge of 5%-10%. However, this amount can be negotiated between the Engineer and the Client. In determining the appropriate mark-up, both the project's value and scope should be considered. For example, a higher mark-up percentage is likely more appropriate for smaller projects, while the mark-up percentage would be closer to the lower end of the range for larger projects.

Subsection 3.1.4 Percentage of Cost Basis

Where compensation is on a "Percentage of Cost Basis" the percentage to be applied to the Services is to be specified by the parties in the table provided. All Services may be performed for the same percentage of the Cost of the Work or the Services may be broken out by category or phase with a different percentage provided for each. Subsection 3.1.4.1 provides for monthly payment of the Engineer on the basis of the Engineer's estimate of the Cost of the Work until the actual Cost of the Work is determined, at which time any underpayment or overpayment made to the Engineer is to be reconciled. Subsection 3.1.4.1(iii) provides for final determination of the Engineer's compensation on the basis of the Engineer's agreed-to estimate where award of the Construction Contract is delayed by the time specified by the parties in the fillable field, with any services provided by the Engineer after such period to be performed on a "time basis".

Subsection 3.1.5 Time Basis

Where compensation is on a "Time Basis", the Engineer's compensation is to be calculated using the hourly rates to be agreed by the parties in writing. Hourly rates may be adjusted for Projects that are more than 1 year in duration. Upon request, the Engineer is required to provide an estimate of its total fees, a payment schedule and a rate schedule for the Client's approval. Any changes to the estimated fees, payment schedule and rate schedule must be approved by the Client in writing. The Engineer shall submit invoices monthly for Services performed and reimbursable expenses incurred in the immediately preceding month.

Subsection 3.1.6 Upset Cost Limit Basis

Where compensation is on an "Upset Cost Limit Basis", the Engineer's compensation is to be calculated on a "Time Basis" in accordance with Subsection 3.1.5, but the parties further agree that the total fees to be paid by the Client shall not exceed the upset amount specified by the parties in the fillable field provided in Subsection 3.1.6.

Subsection 3.1.7 Lump Sum Basis

Where compensation is on a "Lump Sum Basis", the Engineer's compensation is to be the fixed fee specified by the parties in the fillable field provided in Subsection 3.1.7, which fee is inclusive of all labour, disbursements, reimbursable expenses, overhead and profit. Progress invoices are to be issued by the Engineer monthly unless the parties agree to payment of the fixed fee on a milestone basis. Where the parties wish to provide for such milestone payments, this should be done through Supplementary Conditions.

Section 3.2 Invoicing and Payment

Section 3.2 sets out the requirements for each invoice issued by the Engineer and allows for any additional requirements to be set out in the fillable box found in Subsection 3.2.1.8. Subject to compliance with the Construction Act's prompt payment requirements, the Client is required to dispute any invoice within 14 days of its receipt and is otherwise required to make full payment of an invoice within 28 days of its receipt. The interest rate to be charged on overdue accounts is to be set out by the parties in Subsection 3.2.4.

Agreement Signature Page

The Agreement signature page is where the Client and the Engineer sign the Agreement, binding the parties to their respective obligations, including the Engineer's obligation to provide the Services and the Client's obligation to compensate the Engineer for such Services, each as described and agreed in the Agreement.

[Schedules to User Guide follow]

Schedule 1 to User Guide – Form of Sublicense

The following form of Sublicense Agreement is provided as a template only for information purposes. All users should obtain independent legal advice prior to use of this form of Sublicense Agreement or any variation thereof.

SUBLICENSE AGREEMENT
(hereinafter the "**Sublicense Agreement**")

Dated the day of _____, 20 _____ (the "Effective Date')

BETWEEN

(hereinafter the "**Client**")

AND

(hereinafter the "**Sublicensee**")

WHEREAS:

A.   The Client and **[ENGINEER NAME]** (the "**Engineer**") have entered into **[an Agreement for Professional Consulting Services dated ●]** (the "**Prime Contract**"), a redacted copy of which is attached to this Sublicense Agreement as Exhibit "A"; **[*NTD: This template presupposes use of the [2024] MEA-ACEC Client/Engineer Agreement for Professional Consulting Services*]**

B.   The Client has been granted a permanent, non-exclusive and royalty free license to (among other things) grant sublicenses to Other Municipalities for use and reproduction of the Deliverables and any Engineer's IP therein in connection with works and projects of Other Municipalities that are similar to the Client Work and Client Project, as determined by the Client, acting reasonably, including for the purposes of constructing, using, occupying, maintaining, repairing, renovating, altering, and/or adding to such works or projects of Other Municipalities; and

C.   The Sublicensee and the Client wish to enter into this Sublicense Agreement for the Sublicensee's use of the Deliverables and any Engineer's IP therein for the **[SUBLICENSEE PROJECT DESCRIPTION]** (the "**Sublicense Project**") according to the terms and conditions herein, which terms and conditions are consistent with the terms and conditions of the license granted by the Prime Contract and is no more permissive than such license.

NOW THEREFORE WITNESSETH that in consideration of the covenants contained herein, the Client and the Sublicensee mutually agree as follows:

DEFINITIONS

For the purpose of this Sublicense Agreement, the following definitions shall apply:

1. **Claims:** Claims means any claims, liabilities, demands, losses, settlements, costs, expenses, penalties, damages, actions, suits, or proceedings.

2. **Client:** Client means the person or entity identified as such on the first page of this Sublicense Agreement.

3. **Client Project:** Client Project is the total endeavour contemplated under the Prime Contract and of which the Services and Client Work may be the whole or a part.

4. **Client Work**: Client Work is the total construction and related services required by the Construction Contract, but does not include the Services or the services of other consultants engaged by the Client for the Client Project.

5. **Construction Contract:** Construction Contract means any contract or written agreement between the Client and a person or entity to perform all or part of the Client Work for the Client Project.

6. **Consequential Damages:** Consequential Damages means (i) any consequential, indirect, exemplary, or special damages, and (ii) damages of any kind, however caused or characterized, for loss of actual or anticipated revenue or profits, standby time, interest expenses, overhead, business interruption, loss of reputation, loss of use, loss of business opportunity, increased capital or operating costs, or increased financing costs.

7. **Deliverables:** Deliverables are the designs, drawings, plans, models, specifications, studies, reports, photographs, sketches, graphic representations, materials, software, concepts, products, processes, surveys, calculations and other data, information and deliverables, in any form (including in hard copy or electronic form), prepared by or on behalf of the Engineer as part of the Services performed under the Prime Contract.

8. **Effective Date:** Effective Date means the date of this Sublicense Agreement as stipulated on the first page of this Sublicense Agreement.

9. **Engineer:** Engineer means the person or entity identified as such on the first page of this Sublicense Agreement.

10. **Engineer's IP:** Engineer's IP means all patents, trademarks, copyrights, industrial or other intellectual property rights arising or resulting from performance of the Services, including those which are developed, patentable, capable of trademark, first reduced to practice or otherwise produced by or resulting from the Services. For certainty, Engineer's IP includes any and all intellectual property rights in the Deliverables.

11. **Other Municipality:** Other Municipality means a municipality as defined under the *Municipal Act, 2001*, SO 2001, c. 25, as may be amended, that is not the Client.

12.   **Prime Contract:** Prime Contract means the contract or written agreement between the Client and Engineer identified in the recitals to this Sublicense Agreement.

13.   **Services:** Services means those services provided by the Engineer to the Client under the Prime Contract.

14.   **Sublicense:** Sublicense has the meaning given to it in Section 1.4 of this Sublicense Agreement.

15.   **Sublicense Fee:** Sublicence Fee means the fee to be paid by the Sublicensee to the Client as stipulated in Section 2.1 of this Sublicense Agreement.

16.   **Sublicensee**: Sublicensee means the person or entity identified as such on the first page of this Sublicense Agreement.

17.   **Sublicensee Personnel:** Sublicensee Personnel means the Sublicensee, any consultants, contractors, subcontractors, suppliers, agents, employees or tenants of the Sublicensee, and any other person for whom the Sublicensee is responsible at law.

18.   **Sublicense Project:** Sublicense Project means the total endeavour contemplated by the Sublicensee as described in the recitals to this Sublicense Agreement.

19.   **Sublicense Services and Work:** Sublicense Services and Work is the total construction and all related services required by the Sublicensee for the Sublicense Project, including any professional design services or the services of other consultants engaged by the Sublicensee for the Sublicense Project.

ARTICLE 1 – GENERAL CONDITIONS

1   The Sublicense

1.1   The Client has adequate rights to sublicense the Deliverables and any Engineer's IP therein in connection with the Sublicense Services and Work and Sublicense Project to the Sublicensee, all other rights and interest relating therein and thereto are expressly reserved by the Client and/or by the Engineer, as applicable. The Sublicensee hereby acknowledges that it has no right, title or interest in or to the Deliverables and any Engineer's IP therein in connection with the Sublicense Services and Work and Sublicense Project, other than those rights that are expressly licensed to it hereunder.

1.2   The Sublicense is not exclusive with respect to the Deliverables and the Engineer's IP and nothing in this Sublicense Agreement shall be deemed to derogate from the Client's right to grant other sublicenses for use of the Deliverables and any Engineer's IP therein nor from the Engineer's ownership and full right to use the Engineer's IP for any site, work or project.

1.3   The Sublicensee shall not challenge, directly or indirectly, whether during the term of this Sublicense Agreement or at any time thereafter, any of the Client's right, title and interest in and to the Deliverables and any Engineer's IP therein in connection with the Services, the Client Work and Client Project, or those further rights, title and interest of the Engineer.

1.4   Subject to payment of the Sublicense Fee, if any, the Sublicensee shall have a non-exclusive, non-sublicensable and royalty free license granted from the Client to use and reproduce the Deliverables and any Engineer's IP therein in connection with the Sublicense Services and Work and Sublicense Project, including for the purposes of constructing, using, occupying, maintaining, repairing, renovating, altering, and/or adding to Sublicense Services and Work and Sublicense Project (the "**Sublicense**").

1.5   The Sublicensee hereby accepts, confirms and acknowledges such Sublicense and all limitations thereof as set out in this Sublicense Agreement and the Prime Contract. Without limiting the foregoing, the Sublicensee acknowledges that:

1.5.1   the Sublicensee shall have no right to grant further sublicenses under the Sublicense. For certainty, the Sublicense does not include the right of the Sublicensee to grant further sublicenses or sub-sublicenses to any other person, including to any Other Municipality or any other Sublicensee Personnel;

1.5.2   the Sublicensee shall provide the Client with any and all information reasonably requested by the Client in order to ensure that the Sublicensee complies with the terms and conditions of this Sublicense Agreement; and

1.5.3   the Engineer shall bear no liability in respect of any use of the Deliverables and any Engineer's IP therein by any Sublicensee Personnel, including for the Sublicense Services and Work and Sublicense Project, excepting only to the extent, if any, that the Engineer has been retained by the Sublicensee for the Sublicense Services and Work and Sublicense Project.

1.6   The Client shall give the Engineer written notice of this Sublicense identifying the Sublicensee and the Sublicense Services and Work and Sublicense Project.

2   Sublicense Fee

2.1   For the Sublicense the Sublicensee shall make payment to the Client in the amount of **[$●]** (inclusive of any applicable HST) (the "**Sublicense Fee**"). Unless otherwise agreed by the parties in writing, payment of the Sublicense Fee shall be made within 30 calendar days of the Effective Date.

3   Representations and Warranties

3.1   The Sublicensee represents and warrants that:

3.1.1   exercise of the Sublicense, including use of the Deliverables and any Engineer's IP therein by any Sublicensee Personnel, is at the Sublicensee's sole risk;

3.1.2   no Sublicensee Personnel will hold out that any changes, alterations, revisions, modifications or amendments to the Deliverables were approved, reviewed or otherwise accepted by the Engineer or the Client (unless otherwise expressly agreed by such the Engineer or Client in writing); and

3.1.3   no Sublicensee Personnel shall do anything inconsistent with: (i) the validity of any of the Engineer's IP; (ii) the Client's rights granted under the Prime Contract

to the Deliverables and any Engineer's IP therein; or (iii) the terms of this Sublicense Agreement in general

4   <u>**Confidential Data and Publication**</u>

4.1   Neither party shall divulge information regarding the Client Work, the Client Project, the Sublicense Services and Work and the Sublicense Project nor any other specific information identified as confidential, communicated to or acquired by them, or disclosed by the other party in the course of carrying out their obligations under this Sublicense Agreement. The foregoing obligations of confidentiality shall not apply to information which is in the public domain, which is provided to the receiving party by a third party without obligation of confidentially, which is independently developed by a party without access to the other party's information, or which is required to be disclosed by law or court order. No such received confidential information shall be used by one party on any other project without the prior written approval of the other party. For certainty, nothing in this Section 4.1 prohibits the parties from sharing Client Work, the Client Project, the Sublicense Services and Work and the Sublicense Project with their respective consultants, contractors, subcontractors, suppliers, agents, advisors, employees and tenants as required for the purpose of exercising or performing the parties' respective rights and obligations under this Sublicense Agreement.

4.2   Each party agrees to obtain the consent in writing of the other before publishing or issuing any information regarding the Client Work, the Client Project, the Sublicense Services and Work or the Sublicense Project.

4.3   Nothing in this Section 4 shall prevent or preclude the Client's giving of written notice to the Engineer pursuant to Section 1.6 and the Sublicensee expressly consents to the Client's giving of such written notice.

5   <u>**Suspension or Termination**</u>

5.1   Either party may terminate this Sublicense Agreement:

5.1.1   upon seven (7) calendar days' written notice to the other party and without further liability in the event the other party is in material breach of this Sublicense Agreement and fails to remedy such breach within seven (7) calendar days of receiving written notice of the breach, provided that the breach was not caused or contributed to by the party seeking to terminate this Sublicense Agreement; or

5.1.2   immediately upon written notice if the other party becomes insolvent or files for or is put in bankruptcy or makes a general assignment in favour of its creditors, or if all or any part of its property is put under receivership.

5.2   In addition to the foregoing, the Client may terminate this Sublicense Agreement immediately upon written notice to Sublicensee in the event of the Sublicensee's breach of or failure to comply with any of Sections 1.3, 1.5, 3.1 or 4 of this Sublicense Agreement.

5.3   Upon any such termination by either party, unless due to negligence:

5.3.1   the Sublicensee shall pay the Client the total Sublicense Fee; and

5.3.2   the Sublicense shall be deemed to be terminated and the Sublicensee shall immediately cease use of the Deliverables and any Engineer's IP therein in connection with the Sublicense Services and Work and Sublicense Project, including for the purposes of constructing, using, occupying, maintaining, repairing, renovating, altering, and/or adding to Sublicense Services and Work and Sublicense Project.

5.4   Where any such termination is by the Client, the Sublicensee shall also reimburse the Client for the direct costs reasonably incurred by the Client as a direct result of such termination, but not to include Consequential Damages.

5.5   All representations, indemnities, obligations of confidentiality and other obligations under this Sublicense Agreement that by their nature are intended to survive termination shall so survive termination or expiration of this Sublicense Agreement.

6   <u>Indemnification</u>

6.1   The Sublicensee shall indemnify the Client from and against any and all Claims in any way arising out of or related to any of the following:

6.1.1   exercise and/or use of the Sublicense, including without limitation, use of the Deliverables and any Engineer's IP therein for the Sublicense Services and Work and/or the Sublicense Project;

6.1.2   any change, alteration, revision, modification or amendment to the Deliverables by any Sublicensee Personnel;

6.1.3   breach of this Sublicense Agreement by any Sublicensee Personnel;

6.2   Each party shall indemnify the other, including its respective parent, subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against any Claims by third parties that arise out of or are attributable to this Sublicense Agreement and the Sublicense, including Claims attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, to the extent that such Claims are attributable to or caused by the negligence or willful misconduct of the indemnifying party or anyone for whose acts the indemnifying party is responsible in law.

6.3   In no event shall either the Client or the Sublicensee be liable to the other, or their respective directors, officers or employees, for any Consequential Damages arising out of or related to this Sublicense Agreement, the Sublicense, the Services, the Client Work, the Client Project, the Sublicense Services and Work and/or the Sublicense Project.

6.4   To the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of the Client or the Sublicensee shall have personal liability under any provision of this Sublicense Agreement or for any matter in connection with the Sublicense.

6.5   For certainty, the parties' liability for Claims under this Section 6 shall include the obligation to reimburse the other party for all legal fees (including costs of defense) reasonably incurred as a direct result of such Claims on a full indemnity basis.

7   <u>**Miscellaneous**</u>

7.1   This Sublicense Agreement shall not be assigned or transferred, in whole or in part, by Sublicensee without the written consent of the Client.

7.2   This Sublicense Agreement shall be governed by, and construed under, the laws of the Province of Ontario and the laws of Canada applicable in that Province. The parties attorn to the jurisdiction of the Courts of the Province of Ontario, Canada.

7.3   If one or more of the provisions of this Sublicense Agreement is found to be void or unenforceable, the Sublicense Agreement as a whole shall not be affected thereby, and the provisions in question shall be replaced by an interpretation in conformity with the law which comes closest to effecting the parties' original intention.

[Remainder of page intentionally left blank]

8   Any amendments or modifications to this Sublicense Agreement must be made in writing and signed by both parties.

9   This Sublicense Agreement may be executed in counterparts and delivered in original form or by PDF e-mail, facsimile or other electronic means, each of which will together, for all purposes, constitute one and the same instrument as if the parties hereto had executed the same document, and all counterparts will be construed together and constitute one and the same instrument.

The parties hereto have executed this Sublicense Agreement.

CLIENT NAME

By: _____

        Name:

        Title:

SUBLICENSEE NAME

By: _____

        Name:

        Title:

Exhibit A to Sublicense Agreement

Redacted Copy of Prime Contract

[Copy of or excerpts of Prime Contract to be attached. Commercially sensitive terms may be removed/redacted, but excerpts reproduced here should include relevant details of the Client Project and a description of the Services performed by the Engineer under the Prime Contract]

Schedule 2 to User Guide – Form of Notice of Sublicense

The following form of notice is provided as a template only for information purposes. All users should obtain independent legal advice prior to use of this form of notice or any variation thereof.

<u>FORM OF NOTICE</u>

[Date of Notice]

RE: Agreement For Professional Consulting Services between the **[CLIENT]** (the "Client") and the **[ENGINEER]** (the "Engineer"), dated **[INSERT DATE]** (the "Agreement")

In accordance with Subsection 1.7.4.4 of the Agreement which requires the Client to provide written notice of any Sublicense granted pursuant to Subsection 1.7.3.3 of the Agreement identifying the person to whom such Sublicense was granted and the intended use of such Sublicense, please be advised of the following Sublicense:

Client

Project:

Other Municipality/Sublicensee:

Date Entered into Sublicense:

Sublicense Services and Work:

Sublicense Project:

For further details, please contact **[INSERT CONTACT]** at Client.

Regards,

[Name of contact at Client]