

Standard Terms and Conditions for Consulting Services

1.0 General

- 1.1. E2I2 Consulting Inc., of 2332 Palisade DR SW, Calgary, Alberta, Canada, T2V 3V1, hereinafter called the Consultant, is a claim focused engineering consulting company. The Consultant provides the following Services: incident investigation, damage or betterment valuation, repair or replacement time evaluation, and such other services as are agreed in writing between the Consultant and the Client.
- 1.2. The scope of the Services provided by the Consultant to the Client are specific to each Project and will be set out in writing either in the form of an instruction by the Client and an acknowledgement by the Consultant, or strictly by an acknowledgement by the Consultant.
- 1.3. These Terms and Conditions form the Agreement that will govern any Services provided by the Consultant to the Client unless a more specific agreement between the Client and the Consultant exists.
- 1.4. Where the Client is a representative of one or more Other Parties:
 - 1.4.1. The Client represents and warrants that it has permission to direct the Services of the Consultant on behalf of all the Other Parties.
 - 1.4.2. This Agreement extends to all and each of the Other Parties as though they are the Client.

2.0 The Client shall:

- 2.1. Advise the Consultant in advance of the provision of the Services of any restrictions or requirements the Client wishes to impose on the Consultant regarding:
 - 2.1.1. Limitations to the scope of Services requested.
 - 2.1.2. Limitations respecting costs of the Services as supplied by the Consultant.
 - 2.1.3. Restrictions governing communications regarding the scope of Services supplied by the Consultant to other Parties.
 - 2.1.4. Any other restrictions or limitations as required or deemed appropriate by the Client and as agreed by the Consultant.
- 2.2. Exercise its best efforts to obtain and supply all relevant information or data which is required by the Consultant or deemed as appropriate or relevant to the Services for the Project by the Client, understanding that the Consultant will be relying on the accuracy and completeness of the information supplied.
- 2.3. Provide reasonable access to all relevant premises, plant(s) and personnel, as identified by the Consultant and/or the Client:
 - 2.3.1. Where access is granted to premises, plant(s) and personnel not belonging to the Client, the Client represents and warrants that the owner has granted permission for the Consultant to gain access to perform the Services.
- 2.4. Immediately notify the Consultant of any changes to the scope of or nature of the Services requested
- 2.5. When requested by the Consultant, retain directly other specialist Consultants as agreed between the Consultant and Client to perform services necessary to the Consultant to complete the Services, including, but not restricted to, site surveying, geotechnical analysis and reporting, metallurgical testing
- 2.6. Notify the Consultant of any deficiencies in the Services for the Project and provide the Consultant reasonable opportunity to correct the deficiencies.
- 2.7. Reimburse the Consultant per Section 4.0 of these Terms and Conditions to respond to any subpoena or government inquiry, or audit related to the services of the Consultant for the Client
- 2.8. Pay the Consultant as provided for in this agreement.

3.0 The Consultant shall:

- 3.1.** Render the Services as specified in section 1.0 General of this Agreement, to the Client for the Project with that degree of care, skill and diligence normally provided in the performance of such services in respect of projects of similar nature to that contemplated by this Agreement at the time and place that such services are rendered.
- 3.2.** In rendering these Services, the Consultant may at any stage, and at its sole discretion, engage sub-consultants to perform all or any part of the Services.
- 3.3.** Notify the Client of:
 - 3.3.1.** The abilities and or availability of the Consultant
 - 3.3.2.** Availability of information relevant to the Project
 - 3.3.3.** Restrictions or limitations imposed on the Consultant by the Client whether as specified under 2.1 of this Agreement or not.
- 3.4.** Shall not disclose any Confidential Information to any Third Party without the Client's consent, save as may be necessary:
 - 3.4.1.** In the performance of the Services on this Project,
 - 3.4.2.** In order to comply with professional standards to protect public health, safety and the environment,
 - 3.4.3.** To comply with laws and court orders.
- 3.5.** Abide by provincial laws governing privacy to the extent applicable.
- 3.6.** Notwithstanding 3.4 and 3.5 above, the Consultant reserves the right to use productivity data or unitized cost data for its own purposes on other Projects or for other Clients, however this data will not be used to reveal confidential or proprietary processes or equipment.
- 3.7.** Will take reasonable precautions to protect against taking Clients that are in conflict with each other for specific Projects.

4.0 Payment

- 4.1.** Charges for the Service rendered will be made in accordance to the Consultant's Schedule of Fees and Disbursements in effect from the time the Services are first contracted by the Client for the Project and as subject to revision per the notes included in the attached Schedule of Fees and Disbursements.
- 4.2.** The Client agrees that it shall pay the Consultant, in addition to the fee as specified in the attached Schedule of Fees and Disbursements that amount of any goods and services or other taxes on the said fee, including any taxes which first came into effect after the date of this Agreement.
- 4.3.** The Consultant will submit periodic Invoices for the Project that are due by the Client upon receipt by the Client.
 - 4.3.1.** Where the Client is an agent or is otherwise acting on behalf of Other Parties, the Invoices will be due upon receipt by the Client as if the Invoices were submitted direct to the Other Parties.
- 4.4.** At the Consultant's sole discretion, the Client will be charged interest on any amount outstanding beyond 30 days at the lower of 18% per annum calculated monthly or the maximum lawful rate.
- 4.5.** The Client will notify the Consultant of any disputed items or amounts within 10 days of receipt of the Invoice and will pay all undisputed amounts within 30 days of the Invoice Date.
- 4.6.** For any amount outstanding greater than sixty (60) days from the Invoice Date, at the Consultant's sole discretion, the Client agrees to pay in addition to any outstanding amounts all collection costs including but not limited to Consultant's charges per Section 4.1 and reasonable attorney's fees and expenses.

- 4.7.** Payment of the Consultant's fees is not dependent on the findings of the Services or the Client's successful recovery of the Consultant's fees or any other costs from any other party.

5.0 Duration

- 5.1.** The Project begins upon initial notification of the Consultant by the Client either verbally or in writing and continues until such time as the Client and the Consultant agree that the Services are complete or until terminated pursuant to the following clauses.
- 5.2.** The Consultant shall be entitled at its sole option to suspend performance of the Services or terminate Services to a Client or for a specific Project by giving written notice with immediate effect in the event that the Client fails to pay the sum due under this Agreement within 60 days of any invoice rendered
- 5.3.** The Client shall be entitled to terminate Services for a Project for any reason.
- 5.4.** The Consultant shall be entitled to terminate Services for a Project.
- 5.4.1.** If the Client commits any material breach of this Agreement, whether in relation to the Project or any Project involving the Client and in the case such a breach is capable of remedy fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied,
- 5.4.2.** If an encumbrancer takes possession or a receiver is appointed over the property or assets of the Consultant
- 5.4.3.** If the Consultant makes any voluntary arrangement with its creditors or becomes subject to an administrative order
- 5.4.4.** If the Consultant goes into liquidation (except for the purposes of solvent amalgamation, reconstruction or other reorganization)
- 5.4.5.** If the Consultant ceases or threatens to cease to carry on business.
- 5.5.** Where the Consultant or Client determines that the Consultant is in conflict with a specific Project, the Consultant will terminate any further work in support of the Project and will notify the Client(s) involved of the existence of the conflict and the extent of the conflict.
- 5.5.1.** Work on the Project will only continue when approval has been received in writing from the Client, or all Clients when more than one Client is involved, and shall only proceed to the extent mutually agreed by the Client(s).
- 5.6.** Upon Termination for any reason, the Client agrees to pay the Consultant all fees and expenses per Section 4.1 up to the reasonable time the Consultant can return to Calgary, Alberta, Canada but not exceeding 24 hours past the time of termination.
- 5.7.** Notwithstanding the above the Consultant reserves the right to terminate Services for a Project in cases where the lead person working on the Project for the Consultant becomes ill or dies or is otherwise incapacitated so as not to be able to reasonably continue to provide the Services on the Project.
- 5.7.1.** Should the Services for the Project be terminated subject to Clause 5.7 the Consultant will provide any relevant information to the Client that has been developed to the time of the Termination.
- 5.7.2.** The Client agrees to pay the Consultant the relevant fees and expenses per Section 4.1 to develop that portion of the Services for the Project per Section 5.7.1.

6.0 Extent of Liability

- 6.1.** The limitations in this section applies to all injuries, damages, claims, losses, expenses and defense costs for any claim arising in contract, negligence, strict liability, statutory trespass, indemnity misrepresentation or any other theory of liability.

- 6.2. The Consultant will not be responsible for the acts or omissions of any others, except for its affiliates, sub-consultants and their employees, officers, and directors.
- 6.3. To the fullest extent permitted by law and notwithstanding anything else in this Agreement to the contrary, the aggregate liability of the Consultant, its affiliates, sub-consultants and their employees, officers, and directors for all claims arising out of the Services for the Project shall be limited to the lesser value of the fees less expenses actually paid by the Client for the Services on the Project or the limits of Insurance as specified in this Agreement.
- 6.4. The Consultant will not be liable to the Client for lost profits, loss of business, loss of anticipated savings, loss of opportunity or any indirect or consequential loss of any kind whether arising from negligence, gross negligence, breach of contract or otherwise.
- 6.5. Nothing herein is intended to exclude the Consultant's liability for Death or Personal Injury arising from the Consultant's negligence.
 - 6.5.1. Liability under Clause 6.5 is restricted to the limits of Insurance specified in these Terms and Conditions.
- 6.6. The Consultant provides advice in relation to the Services provided only and shall not be construed as providing legal advice or as certifying a device, component or machine as suitable for any purpose other than that specified by the Original Equipment Supplier or Manufacturer subject to the same conditions and restrictions as specified by the Original Equipment Supplier or Manufacturer.
- 6.7. Through some of its Services, the Consultant provides opinion on some means, methods, techniques, sequences or procedures of construction to the Client based on the information available to the Consultant.
 - 6.7.1. Any party making use of those opinions are advised to obtain suitable independent engineering advice prior to utilizing those means, methods, techniques, sequences or procedures of construction.
- 6.8. Through some of its Services, the Consultant provides estimates or opinions on probable quantities or costs of labour, equipment, materials or services to be furnished by others.
 - 6.8.1. The Client acknowledges that the Consultant does not guarantee or represent that actual costs or quantities will be consistent with these estimates or opinion.
- 6.9. No claim will be valid if presented to the Consultant more than two years after the substantial completion of the Service for the Project or, if shorter, the applicable statute of limitations.

7.0 Proprietary rights

- 7.1. The Consultant shall retain all intellectual property and/or proprietary rights in the written report(s) provided to the Client together with all other documents, whether electronic or in hardcopy form produced by the Consultant in the course of providing the Services, providing that the Client may use and reproduce such report(s) for internal business purposes only.
- 7.2. Insofar as intellectual property or other proprietary rights may be developed by the Consultant in its performance of the Services, such rights shall be the property of the Consultant.

8.0 Third Parties

- 8.1. The provision of Services and any advice given or report(s) issued by the Consultant for the Client in connection with the Project are intended and provided for the exclusive use of the Client.

- 8.2.** Subject to Clause 7.0, the Client may distribute such report(s) or opinion in full only (including in full any disclaimer thereon) to any third parties on prior written permission of the Consultant and provided that the Client shall make no charge or commercial gain from such distribution.
- 8.3.** The Consultant accepts no responsibility or liability for any loss or damage suffered by any such third party as a result of reliance on any part of such report(s) or opinion, or any information contained therein.
- 8.4.** The Client agrees to hold the Consultant harmless against any claims, proceedings, losses, costs or damages suffered or incurred by the Consultant as a result of the Client's disclosure of such report(s) or opinions to any third party who may have relied thereon.

9.0 Notices

- 9.1.** Under this agreement shall be in writing and shall be made by registered mail, hand delivered to the applicable party at the address specified for the Consultant under Section 1.0 General or the address last specified by the Client.
- 9.2.** Service of notice shall be deemed effective upon first attempted delivery if by registered mail and upon receipt if by hand delivered.
- 9.3.** Service of notice via email will also be accepted if confirmed by read receipt or delivery receipt or as acknowledged by telephone by each party or through subsequent email acknowledging receipt.
 - 9.3.1.** Service of notice shall be deemed effective upon first delivery attempt if by email.

10.0 Electronic Communication

- 10.1.** The Client and Consultant may communicate with each other by electronic mail sometimes attaching further electronic data.
 - 10.1.1.** By consenting to this method of communication, both the Client and the Consultant accept the inherent risks, including but not limited to:
 - 10.1.1.1.** The security risks of interception of or unauthorized access to such communications,
 - 10.1.1.2.** The corruption of such communications, and
 - 10.1.1.3.** The risks of viruses or other harmful devices.

11.0 Disputes

- 11.1.** All disputes between the Client and the Consultant shall be subject to non-binding mediation
 - 11.1.1.** Either Party may demand mediation by serving written notice stating the essential nature of the dispute, the amount of time or money claimed and requiring the matter to be mediated within 45 days of service of the notice.
 - 11.1.2.** No Action or suit may be commenced unless mediation has been occurred but did not solve the dispute or unless a statute of limitation would expire if suit were not filed prior to such 45 days after service notice.

12.0 Insurance

12.1. The Consultant will maintain Alberta Worker’s Compensation coverage along with commercial general Liability, automotive liability and professional errors and omissions coverage in the following minimum amounts:

General Liability	\$2,000,000 per occurrence \$2,000,000 aggregate
Auto Liability	\$1,000,000
Errors and Omission	\$1,000,000 per occurrence \$2,000,000 aggregate

12.1.1. Consultant will furnish certificates of insurance upon request.

12.2. The Consultant will purchase Project specific insurance at the Client’s request if it is commercially available and Client pays the premium and Consultant’s costs to obtain the additional coverage.

13.0 Miscellaneous

13.1. This Agreement shall be governed by and construed in accordance with the laws of Alberta, Canada and the Courts of Alberta, Canada shall have exclusive jurisdiction over any dispute hereunder.

13.2. No breach of this Agreement by the Consultant or the Client shall be deemed a waiver of this Agreement by the other unless it is expressly waived.

13.2.1. Waiver of one breach shall not be deemed to be a waiver of another breach whether it is identical or substantially similar.

13.3. The provisions of this Agreement are severable such that should any court or other competent authority find them to be void or unenforceable either in whole or in part, the other provisions and the remainder of the affected provision shall continue to be valid.

13.4. Nothing in this Agreement shall be construed to give any rights or benefits to Third parties.

13.5. This Agreement shall govern over any inconsistent Terms and Conditions that may have been agreed elsewhere.

13.6. This Agreement was developed in Canadian English and are to be interpreted using the Canadian English meaning of the words and phrases.

13.7. The above terms and conditions regarding the Extent of Liability shall survive the completion of the Services for the Project under this Agreement and the termination of the Agreement for any cause.

- end Standard Terms & Conditions for Consulting Services -

Schedule of Fees and Disbursements

Effective January 1, 2018
Subject to annual revision.

\$250.00 /hr ----- Engineering and Consulting Services, including travel time
\$1.00/km ----- Mileage
Cost + 5% ----- For Project-Incurred Expenses

- end Schedule of Fees and Disbursements -