



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

**User Guide for the Client Engineer Agreement for Professional Services
Version 3.0**

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User Guide for the Client Engineer Agreement for Professional Services, 2019 (Version 3.0)

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 to complete professional consulting services.

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GUIDELINES FOR USING THE TEMPLATE CLIENT/ENGINEER AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

These guidelines relate to the various sections within the Articles of the Agreement, with a view to explaining their meaning as well as their rationale, where such explanation would be useful.

The document is intended for use by municipalities in Ontario employing professional consultants of many professional groupings such as: engineers, planners, architects and management. For purposes of this user guide and the agreements developed using the template, municipalities will be considered the “Client” and the consultants will be considered the “Engineer”. The Agreement has been updated to include provisions for Prompt Payment and Adjudication so as to be in compliance with the Construction Act.

In the preparation of an agreement the template document must be examined clause by clause.

The Agreement is subject to copyright law meaning that no changes or alterations can be made except for populating the appropriate fillable fields, as indicated in the executable Agreement. Changes and alterations must be made using schedules including supplemental general conditions (if required).

Article 1 – General Conditions (with explanatory rationale where appropriate)

- 1 Clause 1.1 Retainer
- 2 Clause 1.2 Compensation
- 3 Clause 1.3 Staff and Methods
- 4 Clause 1.4 Drawings and Documents
- 5 Clause 1.5 Intellectual Property
- 6 Clause 1.6 Records and Audit
- 7 Clause 1.7 Changes/Alterations and/or Additional Services
- 8 Clause 1.8 Delays
- 9 Clause 1.9 Suspension or Termination
- 10 Clause 1.10 Indemnification

The wording in Section 1.10 is recommended as being sufficient for the majority of municipal projects. However, due to the nature of certain projects, it may be necessary to identify in greater detail the sharing of liability between the Client and Engineer. These additional details would be inserted in Article 5, Schedules in a Supplemental Conditions Section.

- 11 Clause 1.11 Insurance

The Client is to insert in the blanks provided, the limits of insurance the Engineer is required to carry. Clients should ensure that bonafide certificates of insurance are submitted by the Engineer.

When municipalities have established policies relative to the amount of insurance to be carried, these amounts should be used. For those municipalities without such policies the following is suggested:

- (a) Comprehensive General Liability and Automobile Insurance:

Aggregate coverage for General Liability, Bodily Injury and Property Damage should be not less than \$1,000,000.

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(b) Professional Liability Insurance

Coverage should be determined on a sliding scale dependent on the value of the engineering services. For example, where the Engineer's fee is expected to be in excess of \$100,000 the coverage should be \$1,000,000 minimum. Where the fee is to be less than \$100,000 the coverage should be whatever the engineer normally carries. Some Engineers may carry a limited amount of Professional Liability Insurance. Where increased coverage is required by the Client, the Engineer may require additional payment under Section 3.2.

12 Clause 1.12 Force Majeure

This clause describes circumstances for which the Engineer would not be held responsible for damages arising from delays for causes beyond the Engineer's control.

13 Clause 1.13 Contracting for Construction

The wording of this section applies to normal engineering consulting services where tenders are to be called after a design is completed. Where services are required which do not culminate in a project to be constructed this section is redundant. It is also redundant where a Consultant is engaged for Design-Build or Project Management situations.

14 Clause 1.14 Assignment

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

15 Clause 1.15 Previous Agreements

This clause confirms that this Agreement supersedes all previous Agreements.

16 Clause 1.16 Approval by Other Authorities

Attention is drawn to the Client that written authorization is required before the Engineer may apply for approvals to other authorities.

17 Clause 1.17 Sub-Consultants

Sub-consultants required for specialized services must be approved in writing by the Client. Allowable mark-up to cover office administration costs is commonly 5%.

18 Clause 1.18 Inspection (Review by Client)

This clause permits the Client reasonable access to ensure the work is being carried out.

19 Clause 1.19 Publication

The Engineer requires consent from the Client prior to publishing any information on the project.

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20 Clause 1.20 Confidential Data

The Engineer is required to keep information received from the Client confidential unless otherwise permitted.

21 Clause 1.21 Dispute Resolution

This clause outlines the procedure for the resolution of a dispute between the Engineer and Client including negotiation, mediation, arbitration and adjudication.

22 Clause 1.22 Time

The Engineer agrees to the project schedule provided by the Client and as detailed in the Engineer's proposal.

The Client agrees to a timely review of documentation provided by the Engineer in order that the project timelines are not impacted.

23 Clause 1.23 Estimates, Schedules and Staff List

This clause requires the Engineer to provide estimates of fees, a proposed schedule for the work and a staff list including classifications and hourly rates for named staff who will participate in the work. It also requires that the Engineer must obtain prior written approval by the Client for the following:

- Carrying out additional work
- Changes in the project schedule and
- Making staff and rate substitutions

24 Clause 1.24 Additional Conditions

Any special requirement regarding insurance, WSIB, permits, approvals, AODA, etc. for the project for Client approved policies should be included under this section. Additional special conditions should be included as Schedules under separate schedules in Article 5 of the Agreement.

Article 2 – Services

1 Clause 2.0.1 Services to be provided by the Engineer

Services to be provided by the Engineer can be referenced to the proposal submitted by the Engineer or detailed in an additional schedule included as an attachment in Article 5 of the Agreement.

2 Clause 2.0.2 Services to be provided by the Client

Services to be provided by the Client can be referenced to the Request for Proposal or detailed in an additional schedule included as an attachment in Article 5 of the Agreement.

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Article 3- Fees and Disbursements

1 Clause 3.1 Definitions

As detailed in the Agreement

2 Clause 3.2 Basis of Payment

This clause details basis of payment that can be made to the Engineer:

- % Fee Basis
- Time Basis
- Lump Sum
- Reimbursable Expenses
- Upset Cost Limit

The basis of payment must be selected from the options available in the fillable field. Only one (1) methodology shall apply throughout the agreement.

3 Payment

Blanks should be completed as required.

Reimbursable Expenses as stated in the agreement 3.2.4 shall apply to:

3.2.1. – Fees Calculated on a Percentage of Cost Basis

3.2.2. – Fees Calculated on a Time Basis

3.2.3. – Upset Cost Limit

Reimbursable Expenses shall be included in:

3.2.5. – Lump Sum Basis

Reimbursable Expenses commonly have an administrative charge of 5%. However, this amount can be negotiated between the Engineer and the Client.

At time of execution both parties shall ensure the accuracy and consistency of the selected payment terms.

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Article 4 – Form of Agreement

This article contains the Form of Agreement, where the Client and the Engineer sign the Agreement, binding the municipality or its agency for the professional consulting services provided by the Engineer as described in the Agreement and binds the Engineer to provide the services described at the agreed compensation.

Article 5 – Schedules

This article includes all schedules, (i.e. Request for Proposal, Proposal Submission, Certificates of Insurance, etc.) as well as any additional information required to form the Agreement, such as supplemental general conditions, etc.

The following schedules form part of the Agreement:

- Schedule A: Supplementary Conditions – attached OR not used
- Schedule B: Addenda – attached OR not used
- Schedule C: Scope of Services – RFP attached OR not used
- Schedule D: Proposal from engineer – attached OR not used
- Schedule E: Other

Attached

Be sure to check (✓) all applicable selections and attach appropriate schedule documents.