AGREEMENT FOR PROFESSIONAL ENVIRONMENTAL CONSULTING SERVICES

THIS AGREEMENT dated the _____ day of _____ 20__,

BETWEEN:

[XXXXX]

(Hereinafter called the 'Client')

THE PARTY OF THE FIRST PART

-AND-

re
[XXXXX}

(Hereinafter called the 'Consultant')

THE PARTY OF THE SECOND PART

WHEREAS the Client requires _____with respect to _____ (the "Project)" and has requested the Consultant to furnish professional environmental consulting services in connection therewith;

AND WHEREAS the Consultant agrees to provide the requested services;

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

ARTICLE 1 – GENERAL TERMS & CONDITIONS

1.1 Services

The professional environmental consulting services to be provided by the Consultant for the Project are set forth in Article 2 and such services, including subsequent services, changed, altered or additional services are hereinafter called the "Services".

1.2 Standard of Care

The Consultant shall perform the services under this agreement with that degree of care, skill and diligence generally accepted as typical of the industry in the performance of such services as contemplated by the Agreement at the time such services are rendered. The Consultant shall employ only competent staff who will be under the supervision of a senior member of the Consultant's staff.

1.3 Rights of Entry, Permits, Site Information and Utilities

The Client shall obtain all necessary permits and licenses and provide right of entry for the Consultant and its subcontractors to carry out the Services, unless specified otherwise in Article 2. The Client warrants that it has furnished to the Consultant all information known to, or in possession or control of, the Client relating to the past and existing conditions of the site, including but not limited to soil and geologic data, contaminants, wastes and hazardous materials, and subsurface utilities. The Client shall extend use and reliance of this information to the Consultant, unless stated otherwise and to the extent permitted by law. Such information shall be and remain confidential as between the Client and the Consultant and the Consultant shall not disclose same to any third party unless required by law.

1.4 Safety

[*Where the field work involves "construction" (earth moving, excavating, digging, boring, drilling, etc) as per the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, the "constructor" is responsible for ensuring that every worker complies with the OHSA and the regulations. If the Consultant is acting as the "constructor" for the project, use this wording*:

"In respect of the Services, the Consultant shall fulfill the role of "constructor" for the purposes of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, as amended. The Consultant shall submit any required notice of project and registration form to the applicable governmental authority. The Consultant shall have complete and sole responsibility for all health and safety matters regarding the project."

[*Where the Consultant is not "supervising" any field work in the context of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, and is only overseeing quality control on the project, use this wording:*

"The Consultant shall be responsible only for its activities and that of its employees and shall maintain all required insurance, permits or licenses. The Consultant shall fulfill the role of "employer" under the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, with respect to its employees. The Consultant shall not direct any of the field work nor the work of any other employer on the project."

[*Where the field work does not meet the definition of "construction" under the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, and the Consultant "contracts for the services of one or more workers" to undertake the field work, use this wording:*

"The Consultant shall fulfill the role of "employer" for the purposes of the Occupational Health and Safety Act, R.S.O. 1990, c.O.1, as amended. The Consultant shall take every precaution reasonable in the circumstances for the protection of the workers providing any of the Services. Prior to any field work being carried out, the Consultant shall provide the Client with a comprehensive site-specific safety plan which details how the "employer" obligations will be met when providing the Services."

1.5 Investigations and Reports

(a) ***Findings:*** The findings of any investigation undertaken as part of the Services will be based upon information generated as a result of the specific scope of the services as described in Article 2.

Client /Consultant initials

(b) ***Restoration:*** The Client accepts that in the normal course of the Services some damage to existing ground or other surface finishes may occur, the restoration of which shall be addressed in Article 2.

Client / Consultant initials

(c) ***Subsurface Investigations***: The parties acknowledge and accept that unique risks exist whenever engineering or related disciplines are applied to identify subsurface conditions and even a comprehensive sampling and testing program may fail to detect certain conditions. The environmental, geological, geotechnical, geochemical and hydrogeological conditions that the Consultant interprets to exist between sampling points may differ from those that actually exist. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur or become known subsequent to the Consultant's investigation that could affect

conclusions, recommendations, total Project cost and/or execution. Changes in conditions are subject to amendments to the scope of services.

(d) ***Final Report*:** If required under the scope of Services, a final report ("Final Report") may contain a Statement of Qualifications and Limitations, which shall be attached as a schedule to this agreement, and any amendment thereto.

(e) ***Confidentiality and Reliance***: Any Final Report or draft reports and the information contained therein shall be treated as confidential and, unless otherwise agreed to by the Consultant and the Client, the information, sampling data, analysis, conclusions and recommendations (if any), may be used and relied upon only by the Client, its officers, directors and employees and professional advisors in the performance of their obligations for or on behalf of the Client. Any such use and reliance shall be subject to the limitations set forth in this agreement. In addition, the Client may submit any report to a regulatory authority.

(f) ***Third Party Reliance*:** Unless otherwise agreed to by the Parties, in the event that the Client and the Consultant agree to make the Report available to a third party not mentioned in clause (d) ("Third Party"), the Third Party shall be required to sign the Consultant's standard Authorized User Agreement (AUA) and pay a AUA fee of not less than [●] or $500.00 to the Consultant. Any such use shall be subject to the terms, conditions and limitations set forth in this Agreement, the Report and the AUA.

1.6 **Ownership of Records/Reports** *[NTD: DELETE INAPPLICABLE PARAGRAPHS:*

- Upon payment in full, the Report shall be and remain the property of the Client.

- All documents or records created or prepared by the Consultant in the performance of the Services are considered the Consultant's professional work product and shall remain the copyright property of the Consultant, subject to any reasonable disclosure request from the Client as may be necessary and for which reasonable reimbursement for copies is provided.

- The Services and documents provided by the Consultant to the Client are intended for one time use, except as may otherwise be agreed to by the Parties.

OR

- The Client shall have permanent non-exclusive royalty-free license to use any document produced by or resulting from the Services rendered by the Consultant in connection with the Project and for no other purpose or project, except as may otherwise be agreed to by the Parties.

1.7 Samples

(a) The Consultant shall be responsible for appropriate disposal of sample material and sample residuals after 30 days following submission of the Final Report unless the Client specifically requests otherwise.

(b) Unless otherwise stated under Article 2, if the Consultant reasonably decides that any sample material and sample residuals should be disposed of as hazardous waste, the Consultant may charge any additional disposal costs to the Client. If such disposal costs exceed $_____, the Consultant shall advise the Client in writing at least 30 days in advance of disposal, and the Client shall have the option to make its own arrangements for disposal of the material.

1.8 Subsequent Changes

With the consent of the Consultant, the Client may in writing at any time after the execution of this Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the Services forming the scope of Services. The Parties further agree that such changes shall alter the scope of Services, schedule and/or the costs. Any such changes shall be made in writing with reference to this Agreement, and accepted in writing by both Parties.

1.9 Delays

Neither Party shall be liable or penalized for delays or failure to perform its services if same is caused directly or indirectly by circumstances beyond a Party's reasonable control. The Client shall not hold the Consultant responsible for damages or delays in performance caused by the Client, acts of God, acts and/or omissions of governmental authorities and regulatory agencies or other events which are beyond the reasonable control of the Parties.

1.10 Payment

The Client shall pay the Consultant in accordance with the provisions set forth in Article 3 **[or delete Article 3 and set out payment terms here]**.

For example:

Monthly invoices will be issued by the Consultant for all Services performed under this Agreement. Except as set forth below, the Client shall pay each invoice within 30 days of the date of the invoice without holdback. Interest at a rate of _____% per annum or the maximum rate allowed by law, whichever is lower, will be charged on all overdue amounts.

In the event of a disputed billing, only the disputed portion will be withheld from payment, and the undisputed portion will be paid. The Client shall exercise reasonableness in disputing any bill or portion thereof. No interest will accrue on any disputed portion of the billing until mutually resolved.

If the Client fails to make payment of any sum due hereunder within sixty (60) from date of invoice, the Consultant may, after giving 7 days' written notice to the Client, suspend the Services until all such sums have been paid in full to the Consultant.

1.11 Suspension or Termination

The Client may at any time by notice in writing to the Consultant, suspend or terminate the Services or any portion thereof at any stage of the Project. Upon receipt of such written notice by the Client, the Consultant shall perform no further Services other than those reasonably necessary to close out its Services. In such an event, the Consultant shall be

entitled to payment in accordance with Section 3 for any of the Consultant's staff employed directly on the Project together with such expenses and disbursements allowed under Section 3.

1.12 **Insurance** ***[NTD: The Client should seek advice from risk/insurance advisor re amounts and types of insurance needed.]***

The Consultant agrees to the following insurance requirements:

a) To carry and maintain worker's compensation insurance to statutory requirement amounts.

b) Commercial General Liability Insurance in the amount of $1,000,000 per occurrence and $2,000,000 in the aggregate and shall name the Client as Additional Insured.

c) Automobile Liability Insurance in the amount of $2,000,000 per occurrence for both owned and non-owned vehicles.

d) Professional Liability Insurance in the amount of $1,000,000 per claim and $2,000,000 in the aggregate and the policy will be renewed for two (2) years after Project completion and a certificate of insurance evidencing renewal shall be provided to the Client each and every year by the Consultant.

e) The Consultant shall provide the Client with proof of such insurance upon written request.

f) If the Client requests that the Consultant increase the amount of insurance coverage or obtain other special insurance for the Project, the Consultant shall endeavour forthwith to obtain such increased or special insurance at the Client's expense as a disbursement allowed under Section 3.

g) It is understood and agreed that the coverage provided by these policies will not be cancelled by the Consultant until thirty (30) days after written notice of cancellation has been delivered to the Client.

1.13 **Mutual Indemnity**

Subject to any limitations stated in this Agreement, each Party shall indemnify and hold harmless the other Party, their respective officers, directors, employees, and subcontractors, from and against all claims, damages, losses, and actions, including reasonable legal fees, arising out of damages or liabilities for bodily injury, including death, or damage to property, caused by a negligent act, strict liability, breach of contract, error, or omission of the said Party or any of its agents, subcontractors, or employees in the performance of its obligations under this Agreement.

1.14 **Limitation of Liability**

a) Notwithstanding any other provisions contained herein, it is understood and agreed that the Consultant's liability to the Client for all claims arising out of this Agreement, or in any way relating to the Services, will be limited to direct damages and/or to the specific performance of any Services not meeting the Standard of Care set forth herein and such liability will, in the aggregate, not exceed the sum of [**$50,000/$100,000/$500,000/$1,000,000**]. NOTE: The parties should discuss the inclusion of such a clause with legal counsel as this clause may not be appropriate in all cases]

b) In no event will the Consultant be liable for indirect or consequential damages including without limitation loss of use or loss of profits. [Note: The parties should discuss the inclusion of such a clause with legal counsel as this clause may not be appropriate and is subject to differing interpretations]

Client /Consultant initials

c) No claim may be brought against the Consultant more than 2 years {● or insert other applicable time limit} after the Services were completed under this Agreement, or as negotiated between the Consultant and the Client. **[NOTE: The parties should discuss the inclusion of such a clause with legal counsel as this clause may not be appropriate in all cases]**

Client /Consultant initials

d) The provisions of clause 1.14 take precedence over any conflicting provisions of this Agreement or any document incorporated into it or referenced by it.

1.15 Discovery of Contaminants and/or Contaminated Conditions

The Client recognizes that hazardous or suspected hazardous substances may be discovered at the site in the course of provision of the Services by the Consultant, which could not reasonably have been anticipated, and that the presence of such substances are not the responsibility of the Consultant. The Client agrees that the discovery of any such substances may constitute a change in conditions and necessitate a change in scope of work.

ARTICLE 2 - SERVICES

2.1 Services to be provided by the Consultant

The Consultant shall carry out the work as outlined in the [**Request for Proposals** issued by the Client, dated [ ] and attached hereto as Schedule "A" and forming part of this Agreement, and as further outlined in the **Proposal** prepared by the Consultant and submitted to the Client on [ ], attached hereto as Schedule "B" and forming part of this Agreement.]

OR

Outline the services, including restoration (if applicable)

2.2 Responsibilities of the Client

Outline the services, including restoration (if applicable)

ARTICLE 3 - FEES AND DISBURSEMENTS

[CHOICE: Keep this section or simply insert payment terms in section 1.11 of Article 1 above]

3.1 Basis of Payment (*NTD: CHOOSE THE APPROPRIATE METHOD OF PAYMENT*)

Fees Calculated on a Time Basis

The Client shall pay the Consultant a fee, calculated on a time basis, for that part of the Services described in Article 2. Fees on a time basis for all staff shall be hourly rates based on job classifications as follows:

Classification: Hourly Rate:

For a project of over one (1) year duration, or for projects which become extended beyond one (1) year in duration, the Consultant may from time to time seek approval from the Client to adjust hourly rates and such approval shall not be unreasonably withheld.

The Consultant shall submit an invoice to the Client for all Services completed in the immediately preceding billing period, or month [cross out inapplicable language]. Interest at the annual rate of ___ percent (____ percent monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultant's invoice.

Time Expended

All time expended on the Services, whether in the Consultant's office, at the Client's premises, or elsewhere, and including travel time, shall be chargeable, unless otherwise specified in writing. This also includes, but is not limited to, stenographic and clerical staff engaged in the preparation of documents such as reports and specifications.

Negotiated Fees

The Client will compensate the Consultant in accordance with the fees and charges for services as set out in the proposal or as otherwise mutually agreed. All fees and charges will be payable in Canadian funds unless noted otherwise. Invoices will be due and payable, as presented and without hold backs, by the Client upon receipt. Interest on overdue accounts will be charged at the rate of__% per annum.

Lump-Sum Fee

(a) Fees for the Services will be on a Lump-Sum Fee Basis, inclusive for labour and reimbursable expenses.

(b) Progress invoices that may be submitted will be based on the percentage of project (or specific portion thereof) completed or milestone achieved. Invoices for fees are due upon presentation. Accounts unpaid after 30 days are subject to monthly interest charges at a rate of __% per annum. The Consultant reserves the right, without penalty, to discontinue services in the event of non-payment.

(c) If the Project is abandoned or delayed for any reason beyond the Consultant's control, the Client shall pay a fee for Services rendered to that date, plus the termination expenses reasonably incurred by the Consultant in winding down the work.

(d) GST/HST will be added to the Lump-Sum Fee. [NTD – IS THIS JUST HST NOW?]

Reimbursable Expenses

In addition to the fee, the Consultant shall be reimbursed at cost plus an administrative charge of 5%, for all reasonable expenses properly incurred by the Consultant in connection with the Project, including but not limited to: vehicle use charges, travelling and living expenses, long distance telephone charges, facsimile transmission charges, printing and reproductions, progress photography, advertising for tenders, special delivery and express charges, overtime premium costs, and the cost of providing and maintaining site offices, supplies and equipment, chemical and physical tests, plus the costs of premiums relating to increased insurance coverage or special insurance required under Article 1.12(f), unless otherwise specified in writing.

Disputed Amounts

The Client shall notify the Consultant within ten (10) days of receipt of invoice of any dispute with the invoice, and the Parties will promptly resolve any disputed items. Payment on undisputed invoice amounts is due upon receipt of invoice by the Client and is past due [insert appropriate time period] (●) days from the date of the invoice. If payment for undisputed invoice amounts (i.e., where no Notice of dispute was provided in accordance with this section) remains past due [●] days from the date of the invoice, then the Consultant shall have the right to suspend all work under this Agreement without prejudice provided written notice of such suspension has been provided.

ARTICLE 4 – MISCELLANEOUS PROVISIONS

4.1 **Notices:** All notices under this Agreement shall be in writing. It shall be sufficient in all respects if the Notice is delivered by hand, sent by any electronic means, including facsimile transmission, with confirmation ("Transmission") during normal business hours, or sent by registered mail, postage prepaid, addressed to:

CONSULTANT	CLIENT
Attn:	Attn:
Phone:	Phone:
Fax No.:	Fax:

or to such other address as either Party shall have designated by written notice to the other Party. Any notice so given shall be deemed to have been given and to have been received on the day of delivery, if so delivered, on the third Business Day (excluding each day during which there exists any interruption of postal services due to strike, lockout or other cause) following the mailing thereof, if so mailed, and on the day that notice was sent by Transmission, provided such day is a Business Day (a Business Day being any day of the week save and except for Saturday and Sunday) and if not, on the first Business Day thereafter.

1.2 **Entire Agreement, Modifications, Headings, Severability:** The Parties acknowledge that this Agreement constitutes the entire agreement between them and supersedes all prior representations, warranties, agreements, and understandings, oral or written, between the Parties with respect to its subject matter. Unless stated otherwise in this Agreement, this Agreement may not be modified except in writing signed by both Parties. The headings to this Agreement are for convenience and reference purposes only and shall not constitute a part of the Agreement. If any element of this Agreement is later held to violate the law or a regulation, it shall be deemed void, and all remaining provisions shall continue in force.

1.3 **Enurement:** This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and assigns provided that it may not be assigned by either Party without the consent of the other, which consent shall not be unreasonably withheld.

1.4 **Survival:** All representations and obligations (including without limitation the mutual obligations of indemnification) shall survive the termination of this Agreement and expire upon the earlier of (i) any limitation of liability applicable under the *Limitations Act, 2002*, S. O. 2002, c. 24, Sch. B, as amended, and (ii) 6 years from the date of completion of Services.

1.5 **Waiver of Rights:** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if made in writing and signed by the Party granting such waiver or consent, and is valid only in the specific instance and for the specific purpose for which it has been granted. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.6 **Applicable Law:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in the Province of Ontario and the laws of Canada, as applicable.

1.7 **Dispute Resolution:** For the purpose of this Agreement, any disagreement arising between the Parties to this Agreement with reference to the interpretation of this Agreement or any matter arising hereunder and upon which the Parties cannot agree shall be referred to arbitration. Reference to arbitration shall be to a single arbitrator and in accordance with the laws of arbitration in the Province of Ontario. The costs of the arbitrator shall be shared equally by the Parties on an interim basis as may be necessary provided however that the arbitrator shall have the discretion to award costs of the proceeding, including costs of the arbitrator. All decisions of the arbitrator, however appointed, shall be final and binding upon the Parties thereto and not subject to appeal.

1.8 **Contract Documents:** The Contract Documents consist of the documents listed below. If there is a conflict with the Contract Documents, the order of priority of documents, from highest to lowest, shall be:

- This Agreement
- The Request for Proposal (for Services)
- The Consultant's Proposal (for Services)

IN WITNESS WHEREOF the Parties have executed this Agreement on the date first written above.

CLIENT:
The signatory shall have the authority to bind the corporation for purposes of this Agreement

_____
(Signature)

_____
(Name)

_____
(Title)

CONSULTANT:
The signatory shall have the authority to bind the corporation for purposes of this Agreement

_____
(Signature)

_____
(Name)

_____
(Title)