

CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

This Consulting and Professional Services Agreement (the “**Agreement**”) made this [insert date] (the “**Effective Date**”) between Canadian Institute of Transportation Engineers / Institut Canadien des Ingénieurs en Transports (“**ITE Canada**”) and [insert full legal name of consultant] (the “**Consultant**”).

WHEREAS:

- I. ITE Canada requires certain consulting and professional services as hereinafter set forth, and is of the opinion that the Consultant has the necessary qualifications, experience and abilities to provide such services; and
- II. The Consultant wishes to provide such services to ITE Canada on and subject to the terms and conditions set out herein.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. TERM

- 1.1. **Term.** This Agreement shall commence on the Effective Date and shall continue until [insert date] (the “**Term**”), unless terminated earlier in accordance with its terms.

2. SERVICES

- 2.1. **Scope.** During the Term, the Consultant shall perform or provide the consultation and professional services set forth in Schedule “A” attached hereto (the “**Services**”).
- 2.2. **Good Faith.** In performing the Services, the Consultant shall at all times:
 - (a) exercise such professional skill and care as would be provided by consultants and/or professional service providers practicing in the same area or field and under similar circumstances, and in full compliance with any and all statutes, laws, ordinances and/or regulations governing the Consultant’s profession, trade, craft and/or business; and
 - (b) perform the Services as expeditiously as is consistent with such professional skills and care, and consistent with industry standards and the orderly progress of the Services.
- 2.3. **Standard.** Throughout the Term, the Consultant will devote a substantial and sufficient amount of its full business time and attention to the Services so as to meet the requirements and objectives of ITE Canada. Nothing in this Agreement will preclude the Consultant from devoting reasonable periods of time and attention required for serving the Consultant’s other clients, provided this activity does not interfere with the performance of the Consultant’s duties and responsibilities under this Agreement.
- 2.4. **Personnel.** The Consultant shall provide fully trained, competent, and skilled personnel to perform and deliver the Services and shall ensure that its personnel comply with the terms of

this Agreement. The Consultant shall replace or cause to be replaced any personnel engaged to perform the Services whose removal is requested by ITE Canada acting reasonably. If the Consultant takes any other action in respect of any such personnel, or causes any such action to be taken, the Consultant shall indemnify, defend, and hold harmless ITE Canada and its agents, directors, officers, employees, consultants, advisors, and subcontractors (collectively, “**Representatives**”) from all losses and claims arising therefrom.

- 2.5. **No Subcontracting.** The Consultant shall not delegate, assign, or subcontract any of its obligations under this Agreement to any other person, firm, or corporation without the prior written consent of ITE Canada.
- 2.6. **Changes to the Services.** ITE Canada may from time to time request changes in the scope of the Services to be performed, and these changes, to be effective, must be made in writing and agreed to by the parties. If any such change results in an increase or decrease in the cost or time for completion of the Services, the fees and schedule may, upon the mutual written agreement of the parties, be renegotiated and amended accordingly.
- 2.7. **Right to Enforce.** The Consultant’s completion of the Services shall neither extinguish nor prejudice ITE Canada’s right to enforce this Agreement with respect to any default and/or defect in the Consultant’s performance of the Services.

3. FEES AND EXPENSES

- 3.1. **Fees.** Subject to the terms and conditions of this Agreement, ITE Canada shall pay the Consultant [for the Services, for those hours where the Consultant performs the Services in a manner that is satisfactory to ITE Canada, in accordance with the hourly rate(s) set out in Schedule “A”] <OR> [the fees set out in Schedule “A” for the Services properly performed and accepted] (the “**Fees**”).
- 3.2. **Expenses.** Except as expressly set out in Schedule “A”, the Consultant shall be solely responsible for any and all expenses incurred in relation to or otherwise associated with the Services (“**Expenses**”). In no event will ITE Canada reimburse any Expense unless ITE Canada has pre-approved the Expenses in writing and the Consultant provides such adequate supporting details, receipts, or other documentation as ITE Canada may reasonably require. Where the Consultant is eligible to receive a refund, rebate, or remission of any tax, customs duty, tariff, or similar levy on any Expense to be reimbursed by ITE Canada, the amount of such reimbursement shall exclude the amount of the tax, customs duty, tariff, or similar levy.
- 3.3. **Invoices.** The Consultant shall invoice ITE Canada for the Fees and Expenses relating to the Services from time to time and such invoices shall be paid by ITE Canada within a reasonable period after ITE Canada’s receipt thereof. Each invoice provided by the Consultant shall include the invoice number, the date, a detailed description of the Services rendered, any applicable taxes shown separately, the Consultant’s GST/HST registration number, where applicable, and any other information reasonably requested by ITE Canada.
- 3.4. **Withholding.** The Consultant shall be solely responsible to withhold and remit any and all deductions for taxes, levies or contributions imposed by any authority in respect of both the

remuneration paid under this Agreement, the Services, and/or any other work incidental thereto, as the case may be.

4. **INDEPENDENT CONTRACTOR**

- 4.1. **Independent Contractor.** It is expressly agreed that each party is and will remain an independent contractor of the other. Under no circumstances will this Agreement be deemed to create any partnership, joint venture, association, syndicate, agency, or employment relationship between a party or its Representatives and the other party. No party will have any authority to make any statements, representations, or commitments of any kind, or to take any action or incur any liability, which will be binding on the other party.

5. **CONFIDENTIALITY**

- 5.1. **Definition.** For the purposes of this Agreement, “**Confidential Information**” means any information or data identified by ITE Canada or its Representatives as confidential or proprietary or which, under the circumstances, ought to be treated as confidential or proprietary, whether such information is communicated in written form, orally, visually, demonstratively, technically, or by any other form or media, or committed to memory. Confidential Information includes this Agreement, all personal information and all non-public technical, financial, or operational information of ITE Canada and information relating to its business plans, customers, employees, data, equipment, financial statements, Intellectual Property (as defined below), inventory, strategies, products, suppliers, and trade secrets. Confidential Information shall not include information that: (a) entered the public domain without the Consultant’s breach of any obligation owed to ITE Canada; (b) became known to the Consultant from a source other than ITE Canada other than by the breach of an obligation of confidentiality owed to ITE Canada; or (c) was independently developed by the Consultant without reference to Confidential Information of ITE Canada and such independent development is adequately documented.
- 5.2. **Disclosure and Use.** During the Term and thereafter, the Consultant will not disclose to any third party, copy or use, and will cause its Representatives not to disclose, copy or use, the Confidential Information for any purpose, except as specifically permitted by this Agreement, by way of prior written consent, or as required by law.
- 5.3. **Privacy.** The Consultant shall comply, and shall cause its Representatives to comply, with all applicable privacy laws with respect to personal information obtained, accessed, stored, transferred, or otherwise handled in the performance of its obligations under this Agreement.
- 5.4. **Notice.** In the event of any unauthorized access, collection, use, disclosure, or disposal of Confidential Information, the Consultant agrees to:
- (a) immediately notify ITE Canada, in writing, of the unauthorized incident with full details;
 - (b) provide regular and comprehensive updates about the unauthorized incident to ITE Canada; and

- (c) immediately take all reasonable steps to respond to, and prevent the recurrence of, the unauthorized incident.

6. INTELLECTUAL PROPERTY

6.1. Definitions. For the purposes of this Agreement:

- (a) **“Intellectual Property”** means trade or brand names, business names, trademarks, service marks, copyrights, patents, trade secrets, know-how, inventions, research data, drawings and designs, formulae, processes, technology, programs, source code, object code, and other intellectual, industrial, or proprietary rights, together with all rights under licences and other agreements relating to any of the foregoing or which embody, emulate, or employ any part of the foregoing; and
- (b) **“Work Product”** means all notes, reports, documentation, works, other documentation and Intellectual Property that arises or is developed, produced or created in connection with the Services, whether independently or jointly by the parties, or is otherwise created pursuant to this Agreement and regardless of whether identified in a schedule attached hereto.

6.2. Ownership of Work Product. All Work Product created by the Consultant pursuant to this Agreement shall be considered “work for hire” and shall be the property of ITE Canada. The Consultant hereby assigns to ITE Canada all right, title and interest in and to the Work Product and expressly waives any claim to moral rights over any Work Product. The Consultant shall ensure that any Representatives of the Consultant shall have waived all moral rights over any such Work Product. During and after the Term, the Consultant agrees to assist ITE Canada in every reasonable way to secure, maintain and defend for ITE Canada’s benefit all rights, including Intellectual Property rights, in and to the Work Product.

6.3. Related Rights. To the extent that the Consultant has any Intellectual Property, proprietary and/or property rights which are incorporated in or necessary to the use of the Work Product (the **“Consultant Related Rights”**), the Consultant hereby grants to ITE Canada a royalty-free, irrevocable, perpetual, worldwide, transferable, non-exclusive license to use, disclose, reproduce, modify, sub-license, translate and distribute such Consultant Related Rights.

6.4. Infringement and Indemnity. The Consultant represents, warrants and covenants that the Intellectual Property provided by the Consultant to ITE Canada, including the Consultant Related Rights, does not infringe any existing proprietary right registered or recognized in Canada or elsewhere with respect to or in connection with the intended use of such Intellectual Property. The Consultant will indemnify, hold harmless and, at ITE Canada’s request, defend ITE Canada from and against all claims, liabilities, damages, losses and expenses, including reasonable legal fees, arising out of or in connection with any claims that the use or disclosure of any such Intellectual Property violates any third party rights.

7. REPRESENTATIONS AND WARRANTIES

7.1. Representations and Warranties. The Consultant represents and warrants that:

- (a) this Agreement creates legal, valid, and binding obligations on it and is enforceable against it in accordance with its terms;
- (b) its performance of this Agreement will not conflict with any other contract to which it is bound, and while providing the Services, the Consultant shall not engage in any services or enter any contract that would conflict with this Agreement;
- (c) it owns, licenses, or otherwise has or will acquire all rights necessary to grant all of the rights granted under this Agreement to ITE Canada and otherwise to carry out its obligations under this Agreement;
- (d) its knowledge, skill, experience, and abilities are appropriate and sufficient to carry out its obligations under this Agreement; and
- (e) it shall at all times comply, and cause its Representatives to comply, with all applicable laws.

8. TERMINATION

- 8.1. Termination for Convenience.** ITE Canada may, at any time and without cause, by giving seven (7) days' prior written notice to the Consultant, terminate this Agreement, without penalty and without limiting any other remedy available to it under this Agreement or otherwise.
- 8.2. Effect of Notice of Termination.** Upon the Consultant's receipt of a notice of termination pursuant to Section 8.1, the Consultant shall cease the provision of the Services and prepare its statement of accounts in accordance with the effective termination date stated in the notice.
- 8.3. Obligations on Termination.** Upon termination or expiration of this Agreement for any reason, the Consultant shall:
 - (a) immediately disclose to ITE Canada the progress of the performance or delivery of any outstanding Services and deliver to ITE Canada all finished and unfinished Work Product existing at the time of expiration or termination, and transfer title to any such Work Product to ITE Canada in the manner and to the extent directed by ITE Canada; and
 - (b) promptly, at ITE Canada's request, return to ITE Canada or destroy, using a destruction method deemed appropriate by ITE Canada acting reasonably, any Confidential Information which is then in the Consultant's custody or control in any medium or form.

9. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 9.1. Indemnification.** During the Term and following the expiration or termination of this Agreement, the Consultant shall indemnify and hold harmless ITE Canada and its Representatives (each, an "**Indemnified Party**") from and against any and all liabilities,

losses, costs, claims, damages, penalties, demands, proceedings, charges, actions, suits and expenses (including any and all reasonable legal and advisor fees and disbursements) of any kind that may be incurred or suffered by an Indemnified Party, arising from or in any way related to:

- (a) the unauthorized use of any Intellectual Property of a third party by the Consultant or any of its Representatives;
- (b) an allegation that any Consultant Related Rights or Work Product infringes any Intellectual Property or other proprietary right of a third party;
- (c) the Consultant's or any of its Representatives' breach of any term of this Agreement, or any representation, warranty or covenant provided hereunder; or
- (d) the Consultant's or any of its Representatives' willful or negligent act or omission.

9.2. **Limitation of Liability.** In no event will either party be liable to the other party for any special, incidental, indirect, consequential, or punitive damages of any nature whatsoever, including damages for loss of profits, business interruption, loss of business information, or any other pecuniary loss, arising from or relating to this Agreement. These limitations will apply regardless of the claim, and regardless of whether the other party had been advised of the possibility of such damages. If circumstances arise where the Consultant is entitled to recover damages relating to this Agreement, the aggregate liability of ITE Canada, if any, will in no event exceed the value of the fees paid to the Consultant in the [three (3)] months preceding the event giving rise to such damages.

10. INSURANCE

10.1. **Comprehensive General Liability Insurance.** Prior to the Effective Date, the Consultant agrees to provide ITE Canada with a certificate of insurance indicating coverage of at least \$2,000,000.00 per occurrence to cover the Consultant's liability at law and/or under this Agreement for personal injury, death or property damage, including damage to any property of ITE Canada, and including liability arising from owned or non-owned motor vehicles, and employer's liability for Workers' Compensation under local labour laws. The certificate or endorsement shall specifically cover the Services and related operations under this Agreement, shall name ITE Canada as an insured party in respect of losses or claims referred to herein, and shall contain a cross liability clause. Such insurance shall remain in full force and effect throughout the Term, and the above documents shall contain a provision that none of the above insurance will be materially altered, amended or cancelled, except after thirty (30) days' prior written notice to ITE Canada.

10.2. **Professional Liability Insurance.** Prior to the Effective Date, the Consultant shall provide ITE Canada with evidence of professional liability coverage in an amount not less than \$2,000,000.00 per claim. The Consultant shall keep such professional liability policy in full force and effect for at least one (1) year after the expiration or termination of this Agreement.

10.3. **Certificates of Insurance.** Copies of the appropriate certificates or endorsements shall be provided forthwith to ITE Canada and upon ITE Canada's reasonable request from time to

time during the Term. Failure by the Consultant to provide or to keep the insurance policies set out in Sections 10.1 and 10.2 in full force and effect shall be grounds for immediate termination of this Agreement by ITE Canada.

11. RECORDS AND INSPECTION

- 11.1. **Record Retention.** During the Term and for three (3) years thereafter, the Consultant shall keep, at its own expense, full, true, and accurate books of account and records concerning all transactions and all amounts received and paid in relation to this Agreement, as well as any invoices, receipts, and supporting documents related thereto, according to consistently applied generally accepted accounting principles.
- 11.2. **Inspection.** During the Term and for three (3) years thereafter, ITE Canada and its duly authorized Representatives shall have the right, at its own expense and upon reasonable notice to the Consultant, to examine, audit, and make copies of the records described in Section 11.1, and shall have free and full access thereto for such purposes. The Consultant shall make no charge to ITE Canada in relation to this Section 11.2.

12. DISPUTE RESOLUTION

- 12.1. **Good Faith Negotiations.** Without limiting the termination rights set out at Section 8, in the event of a dispute between the parties arising out of or in connection with this Agreement, the parties shall make all reasonable efforts to resolve the dispute by amicable negotiations within twenty (20) calendar days after a written request by a party.
- 12.2. **Mediation and Arbitration.** Without limiting the termination rights set out at Section 8, in the event a dispute is not settled through negotiation in accordance with Section 12.1, then the parties shall try in good faith to settle the dispute by mediation in accordance with the ADR Institute of Canada Mediation Rules. If mediation is not successful, then unresolved disputes shall be submitted to final and binding arbitration. Such arbitration will take place in Ottawa, Ontario, and will be governed by the ADR Institute of Canada Arbitration Rules (“**ADR Rules**”). A single arbitrator shall be selected in accordance with the ADR Rules. The arbitrator’s award may be entered into any court having jurisdiction. Expenses and fees of any mediator and arbitrator will be shared equally by the parties, but each party shall otherwise bear its own legal and other expenses.

13. GENERAL

- 13.1. **Interpretation.** In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively. The division of this Agreement into Articles and Sections, and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. References in this Agreement to an Article, Section, or Schedule are to be construed as references to an Article, Section, or Schedule of or to this Agreement unless otherwise specified. Unless otherwise specified, any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be

construed as a reference to that statute as amended, restated, supplemented, extended, re-enacted, replaced, or superseded at any time.

- 13.2. Notice.** Any notice to be made by a party to the other under this Agreement shall be in writing, in English, and shall be made by prepaid mail, overnight courier, personal delivery, facsimile, or email addressed to the other party as follows:

ITE Canada: 100 Metcalfe Street, Suite 200
Ottawa, ON K1P 5M1
Attention: [insert name]
Email: [insert email address]

Consultant: [insert address]
Attention: [insert name]
Email: [insert email address]

Such notice shall be deemed to have been received (a) if sent by personal delivery or email, on the date it was sent; (b) if sent by courier, on the next business day following delivery; or (c) if sent by regular mail, on the fifth (5th) business day following the date of mailing. Either party may change its address for the purpose of this Section 13.2 by giving written notice of such change to the other party in the manner set out above.

- 13.3. Amendment.** This Agreement may only be amended by written agreement signed by each party.
- 13.4. Waiver.** Failure by either party to enforce any right or seek any remedy for any breach of this Agreement shall not be construed as a waiver of such right, nor shall a waiver by either party of any default hereunder be construed as constituting a continuing waiver and/or a waiver of any other breach.
- 13.5. Severability.** If any section or any portion of any section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement, and such unenforceable or invalid section or portion thereof shall be severed from the remainder of this Agreement.
- 13.6. Assignment.** This Agreement shall be binding upon and enure to the benefit of each party and their respective successors and permitted assigns. This Agreement may not be assigned by the Consultant without the prior written consent of ITE Canada, which consent may be unreasonably withheld.
- 13.7. Further Assurances.** Each party shall from time to time promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions of this Agreement.
- 13.8. Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and replaces any other or previous oral or written negotiations.

13.9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

13.10. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, is an original, but all of which, when taken together, constitute one and the same document. A party's transmission by electronic means of a copy of this Agreement duly executed by that party constitutes effective delivery by that party of an executed copy of this Agreement to the party receiving the transmission.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Effective Date.

**Canadian Institute of Transportation Engineers /
Institut Canadien des Ingénieurs en Transports**

Per: _____

Name:

Title:

I have the authority to bind the corporation.

**[Insert full legal name of Consultant if Consultant is a
Company]**

Per: _____

Name:

Title:

I have the authority to bind the corporation.

<OR>

**[Insert Consultant's name if Consultant is an
individual.]**

SCHEDULE A SERVICES AND FEES

1. Services.

[Insert detailed description of the Services to be performed by the Consultant.]

2. Fees.

ITE Canada shall pay for the Services performed by the Consultant under this Agreement at the following rates:

- (a) \$[●], [inclusive] of applicable taxes.

<OR>

ITE Canada shall pay to the Consultant a total aggregate amount of Fees equal to \$[●], [inclusive] of applicable taxes. The Consultant shall issue invoices for the Fees in accordance with the following schedule, and ITE Canada shall pay the invoiced amounts in accordance with the terms of the Agreement:

Milestone / Invoice Date	Amount of Fees
[Insert invoice schedule]	\$[●]
[●]	\$[●]

3. Expenses.

No Expenses of the Consultant in relation to the Services will be eligible for reimbursement by ITE Canada.

<OR>

The following Expenses of the Consultant in relation to the Services will be eligible for reimbursement by ITE Canada:

Eligible Expense	Eligible Amount
[Describe eligible Expenses]	\$[●]
[●]	\$[●]