



# ARM Group Inc.

Earth Resource Engineers and Consultants

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## ARM GROUP INC. STANDARD TERMS AND CONDITIONS

### 1.0 GENERAL

ARM Group Inc. (ARM) agrees to perform for Client, and Client alone, the services set forth in the Proposal in accordance with generally accepted professional practices, in the same or similar localities, related to the nature of work accomplished, at the time the services are performed. ARM's services shall not be subject to any express or implied warranties whatsoever.

### 2.0 SCOPE OF ARM SERVICES

#### 2.1 Basic Services.

The Basic Services shall consist of those specific services or tasks as described or enumerated in the Proposal.

#### 2.2 Uncertainty of Subsurface Conditions; Changing Conditions Over Time.

Because subsurface conditions are inherently random, variable, and often indeterminate in nature, the professional services rendered by ARM, and opinions provided with respect to such conditions, including the presence or absence of potentially hazardous substances, being performed by ARM in accord with the Proposal (including opinions regarding potential future costs), are not guaranteed to be a representation of actual site conditions or anticipated costs (if such are provided as a service by ARM). In addition, conditions found to exist at the time of ARM's work under the subject Proposal, are subject to change with time as a result of changes that may occur to the subject property or due to the availability of new or additional information.

#### 2.3 Reliability of Existing, Available Information.

ARM may provide Client with a written report ("Report") in connection with the services performed. The Report will present such findings and conclusions as ARM may reasonably make with the information gathered in accordance with the Proposal. In preparing the Report, ARM may review and interpret certain information provided to it by third parties, including government agencies, registries of deeds, testing laboratories and other entities. Client agrees that ARM, in its sole discretion, may rely upon such information, and Client understands that ARM will not conduct an independent evaluation of the accuracy or completeness of such information, and that ARM shall not be responsible for any errors or omissions contained in such information.

#### 2.4 Document Use Restrictions.

Any report(s) other related documents including, without limitation, letters, memos, hand-written notes, design drawings, calculations, figures, tables, datasets, and spreadsheets are instruments of service which are prepared for, and made available for the sole use of the Client, and the contents thereof may not be used or relied upon by any other person without the express written consent and authorization of ARM.

### 3.0 ADDITIONAL SERVICES OF ARM

If mutually agreed by the Client and ARM, ARM shall perform Additional Services that are in addition to Basic Services. Additional Services are not included as part of Basic Services and will be paid by the Client at a negotiated rate. Client agrees that Additional Services, either requested by the Client or recommended by ARM, may be authorized by Client on the basis of verbal authorization provided to ARM by Client's authorized representative.

### 4.0 SERVICES EXCLUDED BY ARM

Services not expressly set forth in writing within the scope of the Proposal are excluded from the scope of ARM's services, and ARM assumes no duty to the Client to perform such services. The services to be performed by ARM shall not include an analysis or determination by ARM as to whether the Client is in compliance with federal, state, or local laws, statutes, ordinances, or regulations, except in the case where the Client specifically engages ARM via ARM's Proposal to conduct such an analysis or determination. Except where expressly stated in the Proposal, ARM's services shall not include directly or

indirectly storing, arranging for or actually transporting, disposing, or treating hazardous substances, hazardous materials, hazardous wastes or petroleum products. ARM's services shall not include an independent analysis of work conducted and information provided by independent laboratories or other independent contractors retained by ARM in connection with ARM's services provided to the Client. Also, unless specifically described or listed in the Proposal, ARM's services do not include sampling of soils, water, air, or other materials.

## **5.0 RESPONSIBILITIES OF THE CLIENT**

### **5.1 Information.**

The Client shall provide all information in its possession, custody, or control which relates to the project site(s), its present and prior uses, or to activities at the site which may bear upon the services of ARM as set forth in the Proposal, including, but not limited to, the following:

- (i) a legal description of the site, including boundary lines and a site plan;
- (ii) historical information as to the prior owners of the site;
- (iii) identification of the location of overhead and underground utilities: underground tanks; waste generation, storage or disposal areas; and structures; information to be provided shall also include available plans of the site;
- (iv) a description of activities which were conducted at the site at any time by the Client or by any person or entity which would relate to the services to be provided by ARM; and
- (v) identification, by name, quantity, location, and date, of any releases or handling of hazardous substances (as defined herein).

### **5.2 Authorized Access to the Project Site/Property.**

The Client shall be fully responsible for obtaining the necessary authorizations to allow ARM, its agents, subcontractors and representatives, to have access to the project site and buildings thereon at reasonable times throughout the period of contract performance. ARM will take reasonable precautions to minimize damage to the site from use of equipment, but Client understands that unavoidable damage or alteration of the site may occur and Client agrees to assume responsibility for such unavoidable damage or alteration, including the cost of site restoration, if required.

### **5.3 Underground Utilities.**

Client agrees to assume responsibility for personal and property damages due to ARM's interference with subterranean structures such as pipes, tanks, and utility lines that are not correctly shown on the documents provided by Client to ARM.

### **5.4 Reliance Upon Client-Furnished Services, Information or Data.**

The services, information, and other data required by this Section to be furnished by the Client shall be provided at the Client's expense, and ARM may rely upon all data furnished by the Client, and the accuracy and completeness thereof.

## **6.0 PAYMENTS AND INVOICING**

ARM will submit invoices for its services to the Client on a monthly basis, and each invoice will cover all sums payable to ARM for services generally provided to Client by ARM and its suppliers and subcontractors for the preceding month. Such invoices shall be in accordance with the scope of services presented within the Proposal and as accepted by the Client. Unit rates and prices for such services shall be invoiced in accord with specific provisions of the Proposal or as otherwise shown on ARM's currently-in-effect Consulting Rate Schedule which is ordinarily attached to each of ARM's proposals. Terms for payment are net: 30 days, and each ARM invoice will specify the due date, accordingly. In authorizing ARM to perform services, Client explicitly agrees to accept and honor these payment terms. Invoices aging past 30 days are subject to a late payment finance charge of 1.5% per month, 18% per annum (simple interest), and such finance charges shall automatically be incurred by Client and shall be due to ARM in the event that the Client fails to honor the specified payment terms. In the event that ARM incurs costs of collection of overdue accounts, Client also agrees to bear the full collection expense incurred by ARM. Applicable collection costs or expenses shall include and not be limited to attorney fees, court and magistrate costs, postage and express mail services, fees charged by duly authorized collection agencies, and other related costs.

## **7.0 LIMITATION OF RESPONSIBILITY**

### **7.1 Limitation of Liability.**

CLIENT HEREBY AGREES THAT TO THE FULLEST EXTENT PERMITTED BY LAW, ARM'S TOTAL LIABILITY TO CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THE PROJECT FROM ANY CAUSE OR CAUSES INCLUDING BUT NOT LIMITED TO ARM'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, OR BREACH OF CONTRACT, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY THE CLIENT FOR THE SERVICES OF THE CONSULTANT UNDER THIS CONTRACT OR \$50,000, WHICHEVER IS GREATER.



## 7.2 No Special or Consequential Damages.

In no event shall either Client or ARM be liable for special, indirect, or consequential damages whatsoever, including, without limitation, loss of use or loss of profits, incurred by one another or successors, regardless of whether such damages are caused by a breach of contract, willful misconduct, negligent act or omission, or other wrongful act, whether professional or unprofessional, of either of them or their employees or associates.

## 7.3 Indemnification.

To the fullest extent permitted by law, Client agrees to defend, indemnify, and hold ARM, its agents, subcontractors, and employees harmless from and against any and all claims, defense costs, including attorneys' fees, damages, and other liabilities arising out of or in any way related to: a) services performed by ARM for Client; b) reports, letters, recommendations, designs, illustrations and calculations prepared for Client by ARM; c) ARM's presence on the Client's property or project site(s); or, d) the presence, release, or threatened release of asbestos, hazardous substances, or pollutants on or from the Client's property or project site(s); **except that** Client shall not indemnify ARM against liability for damages to the extent caused by the negligence or misconduct of ARM, its agents, subcontractors, or employees.

## 8.0 DISPUTES RESOLUTION

All claims, disputes, and other matters in controversy between ARM and Client arising out of or in any way related to the Proposal will be submitted to "alternative dispute resolution" (ADR) such as mediation and/or arbitration, before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to the services provided under the Proposal and that dispute requires litigation as provided above, then: **(a)** Client assents to personal jurisdiction in the State of ARM's principal place of business; **(b)** The claim will be brought and tried in judicial jurisdiction of the court of the county where ARM's principal place of business is located and Client waives the right to remove the action to any other county or judicial jurisdiction; and **(c)** The prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' and expert witness fees, and other claim-related expenses.

## 9.0 DISCOVERY OF UNANTICIPATED POLLUTANT RISKS

If, while performing the services, pollutants are discovered that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated project cost will be reconsidered and that the Basic Services shall immediately become subject to renegotiation or termination.

In the event that the services are terminated because of the discovery of pollutants posing unanticipated risks, Client agrees that ARM shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of the services, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing and in effecting such termination.

Client also agrees that the discovery of unanticipated hazardous substances may make it necessary for ARM to take immediate measures to protect the health and safety of ARM personnel and others, as appropriate. ARM agrees to notify Client as soon as practically possible should unanticipated hazards or hazardous substances or suspected hazards or hazardous substances be encountered. Client authorizes ARM to take measures that in ARM's sole judgment are justified to safeguard ARM's personnel and others, including the general public. Client agrees to compensate ARM for the additional cost associated with such authorized additional steps and measures, pursuant to the provisions of ARM's Consulting Rate Schedule that is then in effect.

## 10.0 DISPOSITION OF SAMPLES AND EQUIPMENT

### 10.1 Disposition of Unpolluted Samples.

No samples of unpolluted soil and rock will be kept by ARM unless agreed otherwise.

### 10.2 Hazardous or Potentially Hazardous Samples and Materials.

In the event that samples and/or materials contain or are suspected to contain substances or constituents that are hazardous or otherwise detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, ARM will, after completion of testing (1) return such samples and materials to Client, or (2) reach an agreement in writing to have such samples and materials properly disposed in accordance with applicable laws. Client agrees to pay all costs associated with the storage, transport, and disposal of samples and materials. Client recognizes and agrees that ARM is acting as an agent of Client and at no time assumes title to said waste.



### **10.3 Contaminated Equipment.**

All laboratory and field equipment contaminated in performing Basic or Additional Services will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of Client. All such equipment shall be delivered to Client or disposed of in a manner similar to that indicated for hazardous samples. Client agrees to pay the fair market value of any such equipment which cannot reasonably be decontaminated.

### **11.0 REPORTS, RECOMMENDATIONS, AND OWNERSHIP OF DOCUMENTS**

Reports, recommendations, and other documents resulting from ARM's efforts are intended solely for purposes of the services described by the Proposal; any reuse by Client or others for purposes outside of those described by the Proposal or any failure to follow ARM's recommendations, without ARM's written permission, shall be at the user's sole risk. Client will furnish such reports, data, studies, plans, specifications, documents, and other information deemed necessary by ARM for proper performance of its services. ARM may rely upon Client-provided documents in performing the services described by the Proposal; however, ARM assumes no responsibility or liability for their accuracy. Client-provided documents will remain property of Client. All reports, field notes, calculations, estimates, and other documents which are prepared, as instruments of service, shall remain ARM's property and ARM shall retain copyrights to these materials. ARM will retain all pertinent records relating to services performed for a period of six years following submission of a report, during which period the records will be made available to Client for review or duplication, at all reasonable times, and at Client's sole expense.

### **12.0 TERMINATION**

The services offered by the Proposal and accepted by the Client may be terminated by either party by giving seven (7) days written notice to the other party. If this Agreement is terminated, it is agreed that ARM shall be paid for total charges for labor performed to the termination notice date, plus reimbursable charges.

### **13.0 FORCE MAJEURE**

ARM shall not be liable to the Client for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control of ARM.

### **14.0 SEVERABILITY AND SURVIVAL**

Any element of these terms and conditions later held to violate a law shall be deemed void, and all remaining provisions shall continue in force. However, Client and ARM will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision. All of these terms and conditions which allocate liability between Client and ARM shall survive the completion of the services hereunder and the termination of services.

