



ASSOCIATION OF  
CONSULTING ENGINEERS  
SINGAPORE

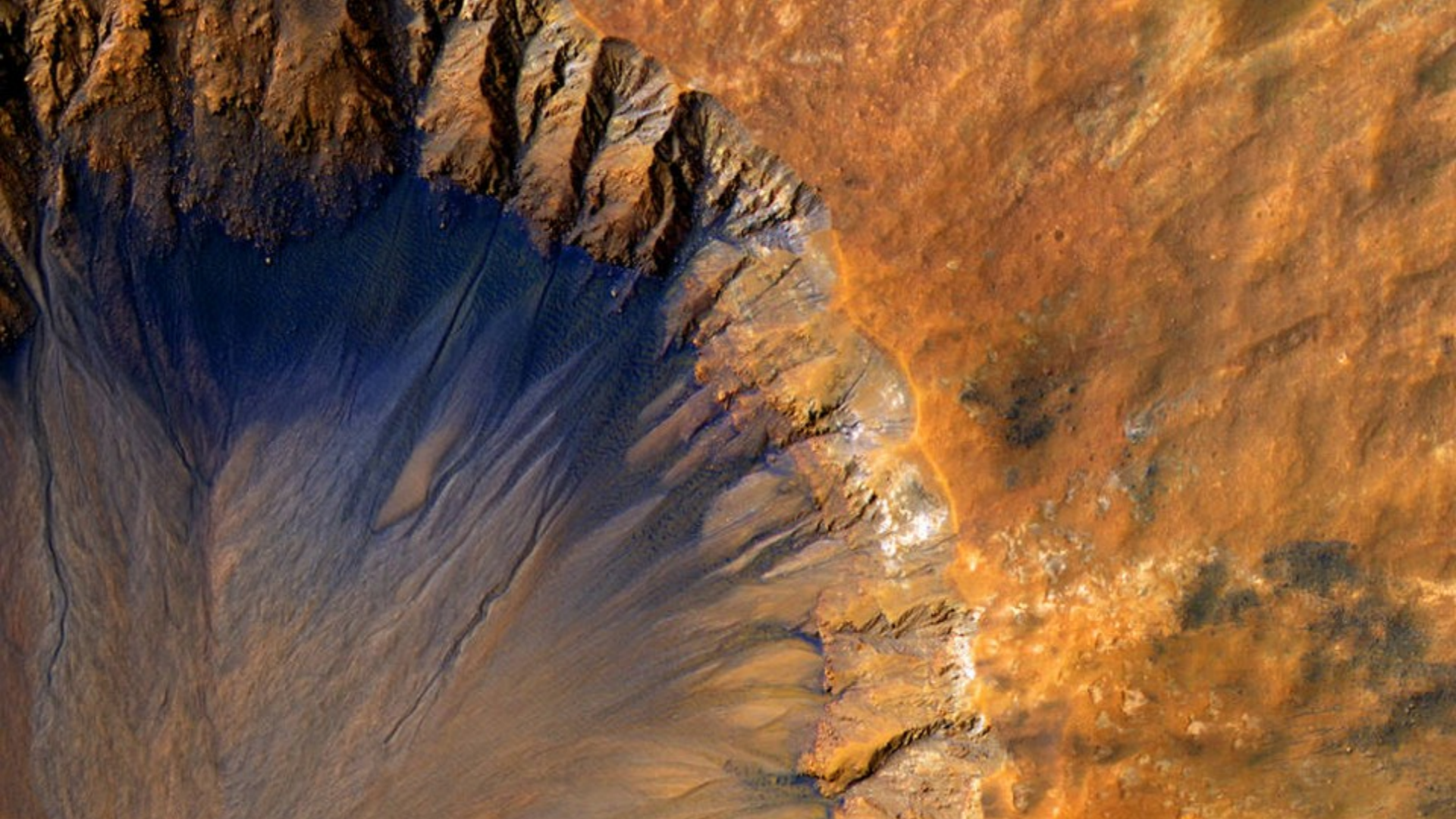
# ACES Contract Refresh 2015

30 September 2015



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# Welcome





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# Agenda

- ❑ Background
- ❑ ACES 2015 Contracts
- ❑ Key features
- ❑ Guidance



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# Background



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# Why do we have ACES contracts?

- ❑ Good professional practice
- ❑ Better conditions for our industry
- ❑ Provides a common template for our clients to understand
- ❑ Assists members in standardizing contract formation in a robust manner

# ACES 2011 contracts

Short Form Agreement (1 page)

Long Form Agreement (23 pages)

Memorandum of Agreement (4 pages)

Standard Conditions of Engagement (19 pages)

# ACES 2011 contracts



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**MEMORANDUM OF AGREEMENT**  
MEMORANDUM OF AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**BETWEEN:**  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
(hereinafter called the Client)  
AND:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
(hereinafter called the Consulting Engineer)  
The Project is: \_\_\_\_\_  
The Project is being carried out at: \_\_\_\_\_

1. The Consulting Engineer agrees to carry out the Services for the Client in accordance with the Agreement.

2. The Client and Consulting Engineer agree that the Agreement consists of the following documents in order of precedence:

- this Memorandum of Agreement
- any additional documents specified in the Specific Provisions
- the Specific Provisions of Engagement March 2011
- ACES Standard Conditions of Engagement

3. The documents listed in paragraph 2 constitute the entire agreement between the Parties in respect of the Services and supersede all prior agreements, undertakings or communications in whatever form.

4. The Agreement applies to all Services carried out prior to the date of execution of this Memorandum of Agreement and may only be varied by writing signed by both Parties.

**5. SPECIFIC PROVISIONS**  
**A. ADDITIONAL DOCUMENTS**  
The documents comprising the Agreement include the following additional documents:

**B. SCOPE OF SERVICES**  
Services to be carried out by the Consulting Engineer under the Agreement are:

**C. VARIATIONS AND RESTRICTIONS**  
Variations and restrictions apply to and take precedence over the Services defined within this Agreement.

**D. WORKS**  
Works are relevant to the Services defined within this Agreement.

**E. INTEREST RATE**  
(e) The interest rate for overdue payments shall be \_\_\_\_\_ per annum (if not completed, the interest rate shall be as specified in Clause 1.4.12.3 of the Conditions of Engagement).

**F. PROGRAMME OF WORK**  
The anticipated programme for the Works is:

- Concept & Schematic Design
- Design Development
- Detailed Design & Contract Documents
- Tender & Recommendation
- Construction

**G. LIABILITY**  
(a) **Maximum Damages**  
The maximum amount of Damages is \_\_\_\_\_ (If left blank then the maximum amount of Damages in Clause 1.3.5(i) of the Conditions of Engagement shall apply).

(b) **Duration of Liability**  
The duration of liability is \_\_\_\_\_ (If left blank then the duration of liability specified in Clause 1.3.4 of the Conditions of Engagement shall apply).

**H. NOTICES AND REPRESENTATIVES**  
Client Address: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Client's Authorized Representative: \_\_\_\_\_  
Consulting Engineer's Address: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Consulting Engineer's Authorized Representative: \_\_\_\_\_

**I. AMENDMENTS AND OTHER CONDITIONS**  
The following amendments and/or additional conditions (if any) are intended to take precedence over the Standard Conditions of Engagement:

Revision 0 - 31 March 2011

# ACES 2011 Contracts

- ❑ Not well publicized or understood therefore
- ❑ Not commonly used

# Reason for refresh

- ❑ Old contracts were:
  - ❑ Cumbersome and sometimes inconsistent
  - ❑ Outdated
  - ❑ Not straightforward to execute
  
- ❑ Industry needs a new standard



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# ACES 2015 Contracts

Short Form Standard Conditions of Engagement

Long Form Standard Conditions of Engagement

Conditions of Engagement Guidance Note





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# ACES 2015 Contracts

Short Form Standard Conditions of Engagement

Long Form Standard Conditions of Engagement

Conditions of Engagement Guidance Note

# Short Form SCOE



## ACES Short Form Standard Conditions of Engagement Second Edition – September 2015

### TERMS AND CONDITIONS

#### 1. INTERPRETATIONS

- 1.1. The Consulting Engineer's accompanying proposal sets out the scope of services (the "Services") and together with these Terms and Conditions forms the Agreement. These Terms and Conditions should be read in conjunction with that proposal.

#### 2. OBLIGATIONS OF THE CONSULTING ENGINEER

- 2.1. The Consulting Engineer shall exercise reasonable skill, care and diligence in the performance of the Services as set out in the proposal and its obligations under this Agreement and shall only be liable to the extent it has failed to exercise such skill and care.
- 2.2. The Consulting Engineer shall perform the Services in compliance with applicable laws and with due regard to applicable local standards.
- 2.3. To the extent required by the Services, the Consulting Engineer shall direct and co-operate with other consultants engaged by the Client and use reasonable skill and care to co-ordinate with their work but shall not be responsible for them or their performance.
- 2.4. The Client may request variations to the Services in writing and the Consulting Engineer shall prepare a proposal indicating any

- 5.2. The Consulting Engineer shall not be liable for any injury, loss or damage arising out of or in connection with this Agreement after the expiry of the period stated in the proposal or if no period is specified three years from completion of the Services.
- 5.3. The Consulting Engineer agrees to maintain professional indemnity insurance to the extent of its liabilities under Clause 5.1.2 and public liability and workers compensation insurance for the duration of the Agreement.
- 5.4. The Client shall not make any claim against any individual employee or employees of the Consulting Engineer.

#### 6. SUSPENSION OR TERMINATION OF SERVICES

- 6.1. The Client may suspend the Services on notice or terminate the Agreement on 30 days' notice, or in the event of the Consulting Engineer failing to remedy a breach, within 10 days of such notice.
- 6.2. The Consulting Engineer may terminate the Agreement on 10 days' notice if the Client fails to make payment within 30 days of the due date for payment or if the Services have been suspended for a period of more than 3 months. The Consulting Engineer shall have no liability for delay or damage caused by such suspension.
- 6.3. The Consulting Engineer shall be entitled to payment for Services

# Long Form SCOE

## ACES Long Form Standard Conditions of Engagement

Memorandum of Agreement

Specific Provisions

Terms and Conditions



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# SCOE Guidance Note



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## ACES Standard Conditions of Engagement Guidance Note Second Edition – September 2015

General	When presented with the Conditions of Engagement, Clients may respond with suggested textual amendments. It is important that the Consulting Engineer carefully review and respond to these amendments as seemingly minor amendments may have a substantial impact on the Conditions.
What are the ACES Standard Conditions of Engagement?	<p>ACES has prepared two Standard Conditions of Engagement both aimed at co-operative rather than adversarial contracting:</p> <ul style="list-style-type: none"><li>• Short Form Standard Conditions of Engagement – This is a simple one page agreement for the provision of Consulting Engineering Services. The Short Form is designed to be easily attached and incorporated into a written proposal.</li><li>• Long Form Standard Conditions of Engagement – This is a more detailed document comprising Memorandum of Agreement, Specific Provisions and Terms and Conditions is designed to contain attachments comprising Services, Fee, Payments and Programme of services.</li></ul>
How do I incorporate the Standard Conditions of	A copy of the Standard Conditions of Engagement should be incorporated into a proposal. The Consulting Engineer should devote a section of the proposal to





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# Key Features

# Obligations of the Consultant

## 2. OBLIGATIONS OF THE CONSULTING ENGINEER

- 2.1. The Consulting Engineer shall exercise **reasonable skill, care and diligence** in the performance of the Services as set out in the proposal and its obligations under this Agreement and shall only be liable to the extent it has failed to exercise such skill and care.
- 2.2. The Consulting Engineer shall perform the Services in compliance with applicable laws and with due regard to applicable local standards.
- 2.3. To the extent required by the Services, the Consulting Engineer shall direct and co-operate with other consultants engaged by the Client and use reasonable skill and care to co-ordinate with their work but shall not be responsible for them or their performance.

# Obligations of the Client

## 3. OBLIGATIONS OF THE CLIENT

- 3.1. The Client shall pay the Consulting Engineer for the Services the amount of fees and expenses (plus GST) set out in the proposal at the time and manner set out in the proposal.
- 3.2. The Client shall, free of cost, provide all information, approvals and access relevant and/or necessary to the provision of the Services and decisions on matters properly referred to it by the Consulting Engineer within a reasonable time so as not to delay the provision of the Services. The Client shall accept responsibility for the accuracy of the information provided, and confirms that in using the information provided in order to provide the Services, the Consulting Engineer will not infringe any patent, registered design, trade mark, copyright or other protected right.

# Payment Terms

## 4. PAYMENT

- 4.1. All sums due shall be paid within 30 days of submission by the Consulting Engineer of its accounts to the Client and interest will accrue on late payments at the rate of 2% above the applicable 3 month Singapore Interbank Offered Rate (SIBOR), calculated daily until payment is made, in addition to any costs of recovery incurred by the Consulting Engineer. If the Client fails to pay the Consulting Engineer as agreed, the Consulting Engineer may suspend services on 10 days written notice.

# Liability

## 5. LIABILITY AND INSURANCE

5.1. If it is found that the Consulting Engineer is liable to the Client for any injury, loss or damage (“Damages”):

5.1.1. Damages shall be limited to the amount of reasonably foreseeable loss and damage suffered by the Client as a direct result of the breach by the Consulting Engineer and there shall be no liability for incidental, consequential, special, indirect or exemplary losses or damages, loss of business, loss of profits, economic loss or liquidated damages, whether or not the possibility of such damages has been disclosed;

# Limit of Liability

- 5.1.2. The maximum aggregate liability, whether in contract, tort (including negligence), in equity or otherwise is limited to the amount stated in the proposal or if no amount is stated, the lesser of S\$250,000 or two times the value of fees (exclusive of GST and disbursements) payable under this Agreement;

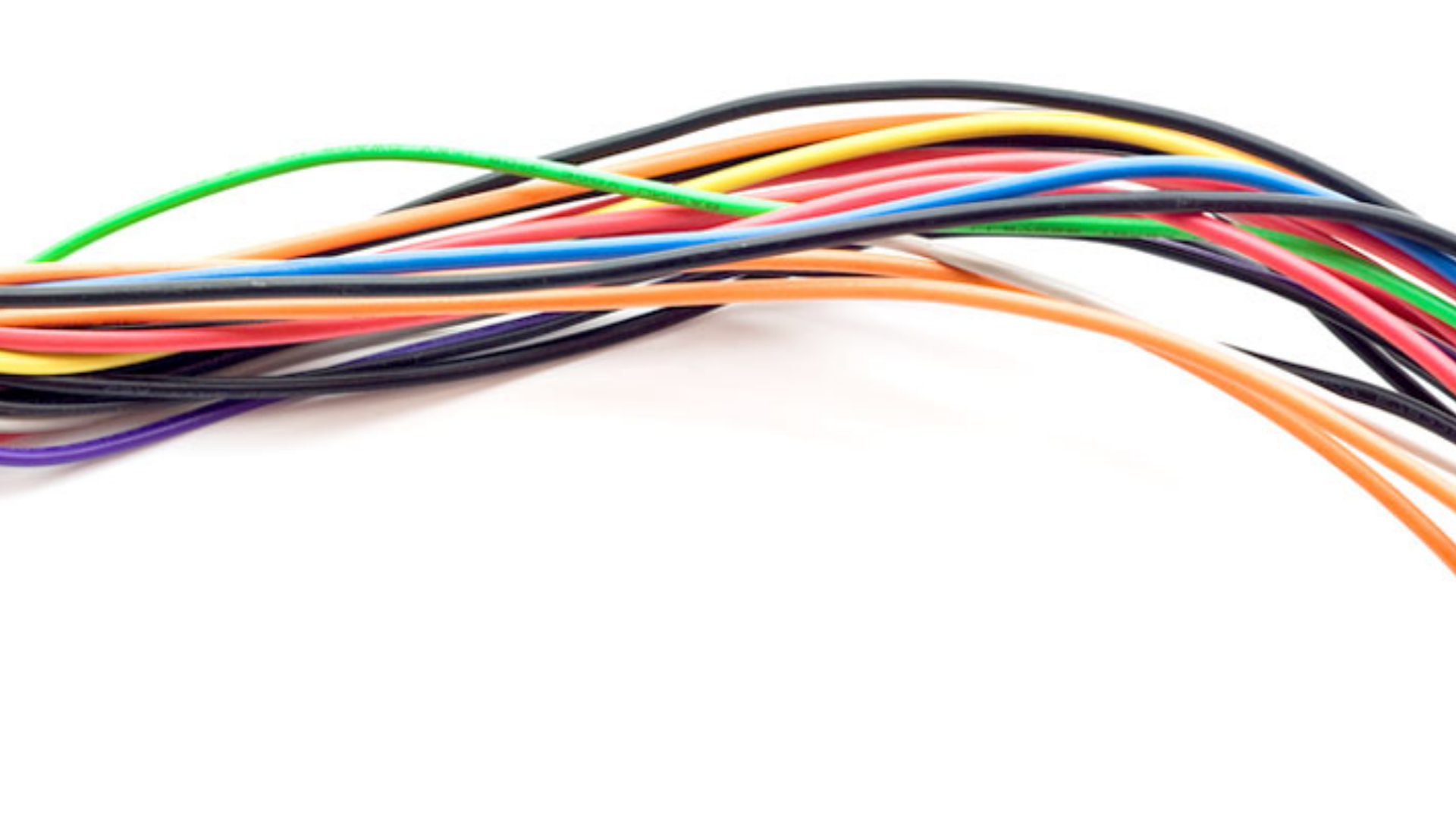
# Dispute Resolution

## 7. SETTLEMENT OF DISPUTES

- 7.1. In the event of a dispute under this Agreement, the party shall inform the other party of the details of the dispute. The representatives of the parties shall then meet in a **bona fide attempt** to resolve the dispute.
- 7.2. If the parties are unable to resolve the dispute then the matter shall be referred to **mediation**. The mediator shall be mutually agreed upon or failing such agreement, a mediator shall be nominated by the Chairman of the Singapore Mediation Centre.

# Joint and Several Liability

- ❑ The ACES contracts are deliberately silent on this.
- ❑ Joint and several liability involves taking responsibility for the actions of others.
- ❑ May be outside your insurance coverage
- ❑ Always consult your legal adviser





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# Guidance Note

## ACES Standard Conditions of Engagement Guidance Note Second Edition – September 2015



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General	When presented with the Conditions of Engagement, Clients may respond with suggested textual amendments. It is important that the Consulting Engineer carefully review and respond to these amendments as seemingly minor amendments may have a substantial impact on the Conditions.
What are the ACES Standard Conditions of Engagement?	<p>ACES has prepared two Standard Conditions of Engagement both aimed at co-operative rather than adversarial contracting:</p> <ul style="list-style-type: none"><li>• Short Form Standard Conditions of Engagement – This is a simple one page agreement for the provision of Consulting Engineering Services. The Short Form is designed to be easily attached and incorporated into a written proposal.</li><li>• Long Form Standard Conditions of Engagement – This is a more detailed document comprising Memorandum of Agreement, Specific Provisions and Terms and Conditions is designed to contain attachments comprising Services,</li></ul>

# General

- Amendments to be carefully reviewed
- Both forms are aimed at co-operative rather than adversarial contracting

# How to use the SCOE

- ❑ A copy of the Standard Conditions of Engagement should be incorporated into a proposal.
- ❑ Devote a section of the proposal to “Conditions of Engagement” containing the following or similar wording:

# Proposal wording

Our appointment will include the *[ACES Short Form Standard Conditions of Engagement or ACES Long Form Standard Conditions of Engagement (delete as appropriate)]*, (copy attached), which shall be read in conjunction with this proposal.

Any other Conditions of Engagement are subject to negotiation and we reserve the right to adjust our fee to reflect any different terms and conditions agreed. Until different conditions of engagement are agreed between us, the Standard Conditions of Engagement (copy attached) shall form part of this proposal and govern our services.

# Short Form vs Long Form

- The Short Form is suitable for most types of work up to a Consulting Engineering fee of approximately \$250,000 including but not limited to the following:
  - ▣ Surveys & inspections – e.g. geotechnical surveys, environmental surveys, traffic surveys, fire safety compliance;
  - ▣ Investigation of failure and incidences – e.g. ground slips, structural failure/collapse, mechanical/electrical failure;
  - ▣ Studies – e.g. master planning studies, feasibility studies, model tests;
  - ▣ Reports and professional advice – e.g. project management advice, checking roles, procedural, compliance;
  - ▣ Design – e.g. preliminary and feasibility work such as master and project planning or budget estimating, scheme and concept work including tender preparation work, and detailed design work.

# Short Form vs Long Form

- ❑ Do not assume that Short Form contract will always be suitable for the above situations.
- ❑ Consider other aspects like
  - ▣ off shore work
  - ▣ secondments
  - ▣ co-ordination of other consultants and/or contractors
  - ▣ management consultancy advice and the like.
- ❑ You should always consult your legal advisor in the first instance.



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# Long Form

- The Long Form is suitable for all the above types of work.



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# Caveat

- The above is for guidance only. The use of either form is at the sole discretion of the Consulting Engineer and the Client.



# How to execute the Short Form

- ❑ Attach the Short Form to the proposal.
- ❑ The proposal will contain a description of the Services, breakdown of the fee and payment terms, a list of the reimbursable expenses (if any), a programme of Services and the like.
- ❑ State in the proposal that the Short Form conditions will apply, and attach a copy.
- ❑ The proposal should be signed by the Consulting Engineer and contain a signing block for the Client.





# How to execute the Short Form

- If urgent, simple exchange of correspondence can suffice as an interim until a full proposal and agreement is signed.



# How to execute the Long Form

- Long Form contains:
  - ▣ Memorandum of Agreement
  - ▣ Specific Provisions
  - ▣ Terms and Conditions



# How to execute the Long Form

- ❑ Preferably, incorporate all Specific Provisions in proposal
- ❑ Execute MoA with reference to proposal (or other document) for Specific Provisions



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# Where can I find the SCOPE?

# ACES Contracts

- A pdf copy of all three documents will be emailed to all members this week
- A pdf copy will be made available on the ACES website under the membership section



# ACES Contracts

- A pdf copy will be made available on the ACES website under the Publication section (login req'd)

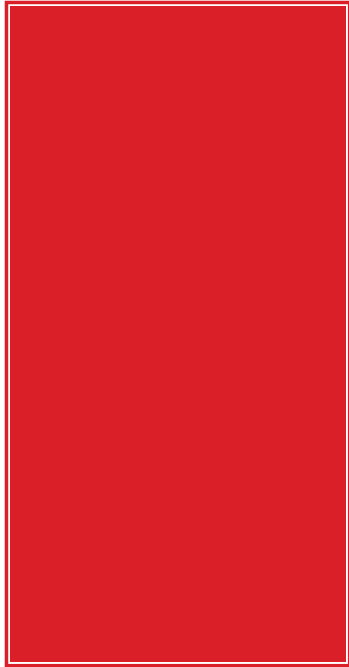
PUBLICATIONS				
<ul style="list-style-type: none"><li>• ACES YEAR BOOK 2005</li><li>• ACES NEWSLETTER<ul style="list-style-type: none"><li>CURRENT ISSUES</li><li>PAST ISSUES</li></ul></li></ul>	<p>ACES has published the following documents. Copies of these publications can be obtained from the association's office during normal working hours.</p> <table border="1"><tbody><tr><td>ACES Short Form Standard Conditions of Engagement – Second Edition – September 2015 <a href="#">Download PDF here</a></td></tr><tr><td>ACES Long Form Standard Conditions of Engagement – Second Edition – September 2015 <a href="#">Download PDF here</a></td></tr><tr><td>ACES Conditions of Engagement Guidance Notes – Section Edition – September 2015 <a href="#">Download PDF here</a></td></tr></tbody></table> <p><a href="#">Back to Top</a></p>	ACES Short Form Standard Conditions of Engagement – Second Edition – September 2015 <a href="#">Download PDF here</a>	ACES Long Form Standard Conditions of Engagement – Second Edition – September 2015 <a href="#">Download PDF here</a>	ACES Conditions of Engagement Guidance Notes – Section Edition – September 2015 <a href="#">Download PDF here</a>
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ACES Conditions of Engagement Guidance Notes – Section Edition – September 2015 <a href="#">Download PDF here</a>				



# Questions



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# ACES Short Form Standard Conditions of Engagement

## Second Edition – September 2015

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### TERMS AND CONDITIONS

#### 1. INTERPRETATIONS

- 1.1. The Consulting Engineer's accompanying proposal sets out the scope of services (the "Services") and together with these Terms and Conditions forms the Agreement. These Terms and Conditions should be read in conjunction with that proposal.

#### 2. OBLIGATIONS OF THE CONSULTING ENGINEER

- 2.1. The Consulting Engineer shall exercise reasonable skill, care and diligence in the performance of the Services as set out in the proposal and its obligations under this Agreement and shall only be liable to the extent it has failed to exercise such skill and care.
- 2.2. The Consulting Engineer shall perform the Services in compliance with applicable laws and with due regard to applicable local standards.
- 2.3. To the extent required by the Services, the Consulting Engineer shall direct and co-operate with other consultants engaged by the Client and use reasonable skill and care to co-ordinate with their work but shall not be responsible for them or their performance.
- 2.4. The Client may request variations to the Services in writing and the Consulting Engineer shall prepare a proposal, indicating any change to the fees and reimbursable costs at the Client's cost.
- 2.5. If any specification, drawing or other document is required to be modified or revised for any reason that could not have been reasonably foreseen by the Consulting Engineer, including instructions from or on behalf of the Client, the additional cost incurred shall be payable by the Client.
- 2.6. If the Consulting Engineer is delayed in performing the Services, it shall notify the Client. If the delay is beyond the reasonable control of the Consulting Engineer, the Consulting Engineer shall be entitled to be paid by the Client any reasonable associated additional costs and be entitled to an extension of time.

#### 3. OBLIGATIONS OF THE CLIENT

- 3.1. The Client shall pay the Consulting Engineer for the Services the amount of fees and expenses (plus GST) set out in the proposal at the time and manner set out in the proposal.
- 3.2. The Client shall, free of cost, provide all information, approvals and access relevant and/or necessary to the provision of the Services and decisions on matters properly referred to it by the Consulting Engineer within a reasonable time so as not to delay the provision of the Services. The Client shall accept responsibility for the accuracy of the information provided, and confirms that in using the information provided in order to provide the Services, the Consulting Engineer will not infringe any patent, registered design, trade mark, copyright or other protected right.

#### 4. PAYMENT

- 4.1. All sums due shall be paid within 30 days of submission by the Consulting Engineer of its accounts to the Client and interest will accrue on late payments at the rate of 2% above the applicable 3 month Singapore Interbank Offered Rate (SIBOR), calculated daily until payment is made, in addition to any costs of recovery incurred by the Consulting Engineer. If the Client fails to pay the Consulting Engineer as agreed, the Consulting Engineer may suspend services on 10 days written notice.

#### 5. LIABILITY AND INSURANCE

- 5.1. If it is found that the Consulting Engineer is liable to the Client for any injury, loss or damage ("Damages"):
- 5.1.1. Damages shall be limited to the amount of reasonably foreseeable loss and damage suffered by the Client as a direct result of the breach by the Consulting Engineer and there shall be no liability for incidental, consequential, special, indirect or exemplary losses or damages, loss of business, loss of profits, economic loss or liquidated damages, whether or not the possibility of such damages has been disclosed;
- 5.1.2. The maximum aggregate liability, whether in contract, tort (including negligence), in equity or otherwise is limited to the amount stated in the proposal or if no amount is stated, the lesser of S\$250,000 or two times the value of fees (exclusive of GST and disbursements) payable under this Agreement;
- 5.1.3. The Consulting Engineer's liability, whether in contract, tort (including negligence), in equity or otherwise, shall be limited to that proportion which is attributable to the fault of the Consulting Engineer.

- 5.2. The Consulting Engineer shall not be liable for any injury, loss or damage arising out of or in connection with this Agreement after the expiry of the period stated in the proposal or if no period is specified three years from completion of the Services.
- 5.3. The Consulting Engineer agrees to maintain professional indemnity insurance to the extent of its liabilities under Clause 5.1.2 and public liability and workers compensation insurance for the duration of the Agreement.
- 5.4. The Client shall not make any claim against any individual employee or employees of the Consulting Engineer.

#### 6. SUSPENSION OR TERMINATION OF SERVICES

- 6.1. The Client may suspend the Services on notice or terminate the Agreement on 30 days' notice, or in the event of the Consulting Engineer failing to remedy a breach, within 10 days of such notice.
- 6.2. The Consulting Engineer may terminate the Agreement on 10 days' notice if the Client fails to make payment within 30 days of the due date for payment or if the Services have been suspended for a period of more than 3 months. The Consulting Engineer shall have no liability for delay or damage caused by such suspension.
- 6.3. The Consulting Engineer shall be entitled to payment for Services carried out up to the date of termination and, unless the Agreement is terminated due to the Consulting Engineer's default, to consequential costs, expenses and disruption incurred as a result of the suspension or termination.

#### 7. SETTLEMENT OF DISPUTES

- 7.1. In the event of a dispute under this Agreement, the party shall inform the other party of the details of the dispute. The representatives of the parties shall then meet in a bona fide attempt to resolve the dispute.
- 7.2. If the parties are unable to resolve the dispute then the matter shall be referred to mediation. The mediator shall be mutually agreed upon or failing such agreement, a mediator shall be nominated by the Chairman of the Singapore Mediation Centre.
- 7.3. If the matter in dispute is not resolved in accordance with Clause 7.2 above then the matter in dispute shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of one arbitrator and the language of the arbitration shall be English.

#### 8. GENERAL PROVISIONS

- 8.1. This Agreement shall be governed by the laws of the Republic of Singapore. The Singapore courts have jurisdiction in respect of this Agreement and all amounts are payable in Singapore Dollars.
- 8.2. Notices under this Agreement shall be in writing and will take effect upon receipt at the address stated in the proposal. Delivery may be by hand, registered letter, facsimile message or e-mail against a written confirmation of receipt.
- 8.3. The Consulting Engineer shall retain all intellectual property rights in documents prepared by the Consulting Engineer. The Client shall, subject to payment of fees due under this Agreement, be entitled to use them for the purpose for which they were intended.
- 8.4. Both parties shall keep all commercially sensitive information obtained by them confidential and shall not use it for any purpose other than as necessary to perform its obligations under this Agreement without the written approval of the other, except where the information is required by law to be disclosed or is already in the public domain without breach by the disclosing party.
- 8.5. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this Agreement.
- 8.6. The language of the Agreement shall be English.
- 8.7. This Agreement (including any attachments) constitutes the entire Agreement between the parties and extinguishes all previous drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter. No variation to the Agreement shall be binding unless in writing and signed by both parties.
- 8.8. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.



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# ACES Long Form Standard Conditions of Engagement

Memorandum of Agreement

Specific Provisions

Terms and Conditions

## Disclaimer

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Association of Consulting Engineers Singapore

Member of the International Federation of Consulting Engineers (FIDIC)

Second Edition - September 2015

## MEMORANDUM OF AGREEMENT

Made the \_\_\_\_\_ day of \_\_\_\_\_  
(Commencement date)

Between:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
(Hereinafter called “Client”) of the one part

And:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
(Hereinafter called “Consulting Engineer”) of the other part

The “Project” is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## THE CLIENT AND THE CONSULTING ENGINEER AGREE AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Terms and Conditions attached to this Memorandum of Agreement.
2. In consideration of the payments to be made by the Client to the Consulting Engineer under this Agreement, the Consulting Engineer hereby agrees to perform the Services in conformity with the provisions of the Agreement.
3. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
4. The Client and Consulting Engineer agree that the Agreement consists of the following documents in order of precedence. In the event of any inconsistency between the provisions of a particular document, it is for the party requesting clarification to raise such inconsistency. These documents constitute the entire Agreement between the parties and extinguish all previous drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter. No variation to the Agreement shall be binding unless in writing and signed by both parties.
  - Memorandum of Agreement
  - Specific Provisions
  - Terms and Conditions

### 5. Notices and Representatives

#### Client’s Representative

#### Consulting Engineer’s Representative

Authorised Person: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E-mail Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year stated above in accordance with the laws of Singapore.**

Authorised Signature of Client

Authorised Signature of Consulting  
Engineer

Name:

\_\_\_\_\_

Signature:

\_\_\_\_\_

In the presence of witness:

Name:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



# ACES Long Form Standard Conditions of Engagement

## Second Edition – September 2015

### SPECIFIC PROVISIONS

<u>Additional documents</u>  The documents comprising the Agreement include the following additional documents:																			
<u>Amendments to Terms and Conditions</u>  The following amendments and/or additional conditions (if any) to Terms and Conditions shall take precedence:																			
<u>Services</u>  The Services to be carried out by the Consulting Engineer under the Agreement comprise the following:																			
<u>Fee</u>  The fee payable by the Client to the Consulting Engineer for the performance of the Services under this Agreement is:																			
<u>Hourly rates</u>  Where Services are provided on a time basis or where variations to the Services are carried out, the Client shall pay the Consulting Engineer at the following hourly rates:	<table border="1"><thead><tr><th>Discipline/Position</th><th>Hourly Rate (S\$ Excl. GST)</th></tr></thead><tbody><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></tbody></table>	Discipline/Position	Hourly Rate (S\$ Excl. GST)																
Discipline/Position	Hourly Rate (S\$ Excl. GST)																		
<u>Schedule of payment</u>  The Schedule of payment of fees shall be as set out. The percentages indicate the total fees payable to the Consulting Engineer on completion of each work stage. The Consulting Engineer shall invoice for fees on a monthly basis during each stage up to the limit shown in the schedule.	<table border="1"><thead><tr><th>Stage</th><th>Proposed Percentage of Fee</th></tr></thead><tbody><tr><td>Concept and Schematic Design</td><td>20%</td></tr><tr><td>Design Development</td><td>20%</td></tr><tr><td>Detailed Design and Contract Documentation</td><td>30%</td></tr><tr><td>Tender and Recommendation</td><td>5%</td></tr><tr><td>Construction</td><td>25%</td></tr></tbody></table>	Stage	Proposed Percentage of Fee	Concept and Schematic Design	20%	Design Development	20%	Detailed Design and Contract Documentation	30%	Tender and Recommendation	5%	Construction	25%						
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<u>Programme of services</u>  The anticipated Programme of services for carrying out and completing the Services is as follows:																			



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### TERMS AND CONDITIONS

#### 1. DEFINITIONS AND INTERPRETATIONS

##### 1.1. Definitions

The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:

- 1.1.1. **"Agreement"** means the Memorandum of Agreement, additional documents specified in the Specific Provisions (if any), Specific Provisions and Terms and Conditions.
- 1.1.2. **"Client"** means the party named in the Memorandum of Agreement, who employs the Consulting Engineer to undertake the Services;
- 1.1.3. **"Consulting Engineer" / "Engineer"** means the party named in the Memorandum of Agreement, who is employed by the Client to perform the Services;
- 1.1.4. **"Contractor" / "Sub-Contractor"** means a third party engaged by the Client to execute the whole or part of the Works for the Project and includes any Sub-Contractor engaged by the Contractor;
- 1.1.5. **"Force Majeure Event"** means any circumstance not within a party's reasonable control including, without limitation:
  - a) acts of God, flood, drought, earthquake or other natural disaster;
  - b) epidemic or pandemic;
  - c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - d) nuclear, chemical or biological contamination or sonic boom;
  - e) collapse of buildings, fire, explosion or accident; and
  - f) interruption or failure of utility service.
- 1.1.6. **"Other Consultants"** means a third party engaged by the Client for other consulting or advisory services related to the Project, but does not include a Contractor;
- 1.1.7. **"Party"** means the Client or the Consulting Engineer, **"parties"** means the Client and the Consulting Engineer and **"third party"** means any other person or entity as the context requires;
- 1.1.8. **"Project"** means the project named in the Memorandum of Agreement for which the Services are to be provided;
- 1.1.9. **"Services" / "Scope of Services"** means the services to be performed by the Consulting Engineer defined in the Memorandum of Agreement;
- 1.1.10. **"Willful Misconduct"** means any act or omission which is known to be wrongful, or an act or failure to act in relation to which the person is wantonly indifferent as to whether it is wrongful or what its consequences might be.
- 1.1.11. **"Works"** means all engineering and construction works in connection with the Project.

##### 1.2. Interpretation

- 1.2.1. The headings in the Agreement shall not be used in its interpretation.
- 1.2.2. In the Agreement the singular shall include the plural, the masculine shall include the feminine and vice versa where the context requires.

#### 2. OBLIGATIONS OF THE CONSULTING ENGINEER

##### 2.1. Duty of Care

- 2.1.1. The Consulting Engineer shall exercise reasonable skill, care and diligence in the performance of the Consulting Engineer's obligations under the Agreement.

##### 2.2. Scope of Services

- 2.2.1. The Consulting Engineer shall perform the Services relating

to the Project in accordance with and subject to the terms of this Agreement. The Scope of Services forms a part of the Agreement.

##### 2.3. Compliance with Laws

- 2.3.1. The Consulting Engineer shall perform the Services in compliance with applicable laws and local standards.

##### 2.4. Professional Duty of Independent Care

- 2.4.1. When required by the Agreement to certify, decide or exercise discretion between the Client and a third party with whom the Client has a contract, the Consulting Engineer shall do so independently and as required by the terms of that contract as an independent professional acting with skill and judgment.

##### 2.5. Authority of the Consulting Engineer

- 2.5.1. The Consulting Engineer is authorised to act as the Client's agent when required by the Agreement but only in such matters as are set out in the Services.

##### 2.6. Commencement and Completion

- 2.6.1. The appointment of the Consulting Engineer shall commence from the date stated in the Memorandum of Agreement or from the time when the Consulting Engineer shall have begun to perform for the Client any part of the Services specified in this Agreement, whichever is the earlier.
- 2.6.2. The Services shall proceed in accordance with the programme of services as attached to the Memorandum of Agreement, subject to extensions and / or variations to the Services in accordance with this Agreement.

##### 2.7. Variations to the Services

- 2.7.1. The Client may order variations to the Services in writing or may request the Consulting Engineer to submit proposals for variation to the Services.
- 2.7.2. As soon as practicable after becoming aware of any matter which will change or has varied the scope or timing of the Services, then the Consulting Engineer shall give notice to the Client and the notice shall contain, particulars of the variation, as far as is practicable in the circumstances.
- 2.7.3. The reasonable cost of preparation and submission of such proposals and of incorporating into the Agreement any variations to the Services ordered by the Client, including any increase in the Consulting Engineer's fees and reimbursable costs shall be payable by the Client and shall be calculated by the Consulting Engineer in accordance with:
  - 2.7.3.1. The Agreement; or
  - 2.7.3.2. If not provided for in the Agreement, by the agreement of the parties and failing such agreement as determined in accordance with Clause 7.
- 2.7.4. If the Consulting Engineer is delayed in performing the Services for reasons beyond its reasonable control, the Consulting Engineer shall be entitled to recover its reasonable additional costs associated with such delay, provided always that the Consulting Engineer has complied with the notification requirements of Clause 2.7.2, the costs are additional and substantiated, and the Consulting Engineer has used reasonable endeavours to mitigate the delay.

##### 2.8. Staged Services

- 2.8.1. Where the Services are specified as being staged, the Consulting Engineer shall not initiate or proceed with any



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subsequent stage of the Services without the written approval of the Client.

### 2.9. Other Consultants

2.9.1. Where specifically required by the Services, the Consulting Engineer shall direct and co-operate with all Other Consultants and use reasonable skill and care to co-ordinate their work into that being undertaken by the Consulting Engineer and others, but shall not be responsible for them or their performance.

2.9.2. Unless stated otherwise in the Agreement, the Consulting Engineer is not the principal design consultant and is not responsible for managing the design co-ordination process.

2.9.3. Where the Consulting Engineer is required to manage, direct and/or co-ordinate the work of other third parties (including Other Consultants) who are directly contracted to the Client for services:

2.9.3.1. The Client shall give all instructions to such third parties through the Consulting Engineer; and

2.9.3.2. The Client must include in the conditions of contract with such third parties a requirement that it has the required insurance and that they will work under the direction of, and co-operate with, the Consulting Engineer. The amount of insurance required by each third party shall be not less than that required of the Consulting Engineer under this Agreement unless the Client and Consulting Engineer specifically agree otherwise.

### 2.10. Conflict of Interest

2.10.1. The Consulting Engineer warrants at the date of signing this Agreement, after making diligent enquiry, that no conflict of interest exists or is likely to arise during the performance of its obligations under this Agreement. The Consulting Engineer shall notify the Client in writing of any interest the Consulting Engineer has which may conflict with the interests of the Client under the Agreement and comply with the Client's reasonable instructions in relation thereto.

## 3. OBLIGATIONS OF THE CLIENT

### 3.1. Payment to the Consulting Engineer

3.1.1. The Client shall pay the Consulting Engineer for the Services the amount of fees and expenses set out in or determined by this Agreement at the times and in the manner set out in this Agreement.

### 3.2. Provision of Information

3.2.1. The Client shall provide to the Consulting Engineer, free of cost all information which may be relevant to the provision of the Services. Following any request by the Consulting Engineer for additional information, the Client shall provide such additional information which is available, within a reasonable time to avoid delay to the provision of the Services.

3.2.2. The Client confirms that in using the information provided in order to provide the Services, the Consulting Engineer will not infringe any patent, registered design, trade mark, copyright or other protected right.

### 3.3. Decisions by the Client

3.3.1. The Client shall provide the Consulting Engineer within a reasonable time that does not result in delay to the provision of the Services, a decision in writing on all matters properly referred to the Client in writing.

### 3.4. Assistance to the Consulting Engineer

3.4.1. The Client shall cooperate with the Consulting Engineer and shall not interfere with or obstruct the proper performance of the Services.

3.4.2. The Client shall as soon as practicable:

3.4.2.1. Make available free of cost to the Consulting Engineer for the purposes of the Services the equipment, facilities and personnel described in the Services;

3.4.2.2. Make arrangements to enable the Consulting Engineer to enter upon the site and other lands as necessary for the purposes of the Services; and

3.4.2.3. Obtain all approval, authorities, licences and permits which are required from governmental, statutory or other responsible authorities for the lawful implementation and completion of the Project, unless otherwise stated.

## 4. PAYMENT

### 4.1. Payment for Services

4.1.1. The sum payable by the Client to the Consulting Engineer for the Services shall be either a lump sum fee, a time basis fee or on such other basis as may be specified in the Memorandum of Agreement.

4.1.2. The Client shall pay all taxes (including Goods and Services Tax) or government charges payable in respect of the Services and all invoices are stated exclusive of such taxes and net of any withholding tax.

4.1.3. Unless otherwise specified in the Memorandum of Agreement, reimbursable expenses will be charged at cost plus 10%. Reimbursable expenses include the actual expenses incurred by the Consulting Engineer directly or indirectly in connection with the Project.

4.1.4. If payment is on a lump sum basis

4.1.4.1. Payment shall be in accordance with the schedule of payment outlined in the Memorandum of Agreement.

4.1.5. If payment is on a time basis

4.1.5.1. Payment for labour charges shall be based on the hourly rates specified in the Memorandum of Agreement.

4.1.5.2. Time spent by staff travelling in connection with the Services shall be chargeable at the hourly rates specified in the Memorandum of Agreement.

4.1.5.3. The Consulting Engineer shall submit to the Client at the time of submission of the monthly accounts such supporting data as may be agreed between the Client and the Consulting Engineer.

4.1.6. If payment is on a basis other than a lump sum or time

4.1.6.1. Payment shall be as provided for in the Memorandum of Agreement.

### 4.2. Payment for Variations to the Services

4.2.1. If, at any time after the commencement of the Consulting Engineer's appointment, any design whether completed or in progress or any specification, drawing or other document prepared in whole or part by the Consulting Engineer shall require to be modified or revised by reason of instructions received by the Consulting Engineer from or on behalf of the Client, or by reason of circumstances which could not reasonably have been foreseen by the Consulting Engineer at the date of entering into the Agreement, the Client shall make additional



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payment to the Consulting Engineer for making any necessary modifications or revisions and for any consequential reproduction of documents.

### 4.3. Invoices

4.3.1. The Consulting Engineer shall submit monthly invoices as detailed in the schedule of payment outlined in the Memorandum of Agreement. All sums due from the Client to the Consulting Engineer in accordance with the terms of this Agreement shall be paid within 30 days of the submission by the Consulting Engineer of the invoice to the Client, and interest will accrue on late payments at the rate of 2% above the applicable 3 month Singapore Interbank Offered Rate (SIBOR), calculated daily until payment is made, in addition to any costs of recovery incurred by the Consulting Engineer.

4.3.2. If the Client fails to pay the Consulting Engineer in accordance with this Agreement, the Consulting Engineer may give the Client notice seeking payment of the outstanding invoice and its intention to suspend. If the invoice remains outstanding 10 days after such notice, the Consulting Engineer may suspend its Services.

### 4.4. Disputed Invoices

4.4.1. If any item or part of an item of an account rendered by the Consulting Engineer is disputed or subject to question by the Client, the Client shall give prompt notice with reasons for disputing and shall not delay payment on the remainder of the account. However, the provisions of the preceding clause shall apply to such remainder and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to the Consulting Engineer.

## 5. **LIABILITY AND INSURANCE**

### 5.1. Liability of the Consulting Engineer

5.1.1. The Consulting Engineer shall only be liable to the Client in respect of any matter arising out of or in connection with this Agreement if the Consulting Engineer has breached Clause 2.1.1.

### 5.2. Limitation of Consulting Engineer's Responsibility

5.2.1. The Consulting Engineer shall have no responsibility or liability for costs, injury, loss or damage of whatsoever nature arising from:

5.2.1.1. Any errors in or omissions from data, documents, plans, designs or specifications not prepared by the Consulting Engineer, the Consulting Engineer's employees or other personnel under the direct control of the Consulting Engineer;

5.2.1.2. Any act or omission or lack of performance or any negligent or fraudulent act or omission by the Client or any Other Consultant, Contractor or supplier to the Client or any employee or agent of the Client, Other Consultant, Contractor or supplier.

5.2.2. Notwithstanding any recommendation or lack of recommendation made by the Consulting Engineer to the Client, the Consulting Engineer shall not be held to have made any warranty or promise as to the suitability, competence or performance of any Other Consultant, Contractor, supplier, or other third party.

### 5.3. Damages

5.3.1. If it is found that the Consulting Engineer is liable for damages to the Client:

5.3.1.1. Damages shall be limited to the amount of reasonably foreseeable loss and damage suffered by the Client as a direct result of such breach by the Consulting Engineer and there shall be no liability for any incidental, exemplary, indirect, special or consequential loss, loss of profit, savings, use, production, or data or business opportunity, economic loss or liquidated damages.

5.3.1.2. The maximum aggregate liability, whether in contract, tort (including negligence), in equity or otherwise is limited to the lesser of S\$1,000,000 or two times the value of fees (exclusive of GST and disbursements) payable under this Agreement;

5.3.1.3. If either party is found to be liable to the other, in circumstances where the acts or omissions of a third party have contributed to the loss or damage, the proportion of damages payable by the party found liable shall be limited to that proportion which is attributable to that party's breach of duty, whether the claims are made under contract, tort (including negligence), in equity or otherwise.

### 5.4. Duration of Liability

5.4.1. Neither party shall be considered liable for any loss or damage arising out of or in connection with this Agreement unless a claim is formally made against that party before the expiry of three years from the completion of the Services, whether or not the loss or damage has become apparent, or been suffered, within that period.

### 5.5. Insurance for Liability and Indemnity

5.5.1. The Consulting Engineer agrees to maintain professional indemnity insurance to the extent of its liabilities under Clause 5.3.1.2 until the time at which that liability shall cease.

5.5.2. The Consultant agrees to maintain public liability insurance until completion of the Services and workers compensation insurance as required by law.

### 5.6. Indemnity of Consulting Engineer's Employees

5.6.1. The Client shall not make any claim against any individual employee or employees of the Consulting Engineer for any costs, losses or damage sustained by the Client arising from the Services.

### 5.7. Indemnity by the Client

5.7.1. The Client shall indemnify the Consulting Engineer against the adverse effects of all claims including such claims by third parties which arise out of or in connection with the Agreement and are made after the expiry of the period of liability, except insofar as they are covered by the insurances arranged under the terms of this Agreement.

### 5.8. Exceptions

5.8.1. Clause 5.3.1.1 shall not apply to claims arising from Wilful Misconduct or anything else which cannot be excluded or limited by law.

## 6. **SUSPENSION OR TERMINATION OF SERVICES**

### 6.1. Force Majeure

6.1.1. If Force Majeure circumstances arise which impact the Consulting Engineer's ability to perform in whole or in part the Services in accordance with the Agreement then the Consulting Engineer shall promptly notify the Client of the same.

### 6.2. Termination by the Client



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- 6.2.1. The Client may suspend all or part of the Services upon written notice, or terminate the Agreement by giving 30 days written notice to the Consulting Engineer who shall immediately make arrangements to stop the Services and minimise further expenditure.
- 6.2.2. The Client may by giving written notice, terminate this Agreement if the Consulting Engineer is in breach of this Agreement and the breach has not been remedied within 10 days of a written notice given by the Client specifying the breach and requiring the breach to be remedied; or
- 6.2.3. The Client may terminate this Agreement immediately if the Consulting Engineer becomes bankrupt, insolvent, or goes into liquidation, administration or receivership.

### 6.3. Termination by the Consulting Engineer

- 6.3.1. The Consulting Engineer may by notice of no less than 10 days terminate the Agreement or at his or her discretion without prejudice to the right to terminate may suspend or continue suspension of performance of the whole or part of the Services:
  - 6.3.1.1. When 30 days after the due date for payment of any account the Consulting Engineer has not received payment of that part of it which has not by that time been contested in writing; or
  - 6.3.1.2. When Services have been suspended under either Clause 6.1 or Clause 6.2 and the period of suspension has exceeded three calendar months, or it is clear to the Consulting Engineer that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded three calendar months.
- 6.3.2. The Consulting Engineer may immediately terminate the Agreement if the Client becomes bankrupt, insolvent or goes into liquidation, administration or receivership.

### 6.4. Payment Due Upon Suspension, Termination and Reinstatement

- 6.4.1. Upon a termination or suspension of this Agreement by the Client, the Client shall pay to the Consulting Engineer all fees and expenses for services performed through the date of the suspension / termination plus demobilisation / remobilisation expenses. In the event of a suspension of services or a termination, the Consulting Engineer shall have no liability for any delay or damage caused because of such suspension/termination of services. Upon the resumption of Consulting Engineer's services, Consulting Engineer's fee shall be equitably adjusted and Consulting Engineer shall be reimbursed for all expenses incurred as a result of the suspension.
- 6.4.2. Upon a termination or suspension of this Agreement by the Consulting Engineer the Client shall pay to the Consulting Engineer all fees and expenses for services performed through the date of the suspension / termination plus demobilisation expenses. Upon payment of such sums, the Consulting Engineer shall deliver to the Client such completed drawings, specifications and other similar documents relevant to the Works as are in his possession. The Consulting Engineer shall be permitted to retain copies of any documents so delivered to the Client.

## 7. SETTLEMENT OF DISPUTES

### 7.1. Notice of Dispute

- 7.1.1. If either party considers that a dispute has arisen under the terms of this Agreement, then authorised representatives of the parties shall meet no later than 10 days after the dispute has arisen in a bona fide attempt to resolve the matter.
- 7.1.2. If the dispute is not resolved within 30 days of the first meeting of such authorised representatives, either party shall by notice in writing served on the other party, request that the dispute be resolved by mediation in accordance with Clause 7.2.

- 7.1.3. Should either party not wish the dispute to be referred to mediation they may request arbitration of the dispute in accordance with Clause 7.3.

### 7.2. Mediation

- 7.2.1. If the notice served requests mediation and such request is agreed to by the other party, then the matter in dispute shall be referred to a mediator to be agreed between the parties or, failing agreement, within 30 days of the notice, a mediator shall be nominated by the Chairman of the Singapore Mediation Centre.
- 7.2.2. Any dispute must be submitted for mediation at the Singapore Mediation Centre (SMC) in accordance with SMC's Mediation Procedure in force for the time being.

### 7.3. Arbitration

- 7.3.1. If the matter in dispute is not resolved in accordance with Clause 7.2 above then the matter in dispute shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of three arbitrators and the language of the arbitration shall be English.
- 7.3.2. The award in the arbitration shall be final and binding on both parties and the costs of any arbitration proceedings shall be borne as the arbitrator may direct.

## 8. GENERAL PROVISIONS

### 8.1. Governing Law

- 8.1.1. This Agreement shall be governed by the laws of the Republic of Singapore. The Singapore courts have jurisdiction in respect of this Agreement and all amounts are payable in Singapore Dollars.

### 8.2. Changes in Legislation

- 8.2.1. If after the date of the Agreement, the cost or duration of the Services is altered as a result of changes in, or additional to, any statute, regulation or by-law, or in the requirements of any authority having jurisdiction over any matter in respect of the Project, then the fee and the programme of services shall be adjusted in order to reflect the impact of those changes.

### 8.3. Notices

- 8.3.1. Notices under the Agreement shall be in writing and will take effect upon receipt at the addresses stated in the Memorandum of Agreement. Delivery may be by hand, registered letter, facsimile message or e-mail against a written confirmation of receipt.

### 8.4. Assignments and Sub-Contracts

- 8.4.1. Each party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of the other party in respect to all obligations and liabilities of this Agreement.
- 8.4.2. Neither party shall assign, sublet or transfer any substantial right or obligation under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under this Agreement.
- 8.4.3. The Consulting Engineer shall not without the written consent of the Client, which consent shall not be unreasonably withheld, sub-contract the performance of all or part of the Services. Any such sub-contracting will not



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relieve the Consulting Engineer from any liability or obligation under this Agreement

- 8.4.4. The Client may novate this Agreement provided that it has obtained the Consulting Engineer's prior written consent (such consent not be unreasonably withheld) and the parties agree the terms of the novation.

### 8.5. Ownership of Data, Design and Documents

- 8.5.1. The Consulting Engineer shall retain copyright and all other intellectual property rights in all documents prepared by the Consulting Engineer. The Client shall be entitled to use them or copy them only for the Works and the purpose for which they are intended and need not obtain the Consulting Engineer's permission to copy for such use.
- 8.5.2. The Client shall retain copyright and all other intellectual property rights in all documents prepared by the Client and the Consultant shall be entitled to use them or copy them only for the provision of the Services,
- 8.5.3. The Client shall have no right to use any documents prepared by the Consulting Engineer, where any or all of the fees and expenses payable to the Consulting Engineer have not been paid in accordance with this Agreement.

### 8.6. Confidentiality

- 8.6.1. Both parties shall keep all commercially sensitive information obtained by them in the context of the Agreement confidential and shall not divulge it without the written approval of the other Party. Neither the Client or the Consulting Engineer shall disclose to third parties or use for any purpose other than as provided in the context of this Agreement, such confidential information provided by the other unless:
- 8.6.1.1. The information is required by law to be disclosed; or
- 8.6.1.2. The information is already generally known to the public without breach by the disclosing party; or
- 8.6.1.3. The other party consents to the disclosure of the information.

### 8.7. Exclusion of third party rights

- 8.7.1. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this Agreement.

### 8.8. Language

- 8.8.1. The language of the Agreement shall be English.

### 8.9. Entire Agreement

- 8.9.1. This Agreement (including any attachments) constitutes the entire Agreement between the parties relating to the Services and no variation shall be binding unless in writing and signed by both parties.

# ACES Standard Conditions of Engagement Guidance Note

## Second Edition – September 2015



ASSOCIATION OF  
CONSULTING ENGINEERS  
SINGAPORE

Disclaimer	ACES disclaims any liability or responsibility for any events or the consequences thereof (including negligence) that derive from the use of the Standard Conditions of Engagement. ACES publications are provided without warranty of any kind, either express or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose and non-infringement. ACES publications are only intended to provide general guidance. Expert legal advice should be obtained whenever appropriate, and particularly before entering into or terminating a contract.
Amendments	When presented with the Conditions of Engagement, Clients may respond with suggested textual amendments. It is important that the Consulting Engineer carefully review and respond to these amendments as seemingly minor amendments may have a substantial impact on the Conditions of Engagement.
What are the ACES Standard Conditions of Engagement?	<p>ACES has prepared two Standard Conditions of Engagement both aimed at co-operative rather than adversarial contracting:</p> <ul style="list-style-type: none"> <li>• Short Form Standard Conditions of Engagement – This is a simple one page agreement for the provision of Consulting Engineering Services. The Short Form is designed to be easily attached and incorporated into a written proposal.</li> <li>• Long Form Standard Conditions of Engagement – This is a more detailed document comprising Memorandum of Agreement, Specific Provisions and Terms and Conditions is designed to contain attachments comprising Services, Fee, Payments and Programme of services.</li> </ul>
How do I incorporate the Standard Conditions of Engagement into a proposal?	<p>A copy of the Standard Conditions of Engagement should be incorporated into a proposal. The Consulting Engineer should devote a section of the proposal to “Conditions of Engagement” containing the following or similar wording:</p> <p>“Our appointment will include the [ACES Short Form Standard Conditions of Engagement or ACES Long Form Standard Conditions of Engagement (delete as appropriate)], (copy attached), which shall be read in conjunction with this proposal. Any other Conditions of Engagement are subject to negotiation and we reserve the right to adjust our fee to reflect any different terms and conditions agreed. Until different conditions of engagement are agreed between us, the Standard Conditions of Engagement (copy attached) shall form part of this proposal and govern our services.”</p>
When should I use the Short Form Agreement in lieu of the Long Form Agreement?	<p>The Short Form is suitable for most types of work up to a Consulting Engineering fee of approximately \$250,000 including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• Surveys &amp; inspections – e.g. geotechnical surveys, environmental surveys, traffic surveys, fire safety compliance;</li> <li>• Investigation of failure and incidences – e.g. ground slips, structural failure/collapse, mechanical/electrical failure;</li> <li>• Studies – e.g. master planning studies, feasibility studies, model tests;</li> <li>• Reports and professional advice – e.g. project management advice, checking roles, procedural, compliance;</li> <li>• Design – e.g. preliminary and feasibility work such as master and project planning or budget estimating, scheme and concept work including tender preparation work, and detailed design work.</li> </ul> <p>It is important not to assume that the Short Form contract will always be suitable for the above situations. Factors which should be considered are off shore work, secondments, co-ordination of other consultants and/or contractors, management consultancy advice and the like. You should always consult your legal advisor in the first instance.</p> <p>Where your Client has indicated that they will provide an alternative form of contract, the Short Form should still be proposed as an interim agreement until such time as different contract terms are mutually agreed between the parties. This should be clearly stated in the proposal.</p> <p>The Long Form is suitable for all the above types of work where the fee exceeds S\$250,000.</p> <p>The above is for guidance only. The use of either form is at the sole discretion of the</p>



	Consulting Engineer and the Client.
How do I execute an Agreement using the Short Form?	<p>The Short Form is designed to be issued as an attachment to a proposal. The proposal will contain a description of the Services, breakdown of the fee and payment terms, a list of the reimbursable expenses (if any), a programme of Services and the like. The proposal should state that the conditions that will apply to the Services will be the Short Form, and attach a copy. The proposal should be signed by the Consulting Engineer and contain a signing block for the Client.</p> <p>If a contract is required to be established as a matter of urgency, the Short Form could be agreed by a simple exchange of correspondence between the Consulting Engineer and the Client setting out the essential details of Services and fee. The Short Form will then apply. Any such interim agreement should always be followed up with a full proposal in due course.</p> <p>The Consulting Engineer should advise the client at the earliest opportunity of their intention to execute an agreement using the Short Form.</p>
How do I execute an Agreement using the Long Form?	<p>The Long Form is designed to be incorporated in a large, complex proposal for Services. The proposal will contain a copy of the duly completed Memorandum of Agreement, Specific Provisions and Terms and Conditions. In the event that the proposal is accepted, the Agreement is prepared comprising the following:</p> <ul style="list-style-type: none"> <li>• Memorandum of Agreement</li> <li>• Specific Provisions</li> <li>• Terms and Conditions</li> <li>• Additional documents comprising the Agreement (e.g. drawings, diagrams, specifications, and the like)</li> <li>• Amendments to Terms and Conditions</li> <li>• Services</li> <li>• Fee</li> <li>• Hourly rates</li> <li>• Schedule of payment</li> <li>• Programme of services</li> </ul>
Joint and several liability	<p>Be aware of any request from a client for joint and several liability from the team of consultants. By accepting joint and several liability you will be taking on the responsibilities of other consultants, and the risks include the following:</p> <ul style="list-style-type: none"> <li>• Generally, the assumption of joint and several liability for the work of other consultants will be outside of a Consulting Engineer's normal insurance coverage.</li> <li>• By accepting such liability a Consulting Engineer will be agreeing to take on the risks and responsibilities of other consultants who may have distinctly different expertise and experience (e.g. compare the areas of specialism of a Consulting Engineer with those of an architect), and whose business they do not control.</li> </ul> <p>The Standard Conditions of Engagement provide that the Consulting Engineer is only liable for its services and therefore do not impose any joint and several liability. You should always consult your legal advisor should joint and several liability be proposed by a client.</p>
How do I obtain a copy of the Standard Conditions of Engagement?	<p>The forms are downloadable from the members section of the ACES website. Any modifications should be discussed with your Legal advisor.</p>