

# Genge Construction Adjudication

## SCHEDULE A

### Terms of Engagement and Non-Disclosure Agreement

Paying Client	
Paying Client	
Paying Client	
Paying Client	
Case Description/ Contract Reference	

#### 1. GENERAL

- a) Genge Construction Adjudication hereafter "GA" shall render services to the Client(s) named above in accordance with the following Terms of Engagement (Agreement).
- b) GA may, and at any stage, with approval of the Client(s), engage specialists for assistance relevant to the disputed matter.
- c) This Agreement may be executed by separate parties in counterparts without invalidating any part of the agreement.

#### 2. REPRESENTATIVES

The Client(s) agree(s) to appoint a representative (each) authorized to enter into agreements, to make decisions on their behalf regarding the disputed matter, and to receive correspondence, etc., pertaining to the matter in dispute.

#### 3. SCOPE OF SERVICES AND LIMITATIONS (STRIKE OUT THE SERVICES NOT APPLICABLE)

The Scope of Services will be defined in agreements, emails, letters of instruction, or other documentation describing the agreed Scope of Services or Instructions.

##### A. ARBITRATION

If the Scope of Services includes acting as an arbitrator, GA will hear evidence from parties and agreed witnesses, including accepted expert witnesses and provide a final and binding ruling. Procedural rules will be agreed upon by all parties. In the event of a disagreement on the rules, GA will decide the rules of procedure. Findings will be written with brief reasons. All findings will be confidential unless all parties agree to disclose the findings. All hearings will be at locations agreed to by the parties. Questions of legal interpretation may be referred to the court, another arbitrator, legal counsel retained by GA or be decided by GA using best judgment considering the evidence and arguments.

##### B. MEDIATION

If the Scope of Services includes acting as a mediator, GA will facilitate discussions, hear arguments and, as agreed, present arguments to other parties, assist in valuation, and work toward a settlement. It is agreed that GA will act as an independent mediator and will not advocate any position unless it is in the interests of settlement. It is also agreed that GA cannot assure that the parties involved will arrive at a settlement.

##### C. EXPERT (HOT TUB) MEETING FACILITATION

If the Scope of Services includes the facilitation of expert meetings [hot tub], it is agreed that GA will act as an independent facilitator and will not advocate any position. It is also agreed that GA cannot assure that the experts involved in the meeting will arrive at a consensus on some or any of the items in dispute, position(s) taken on their findings, evaluation procedures, or any other agreement.

##### D. NEUTRAL EVALUATIONS and LITIGATION CONSULTING

Neutral Evaluations provided by GA are provided as litigation consulting services. They may include opinions on possible resolution of the claim, including a description of GA's opinion on how the evidence may be viewed by a trier of fact, arbitrator, or jury. If the Scope of Services includes a Neutral Evaluation of a claim, it is agreed that the reported information is provided on a "without prejudice" basis and will not be used as evidence.

#### 4. LIABILITY

- a) In performing the Services, GA will exercise the standard of care, skill, and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services contemplated in this engagement at the time when and the location in which the Services were performed.
- b) The Client(s) acknowledges that GA maintains no errors and omissions insurance and agrees that the total amount of all claims the Client(s) may have against GA under this engagement, including but not limited to claims for bias, breach of ethics, negligence, misrepresentation, or breach of contract shall be strictly limited to the aggregate of the professional fees paid by the Client(s) to GA at the time such claims are made. The *Limitations Act* applies.

#### 5. ASSUMED INFORMATION

- a) The Clients affirm that all information contained in all documents provided or presented to GA in any aspect of the claim or dispute which may be relied upon by any Party or by GA is true and accurate to the best of their knowledge and belief. Unless retained to do so, the Parties do not require GA to initiate independent assessments of information supplied by any Party or agent.

#### 6. TERMINATION AND WITHDRAWAL

- a) GA or the Client(s) may terminate this engagement, without cause, upon five (5) business days' notice in writing. The Client(s) shall pay GA

fees and expenses incurred to the time of receipt of notice plus \$500 to close the file. GA may cancel this agreement with 24 hours' notice for non-payment of fees.

**7. COMPENSATION AND PAYMENT**

- a) **A NON-REFUNDABLE RETAINER of \$10,000** applies, payable on commencement of this engagement, and will be applied to the final invoice. The retainer shall be apportioned equally between clients/parties as applicable. Charges for the services shall be made in accordance with the Schedule of Fees and Disbursements below in effect at the time that the Services are rendered. All charges are due and payable without holdback in Canadian Dollars within 30 days of the date of the invoice. Interest will be payable on overdue accounts at 1% per month compounded monthly (12.68%/year) on all accounts beyond 30 days from the date of the invoice. Retainers will be applied to the final invoice. Refunds of unused portions of retainers apply to engagements cancelled up to 14 calendar days prior to the hearing or mediation date, excluding the date of the hearing or mediation. Refunds of unused portions of retainer apply to completed matters less a \$400 administrative fee.
- b) **Payment of retainers and invoices** will be accepted by cheque payable to Genge Construction Adjudication. For electronic fund transfer, email gengegerald@gmail.com.

**8. SCHEDULE OF FEES AND DISBURSEMENTS**

- a) The following schedule of rates applies until December 31, 2022. Thereafter, rates may increase. The client acknowledges that any fee estimate given by GA is subject to change based on the required level of effort to complete the required Scope of Services and that the client is responsible for full payment of fees.
  - A. Review of documents, meetings, GA investigations, and preparation of reports, findings, or recommendations, will be charged on a time basis plus expenses in accordance with the following rates.
    - (1) Principal .....\$425/hour
    - (2) Administrative Assistant .....\$170/hour
    - (3) Travel Time (by any means).....50% of the hourly rate
    - (4) Time charges .....¼ hour minimum
  - B. Hearings and Mediations
    - (1) Principal (1 hour to 3.5 hours) .....\$1,400/ ½ day
    - (2) Principal (3.5 hours to 7.5 hours/day) .....\$3,000/day
    - (3) Additional time per day beyond 7.5 hours/day .....\$425/hour
    - (4) Administrative Assistant .....\$170 hour
  - C. Expenses
    - (1) Personal car mileage rate .....\$0.75/km
    - (2) Travel and living expenses (including road tolls).....Cost plus 10% admin fee
    - (3) Experts and legal counsel engaged by GA (approved by Client) .....Cost Plus 10% admin fee

**9. USE AND DISPOSITION OF DOCUMENTS, SAMPLES, AND DRAWINGS PROVIDED TO GA**

- a) Subject to confidentiality and disclosure agreements, if any, that are made supplementary to this agreement, the parties agree that all documents, samples, drawings, reports, and/or all other data provided to GA by any party may be destroyed or otherwise disposed of without responsibility to report such actions to the clients.

**10. DATED THIS \_\_\_ DAY OF \_\_\_\_\_ 2023**

  
Gerald R. Genge  
On behalf of Genge Construction Adjudications

To be completed by authorized signatory Dated this ___ day of _____ 2023  _____ <i>Authorized Party Name (Printed)</i>  _____ <i>Authorized Party Name (Signature)</i>
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To be completed by authorized signatory Dated this ___ day of _____ 2023  _____ <i>Authorized Party Name (Printed)</i>  _____ <i>Authorized Party Name (Signature)</i>
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To be completed by authorized signatory Dated this ___ day of _____ 2023  _____ <i>Authorized Party Name (Printed)</i>  _____ <i>Authorized Party Name (Signature)</i>
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