



Corporation of the Municipality of Temagami

Memorandum to Council

Memo No.
Memo 2024-M-194

Subject:	Integrated Geotechnical Investigation for the Fox Run Road Project
Agenda Date:	November 14, 2024
Attachments:	Schedule A - Englobe Proposed Geotechnical Investigation Ref# P2411222

RECOMMENDATION

WHEREAS comprehensive geotechnical investigations are essential for informed decision-making in road construction and maintenance;

BE IT RESOLVED, THAT Council accepts Memo 2024-M-194 as presented, including the Englobe Proposed Geotechnical Investigation Ref# P2411222 (Schedule A, attached hereto, forming a part of this report);

THEREFORE, BE IT RESOLVED, THAT:

1. **Approval of Integrated Proposal:** Council approves the full proposal from Tulloch Engineering, including Englobe Corp's geotechnical investigation and pavement design services, totaling \$44,534 (Excl. Tax).
2. **Authorization to Execute Agreements:** The Chief Administrative Officer (CAO) is authorized to execute agreements for both scopes of work and integrate them into the Engineering Report on Fox Run Road Project.
3. **Pursuit of Additional Funding:** Staff will leverage the enhanced deliverables to pursue additional funding opportunities to offset project costs and maximize value for taxpayers.

EXECUTIVE SUMMARY

This report evaluates the integrated engineering services and geotechnical investigation proposed for the Fox Run Road Project. The combined investment of \$44,534 (Excl. Tax) ensures the development of a durable and efficient roadway, supported by comprehensive tendering documentation and a detailed engineering report. By incorporating Englobe Corp's geotechnical services into Tulloch Engineering's broader scope of work, the Municipality addresses critical issues such as frost heave, subgrade instability, and funding compliance. This integrated approach aligns with Council Resolution #24-472, enhancing project planning, execution, and accountability.

BACKGROUND

Council Resolution #24-472 directed the Municipality to strengthen the planning and management of the Fox Run Road Project by adopting best practices and ensuring compliance with provincial and federal funding requirements. The integrated approach outlined in this report fulfills this mandate by:

- **Expanding the Evaluation Scope:** Incorporating Englobe Corp’s geotechnical investigation provides essential subgrade and frost susceptibility data.
- **Enhancing Tender and Construction Precision:** Using data-driven findings to refine tender documentation and ensure effective construction oversight.
- **Maximizing Funding Eligibility:** Meeting "shovel-ready" project documentation standards to improve grant application success.

SCOPE OF WORK (SOW)

- **Tulloch Engineering Fee Proposal:** Tulloch's services include project management, tender documentation, and construction oversight as outlined in the table below.

Task	Timing	Deliverables	Estimated Fee (Excl. Tax)
Site Evaluation - Follow-Up	Fall 2024	<ul style="list-style-type: none">• Roadway review follow-up with visual site evaluation.• Inspection report detailing roadway conditions.	\$3,600
Tender Documentation Preparation	Winter 2024/2025	<ul style="list-style-type: none">• Roadway remediation specifications in a Form of Quotation (FOQ).• Includes roadway figures and diagrams.	\$6,800
Tender Evaluation and Recommendations	February/March 2025	<ul style="list-style-type: none">• Review of tenders received.• Recommendations for awarding contracts.	\$1,400
Construction Administration	2-3 Weeks During Construction	<ul style="list-style-type: none">• General administration, including progress monitoring and contractor coordination.	\$4,500
Inspection Services	1.5 Weeks Full-Time	<ul style="list-style-type: none">• Full-time on-site inspection services.• Quality assurance and compliance reporting.	\$9,600
Subtotal (Without Geotechnical Services)		Comprehensive project management and construction oversight.	\$25,900

- **Englobe Corp's Geotechnical Investigation:** Englobe's services provide a deeper understanding of subgrade conditions and offer tailored pavement design recommendations as outlined in the table below.

Task	Timing	Deliverables	Estimated Fee (Excl. Tax)
Mobilization and Demobilization	December 2024	<ul style="list-style-type: none"> Transport drilling equipment and supervision to/from the site. 	\$2,600
Utility Locates	December 2024	<ul style="list-style-type: none"> Mark out underground services (public and private). 	\$875
Borehole Drilling	December 2024	<ul style="list-style-type: none"> Drilling 32 boreholes (1.5 m depth) at 200 m intervals. - Measurement and recording of water levels at borehole locations. 	\$11,500
Laboratory Testing	January 2025	<ul style="list-style-type: none"> Analyze soil samples for natural moisture content, gradation, and Atterberg Limits. - Determine frost susceptibility. 	\$2,700
Geotechnical Report Preparation	January–February 2025	<ul style="list-style-type: none"> Comprehensive report summarizing findings and providing tailored pavement design recommendations. 	\$3,500
Subtotal for Geotechnical Services		<ul style="list-style-type: none"> Robust geotechnical analysis and pavement design recommendations. 	\$21,750

COST AND DELIVERABLES COMPARISON

Scenario	Total Cost (Excl. Tax)	Deliverables	Risks and Benefits
Scenario 1: Without Geotechnical Analysis	\$25,900	<ul style="list-style-type: none"> Visual inspection. Tender documents. Construction oversight. 	<ul style="list-style-type: none"> Increased risk of frost heave and premature failures due to limited subgrade data. Higher future maintenance and repair costs. Limited funding eligibility.
Scenario 2: With Geotechnical Analysis	\$44,534	<ul style="list-style-type: none"> Comprehensive project management and tender preparation. Geotechnical investigation and tailored pavement design. 	<ul style="list-style-type: none"> Enhanced funding compliance. Improved long-term durability and reduced maintenance costs. Proactive risk management.
Difference in Cost between Scenario 1 and Scenario 2:			\$18,634

KEY BENEFITS OF GEOTECHNICAL INTEGRATION

- **Design Precision**
 - Tailored pavement design based on geotechnical findings ensures alignment with subgrade and environmental conditions.
- **Frost Heave Mitigation**
 - Identifies and mitigates risks associated with frost-prone soils, ensuring long-term stability.
- **Funding Compliance**
 - Comprehensive documentation meets “shovel-ready” criteria required for grant applications.
- **Cost Efficiency**
 - Upfront investment reduces future repair and maintenance expenses.
- **Public Safety and Trust**
 - A well-planned, durable roadway enhances safety and demonstrates fiscal responsibility.

CONCLUSION AND RECOMMENDATION

To ensure the success of the Fox Run Road Project, it is recommended to approve the integrated proposal of **\$44,534 (Excl. Tax)**, combining Tulloch Engineering’s services with Englobe Corp’s geotechnical investigation. This approach will:

- **Enhance Project Planning:** Incorporate data-driven findings into tender documentation for accurate cost estimates and risk mitigation.
- **Secure Funding Opportunities:** Align project deliverables with grant eligibility criteria.
- **Ensure Long-Term Durability:** Address subgrade and frost heave issues to minimize future maintenance costs.

Respectfully Submitted

Laala Jahanshahloo



October 30, 2024

Tulloch

Email: ted.maurer@tulloch.ca

Phone: 705-789-7851 ext 413

Attention: Ted Maurer, CET

Subject: **Geotechnical Investigation - Proposed Roadway Improvements**
Fox Run Road - Temagami, Ontario
Englobe reference: P2411222

Ted:

Following your email on October 21, 2024, we are pleased to present our professional services proposal for the above-mentioned Project.

1 Description of the project

Englobe Corp. (Englobe) is pleased to provide a proposal to complete a Geotechnical Investigation for the proposed roadway improvements along portions of Stevens Road, Fox Run Road and White Bear Crescent in Temagami, Ontario. It is understood that the roadway was recently pulverized, and a new 100 to 150 mm layer of Granular M was placed as a new riding surface. It is also understood that select areas of poor performance were remediated and some culverts were replaced during the work.

Furthermore, it is understood that the Municipality of Temagami is considering placing hot mix asphalt or surface treatment for the riding surface throughout the project limits. As such, general pavement design recommendations are required.

2 Description of the services and deliverables

In the scope of the present Project, the services to be provided by Englobe are the following (the "Services"):

- Clear underground utility services (both public and private services, if necessary).
- Advance thirty-two (32) sampled boreholes to a depth of 1.5 m or practical auger refusal within the limits of construction, at a spacing of ± 200 m.
- Perform laboratory testing on soil samples to determine soil parameters.
- Measure and record water levels during the investigation at each borehole location.
- Prepare a geotechnical report.

The geotechnical report will include, where possible, the following information and recommendations:

- Project summary and development design information;



- Summary of drilling investigation as completed in the field;
- Summary of lab program;
- General breakdown of soil conditions with lab results;
- Groundwater observations;
- Borehole logs as described above;
- General summary of geotechnical considerations and recommendations;
- Frost design considerations;
- Pavement design;
- Site location plans; and
- Borehole locations plans.

Submission of Deliverables

Deliverables produced by Englobe are supplied on an electronic medium and sent electronically (via email) by default. If you wish to receive a hard copy of your deliverables, we invite you to inform the project manager assigned to your Project.

3 Excluded services

All services which are not described herein are not part of this scope of work. Namely:

- Advancing additional boreholes or advancing boreholes deeper than the depths specified (see Section 2 above);
- Survey by OLS of the borehole locations;
- Boreholes will be backfilled upon completion in general accordance to Reg. 903. If drilling is carried out in winter months, there is a possibility for minor subsidence of the ground surface at the borehole locations upon spring thaw. At that time, the surface of the boreholes should be backfilled up to the surrounding grade. If subsidence occurs, Englobe can be retained to return to the site to backfill the boreholes (not included in current scope).

4 Products and services provided by the client

Products and services which will be provided by the Client:

- Site access permission as required, for the fieldwork.
- Site survey plan, if available.
- Traffic data, if available.
- Construction history.



5 Products and services provided by a third party

Services provided by a third party and included by Englobe:

- Underground service clearance(s).
- Drilling services.

6 Schedule of services and deliverables

Prior to commencing any field operations, we will undertake activities to clear the site of underground services with the local Municipality and other public/private utility operations. Following clearance of the underground services, the drilling can commence. From the date of authorization and following reception of locates (one to three weeks depending upon locators' schedule), it is estimated that it would require approximately six to six weeks, to complete this project, depending on Drilling Subcontractors schedule. In summary:

- Fieldwork will require two (2) to three (3) business days to advance the boreholes;
- Lab work will require approximately one (1) to two (2) weeks;
- Geotechnical report will require approximately three (3) to four (4) weeks.

7 Fees proposal

For the execution of this Project, the value of our fees and expenses are tabulated below, all applicable taxes are extra (HST).

Table 1: Cost Breakdown

Task	Fees
Mobilization	
Mobilization and demobilization of field supervisor and drilling subcontractor to and from the site.	\$2,600.00
Locates	
Mark out and clear underground locates (public and private, if necessary).	\$875.00
Field Work	
Supply a drill rig and crew to advance boreholes as described in Section 2, including field supervisor, traffic control services and disbursements.	\$11,500.00
Lab Work	
Routine laboratory testing for soil classification purposes (natural moisture content, gradation analysis, and/or Atterberg Limits on select samples).	\$2,700.00
Engineering	
To cover the cost of a Senior Engineer and Project Manager involved with organization and data compilation along with report preparation, as well as supplying all technical staff for documentation of the project and report production.	\$3,500.00
Subtotal (excluding applicable taxes)	\$21,175.00



8 Invoicing and terms of payment

- On a monthly basis, Englobe will issue an invoice payable upon its reception;
- Any outstanding balance beyond 30 days is subject to a 1.5% compounded interest per month (19.56% per year);
- A down payment can be made; and,
- A start-up advance is not required for this project.

9 Validity of the proposal

This proposal is valid for a period of 30 days.

10 Acceptance of the proposal

We thank you for allowing us to submit our proposal and trust we will be granted the opportunity of participating to the execution of your Project. Should you accept our proposal, please note that our Services will be executed following the terms of this letter, as well as in accordance with the attached Terms and Conditions, all of which constitute the official agreement between the two parties.

If you require additional information, please do not hesitate to contact the undersigned.

Yours very truly,

Englobe Corp.

A handwritten signature in black ink, appearing to read 'Ryan Grasser', with a long horizontal flourish extending to the right.

Ryan Grasser
Team Lead - Materials NE/NW - ON

APPENDICES

Appendix A Terms and Conditions



READ AND ACCEPTED

Signature:

Date:

Name:

Title:

Company:

Phone number:

Email:

Note: Please verify and indicate the appropriate name and address for invoicing.

Paying customer: If same as above, please check ☐

Otherwise:

Email (for invoicing purposes):

Modification:

Legal name for invoicing:

Invoicing address:

Appendix A Terms and Conditions



eNGLOBE

For the purpose of these Terms and Conditions ("T&Cs"), Englobe Corp. shall be referred to as the "Service Provider".

Clause 1 Acceptance

- 1.1 The acceptance of the Proposal for Professional Services (the "Proposal") and/or the issuance of a purchase order by Client shall constitute Client's acceptance of these T&Cs. These T&Cs shall prevail over any additional or contradictory provision of a purchase order or other document submitted by Client. No amendment or waiver to these terms and conditions shall be valid unless evidenced in writing by a duly authorized representative of Service Provider. The acceptance of a purchase order or other document by Service Provider, or Service Provider's omission to oppose to additional or contradictory provisions on any purchase order or other document emanating from Client, shall not be interpreted as an acceptance of such provisions or a waiver by Service Provider of these Terms and Conditions.

Clause 2 Service Provider Fees

Except if otherwise stated in the Proposal, payment terms for the Services shall be as follows:

- 2.1 Client shall pay Service Provider within 30 days from receipt of an invoice without any deduction, withholding, set-off or abatement whatsoever. All payments are to be made in Canadian currency. Any outstanding balance from and after such 30-day period shall bear interest at a rate of 1.5%, compounded monthly (19.56% per annum).
- 2.2 Client agrees to receive electronic invoices in lieu of paper invoices. Such invoices shall be sent to the email address indicated by Client on the execution page of the Proposal.
- 2.3 Fees and other charges payable by Client are determined in accordance with Service Provider's rates in effect at the time the Services are performed, as described in the Proposal. Reimbursable expenses include, but are not limited to, mileage, air fare, accommodation, vehicle rental, parking and meals.
- 2.4 Fees and other charges shall be net of GST, HST, QST, Value Added Tax, Provincial Sales Tax or any other similar taxes (the "Applicable Taxes"). Applicable Taxes, if any, shall be levied in addition to any fees or other charges payable by Client under the Proposal and will be shown separately on each invoice. The parties shall not be responsible for income taxes and or other taxes owed by the other party.
- 2.5 Service Provider shall be entitled to recover all costs, interest and legal expenses it incurs in recovering any outstanding balance owed by Client, including any reasonable legal fees and disbursements, as well as an additional amount equal to 20 % of such outstanding balance, as liquidated damages (and not as a penalty).
- 2.6 Any request from Client following the issuance of a report or other Deliverable (meeting, court testimony, request for information, etc.) shall be invoiced at the rates determined by Service Provider, acting in its sole discretion. Service Provider's travel and other expenses, if any, shall also be invoiced to Client.

Clause 3 Changes

- 3.1 Client acknowledges that (i) changes to the Services; (ii) unforeseen circumstances or conditions; (iii) situations beyond a party's reasonable control; and (iv) changes to applicable laws or standards, may increase the costs incurred by Service Provider to perform the Services (individually, a "Change").
- 3.2 Service Provider undertakes to notify Client of any additional costs resulting from a Change that are necessary to complete the Project. Any Change shall result in a reasonable adjustment to Service Provider's fees and to the schedule for the provision of the Services, where applicable.
- 3.3 Client acknowledges and agrees that any request made to change the name of the entity being invoiced (as indicated in the body of the Proposal) will result in it being charged a \$250 administration fee.

Clause 4 Service Provider Obligations

- 4.1 In performing the Services, Service Provider shall act in a professional manner, using the same degree of care and skill ordinarily exercised by members of the same professional and consistent with professional standards applicable to the same or similar Services, performed in conditions similar or the same to those of the Project site (the "Site").
- 4.2 Prior to performing any intrusive work (if applicable), Service Provider undertakes to apply for an underground structure locate report with the appropriate service provider. Service Provider shall not be liable for any loss or damage caused to the Site or to any underground structures not identified (or incorrectly identified) in the locate report and Client shall indemnify and hold Service Provider and its directors, officers, employees, agents, successors and assigns harmless from and against any and all costs arising out of, or resulting from the presence of such underground structures.
- 4.3 Service Provider shall make commercially reasonable efforts to minimize damages to the Site but does not guarantee that it will be returned to the same condition as it was prior to the work. All costs necessary to restore the Site to its original condition shall be borne by Client.
- 4.4 Service Provider shall make commercially reasonable efforts to minimize damages to the Site but does not guarantee that it will be returned to the same condition as it was prior to the work. All costs necessary to restore the Site to its original condition shall be borne by Client.
- 4.5 Service Provider shall not provide maintenance or support, nor shall it issue maintenance recommendations, with respect to the Deliverables.
- 4.6 Service Provider shall keep all records relevant to the Project for a period of 10 years following the provision of the Services. Such records shall be made available to Client upon written request.

Clause 5 Client Obligations

- 5.1 Client agrees to promptly provide Service Provider with any information relevant to the provision of the Services, including such information as that which Service Provider could not reasonably obtain pursuant to section 4.2, as well as any information which could have an impact on the safety of Service Provider's personnel (the "Data"). Client hereby represents and warrants that the Data is accurate and understands that Service Provider will be relying on such data to perform the Services.
- 5.2 Client shall provide Service Provider with access to the Site and procure and maintain all permits and licenses necessary

for the performance of the Services.

- 5.3 Client shall take all necessary measures to ensure the safety of Service Provider's employees and representatives on the Site. Where unpredictable conditions require Service Provider to take exceptional measures for the safety of its employees and representatives or for the public in general, Service Provider shall be entitled to act for and on behalf of Client with respect thereto and all costs resulting therefrom shall be borne by Client.
- 5.4 Client agrees to comment or accept within 10 days from their receipt any documents that Service Provider may submit for its review, failing which such documents shall be deemed accepted by Client.

Clause 6 Liability and Indemnification

- 6.1 Client acknowledges that the Services entail certain risks which may lead to disruptions including, without limitation, the temporary suspension of Client's business operations. Service Provider shall not be liable for any damages or costs arising out of, or relating to such temporary disruptions. Notwithstanding the foregoing, Service Provider shall remain liable for Client's material losses, where such losses result from Service Provider's gross negligence or willful misconduct.
- 6.2 Service Provider shall not be liable for any claims, damages or costs arising from the discovery of the presence, spill, release, escape or effects of radiation, radioactive or nuclear reactions, or the presence of radioactive, toxic or explosive substances, or hazardous substances or conditions, the presence of solid, liquid or gaseous pollutants or other contaminants of any kind on the Site. Client acknowledges that it shall remain fully liable and bear all costs related thereto.
- 6.3 In addition to the foregoing, Service Provider shall not be liable for (i) any defect or delay caused by Client or any third party (including, without limitation, delays in obtaining permits, licenses or authorizations); (ii) defects in any equipment supplied or designed by Client or a third party; (iii) any acts of Client, its employees and/or representatives, or that of others; (iv) any inaccuracy or error in the information or data provided or designed by Client or a third party; (v) damages to hardware (equipment, computers, software, etc.) provided by Client or a third party; (vi) underground structures identified or installed (or not) by Client or a third party; (vii) delays caused by any event beyond Service Provider's reasonable control; (viii) any Project decisions made by Client without Service Provider's prior consent; (ix) the distribution of documents or reports prepared by or on behalf of Service Provider for the exclusive use of Client (and Client undertakes to indemnify and hold Service Provider harmless from any liability with respect thereto); (x) an inaccurate estimate of costs and expenses, where such inaccuracy results from (a) the Project being constructed in more than one phase and/or more than one contractor; or (b) delays in transportation and/or financial difficulties of a major supplier or subcontractor retained by Service Provider; (xi) the choice of work methods, techniques, procedures, protocols and sequences, site supervision and safety and security precautions and programs; and (xii) the Project not achieving requirements of rating systems including, but not limited to, LEED®, Built Green™, or Green Globes®.
- 6.4 Service Provider's maximum liability under the Proposal and these T&Cs shall not exceed the total amount of fees paid by Client to Service Provider hereunder. For the purposes of this paragraph 6.4, "Service Provider" shall be deemed to include Service Provider and its representatives, consultants, subcontractors, directors, officers, employees and affiliates.
- 6.5 To the extent permitted by applicable law, Service Provider shall in no event be liable for any special, consequential, indirect, moral or punitive damages relating to the Proposal, these T&Cs or the Services rendered in connection therewith, despite the fact that Service Provider may have been informed of the possibility of such damages. This may include, but shall in no event be limited to, loss of use, income, or profits, increased construction costs, as well as any costs necessary for the reconstruction or repair.
- 6.6 Client undertakes to indemnify and hold Service Provider harmless for any loss or damage arising out of Client's breach of these T&Cs, or from the acts, omissions or negligence of Client, its employees, representatives, contractors or consultants.

Clause 7 Insurance

- 7.1 Service Provider undertakes to procure and maintain adequate insurance coverage (civil and professional liability) appropriate for the Services throughout the term of the Proposal. If all or part of the Services are to be performed on Client or a third party's property, Client shall indemnify and hold Service Provider harmless against any claims relating to property damage, except where such damage results from Service Provider's gross negligence or willful misconduct. Client shall also cause Service Provider to be designated as an additional insured on its insurance policies and have its insurers waive their right of subrogation.
- 7.2 Service Provider represents that it is an employer in good standing regarding the requirements of the relevant health and safety regulations.

Clause 8 Suspension / Termination

- 8.1 Either party may terminate the Proposal for convenience by giving the other party at least 30 days' prior written notice. If the Proposal is terminated by Client, Service Provider shall be entitled to the payment of all the Services rendered up to the date of such termination, as well as any and all costs associated with this early termination of the Proposal, including, without limitation, reasonable demobilization costs and any third party penalties or charges.
- 8.2 If either party is in breach of any of its material obligations under the Proposal or these T&Cs, the other party may give notice in writing of the breach to the defaulting party and request the latter to remedy it. If the defaulting party fails to remedy the breach within 10 days (or any longer period mutually agreed upon by the parties, such period not to exceed 30 days) after the date of delivery of such written notice, the Proposal shall be terminated upon the expiry of the cure period. If the Proposal is terminated as a result of Client's breach of its obligations, Service Provider shall be entitled to the payment of any and all costs associated with this early termination of the Proposal, including, without limitation, reasonable demobilization costs and any third party penalties or charges, in addition to the payment of all the Services

rendered up to the date of such termination.

Without limiting any of its other rights or remedies, Service Provider shall be entitled to suspend the performance of the Services upon written notice to Client if the Client fails to make any payment due hereunder and has failed to cure such default within 10 days from its receipt of a non-payment notice. If the Services are suspended, Service Provider shall have the right to immediately assign its personnel to other projects without further notice to Client. The impact of any such suspension and remobilization shall be reflected in a Change in accordance with section 3.2 and shall be borne entirely by Client.

Clause 9 Intellectual Property Rights

- 9.1 Provided that it has paid any fees due to Service Provider hereunder, Client shall be entitled to a perpetual, non-exclusive and non-transferable (without sub-license rights) license in all plans, specifications, diagrams, reports and other documents (collectively referred to as the "Documentation") prepared by Service Provider for its use in the Project. For greater clarity, Service Provider is and shall remain the sole owner of the Documentation. Client may not modify, use, or otherwise permit the use of the Documentation for any other project, or for additional work related to the Project, without Service Provider's prior written consent. Any such request made by Client shall be subject to Service Provider being remunerated according to its rates in effect at the time of such request for consent. Service Provider is hereby released from any liability if the Documentation is used for purposes other than the Project, or if the Documentation is modified, in any way, or cited out of its context, without Service Provider's prior written consent. Client undertakes to defend and hold Service Provider harmless against any claims, damages or costs (including extrajudicial fees) resulting from the unauthorized use of said Documentation.
- 9.2 Service Provider shall be the sole owner of any discovery, invention and/or design, whether or not patentable or subject to copyright, developed in the course or in connection with the Project (collectively, the "Intellectual Property Rights"). Client hereby waives and assigns in favor of Service Provider all of its rights, including moral rights, if any, to which it may be entitled in or on the proceeds of the Services and further agrees to sign, or cause to be signed, all the documents required to enable Service Provider to confirm its Intellectual Property Rights. Without limiting the generality of the foregoing, Client acknowledges and agrees that any tax credit or tax incentive available to it as a result of activities which constitute "scientific research and experimental development" shall be for the sole benefit and claimed exclusively by Service Provider.

Clause 10 Confidentiality

- 10.1 All drawings, specifications, technical data, Documentation, Data and other information (including personal information, if any) provided by Service Provider to Client in connection with the Project are confidential ("Confidential Information"), shall remain the property of Service Provider and may not be copied or otherwise reproduced or used in any way except in connection with the Project. Client shall comply with all applicable laws respecting the protection of personal information, including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada). Notwithstanding the foregoing, the following information shall not be considered Confidential Information for the purpose of the Proposal and these T&Cs: (i) information known to the public other than through a breach of these T&Cs by Client; (ii) information developed by Client irrespective of its obligations hereunder; and (iii) information acquired by Client from a third party, except through the breach of a confidentiality or other similar agreement entered into between said third party and Service Provider.

Clause 11 Non-Solicitation

- 11.1 Throughout the term of the Proposal and for a period of twelve (12) months thereafter, Client undertakes not to solicit, incite, recruit or otherwise encourage an employee of Service Provider to terminate its employment with Service Provider, whether directly or indirectly, alone or through others and for its own benefit or that of another person or entity. Notwithstanding the foregoing, Client shall not be prohibited from recruiting an employee of Service Provider who submits an application in response to a job posting that is not specifically directed to Service Provider and its employees. Client acknowledges and agrees that its failure to comply with this covenant shall result in it having to pay Service Provider an amount equal to twelve (12) months of full-time billing of this person at the rates in effect at the time of such illegal solicitation. In addition to the above, Service Provider also reserves any other rights and remedies it may have under applicable law, including injunctive relief.

Clause 12 General Provisions

- 12.1 Service Provider reserves the right to subcontract all or any portion of the Services. Service Provider makes no representation or warranty, express or implied, with respect to the Services or the Deliverables other than as explicitly set forth herein.
- 12.2 Client shall not assign or transfer any of its interests or obligations under the Proposal or these T&Cs without Service Provider's prior written consent.
- 12.3 Service Provider and Client are independent contractors and nothing herein shall be construed as creating an employee or agency relationship, franchise, joint venture or partnership of any nature whatsoever between Service Provider and Client.
- 12.4 The Proposal and these T&Cs shall be governed and interpreted in accordance with laws applicable in the jurisdiction in which the Project is located.

Service Provider reserves the right to broadcast any promotional communications (press releases, traditional and web advertising, brochures, project sheets, social media, etc.) relating to the Services, unless Client has expressly stated its disagreement in writing.