



THE QUALTIM FAMILY OF SERVICES

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## **Appendix B: Project/Deliverables**

1. The scope of work or Services to be provided by the Service Provider for the Project will be requested by Customer, and Communicated back to the Customer in a Proposal. The Proposal becomes a Project when the Proposal is confirmed by Communication between Customer and Service Provider, actions are taken, and/or any invoice has been paid by the Customer.
2. Customer shall promptly take actions including but not limited to providing Service Provider with information and documents needed so that Service Provider is able to perform the work required to complete the Project. Project Completion Dates and Deliverables are predicated upon this Customer action.
3. During the term of the Project, and at times and places as may be delineated in the Proposal, Authorized Representatives of the Service Provider will Communicate with Authorized Representatives of Customer to discuss items including but not limited to amendments to the Project, Project progress, changes to the Project, budget variances, scope modifications, invoices, etc.
4. At any time, Customer and Service Provider may amend the Project through Communication between their Authorized Representatives. Subsequent actions taken shall be viewed as confirmation of Authorized Representative Project amendment.
5. The Deliverables will be provided by Service Provider to Customer, in their usual and customary form, at the conclusion of the Project, or at earlier termination of the Project, if there are no outstanding or overdue invoices.
6. Customer shall make payment to Service Provider according to the terms of the Proposal and invoice. In the event of early termination of the Project by the Customer, Customer shall pay for any costs and non-cancellable commitments specifically incurred on the Customer's behalf by Service Provider through and including the date of termination. In the event Customer fails to pay all invoices due for work on the Project, and until such time that the invoices are paid, the Deliverables shall become the property of Service Provider and not Customer.
7. Service Provider may have access to Customer's Confidential Information. Service Provider may use Confidential Information only for the purposes of the Project. Service Provider shall maintain Confidential Information in the same manner in which it protects its own Confidential Information. Upon request, Service Provider shall return all Customer Confidential Information and shall not use Confidential Information for its own, or the benefit of any third party. Similarly, Customer may have access to Service Provider's Confidential Information. Customer may use Confidential Information only for the purposes of the Project. Customer shall maintain Confidential Information in the same manner in which it protects its own Confidential Information. Upon request, Customer shall return all Service Provider Confidential Information and shall not use Confidential Information for its own, or the benefit of any third party.
  - 7.1 Service Provider and Customer agree to exercise reasonable efforts not to disclose Confidential Information unless Confidential Information:
    - 7.1.1 Is generally available in the public domain.
    - 7.1.2 Thereafter becomes available to the public through no act of either party.
    - 7.1.3 Was independently known by either party prior to its receipt as evidenced by written documentation.
    - 7.1.4 Was made available as a matter of legal right by a third party.
8. Service Provider will provide Deliverables to Customer exclusively, so long as payment is made in full for the Deliverables as set forth in item six (6) above. Deliverables are the property of Customer and Customer may use the Deliverables as it sees fit in the conduct of its business, except when the following conditions are present:
  - 8.1 The Service Provider provides an engineer's seal and signature and/or an engineer's signature designating the engineer is a professional engineer (PE).
  - 8.2 When the Deliverable is sealed and/or has an engineer's signature with a PE license number, the Service Provider will provide:
    - 8.2.1 The engineering scope of work and conditions of use.
    - 8.2.2 An expiration date can be provided.

8.2.3 If no expiration date is provided, the expiration date is December 31 of the year that is placed on the engineer's seal and/or the year of signature designating the engineer is a PE.

9. Service Provider will perform Services defined in the Project and/or Communications with the Customer. The Service will be provided in a manner that includes but is not limited to Services typical of management, marketing, testing, and engineering businesses. The Service Provider's sole responsibility is for the work that creates a Deliverable and the final Deliverable. The Service Provider is not responsible for the Customer's use and/or any Customer's client use of the Deliverable.
10. In the event of any suspension, delay, or interruption by Customer, Deliverable completion dates shall be adjusted commensurate with the suspension, delay, interruption, and/or by amending the Project through Communication.
11. In the event of acts of God or public enemy, wars, insurrections, civil disturbances, epidemics, labor disputes, failure of government approval, accidents, failure of utilities, material shortages, fires, storms, floods and any other causes, whether of the kind enumerated herein or otherwise, not within the control of the Customer or Service Provider, obligations of the Service Provider shall be suspended and the completion date shall be adjusted commensurate with the suspension, delay, interruption, and/or by amending the Project through Communication.
12. Notices and related business activity agreements are made when Communication takes place with an Authorized Representative.
13. In the event of any breach of, default, conflict, or claim that arises with respect to Schedule 1, a Project, Deliverables, and/or payments, Communication between Authorized Representatives shall take place and recommended remedies created. In the event that a remedy is not agreed to within ten (10) days pursuant to Communication of Authorized Representatives, then senior management of both parties shall meet to determine the best mutually beneficial remedy. If a remedy is not agreed to within ten (10) days pursuant to Communication of senior management, then all Agreements terminate or arbitration shall be undertaken as follows:
  - 13.1 Claims shall be heard by a single arbitrator, unless the claim amount exceeds \$200,000, in which case the dispute shall be heard by a panel of three arbitrators. Within fifteen (15) days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be in Madison, Wisconsin. The arbitration shall be governed by the laws of the State of Wisconsin. Each party will, upon written request of the other party, promptly provide the other with copies of all relevant documents. There shall be no other discovery allowed. In making determinations regarding the scope of exchange of electronic information, the arbitrator(s) and the parties agree to be guided by The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production. The arbitration will be based on the submission of documents and there shall be no in-person or oral hearing. The award shall be made within three (3) months of the filing of the notice of intention to arbitrate (demand), and the arbitrator(s) shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by the arbitrator for good cause shown, or by mutual agreement of the parties. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrators, all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The award of the arbitrators shall be accompanied by a reasoned opinion. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Due to the specialized nature of the construction industry, each party waives its right to any type of trial.
14. Service Provider agrees to repay all Customer costs, related to any act and/or omission of Service Provider, anyone employed by Service Provider (including any and all of Service Provider's subcontractors) or anyone whose acts Service Provider is responsible for, when there is direct evidence provided that one or more specifically delineated acts and/or omissions, with respect to the Service Provider's specific responsibilities, as delineated in Schedule 1 (including all appendices), a Project, and/or Deliverables, caused a Customer's loss or expense.
15. Customer agrees to repay all Service Provider costs, related to any act and/or omission of Customer, anyone employed by Customer (including any and all of Customer's subcontractors), any Customer's clients and/or anyone whose acts Customer reliant upon, when there is direct evidence provided that one or more specifically delineated acts and/or omissions, with respect to the Customer's use of information provided pursuant to Schedule 1 (including all appendices), a Project, and/or Deliverables, caused a Service Provider's loss or expense.

16. The work pursuant to Schedule 1, a Project, Deliverables and/or provisions of the transaction between Customer and Service Provider cannot be assigned except through Communication by the senior management of the Customer and Service Provider.
17. The work pursuant to Schedule 1, a Project, Deliverables, and/or provisions of the transaction between Customer and Service Provider shall remain in place to the benefit of future partnerships, joint ventures, or changes in ownership.
18. Either party may cancel a Project at any time, with or without cause, upon Communication by Authorized Representatives and their mutual agreement. If any of the Project work has been performed and/or invoiced, Service Provider shall provide a final invoice within ten (10) business days and Customer will pay all amounts due Service Provider within ten (10) business days following receipt of the final Service Provider invoice. In the event Customer fails to pay all invoices due for work on the Project, and until such time that the invoices are paid, Deliverables shall become the property of Service Provider and not Customer.
19. In the conduct of any Project, Service Provider shall be an independent contractor. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither party shall be bound by or responsible for the acts or conduct of the other. Responsibilities and authority of each are as delineated in Schedule 1 (including all appendices), a Project, and/or Deliverables.
20. Customer and Service Provider will comply with all applicable federal, state, local, and professional engineering laws, and State of Wisconsin laws specifically apply without regard to conflicts of laws principles.
21. These Project/Deliverables incorporate [Appendix A: Commentary/Definitions](#) and apply to Schedule 1.
22. Appendix B describes the transaction between the Customer and Service Provider as Communicated to Customer and supersedes all prior versions and understandings with respect to Appendix B and any prior transactions. In addition, Appendix B may be updated periodically during the year, where the current version is available twenty-four (24) hours per day, seven (7) days per week for review, comment and Customer feedback regarding changes.