



Client – Quantity Surveyor

Agreement

1998

Project _____

Client _____

*Quantity surveyor/
Consortium representative* _____

Agreement date _____ *File reference* _____

Effective date: 1 June 1998



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1.0 DEFINITIONS AND INTERPRETATION

- 1.1 Where the words and phrases are highlighted in the text of this agreement they shall bear the meaning assigned to them in this 1.1 or in the 1998 edition of the Tariff of Professional Fees as issued by the Association of South African Quantity Surveyors and where such words and phrases are not highlighted they shall bear the meaning consistent with the context
- 1.1.1 **"CALENDAR DAYS"** means days of twenty four (24) hours duration commencing at midnight (00:00) and which includes non-working days
- 1.1.2 **"CLIENT"** means the contracting party so named in the **schedule**
- 1.1.3 **"QUANTITY SURVEYOR"** means the contracting party or the members of a quantity surveying consortium so named in the **schedule**. The **consortium representative** authorised to sign this agreement on behalf of the members of a quantity surveying consortium shall be so named in the **schedule**
- 1.1.4 **"SCHEDULE"** means the items selected in 22.0 and their contents
- 1.1.5 **"TARIFF OF PROFESSIONAL FEES"** means the 1998 edition of the Tariff of Professional Fees as issued by the Association of South African Quantity Surveyors. The provisions of the **schedule** shall take precedence over the provisions of the Tariff of Professional Fees
- 1.2 The **client** and the **quantity surveyor** choose *domicilium citandi et executandi* at the respective addresses as stated in the **schedule** where notices or processes arising out of or concerning this agreement may validly be delivered to and served on them. Either contracting party may, at any time, by notice to the other contracting party, change his *domicilium* to another address, provided that such new address shall be in the same country as the *domicilium* initially stated in the **schedule**
- 1.3 Documents and Acts of Parliament referred to in this agreement shall mean, unless otherwise stated, the latest edition thereof with all amendments thereto at the date of signing of the agreement
- 1.4 The headings of clauses in this agreement are for reference purposes only and shall not be taken into account in construing the context thereof
- 1.5 In this agreement, unless inconsistent with the context, the word "deemed" is to be taken in its ordinary sense as meaning "considered" or "regarded"
- 1.6 In this agreement, unless inconsistent with the context, the masculine includes the other gender, the singular includes the plural and *vice versa*, and persons shall include bodies corporate
- 1.7 A notice or document sent by a party in terms of this agreement by registered post addressed to the other party at his *domicilium citandi et executandi* shall be deemed to have been received by the other party within ten (10) **calendar days** from date of posting
- 1.8 In this agreement the **VAT** exclusive method shall be used in determining all monetary amounts with **VAT**, where applicable, added as a single calculation to the total
- 1.9 This agreement constitutes the whole agreement between the parties and no amendment to the terms and conditions shall have force or effect unless reduced to writing and signed by the parties
- 1.10 The only law applicable to this agreement is the law so named in the **schedule**

2.0 PROJECT

2.1 The **client** is desirous of undertaking a project so named in the **schedule**

2.2 The project is situated on a site so described in the **schedule**

3.0 APPOINTMENT

The **client** appoints the **quantity surveyor** who accepts the appointment to carry out the services so indicated in the **schedule**. Unless specifically otherwise stated the **quantity surveyor's** appointment shall be deemed to include **Service A, Service B, Service C** and **Service D** or equivalent stages

4.0 PROFESSIONAL FEES

For the rendering of his professional services on the aforesaid project and in accordance with the provisions of 3.0 it is agreed that the **quantity surveyor's fees** shall be in accordance with the **Tariff of Professional Fees**

5.0 EXCESSIVE VARIATION

Excessive variation shall be dealt with in accordance with the provisions of the **Tariff of Professional Fees**

6.0 DISBURSEMENTS AND TRAVELLING EXPENSES

Disbursements and reasonable travelling and subsistence expenses shall be reimbursed to the **quantity surveyor** by the **client** as stated in the **Tariff of Professional Fees**

7.0 SPECIAL CONDITIONS

Any special conditions appertaining to this agreement shall be stated in the **schedule**

8.0 ACT OF PARLIAMENT AND REGULATIONS

The **quantity surveyor** is obliged to abide by the South African Quantity Surveyor's Act 1970 (Act 36 of 1970), the regulations framed in terms thereof and the constitution and rules of the Association of South African Quantity Surveyors and any amendments thereto

9.0 QUANTITY SURVEYOR'S DILIGENCE

The **quantity surveyor** shall exercise reasonable diligence and skill in the performance of his professional services

10.0 LIMITS TO QUANTITY SURVEYOR'S RESPONSIBILITY

10.1 The **quantity surveyor's** advice shall be given in good faith under conditions prevailing at the time. The **quantity surveyor** shall not be responsible for any effects of subsequent changed circumstances on advice given, or for any consequences of his advice being disregarded

10.2 In preparing estimates of construction cost the **quantity surveyor** shall endeavour to determine what the tender/negotiated price will be but does not guarantee that the tender/negotiated price will not exceed nor be less than the approved estimates of construction cost

10.3 The **quantity surveyor** in preparing procurement documentation undertakes to use his best endeavours to adhere to the approved estimate of construction cost but does not guarantee that the tenders/negotiated price will not exceed nor be less than the estimate of construction cost

10.4 No claim whatsoever shall be enforceable by the **client** against the **quantity surveyor** arising out of or in respect of any services rendered by the **quantity surveyor** under this agreement or otherwise in connection with the carrying out of the project after three years has elapsed from completion, suspension or termination of the project in terms of 20.0, irrespective of when such claim arises and/or when the **client** acquires knowledge of the facts from which the claim arises

11.0 **CHANGES TO CLIENT/QUANTITY SURVEYOR COMPOSITION AND ASSIGNS**

Any changes of composition or status of the **client** or the **quantity surveyor** shall not affect this agreement

Neither party shall assign, sublet or transfer their interest or obligations in this agreement without the written consent of the other

12.0 **INCAPACITY OF THE QUANTITY SURVEYOR**

In the event of the **quantity surveyor's** death, where he is not a member of a partnership, corporation or company or in the event of the **quantity surveyor's** incapacity to fulfil his obligations, the procedure shall be as for termination

13.0 **COPYRIGHT, OWNERSHIP AND USE OF DOCUMENTS**

All documents prepared by the **quantity surveyor** are copyright and remain his property

The **client** has the right to the use of and benefit from authorised copies of documents for the sole purpose of this project, subject to his compliance with the terms and conditions of this agreement

14.0 **PROFESSIONAL INDEMNITY**

The **quantity surveyor** shall maintain a policy of insurance in respect of professional indemnity to a cover so stated in the **schedule** and shall (if requested to do so) issue to the **client** a certificate to that effect from the underwriting company or broker

15.0 **LIMIT OF LIABILITY**

The maximum amount of compensation payable by the **quantity surveyor** to the **client** in respect of liability under this agreement or as a result of work executed in terms of this agreement is limited to the amount of the professional indemnity insurance stated in the **schedule** or, where no such amount is stated, to an amount equal to twice the amount of fees payable by the **client** to the **quantity surveyor** under this agreement, excluding **disbursements**

The **client** agrees to waive all claims against the **quantity surveyor** in so far as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable

16.0 **INTERIM PAYMENT OF FEES**

Interim payment of fees by the **client** to the **quantity surveyor** shall be in accordance with the provisions of the **Tariff of Professional Fees**

17.0 WITHHOLDING OF FEES

Should a **client** allege a claim against a contractor or any third party involved in the project, such claim shall be dealt with on its own merits and the **client** may not withhold payment of any part of the **fees** or **disbursements** due to the **quantity surveyor** on this account

18.0 LATE PAYMENT OF ACCOUNTS

The **quantity surveyor** shall charge the **client** interest at a rate which is one tenth (1/10) above the rate of interest applicable from time to time to prime borrowers at the **quantity surveyor's** bank on all accounts, correct and due, not settled within thirty (30) **calendar days** of submission

19.0 DEFERMENT

The **client** may at any time instruct the deferment of the work on the project. Immediately thereafter the **quantity surveyor** shall be entitled to be remunerated in full for all of his services rendered and **disbursements** to the date of such instruction in accordance with the provisions of the **Tariff of Professional Fees**. If work on the project remains deferred for three (3) months or more from such instruction the **quantity surveyor** shall be entitled to deem that the project has been terminated by the **client** in terms of 20.1 and shall notify the **client** accordingly

20.0 TERMINATION

20.1 This agreement may be terminated by either party giving thirty (30) **calendar days** notice to the other party. The provisions of the **Tariff of the Professional Fees** shall apply

20.2 Within thirty (30) **calendar days** of receipt of payment of all outstanding fees the **quantity surveyor** shall deliver to the **client** one copy of each document prepared by the **quantity surveyor** and any other documents or items that may or should be in his possession and not previously delivered to the **client** which may be relevant for the completion of the project

21.0 DISPUTE OR DIFFERENCE ARISING OUT OF THIS AGREEMENT

21.1 Should any disputes or differences whatsoever arise at any time between the parties hereto concerning this agreement or its construction or effect or as to the rights, duties and/or liabilities of the parties hereto or either of them under or by virtue of this agreement or otherwise or as to any other matter in any way arising out of the subject matter of this agreement, then either party hereto may:

21.1.1 Declare a dispute by delivering the details thereof to the other party and

21.1.2 Request that such dispute be referred by the parties, without legal representation, to mediation by a single mediator at a place and time to be determined by the mediator

21.2 The mediator shall be:

21.2.1 Selected by agreement between the parties or, failing such agreement,

21.2.2 Nominated on the application of either party by the president for the time being of the Association of South African Quantity Surveyors

21.3 The mediator shall, at his entire discretion, determine whether the reference to him shall be made in the form of written and/or oral representations provided that, in making this determination, he shall consult the disputing parties and be guided by their desires in respect of the form in which the said representations are to be made

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- 21.4 The mediator shall, within a reasonable period thereafter, express in writing an opinion on the matter and shall include therein his detailed reasons leading to his opinion
- 21.5 The mediator shall deliver a copy of his reasoned opinion to each party
- 21.6 The opinion so expressed by the mediator shall be final and binding on the parties unless either party, within thirty (30) **calendar days** of the delivery of the opinion, notifies the other party of its unwillingness to accept the said opinion
- 21.7 The costs of mediation shall be determined by the mediator and shall comprise:
- 21.7.1 The mediator's expenses and
- 21.7.2 A fee which shall have been previously agreed by the parties and the mediator. The said costs shall be borne equally by the two parties and shall be due and payable to the mediator on presentation to them of his written account
- 21.8 Each party shall bear the costs of any legal advice it may have obtained in connection with the mediation and any other costs it incurred in respect of the mediation
- 21.9 The expressed opinion of the mediator shall not prejudice the rights of the parties in any manner whatsoever in the event of their proceeding to arbitration
- 21.10 Any decision given by any representative of the parties in accordance with any provision of this agreement shall not disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to arbitration
- 21.11 If either party to this agreement is unwilling to accept the opinion expressed by the mediator then either party may, by notice delivered to the other within thirty (30) **calendar days** of receipt of the mediator's opinion require that the dispute be referred to arbitration
- 21.12 Such arbitration shall be by a single arbitrator who shall be:
- 21.12.1 Selected by agreement between the parties or, failing such agreement,
- 21.12.2 Nominated on the application of either party by the chairman for the time being of the Association of Arbitrators (Southern Africa)
- 21.13 The arbitrator shall have power to open up, review and revise any opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such opinion, decision, requisition or notice had been given. Upon every or any such reference, the costs of and incidental to the reference and award shall be in the discretion of the arbitrator, who may determine the amount thereof, or direct the same to be taxed as between attorney and client or as between party and party and shall direct by whom and in what manner the same shall be borne and paid
- 21.14 The award of the arbitrator shall be final and binding on the parties hereto
- 21.15 The arbitration shall be held in terms of the law and the rules stated in the **schedule**

22.0 THE SCHEDULE

This **schedule** contains all variables referred to in this agreement. Spaces requiring information must be filled in, indicated as being not applicable or deleted and not left blank. Where choices are offered the non-applicable items are to be deleted. Reference clauses are bracketed in italics

22.1 **LAW APPLICABLE TO AGREEMENT**

(1.10) Country _____

22.2 **CONTRACTING PARTIES**

(1.1.2) **Client** _____

Postal address _____

Code _____

Tel _____ Fax _____

e-mail address _____

(1.2, 1.7) Domicilium _____

(1.2) Country _____

(1.1.3) **Quantity surveyor** or _____
members of a quantity
surveying consortium _____

(1.1.3) **Consortium
representative** _____

Postal address _____

Code _____

Tel _____ Fax _____

e-mail address _____

(1.2, 1.7) Domicilium _____

(1.2) Country _____

22.3 **PROJECT**

(2.1) Project description _____

(2.2) Site description _____

22.4 **APPOINTMENT**

(3.0) Quantity surveying services

Affordable housing contract with bills of quantities

Affordable housing contract without bills of quantities

Arbitrator or umpire

Builder's quantities

Consortium representative

Construction management

Contract with bills of provisional quantities

Contract with bills of quantities

Contract without bills of quantities

Contract with schedule of rates

Cost norms

Cost-plus contract

Expert witness

Financial viability studies

Locational bills of quantities

Mediator

Multiple procurement contract

Project administration

Project management

Project monitoring

Quality inspection

Schedule of materials

Services at risk

Small or simple building works contract with bills of provisional quantities

Small or simple building works contract with bills of quantities

Tenant requirements

Time charge services other than stated (elaborate below)

Valuations for assessment of taxation, fire insurance, expropriation, rental return or similar purposes

Valuations for payment certificates

Value management

Other quantity surveying services or elaboration of the abovementioned services:

22.5 **PROFESSIONAL FEES OTHER THAN IN THE TARIFF**

(1.1.5, 4.0)

Professional fees other than stated in the **Tariff of Professional Fees**

22.6 **DISBURSEMENTS AND TRAVELLING EXPENSES OTHER THAN IN THE TARIFF**

(1.1.5, 6.0)

Disbursements and travelling expenses other than stated in the **Tariff of Professional Fees**

22.7 **PROFESSIONAL INDEMNITY INSURANCE**

(14.0) Insured No. 1 _____
Insurer No. 1 _____
Limit of indemnity for insured No. 1 _____
and in case of a quantity surveying consortium

Insured No. 2 _____
Insurer No. 2 _____
Limit of indemnity for insured No. 2 _____

Insured No. 3 _____
Insurer No. 3 _____
Limit of indemnity for insured No. 3 _____

22.8 **ARBITRATION**

(21.15)	Arbitration law	<table border="1"><tr><td>South African Arbitration Act of 1965</td></tr></table>	South African Arbitration Act of 1965	<table border="1"><tr><td>Other (state):</td></tr></table>	Other (state):
South African Arbitration Act of 1965					
Other (state):					
(21.15)	Arbitration rules	<table border="1"><tr><td>Rules recommended by the Association of Arbitrators (Southern Africa)</td></tr></table>	Rules recommended by the Association of Arbitrators (Southern Africa)	<table border="1"><tr><td>Other (state):</td></tr></table>	Other (state):
Rules recommended by the Association of Arbitrators (Southern Africa)					
Other (state):					

