

CLIENT/ PROFESSIONAL AGREEMENT FOR ARCHITECTURAL SERVICES

Project

Client:

Architectural Professional:

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The South African Institute of Architectural Technologists
Die Suid-Afrikaanse Instituut van Argitekstegnoloë

Building Professionals to Build the Future!

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 clause 1.2 and where such words and phrases are not highlighted they shall bear the meaning consistent with the context.

1.2 Definitions:

In this document, unless the context otherwise indicates, an expression or word to which a meaning has been assigned in the **Act**, shall bear the same meaning, and:

act means the **Architectural Profession Act, 44 of 2000**

agreement means a written **agreement** between the **client** and any other party

architectural professional means a person registered in terms of the **Architectural Profession Act, 44 of 2000**, under a specific category of registration, or the **architectural professional 's** architectural professional constituted as a legal persona appointed to provide the architectural service for the **project**

budget means the anticipated cost of the **project** and/or **works**; provided that estimates on which the **budget** is based, shall be deemed to be valid for a period not exceeding 3 months

building contract means the **JBCC** Principal Building Agreement (PBA) or the **JBCC** Minor Works Agreement (MWA) or such other building **contract** entered into between the **client** and the **contractor**

Category of Registration means the category in which a person who is competent to undertake the range of work as specified in respect of each category, who may register in the **architectural profession** in terms of Section 18(1) of the Act; provided that specialized services may only be performed by a registered person meeting the defined requirements. For the purposes of this **agreement** the **Categories of Registration** are:

:

- (i) Professional Architect or
- (ii) Professional Senior Architectural Technologist
- (iii) Professional Architectural Technologist
- (iv) Professional Architectural Draughtsperson

client means the party appointing the **architectural professional** to perform the services or any part thereof referred to in this document

consultant means **professional** person/s or entity/entities appointed by the **client** to provide services with respect to the **project**

construction documentation means graphic representations, plans, sections, elevations, site plans, specifications, construction details, service co-ordination information, schedules and such other details and descriptions as are within the reasonable competence of an **architectural professional which** are sufficient to indicate the scope of the **works**

contract means an agreement entered into by the **client** with a **contractor** for the execution of the **works** or part thereof; may also be referred to as the **building contract**

contractor means the entity or entities contracting with the **client** for the execution of the **works** or part thereof

inspection means such periodic visits to, or in connection with the **works**, by the **architectural professional** as are necessary to establish conformity of the work to the **contract** documentation and National Building Regulations, and to provide on-site clarification and further information during the progress of the work; **inspect** shall carry the same meaning

JBCC means the Joint Building Contracts Committee, (JBCC) suite of **contract** documentation

practical completion means the stage of completion where the **works** or a section thereof as certified by the **principal agent**, is substantially complete and can effectively be used for the purpose intended

principal agent means the person appointed to fulfill the obligations of the agreed form of contract.

principal consultant means the person authorised by the **client** to lead the **consultants**. **project** means the development for which the **architectural**

professional and **consultants** are appointed and may not be limited to the **works**

SACAP means the South African Council for the Architectural Profession

schedule means the part of this document that contains the variables

Schedule of Fees means the attached document setting out the manner in which the professional fees will be calculated (quotation, cost estimate)

works means all work executed or intended to be executed according to the **building contract**

1.3 Interpretations

Informal service agreements and contracts, unless inconsistent with the context:

The words "advise", "appoint", "approve", "authorise", "certify", "consent", "decide", "delegate", "designate", "instruct", "issue", "notify", "object", "reply", "request", and "specify" shall indicate an act required to be carried out in writing.

The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa and persons shall include juristic persons.

All monetary amounts exclude tax, which tax shall be added to any amounts which become due and payable.

Notice in terms of service agreements shall be deemed to have been duly received when:

- Delivered by hand - on the day of delivery
- Sent by prepaid registered post - 7 (seven) days after posting
- Sent by telefax - 1 (one) day after transmission
- Sent by e-mail - 1 (one) day after transmission

2.0 STANDARD SERVICES

The standard services for which the **architectural professional** is responsible are set out below:

2.1 STAGE 1: INCEPTION

2.1.1 Receive, appraise and report on the **client's** requirements with regard to:

- the **client's** brief
- the site and rights and constraints
- budgetary constraints
- the need for **consultants**
- **project** programme
- methods of contracting

2.2 STAGE 2: CONCEPT AND VIABILITY (CONCEPT DESIGN)

2.2.1 Prepare an initial design and advise on:

- the intended space provisions and planning relationships
- proposed materials and intended building services
- the technical and functional characteristics of the design

2.2.2 Check for conformity of the concept with the rights to the use of land.

2.2.3 Review the anticipated costs of the **project**.

2.2.4 Review the **project** programme.

2.3 STAGE 3: DESIGN DEVELOPMENT

2.3.1 Confirm the scope and complexity.

2.3.2 Review the design and consult with local and statutory authorities.

2.3.3 Develop the design, construction system, materials and components.

2.3.4 Incorporate and co-ordinate all services and the work of **consultants**.

2.3.5 Review the design, costing and programme with the **consultants**.

2.4 STAGE 4: DOCUMENTATION AND PROCUREMENT

2.4.1 Prepare documentation sufficient for local authority submission:

- co-ordinate technical documentation with the **consultants** and complete primary co-ordination
- prepare specifications for the **works**
- review the costing and programme with the **consultants**
- obtain the **client's** authority and submit documents for approval

2.4.2 Complete **construction documentation** and proceed to call for tenders:

- obtain the **client's** authority to prepare documents to procure offers for the execution of the **works**
- obtain offers for the execution of the **works**
- evaluate offers and recommend on the award of the **building contract**.
- prepare the **contract** documentation and arrange for the signing of the **building contract**.

2.5 STAGE 5: CONSTRUCTION

- 2.5.1 Administer the **building contract**.
- 2.5.2 Give possession of the site to the **contractor**.
- 2.5.3 Issue **contract documentation**.
- 2.5.4 Initiate and/or check sub-contract design and documentation as appropriate.
- 2.5.5 **Inspect the works** for conformity to the contract documentation.
- 2.5.6 Administer and perform the duties and obligations assigned to the **principal agent** in the **JBCC building contract**, or fulfil the obligations provided for in other forms of **contract**
- 2.5.7 Issue the certificate of **practical completion**
- 2.5.8 Assist the **client** to obtain the occupation certificate

2.6 STAGE 6: CLOSE OUT

- 2.6.1 Facilitate the **project** close-out including the preparation of the necessary documentation to effect completion, handover and operation of the **project**.
- 2.6.2 After the contractor's **obligations** with respect to the building **contract are** fulfilled, the **architectural professional** shall issue the certificates related to **contract** completion.
- 2.6.3 Provide the **client** with as-built drawings and relevant technical and contractual undertakings by the **contractor** and sub-contractors.

3.0 ADDITIONAL SERVICES

The following services are additional to the standard service and rank for Additional fees. These services may be added individually or in varying combinations and shall be provided by prior agreement between the **client** and the **architectural professional**:

3.1.1 Special design services

The preparation of special designs within, or in relation to, the facilities which are contemplated in a standard service, which may include:

- 3.1.1.1 Rational design by other consultants - participate in the preparation of rational designs.
- 3.1.1.2 Town planning and/or urban design including participation in the application for the establishment and/or amendment of regional and local town planning and urban design schemes and the amendment of title conditions, negotiations with interest groups and authorities
- 3.1.1.3 Master planning - defining and planning the layout of future development of buildings and/or services on the same site
- 3.1.1.4 Landscape design - participation in landscape planning and construction
- 3.1.1.5 Interior design - the design of interiors and the selection of furnishings, fixtures and special finishes
- 3.1.1.6 Liaison with special designers and specialist consultants
- 3.1.1.7 Purpose-made items - the design and documentation of purpose-made items
- 3.1.1.8 Promotional material and art work - participation in the preparation of promotional material
- 3.1.1.9 Plant operation and production layouts - participation in the definition of plant operation layouts

3.1.2 **Special management services**

- 3.1.2.1 Elaboration of architectural professional s' services including inter alia: the preparation of broad project parameters, project scope statements, project milestones, budget and cash flow forecasts, tender enquiry documentation, contractor and supplier selection, adjudication and tender awards, progress status monitoring, variations management, quality management, communication management, payment processing and final account close outs
- 3.1.2.2 Cost and valuation services - participation in the administration of costs and payments where a quantity surveyor has not been appointed
- 3.1.2.3 Special inspections - more intensive inspections and assessment of the works than the norm to assess compliance with specifications

3.1.3 **Special studies**

- 3.1.3.1 Preparation of the client's brief - assist the client in the preparation of his requirements with regard to the purpose, scope, use of and operation of the project
- 3.1.3.2 Site selection - research the suitability and location of a site for a proposed project
- 3.1.3.3 Feasibility studies - participation in technical and/or economic feasibility studies
- 3.1.3.4 Environmental studies - participation in environmental studies
- 3.1.3.5 Energy analysis studies and planning
- 3.1.3.6 Energy studies - participation in energy studies
- 3.1.3.7 Market surveys - participation in market surveys
- 3.1.3.8 Traffic studies - participation in traffic flow studies

3.1.4 **Work on existing premises**

- 3.1.4.1 Surveys and inspections - inspect, survey, measure and prepare documentation of existing premises, with other consultants as needed
- 3.1.4.2 Restorations and renovations - services in connection with work on existing buildings
- 3.1.4.3 Heritage buildings - services in connection with work on heritage buildings
- 3.1.5 Services in connection with demolition permits of existing buildings.

3.1.6 **Other Services**

- 3.1.6.1 Participation in litigation and dispute resolution (where a concurrent service is rendered)
- 3.1.6.2 Mutually agreed additional services

4. **FEES FOR PROFESSIONAL SERVICES**

4.1 **Basis of fees agreement**

- 4.1.1 The **client** agrees to pay the **architectural professional** the fees for the services as recorded in the formal **agreement** entered into by the parties.
- 4.1.2 Where a **project** cost based fee is applied, the final fee is calculated as recorded in the formal **agreement** entered into by the parties.

4.2 Project cost based fees for standard and partial services

4.2.1 For a partial service, assuming the fee is a project cost based fee, the percentage of the fee for each work stage to be performed is agreed between **client** and **architectural professional** as per 4.4

4.2.2 The **budget** for fee purposes excludes VAT, contingencies and provision for escalation.

4.3 Apportionment of fees between work stages:

4.3.1 The fee applicable to each work stage is apportioned according to the table below and may be adjusted by agreement. In project specific cases requiring the completion of documentation at earlier stages, an appropriate increase of the fee apportionment to the initial stages may be considered.

Work stages 1 to 6	Proportion of fee	Cumulative total
1	5%	5%
2	15%	20%
3	20%	40%
4.1	20%	60%
4.2	10%	70%
5	27%	97%
6	3%	100%

4.4 Fees for additional services:

4.4.1 Unless otherwise agreed, the fee for additional services is time based, based on hourly rates as recorded in the formal **agreement** entered into by the parties.

4.5 Time based fees

4.5.1 Where fees for the **architectural professional's** services are time based fees, the hourly rates as recorded in the formal **agreement** entered into by the parties apply.

4.6 Fees for deployment of employees

4.6.1 Where an employee of the **architectural professional** is deployed on site for extended inspection or other agreed purpose, the amount of the reimbursement shall be the total cost of employment plus 30%, or as agreed on proven cost.

4.7 Extended initial contractual contract period

4.7.1 In the event that the initial **contract** period is exceeded by more than 10%, through no fault of the **architectural professional**, the **architectural professional** is to be remunerated for all additional work resulting from the extension of time at the hourly as recorded in the formal **agreement** entered into by the parties together with related re-imbursable expenses.

4.8 Adjustment of fees and disbursements

4.8.1 The fees and disbursements are based on the following parameters:

4.8.1.1 Scope of services

4.8.1.2 Scope of the **project/works**

4.8.1.3 **Project** programme

4.8.1.4 Cost of the **works** Cost of the **project**

4.8.1.5 Appointment of other **consultants**

4.8.1.6 Appointment of **contractor**

4.15.2 Should any material variation to the parameters as stated occur, the fees and disbursements will be adjusted.

4.15.3 Adjustments to the **project** programme, commonly known as 'fast tracking', that requires the application of an additional resource by the **architectural professional**, shall attract an additional fee.

4.16 Travelling

4.16.1 Where travelling is not included in the fee as recorded in the formal **agreement** between the parties, the hourly rates as recorded in the formal **agreement** entered into by the parties shall apply plus the latest applicable rate per kilometer as published by the Department of Public Works. This shall only apply to travel time greater than two (2) hours and more than 100km per return trip.

4.17 Fees on termination by the client

4.17.1 Where the **agreement** between the **client** and the **architectural professional** is terminated the **client** shall pay for that portion of the service that has been executed.

4.17.2 Termination of the **project** will attract an additional fee equal to 10% of the full fee in the stage in which termination occurs.

4.18 Fees for dispute resolution services

4.19 For acting as a witness, or giving evidence at adjudication, mediation, arbitration or litigation (the cause not being the action of the **architectural professional**, the fee will be the time charge fee at the hourly rates the hourly rates as recorded in the formal **agreement** entered into by the parties apply and increased by 50% (150% of the fee).

4.20 Payment of professional accounts

4.20.1 The **architectural professional's** accounts are due and payable on presentation.

4.20.2 The **architectural professional** shall be entitled to render interim accounts.

4.20.3 Fee and re-imbusement invoices may be invoiced separately.

4.20.4 The **architectural professional** may give notice to the **client** of intention to suspend work if payment on interim accounts or any other account has not been received within seven (7) calendar days from issuing such notice.

4.20.5 If payment is still not received within seven (7) calendar days after given such notice the **architectural professional** may suspend any work and/or service until such payment has been made by the **client**.

4.20.6 If work or service was suspended and the **client** has rectified his default by paying any outstanding account, the **architectural professional** has to resume work within two (2) working days after receiving such payment.

4.21 Re-imbusement of expenses

4.21.1 In addition to the fees set out in the formal **agreement** between the parties, the **client** shall reimburse the **architectural professional** for all reasonable disbursements properly incurred.

4.21.2 The expenses contemplated may include the following:

4.21.2.1 printing, photocopying, maps, models, presentation materials, photography and similar documentation including all reproduction or purchase costs of documents, hotel, subsistence and travelling expenses, toll fees and other similar disbursements

4.21.2.2 all payments made by the **architectural professional**, including fees and other charges for

specialised professional and other services incurred on behalf of the **client**

4.21.2.3 telephonic, electronic and facsimile communication, special postage and courier deliveries

4.21.2.4 any other disbursements that may be agreed by the **client**

4.22 Claims to be separate and not set-off

4.22.1 Should the **client** allege a claim against the **architectural professional, a contractor** or any other party involved in the **project**, such claim shall be dealt with on its own merits. The **client** is not entitled to withhold payment of fees or disbursements or part thereof due to the **architectural professional**, based on the alleged claim. The **client** shall make payment without any set-off and waives all rights to any such set-off.

4.22.2 No penalties will be applied to this professional service agreement. Should professional error, omission and/or negligence be implied, compensation is sought by dispute resolution or litigation and claimed from the **architectural professional**.

4.23 Termination of engagement

4.23.1 Where the agreement between the **client** and **architectural professional** is terminated, the **client** shall pay the **architectural professional** for that portion of the work that has been executed.

4.23.2 Where the termination, suspension or deferment of the **project** is not directly attributable to the **architectural professional**, a surcharge of ten (10) percent of the fee determined in Clause 4 shall apply.

4.24 General

4.24.1 Suspension or deferment

4.24.1.1 The **client** may at any time require that work on the project be suspended or deferred. The **architectural professional** shall not be precluded from recovering any damages he may sustain due to the suspension or deferment of the **project**.

4.24.2 Interest

4.24.2.1 The **architectural professional** is entitled to charge interest equal to the Bank Repo Rate at the beginning of every month plus six (6) percent per annum.

5.0 CONFIDENTIALITY AND COPYRIGHT

5.1 The **client** and the **architectural professional** both shall keep all sensitive information obtained by them in the context of this **agreement** and shall not divulge it without the prior written approval of the other party.

5.2 The **architectural professional** retains copyright of all documents and/or designs prepared by the **architectural professional** for the **project**.

5.3 The **client** has the right to the use and the benefit of the documentation produced for the sole purpose of its intended use on the **project** subject to the compliance with the terms and conditions of this **agreement**.

5.4 The **client** is entitled to all data and factual information collected by the **architectural professional** and paid for by the **client**.

6.0 LIMIT OF LIABILITY

6.1 The **architectural professional's** liability for any defect in the design of the **project/works** will end five (5) years after date of final account of the **architectural professional**.

6.2 The financial limit to any liability for any defect in the design of the **project/works** will be as stated in A4 of the Schedule.

7.0 TERMINATION

- 7.1 This agreement may be terminated by either party on the expiry of fourteen (14) days' notice to the other party should the other party be in breach of a material term of this **agreement**. Within thirty (30) days of payment of the fees and disbursements due, the **architectural professional** shall provide copies of documents and other items which, in his opinion, are relevant to the **project**. This disbursement shall be reimbursed by the **client**.

8.0 RESOLUTION OF DISPUTES

- 8.1 Should any dispute whatsoever arise between the parties, then either party hereto may declare a dispute by delivering notice of the details thereof to the other party, which dispute shall be referred to arbitration.
- 8.2 Prior to arbitration and should the parties so agree, the dispute may be referred to a single mediator without the parties having legal representation. The mediator shall be selected by agreement between the parties within fourteen (14) days and be appointed jointly by the parties.
- 8.3 The mediator shall have absolute discretion in the manner in which the mediation proceedings shall be conducted.
- 8.4 The mediator shall deliver a copy of his reasoned opinion to each party within twenty-one (21) days of his appointment which shall be final and binding to the parties unless either party notifies the other party in writing of his unwillingness to accept the said opinion. In this event the dispute shall be referred to arbitration.
- 8.5 Arbitration shall be by a single arbitrator who shall be selected by agreement between the parties within fourteen (14) days. The arbitrator shall be appointed jointly by the parties.
- 8.6 The arbitrator shall have the power to open up, review and revise any opinion, decision or notice and to determine the matters in dispute which shall be submitted to him.
- 8.7 The cost of mediation and/or arbitration as determined by the mediator and/or arbitrator shall be borne equally by the parties and shall be due and payable to the mediator and/or arbitrator on presentation of his written account.

9.0 WHOLE AGREEMENT

- 9.1 This agreement, including the Schedule and any annexures hereto, is the whole of the contract between the parties and no variation hereof shall have any effect unless reduced to writing and signed by both parties. The validity of Clause 4 shall not be affected by the termination of this agreement.

10.0 LAW OF THIS AGREEMENT

- 10.1 The only law applicable to this agreement is that of the republic of South Africa.

SCHEDULE

This schedule contains all variables, amendments and/or special conditions pertaining to this **agreement** which variables and/or special conditions shall take precedence over the terms and conditions of this **agreement**.

A1: CONTRACTING PARTIES

Client:

Name: _____

Representing: _____

Postal Address: _____

Physical Address: _____

Telephone Number: _____

E-mail: _____

Architectural Professional:

Name: _____

Practice Name: _____

Postal Address: _____

Physical Address: _____

Telephone Number: _____

E-mail: _____

SACAP Registration N°: _____

A2: PROJECT:

Name and Description: _____

Site Identification: _____

Site Address: _____

A3: DOCUMENTS:

Apart from this **Agreement**, including the **Schedule**, the flowing documents shall form part of the **agreement**

A4: PROFESSIONAL INDEMNITY INSURANCE:

The **architectural professional** will provides professional indemnity insurance underwritten/issued by a registered insurer/underwriter/financial services provider:

YES

NO

If YES, the following will apply:

Insurer: _____

Certificate N°: _____

Retroactive Date: _____

Limit of Indemnity: _____

Renewal Date: _____

If NO, the following will apply:

Financial Limit to any claim: _____

Period of liability (from date of final account of **architectural professional**) will be five (5) years as per Clause 6.1.

A5: PROFESSIONAL FEES:

The professional fees are calculated as per the attached Annexure as provided by the **architectural professional** which shall include frequency of interim payments.

A6: SIGNATURE OF THE CONTRACTING PARTIES

The **client** appoints the **architect** who accepts the appointment as the principal agent to carry out the defined services for the **project** on the conditions and for the fees and disbursements according to the clauses of the **agreement**

CLIENT

Thus done and signed at _____

on _____

For and on behalf of the **client** who by signature hereto warrants authorization (Print Name)

(Signature)

ARCHITECTURAL PROFESSIONAL

Thus done and signed at _____

on _____

For and on behalf of the **architectural professional** who by signature hereto warrants authorization (Print Name)

(Signature)