

Client/Project Manager Agreement

October 2001

Published: The Association of Construction Project Managers

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CLIENT / PROJECT MANAGER AGREEMENT

Entered into by and between:

.....

(hereinafter “the Client”)

and

.....

(hereinafter “the Project Manager”)

(hereinafter collectively as “the parties”)



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CONTACT DETAILS

CLIENT

Tel:
Telefax:
E-mail:
Contact person:

Physical Address:	Postal Address:
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.....
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PROJECT MANAGER

Tel:
Telefax:
E-mail:
Contact person:

Physical Address:	Postal Address:
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CONDITIONS OF APPOINTMENT

1.0 DEFINITIONS AND INTERPRETATION

1.1 The following words and expressions shall have the meanings assigned to them except where the context requires otherwise:

“Client” means the contracting party as defined in this Agreement

“Project Manager” means the contracting party as defined in this Agreement

“Project” means the project as defined in Annexure “A”

“consultancy agreement” means a contract entered into between the Client and a consultant who has contracted with the Client to attend to architectural, quantity surveying, engineering or any other technical service on behalf of the Client and which service relates to the Works.

“consultant” means a contracting party in terms of a consultancy agreement

“building agreement” means a contract entered into between the Client as Employer and a contractor to execute the Works or part thereof

“contractor” means a contracting party in terms of a building agreement and shall include all of such contractor’s subcontractors

“this Agreement” means this Client/Project Manager Agreement



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“the Works” means the work to be executed by the contractors in terms of the building agreements

“Scope of Services” means the services to be provided by the Project Manager in terms of Annexure “B”

- 1.2 This Agreement shall be governed by the law of the Republic of South Africa.
- 1.3 The headings in this Agreement shall not be used in its interpretations.
- 1.4 Documents and Acts of Parliament referred to in this Agreement shall mean the latest edition with all amendments thereto at the date of signature of this Agreement.
- 1.5 The words “authorise, authorisation, notice, notify, notifications, consent, certify, certification, issue, approval, specify, instruction, instruct, designate, advise, objection, reply and request” shall denote an act carried out in writing and delivered by hand, sent by registered post, by telefax or by e-mail.
- 1.6 Numbers generally preceded by “in terms of” shall reference clause numbers or Annexures in this Agreement.
- 1.7 The singular includes plural, the masculine includes feminine and persons shall include corporate bodies and vice versa.
- 1.8 The Client and the Project Manager choose *domicilium citandi et executandi* at the respective physical addresses stated under the heading “Contact Details” of this Agreement. Either party may by notice to the other change the *domicilium citandi et executandi* provided that such new physical addresses shall be in the Republic of South Africa.

2.0 APPOINTMENT

- 2.1 The Client herewith appoints the Project Manager subject to the provisions of 6 as follows:

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- 2.1.1 To provide the Scope of Services in terms of Annexure "B".
- 2.1.2 As agent in terms of each and every consultancy agreement unless otherwise stated in Annexure "A".
- 2.1.3 As Principal Agent in terms of each and every building agreement unless otherwise stated in Annexure "A".

2.2 The Project Manager herewith accepts the appointment in terms of 2.1.

3.0 OBLIGATIONS OF THE PROJECT MANAGER**3.1 Scope Of Services**

The Project Manager shall execute the Scope of Services in terms of this Agreement.

3.2 Professional Duty

The Project Manager shall exercise reasonable skill, care and diligence in providing the Scope of Services.

3.3 Exercise Of Authority

Where the duties assigned to the Project Manager include the power to certify, to exercise discretion or quasi-arbitrational functions in terms of an agreement between the Client and any third party then the Project Manager shall act in accordance with such agreement and the Client agrees and acknowledges that the Project Manager shall be obligated to exercise such powers, discretion and functions in an independent manner acting with reasonable skill, care and diligence towards all interests involved.

3.4 Professional Indemnity

3.4.1 The Project Manager shall take out an insurance policy for Professional Indemnity and shall within 10 days of signature of this

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Agreement provide a certificate of such insurance from the Insurer or Broker to the Client.

3.4.2 The Insurer's limit of indemnity shall not be less than the Project Manager's fee for Basic Services in terms of Annexure "C".

3.4.3 The Project Manager shall maintain the insurance policy for the duration of the Project Manager's liability in terms of this Agreement and shall from time to time at the Client's request provide a certificate of insurance.

3.5 Agent – Consultancy Agreement

3.5.1 The Project Manager shall perform the duties of agent (hereinafter the "Agent duties") for each and every consultancy agreement so appointed in terms of 2.1.2.

3.5.2 Such Agent duties shall expressly be authorised in each and every consultancy agreement and shall not exceed the Scope of Services.

3.6 Principal Agent – Building Agreement

3.6.1 The Project Manager shall perform the duties of Principal Agent (hereinafter "the Principal Agent duties") for each and every building agreement so appointed in terms of 2.1.3.

3.6.2 The Project Manager shall be entitled to delegate the Principal Agent duties in terms of any building agreement to consultants without the prior written consent of the Client provided that such building agreement provides for the delegation of the Principal Agent duties.

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4.0 LIMITATIONS TO PROJECT MANAGER'S RESPONSIBILITIES AND OBLIGATIONS

The Client acknowledges and agrees that:

- 4.1 the Project Manager shall not be responsible for the work of others including but limited to the following:
 - 4.1.1 design, technical co-ordination of the design or quality control of the Works;
 - 4.1.2 construction methods, techniques, sequences and procedures employed by a contractor;
 - 4.1.3 failure by a contractor or Client as Employer to proceed or carry out work in terms of a building agreement;
 - 4.1.4 breach by a contractor or Client as Employer of a building agreement;
 - 4.1.5 reviewing materials, systems, designs, quality control and assurances, value engineering or specifications;
 - 4.1.6 acts or omissions by a contractor or a consultant;
 - 4.1.7 cost of the Works exceeding the project budget.

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- 4.1.8 breach by a consultant or Client of a consultancy agreement;
 - 4.1.9 delays caused by a contractor;
 - 4.1.10 delays caused by a consultant or Client or others;
 - 4.1.11 preparation of budgets, cost reports, valuations and payment certificates.
- 4.2 all contractual and delictual claims against the Project Manager shall be extinguished by prescription after the lapse of a period of 3 years which period shall commence on:
- 4.2.1 practical or other equivalent completion of the Works; or
 - 4.2.2 suspension, postponement, expiry, cancellation or termination of all of the building agreements; or
 - 4.2.3 cancellation or termination of this Agreement.
- 4.3 the Project Manager's liability in terms of this Agreement and in delict is at all times limited to and shall not exceed the Project Manager's fee for Basic Services in terms of Annexure "C" and Client herewith waives all claims against the Project Manager in so far as such claims exceed such fee.

5.0 THE OBLIGATIONS OF THE CLIENT**5.1 Project Manager's Requirements**

- 5.1.1 The Client shall precisely and timeously specify its requirements for the Project relating to design, cost, quality, timescale, location and any other relevant information.

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- 5.1.2 The Client shall reply within reasonable time to all requests by the Project Manager.
- 5.1.3 The Client shall prior to appointing any contractor advise the Project Manager of such appointment and of the building agreement the Client intends to use.
- 5.1.4 The Client shall prior to appointing any consultant advise the Project Manager of such appointment and of the consultancy agreement the Client intends to use.
- 5.1.5 The Client shall not proceed with an appointment in terms of 5.1.3 or 5.1.4 in the event of the Project Manager lodging a reasonable objection against the contractor or consultant or building agreement or consultancy agreement.

5.2 Client's Representative

The Client shall designate an authorised representative who shall be available at all reasonable times to liaise with the Project Manager.

5.3 Consultants

The Client shall enter into contracts with consultants in terms of 6.2.

5.4 Disclosure of Funding

The Client shall, if requested to do so by the Project Manager, provide proof of available funding for the Project.

5.5 Co-operation

- 5.5.1 The Client shall co-operate in absolute good faith with the Project Manager and shall not prevent or obstruct the proper performance of the Project Manager in the execution of its duties or the provision of services.

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5.5.2 The Client shall instruct all its consultants in writing to co-operate in absolute good faith with the Project Manager and to comply with and adhere to all reasonable requests directed by the Project Manager to a consultant.

5.6 Payment of Fees and Disbursements

5.6.1 The Client shall pay the Project Manager the fees and disbursements in accordance with Annexure "C" to this Agreement.

5.6.2 The Project Manager shall render monthly invoices to the Client in accordance with Annexure "C" which invoices shall be due and payable within 10 calendar days after submission to the Client.

5.6.3 The Client shall pay interest monthly compounded in arrears on all late payments at 2 (two) percentage points above the prime lending rate of The Standard Bank of South Africa Limited.

5.6.4 The Client shall make payment without any deductions or set-off and herewith waives all rights to set-off or to withhold payment.

5.7 Adjustment of Fees and Disbursements

5.7.1 The parties acknowledge and agree that the fees and disbursements in terms of Annexure "C" have been based and calculated on the following parameters:

5.7.1.1 Project Description

5.7.1.2 Programme

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- 5.7.1.3 Completion Date
- 5.7.1.4 Commencement Date
- 5.7.1.5 Construction Value
- 5.7.1.6 Complexity of Project
- 5.7.1.7 Appointment of consultants or others
- 5.7.1.8 Principal Agent duties
- 5.7.1.9 Agent duties

5.7.2 In the event where any of the parameters in terms of 5.7.1 are amended or varied in any material manner or form the Project Manager shall be entitled to an adjustment of fees and disbursements and the Client acknowledges and agrees to negotiate such an adjustment of fees and disbursements with the Project Manager taking into consideration the reason and purpose of such amendment or variation.

5.7.3 Should the parties fail to negotiate an adjustment of fees and disbursement within a reasonable time, either party is entitled to declare a dispute whereafter the arbitrator shall determine such an adjustment of fees and disbursements in accordance with this Agreement and the parties specifically hereby mandate the arbitrator to appoint, should he deem it necessary, another to assist him as a technical expert in determining such an adjustment of fees or disbursements.

6.0 SCOPE OF SERVICES**6.1 Objective**

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- 6.1.1 The Project Manager shall manage the Project for the Client with the objective of achieving the Client's scope, time, cost, and other specified objectives.
- 6.1.2 The Project Manager shall provide the basic services in terms of Annexure "B" at the fees and disbursements set out in Annexure "C" and subject to 5.7 and 6.2.
- 6.1.3 Should the Client instruct the Project Manager to attend to supplementary services in terms of Annexure "B", an adjustment of fees and disbursements shall be agreed by the parties in terms of 5.7 prior to the provision of such supplementary services and failing such agreement the Project Manager shall be under no obligation whatsoever to provide the supplementary services.

6.2 Appointment of others

The Scope of Services is dependent upon the organisation structure for the Project. The Project Manager's fee for providing the basic services has been calculated on the assumption that the Client shall enter into contracts with others as set out hereunder:

- 6.2.1 Consultants comprising the architect, quantity surveyor, consulting engineers and other professional designers and technical service providers necessary for the proper execution of the Project;
- 6.2.2 A single contractor for the construction of the whole of the Works. In turn, the contractor shall appoint a number of subcontractors approved by the Client;
- 6.2.3 Other direct contractors for specialist items to be incorporated into the

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Works under the Client's own control.

- 6.3 Should the Client fail to enter into such contracts in terms of 6.2 the Project Manager shall be entitled to an adjustment of fees and disbursements in terms of 5.7.

7.0 GENERAL PROVISIONS**7.1 Cession and Assignment**

Neither party shall cede, assign, sublet or transfer its interests in this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld.

7.2 Copyright

All documents prepared by the Project Manager are protected by copyright. The Client has the right to the use of and the benefit from authorised copies of the documentation for the sole purpose of this Agreement subject to compliance with the terms and conditions hereof.

7.3 Authority to make Changes

The Project Manager shall not make any material alteration or omission to the Project without the prior consent of the Client except when arising from an emergency necessitated during construction in which event the Project Manager shall exercise reasonable skill, care and diligence in the interests of the Project.

7.4 Termination of Agreement

- 7.4.1 The Project Manager shall have fulfilled all its obligations in terms of this Agreement upon the following which shall be construed as the termination of this Agreement:

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7.4.1.1 the issue of a certificate of final completion or other equivalent certificate or the issue of the final account or other equivalent final financial determination whichever is the later; or

7.4.1.2 suspension, postponement, expiry, cancellation or termination of all of the building agreements;

7.4.2 In the event of termination of this Agreement all fees and disbursements in terms of Annexure "C" and in terms of 5.7 shall immediately become due and payable.

7.5 Breach

Should either party commit a material breach of any provision of this Agreement and fail to remedy such breach within fourteen (14) days after receiving notice from the other party requiring it to do so, then the party aggrieved by such breach shall be entitled to cancel this Agreement without prejudice to such aggrieved party's entitlement to claim damages.

7.6 Entire Agreement

This Agreement constitutes the entire agreement between the parties and no representations, terms, conditions or warranties not contained in this Agreement shall be binding on the parties. No agreement or addendum varying, adding to, or deleting from this Agreement shall be effective unless reduced to writing and signed by both parties.

8.0 DISPUTE

8.1 Should any disagreement arise either party may declare a dispute by notice to the other party. All disputes shall be referred to arbitration in terms of 8.4.

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8.2 Prior to such submission to arbitration the parties may by mutual consent refer the dispute to mediation by a mutually agreed mediator. Should the parties fail to appoint a mediator within 20 days or should the parties fail to reach a binding agreement within 20 days of the mediator’s appointment it shall be deemed that the mediation process has been abandoned.

8.3 Mediation in terms of 8.2 shall not be construed as a compulsory procedure.

8.4 The arbitration shall at the request of either party be appointed by the Chairman of the Association of Arbitrators (Southern Africa). The arbitration shall be conducted according to the Rules For The Conduct of Arbitrators published by the Association of Arbitrators (Southern Africa).

Signed at on this the day of

1. _____
Name of witness (in print)

Signature of witness

Signed by
On behalf of the Client hereby confirming
that he is duly authorised

Signed at on this the day of

1. _____
Name of witness (in print)

Signature of witness

Signed by
On behalf of the Project Manager hereby
confirming that he is duly authorised



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Annexure A - The Project

1. **Project Name:**

2. **Project Description:**
.....
.....
.....

3. **Programme**

3.1. **Commencement:** (Date)

3.2. **Anticipated Completion:** (Date)

3.3. **Programme Ref:**

3.4. **Other:**

4. **Financial**

4.1. **Project Budget:** R

4.2. **Cost Plan Ref:**

4.3. **Construction Value:** R



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Annexure A - The Project

5. **Agent**

The Project Manager shall NOT be appointed as Agent for the following consultancy agreements:

- 5.1
- 5.2
- 5.3
- 5.4

6. **Principal Agent:**

The Project Manager shall NOT be appointed as Principal Agent for the following building agreements:

- 6.1.
- 6.2.
- 6.3.
- 6.4.

7. **Other:**

- 7.1.
- 7.2.
- 7.3.



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**Annexure B - Scope of Services
Basic Services****1.0 BASIC SERVICES**

The Project Manager shall provide the following basic services:

1.1 Integration Management

- 1.1.1 Consult with the Client to establish the Project scope, objectives, priorities, constraints, assumptions and strategies.
- 1.1.2 Manage the integration of the preliminary design, time programme and cost budget for the Works, to form the basis of planning documents to be approved by the Client.
- 1.1.3 Manage the execution of the Project in accordance with the approved planning documents.
- 1.1.4 Manage the control of all interrelated changes to the approved planning documents.

1.2 Scope Management

- 1.2.1 Breakdown the scope of the Project into a manageable work breakdown structure encompassing professional services and construction.
- 1.2.2 Monitor the preparation of the final design of the Works through the duration of the Project.
- 1.2.3 Manage the acceptance by the Client of the design and construction of the

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Works.

**Annexure B - Scope of Services
Basic Services**

1.2.4 Establish and monitor the processes of controlling changes to the scope of the Project.

1.3 Time Management

1.3.1 Develop a master project programme integrating the interdependencies of planning, design and construction.

1.3.2 Control changes to the master project programme to reflect actual Project status.

1.3.3 Monitor that subordinate detailed programmes are produced and maintained in conformity with the master Project programme by the other Project participants.

1.4 Cost Management

1.4.1 Establish responsibilities for information flow between the design team and the quantity surveyor.

1.4.2 Monitor the preparation by the quantity surveyor of cost estimates and the cost budget for the Project.

1.4.3 Establish a format for the cost budget in consultation with the quantity surveyor that meets the Client's reporting requirements.

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**Annexure B - Scope of Services
Basic Services**

1.4.4 Establish and monitor the processes of controlling changes to the cost budget.

1.5 Quality Management

1.5.1 Establish the organization structure and responsibilities for quality management in the provision of professional services and construction.

1.5.2 Monitor that all Project participants meet their quality management obligations.

1.6 Human Resource Management

1.6.1 Establish the roles, responsibilities and reporting relationships between the various participating organizations for the Project.

1.6.2 Monitor that suitable key people are assigned by participating organizations to establish an adequate Project team.

1.6.3 Promote the development of Project team spirit to enhance Project performance.

1.7 Communications Management

1.7.1 Establish the communications structure and responsibilities for the Project.

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**Annexure B - Scope of Services
Basic Services**

1.7.2 Monitor the information distribution and record keeping.

1.7.3 Collate information and prepare reports for submission to the Client.

1.7.4 Manage the closing out of the Project and submission to the Client of required records.

1.8 Risk Management

1.8.1 Establish responsibilities for arranging Project insurance and monitoring the timeous provision of proof of insurance.

1.9 Procurement Management

1.9.1 Establish the Client's requirements regarding potential consultants and contractors and methods of obtaining quotations, offers and tenders.

1.9.2 Manage the processes of preparing proposal calls and tender documents, and calling for proposals and for tenders, in accordance with agreed procedures.

1.9.3 Manage the evaluation of proposals and tenders, and facilitate their awards.

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- 1.9.4 Appoint consultants and contractors on behalf of the Client subject to prior authorization by the Client.

**Annexure B - Scope of Services
Supplementary Services****2.0 SUPPLEMENTARY SERVICES**

The Project Manager may by prior mutual consent provide the following supplementary services subject to 6.1.3:

- 2.1 Procuring of land and finance.
- 2.2 Procuring of tenants, tenant co-ordination and tenant installations.
- 2.3 Drafting of appointment contracts for other members of the professional team.
- 2.4 Project management services in relation to direct contractors engaged by the Client, such as those engaged for furniture, fittings and equipment.
- 2.5 Mediation, arbitration and litigation proceedings and similar services. Such services will commence upon the notification of a dispute or the initiation of such proceedings.
- 2.6 All work arising out of the failure of any consultant, contractor, supplier or other external party to perform its obligations.
- 2.7 Services required in respect of damage to or destruction of the Works, insurance matters, postponement or cancellation of agreements.
- 2.8 Additional services resulting from changes by the Client to previously issued instructions.
- 2.9 Construction management and site co-ordination of various contractors engaged by

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the Client in the event that more than one contractor is appointed.

2.10 Any other services not specifically incorporated in this Agreement.

Annexure C - Schedule of Fees & Disbursements

All fees and disbursements set out hereunder are exclusive of VAT.

The agreed fee and disbursement payable by the Client to the Project Manager for the Basic Services as defined under the Scope of Services and as based and calculated on the parameters referred to in 5.7.1 of this Agreement as follows:

Fee for Basic Services

R :excluding VAT
(words) excluding VAT

Fee Distribution / Month



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Month% of Fee for Basic Services

Month% of Fee for Basic Services

Month% of Fee for Basic Services

Month% of Fee for Basic Services

Month% of Fee for Basic Services

Month% of Fee for Basic Services

Month% of Fee for Basic Services

Month% of Fee for Basic Services

Month% of Fee for Basic Services

Annexure C - Schedule of Fees & Disbursements

Disbursements:

In addition to the fees stated above, disbursement costs as outlined below which are incurred in connection with the Project shall be reimbursed by the Client to the Project Manager at cost plus VAT where applicable:



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|---|--|
| <ul style="list-style-type: none"> • Duplicating & Printing • Long Distance & Overseas Telephone Calls • International Postage • Local & International Freight & Courier Charges • Travelling & Accommodation Subsistence Expenses | <ul style="list-style-type: none"> • Motoring Beyond 60Km radius of the Project • Progress Photographs • Video Conferencing • Special Electronic Data Transfer |
|---|--|

Time Based Fees

Partner or Director or Member of an appropriate legal entity: (per hour)	R	excluding VAT
Staff with more than 10 years of experience (per hour)	R	excluding VAT
Support Staff including assistant Project Managers, Site Staff and Technical support staff (per hour)	R	excluding VAT