
**DESIGN
AND
CONDITIONS OF ENGAGEMENT
FINANCIAL PROPOSAL
FOR
HOSTEL PROJECT**

CLIENT WESTEX LTD.

CONSULTANTS



ETHNIK INTERNATIONAL

DEVELOPMENT CONSULTANTS

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1. DRAFT MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT BETWEEN CLIENT AND CONSULTING ARCHITECT FOR THE DESIGN AND SUPERVISION OF ARCHITECTURAL & ENGINEERING SERVICES (DRAFT)

PROJECT TITLE:

PROJECT LOCATION:

MEMORANDUM OF AGREEMENT made this day of
..... 20.....

BETWEEN

----- (hereinafter called "the Client") of the one part

AND

ETHNIK INT. LTD (hereinafter called "the Consulting Architect") of the other part.

WHEREAS the Client has considered and approved and agreed to proceed with the works described as

HOSTEL PROJECT

and has requested the Consulting Architect to provide professional service in connection with

Pre and Post Contract Architectural, Engineering and Quantity Surveying Services

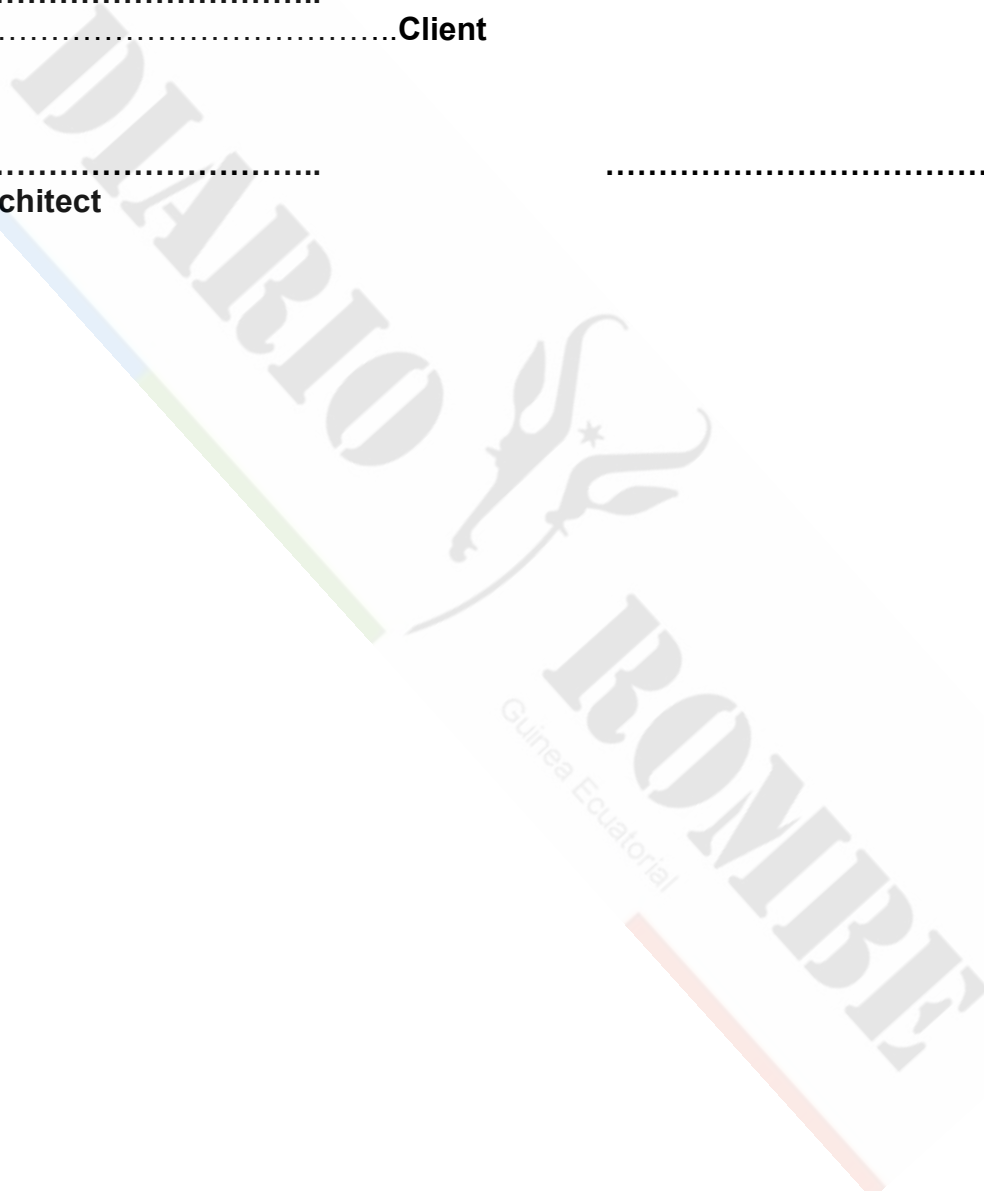
NOW IT IS HEREBY AGREED as follows:-

1. The Client agrees to engage The Consulting Architect subject to and in accordance with the Conditions of Engagement set out in the Schedule 1 hereto and The Consulting Architect agrees to provide professional services subject to and in accordance with the said Conditions of Engagement.
2. This Memorandum of Agreement and the said Conditions of Engagement shall together constitute the Agreement between the Client and the Consulting Architect.
3. The Institute referred to in Clause 4 of the said Conditions of Engagement shall be the Ghana Institute of Architects.
4. In the said Conditions of Engagement the rate or rates referred to in Clause 11.1 shall be as detailed in Schedule 2 below
5. The schedule and conditions for payment for the payment of fees referred to in Clause 11.1 under the said Conditions of Engagement shall be as detailed in Schedule 2 below
6. and it being agreed that this Agreement is to be governed construed and enforced in accordance with the Laws of Ghana.

IN WITNESS where of the parties have executed this MEMORANDUM OF AGREEMENT the day and year first above written:

Witness
.....**Client**

Witness
Consulting Architect



GENERAL CONDITIONS

1 DEFINITIONS OF TERMS

In construing this Agreement the following expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

The Consulting Architect

Meaning the person or firm appointed by the client to act as Architect for the Project and named in the Memorandum of Agreement and shall include any other person or persons taken into partnership or directorship by such person or firm during the currency of this Agreement and the surviving member or members of any such partnership.

Project

Means the project with which the Client is proceeding and of which the works form a part.

The Works

Means the works in connection with which the Client has engaged the Consulting Architect to perform professional services, and which summarized in the Technical Schedule attached to and comprising part of these Conditions of Engagement.

The Contractor

Means any person or persons or company under contract to the Client or to a main Contractor to perform work and/or supply goods in connection with the Works.

Tender Drawings

Means drawings, additional to Tender Drawings, especially prepared by the Consulting Architect to fully address all issues of construction details covering various aspects of the works.

Record Drawings (As-built Drawings)

Means drawings normally prepared by the contractor for approval by the consulting architect, showing clearly the general scheme and details of the works as completed.

2 DURATION OF ENGAGEMENT

- 2.1 The appointment of the Consulting Architect shall commence from the date of this Agreement or from the time when the Consulting Architect shall have begun to perform for the Client any of the services specified in Clause 6 of this Agreement, whichever is the earlier.
- 2.2. The Consulting Architect shall not without the consent of the Client assign the benefit or in any way transfer the obligations of this agreement or any part thereof.
- 2.3 If at any time the client decided to postpone or abandon the works he may thereupon by notice in writing to the consulting Architect terminate the Consulting Architect's appointment under this agreement, provided that the client may when the works or any part thereof are postponed, in lieu of so terminating the Consulting Architect's appointment require the consulting Architect in writing to suspend the carrying out of his services under this agreement for the time being.
- 2.4 If the client shall not have required the consulting Architect to resume the performance of services in respect of any postponed work within a period of 12 months from the date of the Client's requirement to the Consulting Architect to suspend the carrying out of his services, such work shall be considered to have been abandoned and this agreement shall terminate.
- 2.5 In the event of the failure of the Client to comply with any of his obligations under this agreement, or upon occurrence of any circumstances beyond the control of the Consulting Architect which are such as to delay for a period of more than 12 months or prevent or unreasonably impede the carrying out by the consulting architect of his services under this agreement, the Consulting Architect may upon not less than 60 days notice in writing to the Client terminate his appointment under this agreement, provided that, in lieu of so terminating his appointment, the Consulting Architect may:
 - a. forthwith upon any such failure or the occurrence of any such circumstances suspend the carrying out of his services hereunder for a period of 60 days (provided that he shall as soon as practicably inform the Client in writing of such suspension and the reasons therefore), and

- b. at the expiry of such period of suspension either continue with the carrying out of his services under this agreement or else, if any of the reasons for the suspension then remain, forthwith in writing to the client terminate his appointment under this agreement.
- 2.6 The Consulting Architect shall upon receipt of any notice or requirement in writing in accordance with Clause 2.3 or the termination by him of his appointment in pursuance of Clause 2.5, proceed in an orderly manner but with all reasonable speed and economy to take such steps as are necessary to bring to an end his services under this agreement.
- 2.7 Unless terminated under this clause the Consulting Architect's appointment under this agreement shall terminate when the final payment to the Contractor is recommended or authorised by the Consulting Architect.
- 2.8 Any termination of the Consulting Architect's appointment under this agreement shall not prejudice or affect the accrued rights or claims of either party to this agreement.

3 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

- 3.1 Original documents, reports, calculations, designs, drawings and survey notes prepared in the course of performing services under this agreement, represent the product of training, experience and professional skill of the Consulting Architect. They belong to and remain the property of the consulting architect who produced them, unless otherwise provided in the agreement. The Client may at his expense retain reproducible copies of drawings and other documents resulting from the performance of services for design-type projects. It so, it should be mutually agreed that the Client will use them solely in connection with the project and not for the purpose of making subsequent extensions or enlargements thereto, save with the express consent of the Consulting Architect. Re-use for extension of the original project or for new projects requires permission of the consulting architect and entitles him further compensation at a rate agreed upon by the Client and the Consulting Architect.
- 3.2 The Consulting Architect may with the consent of the Client, which consent shall not be unreasonably withheld, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the works.

4 SETTLEMENT OF DISPUTES

Any dispute or differences arising out of this agreement shall be referred to the arbitration of a person to be agreed upon between the Client and the Consulting Architect or failing agreement to be referred to the Council of the Ghana Institute of Architects.

5 OBLIGATIONS OF THE CONSULTING ARCHITECT

- 5.1 The Consulting Architect shall exercise all reasonable skills, care and diligence in the discharge of the services agreed to be performed by him. If in the performance of his services the Consulting Architect has a discretion exercisable as between the Client and the Contractor, the Consulting Architect shall exercise this discretion fairly.
- 5.2 If demanded or requested, the Consulting Architect shall give his prospective Client every reasonable opportunity of inspecting his record including the qualification and experience of his staff and should assist him in its interpretation.

6 DUTIES OF THE CONSULTING ARCHITECT

6.1 PRE – CONTRACT

6.1.1 Inception, Condition Survey, Mobilisation and Consultation

The services to be provided by the Consulting Architect at this stage shall comprise all or any of the following as may be necessary in the particular case:-

- a. Investigating data and information relating to the Project and relevant to the Works which are reasonably accessible to the Consulting Architect, and considering any reports relating to the Works which have been prepared by others and made available to the Consulting Architect by the Client.
- b. Advising the Client on the need for arrangements to be made, for the carrying out of special surveys including condition survey, building measurements and as any special investigations or model tests if needed, and advising the Client on the result of any such surveys, investigations or tests carried out.

- c. Consulting any local or other authorities on matters of principle in connection with the Planning and Architectural Designs of the Works.
- d. Consulting any professional advisor appointed by the Client in connection with the Project.
- e. Preparing and submitting to the Client a preliminary appraisal report with recommendations.

6.1.2 Preliminary Design and Costing Stage

- a. Preparing requisite schedules providing sufficient preliminary information on items of dilapidation, demolition and dountaking.
- b. Preparing an outline design proposal
- c. Preparing approximate estimates regarding the Works
- d. Preparing and submitting to the Client a report covering Clause 6.1.2a, b and c.

6.1.3 Design Development, Production Information and Costing

The services to be provided by the Consulting Architect at this stage shall include all or any of the following as may be necessary in the particular case:-

- a. Preparing Detailed Designs, Production Drawings and Specifications for the Works in such details as may be necessary to enable competitive tenders for the execution of the Works to be obtained.
- b. Providing outline information as mechanical and electrical installations, and other similar elements incorporated in the building structure if any, and providing information as to the approximate sizes of items of fittings, fixtures, plants and equipment which are to be incorporated in the Works.
- c. Preparing Bills of Quantities in respect of the works before the invitation of tenders thereof

6.1.4 Tender Action Stage

- a. Advising on, preparing and executing Conditions of Contract relevant to the Works and Forms of Tender and Invitations to Tender as they relate to the Works.
- b. Reviewing and evaluating tenders, advising the Client as to the suitability for carrying out the Works of persons and firms tendering and further as to the relative merits of tenders, prices and estimates received for carrying out the Works.

As soon as the Consulting Architect shall have submitted advice to the Client upon tenders, his services at this stage shall be complete.

6.2 POST – CONTRACT Construction Stage

The Consulting Architect shall not accept any tender in respect of the Works unless the Client gives him instructions in writing to do so, and any acceptance so made by the Consulting Architect on the instructions of the Client shall be on behalf of the Client. The services to be provided by the Consulting Architect at this stage shall include all or any of the following as may be necessary in the particular case:-

- a. Advising on the preparation of formal contract documents relating to accepted tenders for carrying out the Works or any part thereof.
- b. Advising the Client on the appointment of site staff in accordance with Clause 8.
- c. Making such visits to the site as the Consulting Architect shall consider necessary to satisfy himself as to the performance of any site-staff appointed pursuant to Clause 8, and to satisfy himself that the Works are executed generally according to his designs and specifications and otherwise in accordance with good construction practice.
- d. Giving all necessary instruction to the Contractor, provided that the Consulting Architect shall not without the prior approval of the Client give any instruction which are in his opinion likely to substantially increase the cost of Works unless it is not in the circumstances practicable for the Consulting Architect to obtain such prior approval.

- e. Advising the Client as to the need for varying any part of the Project for a reason or reasons relating to the Works.
- f. Approving the Contractor's commissioning procedure and performance tests, and inspecting the Works on completion.
- g. Advising on interim valuations, issuing certificates for payment to the Contractor where appropriate and advising on the settlement of the Contractor's final accounts.
- h. Performing any services which the Consulting Architects may be required to carry out under any document which he has prepared relating to the Works. The Consulting Architect may decline to perform any services specified in a contract the terms which have not initially been expressly approved by him in writing.
- i. Delivering to the Client on the completion of the Works copies of Record Drawings, the Contractor's operating instructions and where appropriate, Certificates of Works Tests.
- j. Assisting in settling any dispute or difference which may arise between the Client and the Contractor, provided that this service shall not extend to advising the Client following the taking of any step in or towards any arbitration or litigation in connection with the Works.

7 VARIATIONS

- 7.1 The Consulting Architect shall initiate all necessary variation orders if any in connection with the works.
- 7.2 The Consulting Architect shall measure or assess the extent of all variations in the works if any and shall negotiate and if possible agree with the contractor the value thereof. The Consulting Architect shall also check all relevant entries in the Contractor's interim and final accounts.
- 7.3 The Consulting Architect shall check and approve the Contractor's assessments of the value of all fluctuations. (increases and/or decreases) in the cost of labour and materials.

8 SUPERVISION OF SITE

- 8.1 If in the opinion of the Consulting Architect the nature of the Works warrants full-time Architectural or Engineering supervision on site, the Client shall not object to the appointment of such suitably qualified technical and clerical site-staff as the Consulting Architect shall consider reasonably necessary to enable such supervision to be carried out.
- 8.2 Persons appointed pursuant to Sub-Clause 8.1 shall be employed either by the Consulting Architect or, if the Client and the Consulting Architect shall so agree, by the Client directly, provided that the Client shall not employ any person as a member of the site-staff unless the Consulting Architect has first selected or approved such persons as suitable for employment
- 8.3 The terms of service of all site-staff to be employed by the Consulting Architect shall be subject to the approval of the Client, which approval shall not be unreasonably withheld.
- 8.4 The Client shall ensure that the contract so employment of site-staff employed by the Client shall stipulate that the person employed shall in on circumstances take or act upon instructions other than those of the Consulting Architect.
- 8.5 Where any of the services specified in Clause 6.2 are performed by site-staff employed by the Client, the Consulting Architect shall not be responsible for any failure on the part of such staff to properly comply with any instructions given by the Consulting Architect.

9 OBLIGATIONS OF THE CLIENT

9.1 Responsibilities of the client

- 9.1.1 The Client shall pay the Consulting Architect for his services, in accordance with the schedule specified in the contract.
- 9.1.2 The Client shall accept the consulting architect as a professional adviser and treat him with respect and confidence.
- 9.1.3 The Client shall give his decision on all sketches, drawings, reports, recommendations, tender documents and other matters properly refereed to him for decision by the Consulting Architect in such reasonable time as not to delay or disrupt the performance by the consulting architect of the assignment.

9.1.4 The Client must accept the consequences if he does not follow the Consulting Architect's recommendations.

9.1.5 The Client shall respect the consulting architect position with regard to the third parties such as Contractor's materials suppliers, etc. and not bypass the Consulting Architect in his dealings with them.

10.2 Information to be supplied to the Consulting Architect

10.2.1 The Client shall supply to the consulting architect, without charge and within a reasonable time, all necessary and relevant data and information in the possession of the client and shall give such assistance as shall reasonable be required by the Consulting Architect in the performance of his service under this agreement. The information to be provided by the Client to the Consulting Architect shall include:

- a. all such drawings as may be necessary to make the Client's or the Architect's requirements clear, including plans and sections of all buildings and essential details together with the site plans and levels.
- b. Copies of all contract documents, variation orders and supporting documents relating to those parts of the project which are relevant to the works.

10.3 The Client shall give his decision on all sketches, drawings, reports, recommendations, tender documents and other matters properly referred to him for decision by the Consulting Architect in such reasonable time as not to delay or disrupt the performance by the Consulting Architect of his services under this agreement.

11 PAYMENT FOR CONSULTING ARCHITECTS SERVICES

11.1 The Consultant shall be paid at the rates and other costs on the basis and in the manner set out in Schedules 1-4 attached herewith. Any additional sum calculated on the increase (if any) between the day of the submission of the Proposal and the date for the payment of such item included in the application for payment by reference to Schedules 1-4 attached hereto shall be agreed upon between the Consultant and Client during negotiations at the Contract Award Stage.

Should the period of the project extend beyond the time stipulated in this offer through no fault of the Consultant, the Consultant shall be

remunerated for services performed during the extension period based on an agreed fixed sum and any other incidental expenses, as shall be agreed upon with the Client.

11.2 BASIS OF RATES

The Consultants Fees are based on time charges approved by the Architectural and Engineering Services Ltd. For Consultants Fees. A discount of 30% to 35% has further been offered on the time charges for Consultants under the Architectural and Engineering Services Ltd. rates.

11.3 TERMS OF PAYMENT

The following shall be the terms of payment:

11.4 PRE-CONTRACT SERVICES

11.4.1 Advance for Mobilisation

20% of total Consultancy Fee (as detailed in Schedule 1) as Down Payment and Commitment fee shall be made to the Consultant upon acceptance of the proposals and the commencement of the Inception stage but after the preliminary report.

11.4.2 Inception Report

A further 20% of the total fee shall be made to the Consultant, after submission and acceptance of the Inception Report.

11.4.3 Design Report

On submission of the Design Report, the Consultant shall be paid a further 20% of the total design fee.

11.4.4 Final Report

The remaining 40% of the total design fee shall pay upon submission of the Final Report and Bills of Quantities.

11.4.5 Reimbursable Charges:

Payment shall be made against invoices submitted by the Consultant and shall be effected in addition to fee claims at the proposed payment stages stated

11.5 POST-CONTRACT SERVICES

11.5.1

Fee claims shall comprise two interim payments in the course of site operations and a final payment after submission of the project final account. The final payment shall comprise payment of fee retention as contained in the contract. Payment shall be made on account on

submission of fee claims. Such claims shall not exceed three (3) claims over the agreed contract period.

11.5.2

Payment shall be made against invoices submitted by the Consultant and shall be effected in addition to fee claims at the proposed payment stages stated

12 DISBURSEMENTS (REIMBURSABLE CHARGES)

The Client shall in all cases reimburse the Consulting Architect in respect of all the Consulting Architects disbursements properly made in connection with:

- a. Printing, reproduction and purchase of all documents, drawings, maps and records.
- b. Faxes, telegrams and telephone calls other than local.
- c. Travelling, Hotel expenses and other similar disbursements.
- d. Advertising for tenders and for site-staff.

12.1 Payment shall be made against invoices submitted by the Consultant and shall be effected in addition to fee claims at the proposed payment stages stated above.

13 PAYMENT FOR ALTERATION OR MODIFICATION TO DESIGN

If after the completion by the Consulting Architect of his services under Clauses 6.1, any design whether completed or in progress or any specification, drawing or other documents prepared in whole or in part by the Consulting Architect shall require to be modified or revised by reason of instructions received from the Architect or from the Client, or by reason of circumstances which could not reasonably have been foreseen, then the Client shall make additional payment to the Consulting Architect for making any necessary modifications or revisions and for any consequential reproduction of documents, /Unless otherwise agreed between the Client and the Consulting Architect, the additional sum to be paid by the Consulting Architect shall be calculated in accordance with the Scale of Charges set out in Clause 11 and shall also include any appropriate reimbursements in accordance with Clause 12.

14 PAYMENT WHEN WORKS ARE DAMAGED OR DESTROYED

It at any time before completion of the Works any part of the Works or any materials, fittings, fixtures, plant or equipment whether

incorporated in the Works or not shall be damaged or destroyed, the Client shall make additional payment to the Consulting Architect in respect of any expensed incurred or additional Work required to be carried out by the Consulting Architect as a result of such damage or destruction. The amount of such additional payment shall be calculated in accordance with the Scale of Charges set out in Clause 11, and shall also include any appropriate reimbursement in accordance with Clause 12.

16 PAYMENT FOLLOWING TERMINATION OR SUSPENSION BY THE CLIENT

- 16.1 Upon a termination or suspension by the Client in pursuance of Clause 2.3, the Client shall pay to the Consulting Architect the sums specified in (a), (b) and (c) of this sub-clause (less the amount of payments previously made to the Consulting Architect under the terms of this Agreement.)
- a. A fair and reasonable proportion of the sum which would have been payable to the Consulting Architect under Clause 11 if no such termination or suspension had taken place. In the assessment of such proportion, the services carried out by the Consulting Architect.
 - b. Amounts due to the Consulting Architect under any other Clauses of this Agreement.
 - c. A disruption charge equal to one sixth of the difference between the sum which would have been payable to the Consulting Architect under Clause 11, but for the termination or suspension and the sum payable under (a) above.
- 16.2 In any case in which the Client has required the Consulting Architect to suspend the carrying out of the Consulting Architects services in pursuance of the power conferred by Clause 2.3, the Client may, at any time within the period of 12 months from the date of his requirement in writing to the Consulting Architect to suspend the carrying out of the Consulting Architects services, require the Consulting Architect in writing to resume the performance of such services. In such event:
- a. the Consulting Architect shall within a reasonable time of receipt by him of the Client's said requirement in writing resume the performance of his services in accordance with this Agreement, the payment made under Clause 16.1 (a) ranking as payment on

account towards the total sum payable to the Consulting Architect under Clause 11, but

- b. notwithstanding such resumption the Consulting Architect shall be entitled to retain or receive as an additional payment due in accordance with this Agreement the disruption fee referred to in Clause 16.1 (c)

If the Consulting Architect shall need to perform any additional services in connection with the resumption of his services in accordance with Clause 16.2 the Client shall pay the Consulting Architect in respect of the performance of such additional services on an agreed fee and expense basis based on a fixed sum and any other incidental expenses, as shall be agreed

- 16.3 in accordance with the Scale of Charges set out in Clause 11 and any appropriate reimbursements in accordance with Clause 12.

17 PAYMENT FOLLOWING TERMINATION BY THE CONSULTING ARCHITECT

Upon a termination by the Consulting Architect in pursuance of Clause 2.5, the Client shall pay to the Consulting Architect the sums specified in Clause 16.1 (a) and (b) (less the amount of payment previously made to the Consulting Architect under the terms of this Agreement). Upon payment of such sums, the Consulting Architect shall deliver to the Client such completed drawings, specifications and other similar documents so delivered to the Client.

18 COST OF THE WORKS

- 18.1 The cost of the Works or any part thereof shall be deemed to include;
 - a. The cost of the Client of the Works however incurred, including any payments (before deductions of any liquidated damages or penalties payable by the Contractor to the Client) made by the Client to the Contractor by way of bonus, incentive or ex-gratia payments, or in settlement of claims.
 - b. Where the Works are carried out as sub-contract or as sub-contract or sub –contracts awarded under a main contract, the allowances made in the main contract to cover attendance and profit relating to the Works, together with the cost of items of Builder's work required in connection with

the Works, and a part of the cost of the preliminary and general items included in the main contract being the proportion that the cost of the sub-contract bears to the total cost of the main contract.

- c. A fair valuation of any labour, materials, manufactured goods, machinery or other facilities provided by the Client, and of the benefit accruing to the Contractor from the use of construction plant and equipment belonging to the Client which the Client has required to be used in the Execution of the Works.
- d. The market value, as if purchased new, or any secondhand materials, manufactured goods and machinery incorporated in the Works.

18.2 The cost of the Works shall not include:

- a. Administration expenses incurred by the Client.
- b. Costs incurred by the Client under this Agreement.
- c. Interest on capital during construction, and the cost of raising moneys required for carrying out the construction of the Works.
- d. Cost of land.

19 PAYMENT ON ACCOUNT

19.1 Unless otherwise agreed between the Client and the consulting Architect from time to time:

the sum payable to the Consulting Architect under Clause 11 shall , until the cost of the Works is known be paid by the Client to the Consulting Architect in instalments and shall be calculated by reference to the Consulting Architect's most recent estimate of the cost of the Works incorporating when available any accepted tender or tenders. Such instalments shall be paid during each of the several stages for the Consulting Architects services at the intervals specified in Clause 5 of the Memorandum of Agreement so that by the end of each stage there shall have been paid the relevant proportion, as specified in Clause 6 of the Memorandum of Agreement, of the estimated total sum payable to the Consulting Architect under this Agreement.

19.2 Instalments paid by the Client to the Consulting Architect in accordance with clause 19.1 (a) shall constitute no more than

payments on accounts, and the total sum due to the Consulting Architect shall be determined when the cost of the Works is fully known.

- 19.3 All sums due from the Client to the Consulting Architect in accordance with the terms of this Agreement shall be paid within 40 days of the submission by the Consulting architect of his accounts therefore to the Client, and any sums remaining unpaid at the expiry of such period of 40 days shall bear interest thereafter, such interest to accrue from day to day at the prevailing Bank Rate.
- 19.4 If any item or part of an account rendered by the Consulting Architect is disputed or subject to question by the Client, the payment by the Client of the remainder of that account shall not be withheld on those grounds and the provisions of Clause 19.3 shall apply to such remainder and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to the Consulting Engineer.

