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CLIENT/PROJECT MANAGER AGREEMENT

FOR THE PROVISION OF CONSULTANT PROJECT MANAGEMENT SERVICES

WITHIN THE BUILDING & CONSTRUCTION INDUSTRY

by

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*A thesis submitted in partial fulfilment of the
requirements for the degree of
Master of Engineering,*

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Preface

This thesis contains no material which has been accepted for the award of any other degree or diploma, in any university or institution and to the best of my knowledge, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

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The broad ranging support provided by Stephenson & Turner Victoria Architects, over many years in developing my interest in project management and in particular as the principal sponsor of this undertaking, deserves special thanks and acknowledgement.

Chapter One
Abstract

Chapter One

Abstract

As the building and construction industry continues to develop its understanding of Project Management, by natural evolution and through formal training and research, the body of knowledge generally held within the industry with respect to the different types of Project Manager, the services they offer, risk apportionment and the relationship between Clients and Project Managers will become increasingly clarified.

Allied professions within the building and construction industry have developed through their professional associations industry standard Client/Consultant Agreements which are used in formalising the relationship between the parties and educating clients, consultants and the industry generally.

The project management profession currently does not have an industry standard Client/Project Manager Agreement and those Client/Consultant Agreements which are currently used are either inappropriate or do not adequately address the broad range of issues specific to the different types of Project Managers and resultant relationships.

The agreement prepared by the Western Australian Project Manager Association is the best attempt found, in that it addresses the type of project manager and a limited range of services.

The agreements reviewed which are of a generic or allied professional nature were deemed to be unsuitable for the provision of Project Management Services because generally, they did not sufficiently establish the nature of the relationship, adequately set out the range of services to be provided and therefore could not adequately assign risk and obligations between the parties.

The agreements reviewed were generally poorly structured and were deficient in specific areas.

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The majority of the agreements reviewed, in particular those generic Clients/Consultant Agreements could not readily assign risk, as they relied on the parties determining the range of services (in the first instance) remote from the agreement for later insertion.

The approach adopted by the Royal Australian Institute of Architects in its Client/Architect Agreement was considered admirable, in that setting out a broad range of services and giving the parties the opportunity to assign responsibility by completion of a check-list and provides useful information, as to the role and nature of the consultant. Being part of the agreement, risk can be apportioned by completing the check-list.

Matters concerning time, cost and quality were poorly addressed in most agreements reviewed and in certain agreements omitted completely. The agreements did not provide well either for alternative dispute resolution procedures.

As the Project Management profession continues the process of increased professionalisation, concurrently with the industry coming to terms with Project Management, it is timely that a process be commenced which results in an industry standard Client/Project Manager Agreement.

The benefits of an industry standard Client Project Manager Agreement are described in Chapter Seven. A common thread in most of the benefits is that of education, understanding and further addition to the project management body of knowledge.

Chapter Two
Introduction/Objectives

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2.01 INTRODUCTION

Generally within the professions it is regarded as sound practice for Consultants and Clients to execute agreements that define the nature of their relationship in terms of the responsibilities, risks, obligations and services to be provided for a consideration.

These agreements are generally known as Client/Consultant Agreements. Within the building industry, there are standard agreements available for a range of consultants, including Architects and Engineers. The body of knowledge that exists regarding the nature of various professions, the services available and terms of engagement has become embodied in these agreements, as the professions and the industry have evolved over many years.

The project management profession in Australia is young in relative terms and consequently has yet to develop a body of knowledge and industry understanding of it, in the same way that the industry understands other professions.

Architects and Engineers, for example, have at their disposal a range of documents that describes what they do and the basis upon which they may be engaged. The associations representing these professions have developed standard Client/Consultant agreements that are continually being revised to reflect changing market needs and conditions.

In addition to the considerable practical experience written into these agreements, they contain information that can assist Clients and practitioners in understanding the nature of the service they may be considering and in particular, the basis of the engagement.

2.02 OBJECTIVES

The building project management profession in Australia has yet to develop an industry standard Client/Project Manager Agreement. This thesis examines Client/Consultant agreements and addresses the need for and benefits of, developing such an agreement.

The intent of this research thesis was to:

- a) Establish whether or not such an agreement was needed within the industry.
- b) Examine the general nature of Client/Consultant Agreements and their applicability to Project Management.
- c) Examine the nature of Project Management in the context of responsibilities, obligations, risk apportionment and the relationship with Clients.
- d) Review a range of existing Client/Consultant Agreements currently used for the provision of Project Management Services, to determine whether or not these agreements were suitable or useful in the process.
- e) Establish a philosophical basis for a new Client/Project Manager Agreement and an appropriate structure.
- f) Prepare a draft Client/Project Manager Agreement as a basis for continuing debate and evolution.
- g) Determine what further action should be taken to conclude the process so that the material gathered and work produced in the conduct of this thesis can be used for the benefit of the industry in a practical and realistic manner.

Chapter Three
The need for an
Industry Standard Client/Project Manager Agreement

Chapter Three
The need for an
Industry Standard Client/Project Manager Agreement

3.01 THE GROWTH OF PROJECT MANAGEMENT

The procurement of building and construction projects is complex and they are potentially risky ventures. It is extremely rare to find any two (or more) projects that are similar or the same. The vast majority of projects are, in effect, one-off prototypes. A Client's project related risks may be reduced by management, transfer of risk, or a combination of both. This is a major skill area of project management.

The use of project management and its acceptance as a valid system of procurement of facilities, within the Australian building and construction industry, has increased in the last ten years. However, this growth over the last 2-3 years has been marginally curbed by the economic recession.

There is no published documented statistical evidence confirming the trend toward the increasing use of project management in the procurement of building and construction projects in Australia. However, there is anecdotal evidence that exists in the:

- a) growth of project management software availability and sales
- b) range of academic project management courses available today, compared with five years ago
- c) number of project managers listed in the yellow pages
- d) number of project managers listed on job boards on medium scale to major projects in the central business district and suburbs
- e) number of registrations of interest for project managers/directors sought by Private Clients, or the Government in the weekend press.

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Barnett (1988/9) observed that project managers were rapidly gaining acceptance as professionals in their own right. Barnett also forecast an increase in public and private sector use of different forms of project management, concurrently with significant changes in the building industry, in the fields of management, design, environment and people issues.

The evolution of the Australian Institute of Project Management, from its predecessor, the Project Managers Forum, together with its current professionalisation program, is a response to industry demand for project managers and is, in itself, further evidence of the growing trend towards the use of project management.

3.02 THE CLIENT/PROJECT MANAGER RELATIONSHIP: AGREEMENTS

Many papers and works addressing the subject of project management often commence by defining project management and acknowledging the diversity of opinion regarding the role, function, services and industries within which project management is practised.

What compels authors to approach this subject matter in this pre-qualifying manner?. The answer must lie in generic nature of project management itself, the need to establish a frame of reference for the reader and correct context.

What appears to be common to the most of the literature, is the notion that project management is primarily a management process, augmented by services and delivered by individuals responsible for whole or part of the carriage of a project, over the whole or part of its life cycle.

Richard Standen (1981) provides six separate definitions for project management in his book, "Terms in Practice. A Dictionary for Australian Architects."!!

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In general and more particularly with respect to the building and construction industry. I would suggest project management could be defined as:

The overall planning, control, organising and co-ordination of a project from inception to completion, with the objective to best meet a Client's interrelated (and sometimes conflicting) project requirements, generally expressed in terms of function, quality, time, cost, safety and risk.

When contemplating the basic nature of project management, one should differentiate between the management processes used by Project Managers and the services offered, which may in total or part support the management processes. Services such as time programming, integrated with cost planning are used to support the management of the procurement process to achieve project objectives.

Pure project management is not product oriented. That is to say the practice of project management does not produce a product in the same way that a computer programmer, architect or engineer does.

Project management does produce results, which are achieved by a two party team comprising the Client and the Project Manager or a multi party team comprising the Client, Project Manager and a range of other team members.

A Project Manager should use management processes, skills and services to create the environment within which project objectives can be best facilitated.

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There may be Project Managers who disagree with this analysis. I suggest they are either providing services in addition to management, or are confusing the consolidation of data and information and preparation of status reports, with production of something new in its own right, rather than repackaging the work of others.

I do not intend to imply that Project Managers do not contribute to the process of project procurement. Quite the contrary. Competent Project Managers can contribute to and fundamentally influence a project, depending on the nature of the project and the participants charged with its delivery.

Among a range of other related skills, management expertise can be made available by Project Managers in the form of:

- a) problem definition
- b) project and budget scoping
- c) objective setting
- d) team building and interaction
- e) communications and reporting
- f) priority setting
- g) value management
- h) progress & time management

As the project management profession evolves, the need will increase for Project Managers and Clients to understand the nature of project management at this most basic level. It is this understanding that will clarify and guide the relationship between a Client and Project Manager and should be reflected in the Client/Project Manager Agreement.

Contracts

A legally enforceable contract exists between a provider of service and its receiver, where a consideration (or payment) for provision of those services exists, even though a "formal" (or written) contract may not have been executed.

A formal contract in effect sets down the "rules" for the parties, so that they can operate their relationship within the parameters of those rules, those parameters being specifically defined and the obligations of each party being set out within those parameters. (Pilley 1992)

The process of structuring relations between parties in this manner, informs the parties involved and reduces the likelihood of disputes, which should be a principal consideration of project managers, in regard to professional liability and their ability to purchase professional indemnity insurance.

Calder (1989), in discussion of professional indemnity claims prevention, suggests that one should assume every client to be a potential claimant. He then goes on to assert that some disputes would never have arisen if a proper letter of engagement or agreement had been executed.

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The NPWC/NBCC Joint Working Party (1990) found that standard forms of contracts are preferred by the Industry to contracts that are individually drafted for each project, if for no other reason than both parties are more likely to be fully familiar with the obligations assumed by each party using a standard form. They will thereby reduce incidences of dispute caused by concealing obligations in unfamiliar documents.

In an ideal world, contracts would be tailored to the needs of a particular project, be balanced, equitable and assign reasonable risks to the parties best able to manage them. It should come as no surprise however, that most contracts are biased (to a greater or lesser degree) in favour of their authors, or the interests sponsoring the initial drafting of the contract. An extreme example of this bias exists in the suite of standard form contracts prepared by the Australian Department of Defence (1992) for construction of defence facilities, where for instance it could be argued that the doctrine of "*contra proferentum*" is denied, thereby placing the Defence Department in a totally risk free position with regard to the existence of ambiguities found in the contract [Clause 1.2 (j)].

A major contributing factor to this situation, as Bhuta (1992) observed is that the basis of contracts in the building and construction industry (in Canada), was mistrust and the objective of covering the worst possible scenario, rather than the most probable scenario. The circumstances in Australia are no better, where sixty page revisions to standard form building contracts have recently been reported to the Contracts Task Group, Royal Australian Institute of Architects.

Many contracts are drafted using precedents as their basis. That is to say, a contract recently used for a similar purpose is copied and tuned to suit the current need. This practice presents advantages and disadvantages. A major advantage is the considerable contract law that has been built up over many years and familiarity by users. One of the disadvantages is that a lot of contracts are not well suited to a particular relationship and fall short of the "ideal world" contract referred to earlier.

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The formal ratification of the Client/Project Manager relationship should be a practice exercised on all projects, using agreements appropriate to the nature and size of the project and derived from an industry standard form.

The following clause headings are those which reflect the relationship and establish the obligations, responsibilities, risks and rights between a Client and Project Manager. There are also suggested clause headings for specific processes to be followed in certain circumstances. In essence the agreement should be the framework for the relationship.

1. The Agreement
2. Definitions & Interpretation
3. Services to be provided by the Project Manager
4. The Role of the Project Manager & the Project Manager's Authority
5. Obligations & Responsibilities of the Project Manager
6. Obligations & Responsibilities of the Client
7. Personnel
8. Conflict of Interest
9. Variations to the Contract
10. Documents (ownership, copyright, publication, etc.)
11. Transfer or Assignment
12. Completion Time
13. Suspension or Deferment of the Project
14. Liability & Insurance
15. Law of Contract
16. Termination
17. Settlement of Disputes
18. Fees & Payments
19. Service of Documents
20. Annexure (for project specific details)

3.03 THE CURRENT SITUATION

Barnett (1990) noted that (at that time within the Australian building industry) there was no foreseeable standard project management contract covering, all types of Project Managers. He did however concede that the development of a fairly standard project management agreement was possible, for each particular type of Project Manager.

A range of Client/Consultant Agreements are currently used for the provision of project management services, mainly for construction related project management and consultant project management. None of these agreements are well recognised or used.

Nine agreements have been collected to enable a comparative table to be prepared (Exhibit 1), demonstrating their relative characteristics.

Three of the nine agreements are project management specific (**PM2, WAPMA, Private PM**) with the remaining six agreements being generic client/consultant agreements, used for the provision of project management services.

These agreements are representative samples of those currently being used in the public and private sectors, on both small and major projects. The RAIA and ACEA agreements, do not (strictly speaking) cover project management. Nonetheless they were included in the sample in response to the close relationship of those disciplines to project management and in acknowledgment of those professions providing project management services.

3.04 THE TYPE OF PROJECT MANAGER

The relationship, the services provided, expectations and risk apportioned between a Client and Project Manager will differ from project to project to varying degrees. The greatest difference will be determined by the type of Project Manager involved, which can be generally classified according to whether or not the Project Manager has a commercial interest in the project and degree of risk apportioned to him.

This is confirmed by Barnett (1990) who states that a project management contract will vary depending on the classification of the project manager. The Barnett Project Manager Classification System (1990), defines four categories of project manager:

- a) Consultant Project Manager, *Adviser*
- b) Executive Project Manager, *Agent*
- c) Commercial Project Manager, *Managing Contractor*
- d) Entrepreneurial Project Manager, *Vendor*.

According to the Barnett system, the Executive Project Manager classification is the most appropriate definition of Project Manager in the context of this paper. As defined by Barnett (1990) the Executive Project Manager would in essence, have an agreement with the client to provide, in a non-adversarial manner, certain advice or management services. This advice and service would include planning, control and co-ordination of the project from inception to completion, on time, within budget and to required quality and safety standards and so that it is fit for the purpose.

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The views of the following industry bodies were sought at the outset of preparing this paper. All confirmed that to the best of their knowledge, an industry standard Client/Project Manager Agreement did not exist and that they would endorse and support the drafting of such a document.

1. Australian Institute of Project Management
2. The Royal Australian Institute of Architects (Victorian Chapter)
3. The Association of Consulting Engineers
4. The Building Owners and Managers Association
5. Phillips Fox, Solicitors
6. Dunhill Madden Butler Solicitors
7. National Public Works Conference
8. The Insurance Council of Australia
9. Australian Mutual Provident Society

Chapter Four
Review of Existing Client/Consultant Agreements

Chapter Four

Review of Existing Client/Consultant Agreements

Research has revealed that whilst there is no industry standard Client/Project Manager Agreement, a range of Client/Consultant Agreements are used to formalise the relationship between Clients and Project Managers.

In the process of determining the need for an industry standard Client/Project Manager Agreement, a range of Client/Consultant Agreements were reviewed to determine whether or not they would be suitable as a basis for a Client/Project Manager Agreement or alternatively, to highlight those sections, clauses and approach would be appropriate for a Client/Project Manager Agreement.

The review process involved the study of each individual agreement and construction of a table describing the contents of the agreements and clause references for comparison.

The contents of the following nine agreements are shown in Exhibit 1: (Refer to Appendix 1 for large scale version)

1. Government of Victoria, Ministry of Finance, Conditions of Engagement for External Consultants, December 1991.
2. Federation Internationale Des Ingenieurs-Conseils, Client/Consultant Model Services Agreement, Second Edition 1991.
3. Health Department Victoria, Draft Project Director Agreement, March 1992.
4. National Public Works Conference, General Conditions of Engagement of Consultants, May 1992.
5. Private Consultant Project Managers Consultant (source confidential).
6. Royal Australian Institute of Architects, Client/Architect Agreement, October 1991.

7. The Association of Consulting Engineers Australia, Guideline Terms of Agreement October 1983, revised February 1992.
8. Master Builders Association NSW, Project Management Agreement August 1990.
9. Western Australia Project Managers Association, Terms of Engagement for Project Management Services, edition 90.1 (a) August 1990.

Exhibit 1

Contents of Nine Client/Consultant Agreements used for Building and Construction in Australia

MOF	<i>Government of Victoria, Ministry of Finance, Conditions of Engagement for External Consultants, Dec 1991</i>
FIDIC	<i>Federation Internationale Des Ingenieurs-Conseils, Client/Consultant Model Services Agreement, 2nd Edition 1991</i>
HDV	<i>Health Department Victoria, Draft Project Director Agreement, March 1992</i>
NPWC	<i>National Public Works Conference, General Conditions of Engagement of Consultants, May 1992</i>
Private PM	<i>Private Consultant Project Manager's Consultant Agreement (source confidential)</i>
RAIA	<i>Royal Australian Institute of Architects, Client/Architect Agreement, Oct 1991</i>
ACEA	<i>The Association of Consulting Engineers Australia, Guideline Terms of Agreement, Oct 1983, Revised Feb 1991</i>
PM2	<i>Master Builders Association of NSW, Project Management Agreement, August 1990</i>
WAPMA	<i>Western Australia Project Managers Association, Terms of Engagement for Project Management Services, Edition 90.1 (a) August 1990</i>

No	CLAUSE	MOF Clause	FIDIC Clause	HDV Clause	NPWC Clause	PrivatePM Clause	RAIA Clause	ACEA Clause	PM2 Clause	WAPMA A Clause
1	Agreement	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
2	Definitions & Interpretation	1	12	1	1	1	-	8.8	1	-
	counting of days								2	B4.10
3	Evidence of Contract	2	21	-	2	-	-	-	-	B4.08-
4	Service of Documents, Notices	3	41	18	4	19	-	8.4	3, 4(d)	B4.09
5	Directions of the Principal	4		-	14	-	B2.02	Part 2		
	documentation	4.1	-	-	-	-	B2.02	2.1	-	B2.01
	budget component	4.2	-	-	-	-	B2.02	-	-	B2.01
	mode of direction (instruction)	4.3	8	-	-	-	B2.02, B2.04	2.7	5, 19(c)	B2.01
6	Personnel			-						
	principal's representative/authority	5	14	-	15	-	B1.10, B2.01	2.6	4(a), 4(e)	B2.04
	project manager's representative	-	14	-	-	-	-	-	4(a)	B1.10
	changes in personnel	-	15	4.1(f)	-	5.2	-	-	4(c)	-
7	Obligations of the Client			-	13	Annex 2	B2	Part 2	-	B2
	information provided by Principal	6	7	-	13	-	B2	2.1	-	B2.01, B2.02-3
	services of others	-	12	-	-	-	B1.08	2.4, 8.2	-	-
	indemnity as agent								-	B2.05

Exhibit 1
Contents of Nine Client/Consultant Agreements used for Building and Construction in Australia
(Continued)

No	CLAUSE	MOF Clause	FIDIC Clause	HDV Clause	NPWC Clause	PrivatePM Clause	RAIA Clause	ACEA Clause	PM2 Clause	WAPM A Clause
8	Obligations of the Consultant			6	10	2	Part A	Part 1	7	B1
	services & duties	18	3, 4, 5	4	16	Annex 3	B1.01	Annex A	Part C,D,E	A1-4, B1.01
	stages of service	-	-	3	-	3	B1.05	-	-	B1.05
	responsibility for consultants	18.5	-	10	-	10, Annex 3	B1.06	-	9, 16	B1.06, B1.07
	other consultants responsibilities	-	12	-	-	Annex 4, 5, 6	B1.08, B2.03	-	-	-
	certificates on completion	-	-	11	-	11	-	-	-	-
	final certificate	-	-	12	-	12	-	-	-	A4.06
	compliance with statutory requirements	18.3	-	-	16.3	Annex 3	-	Annex A(6)	-	-
	checking, signing and certification	18.4	-	-	16.4	Annex 3	B1.09, 011	Annex A(8)	-	-
	inspection (not superintendence or supervision)	-	-	-	-	-	-	-	-	B1.08
	corrections	18.7, 18.8	-	-	16.5	-	-	-	22(c)	-
	project cost control	4.2	-	4.1(g)	16.6	-	B1.12	1.5, 4.4	19(b), 20	-
	variations to project generally, time & cost	-	25	-	7	-	B1.04	-	19(b)	B1.03, B1.04
	review of work by others	18.9	-	-	16.7	-	B3.08	-	-	B3.06
	quality assurance	-	-	-	16.8	-	-	-	-	-
	confidentiality	-	-	-	12	-	-	-	29	B4.01
9	Status of Consultant	7	-	-	3	1.1	-	-	8a	-
	authority of the consultant	-	-	-	-	-	B1.02, B2.05	annex A	8, 21	B1.02
10	Progress Reports	8	-	4.1(b)	16.2	Annex 3	-	-	17, 18	A1.05
11	Access (to the Client)	9	-	-	-	4	-	-	-	-
12	Variations to the Contract	10	23, 24	14	7	14	B1.03-4	-	19(a)	B1.03
13	Conflict of Interest	11	40	4.1(b)	11	-	-	-	-	-
14	Documents	12, 18.6			9			Part 5	-	B4.01
	ownership	12.1	-	-	9.1	-	B4.02	-	-	B4.01
	copyright	12.2	39	-	9.3	-	B4.01	5.1, 5.2, 5.3	-	B4.01
	warranty and indemnity	-	-	-	9.2	-	-	-	-	-
	publication	12.1	42	8	12	8	-	5.4	-	-
	patents	12.3	-	-	9.4	-	-	5.5	-	-
	insurance of documents	12.4	-	-	19.3	-	-	-	-	-
15	Transfer or Assignment	13	38 i, ii	4.1(b)	5	16	B4.04	8.1	28a	B4.03
	sub-contracts	18.5	38 iii	-	6	16	B1.07	8.2	28b	-
16	Completion Time	14	22	13	16.1	13	-	-	-	-
	work to programme	-	-	13.1	-	-	-	-	-	-
	delays	-	-	13.2-13.4	-	13.2-13.4	-	-	-	-
	client initiated delays	-	25	13.4	-	-	-	-	-	-
	changed circumstances	-	26	13.4	-	-	B1.04	3.9	-	-
17	Suspension of the Project	15.5	27	16	8.5	17	-	7.3, 7.4	-	-
18	Termination	15	27, 28, 29	15	8	15	B4.03	Part 7	26	B4.04
	method of termination	15.1	27	15.3	8.1	15.1-15.3	B4.03	7.1, 7.2	26	B4.04
	fee entitlement upon termination	15.2	28	15.4	8.2	15.4	B4.03	3.8	27	B4.04
	change in constitution of the consultant	15.3	-	15.2	8.3	-	-	8.1(4)	-	-
	incapacitation of consultant	15.4	-	-	8.4	-	-	-	-	-
	abandonment, suspension or deferment of project	15.5	27	13.5, 15.7, 16	8.5	13.5(c), 15.7	B3.06	7.3, 7.4	-	-

Exhibit 1
Contents of Nine Client/Consultant Agreements used for Building and Construction in Australia
(Continued)

No	CLAUSE	MOF Clause	FIDIC Clause	HDV Clause	NPWC Clause	PrivatePM Clause	RAIA Clause	ACEA Clause	PM2 Clause	WAPM A Clause
19	Settlement of Disputes	16	43, 44	17	17	18	B4.06	Part 6	31	B4.02
	continuation of work during disputes	16.1	-	17.1	17.1	18	-	-	-	-
	procedure for resolution of disputes	16.2	44	17.2-17.6	17.2	18	B4.06	6.1, 6.2	31	B4.02
	arbitration	16.3, 16.4	44	17.7, 17.8	17.2	18.3-18.6	B4.06	6.2	32	-
	claim for loss or damage	-	43	-	-	-	-	-	-	-
20	Law of Contract	17	36	-	2	1.3	-	8.6	-	B3, B4.07
21	Fees & Payments	19	30	5	18	6	B3	Part 3	23	Section C
	basis of fees	19.1	30	5.1	18.2	6.1	schedule C	3.1	22, 23	B3.01, B 3.08, C1 .01
	fee on a percentage basis	19.2	-	-	18.3	-	C1	3.2, Annex exC	23(b)	-
	fee on a lump sum basis	19.3	-	-	18.4	-	C2	3.2	23(a)	C1.02, C 1.06
	fee on a time charge basis	19.4	-	-	18.5	-	C3	3.2	23(c)	C1.04, C 1.06
	method of payment	19.5	31	5.4, 5.5, 5.6	18.1	6.4-6.6, 6.9	B3.01	3.4, 8.5	20	B3.01
	travel, subsistence & accommodation	19.6	30	5.3	18.6	7	C5	3.3, Annex exC	-	C1.05
	other reimbursements	19.7	30	7	18.6	7	B3.11, C6	3.3, Annex exC	-	C1.05
	payment of expenses	19.8	-	-	18.6	7	C5, C6	-	-	C1.05
	disputed invoices	-	34	5.7	-	6.7	-	-	24(b), 25	C1.02(e)
	independent audit/fee claim check	-	35	5.8	-	-	B3.11-	-	-	B3.09
	fees due as a result of variations to the project	10.3	-	14.2	-	-	B2.06, B3.04	3.9	24	B3.04, C 1.03
	fees due as a result of delays	-	-	5.2, 13.5	18.3-4	6.2	B3.05	3.7	25	B3.04, C1.03
	fees due as a result of suspension or deferment	15.5	28	-	8.5	-	B3.06, B3.07	3.9	-	B3.05, C 1.02, C1.03
	interest on overdue payment	-	31	-	-	6.8	B3.02	3.5	30	B3.03, B3.02
	security provided by the Client for fee payment	-	-	-	-	-	-	3.10	-	-
	fee for special contracts	-	-	-	-	-	B3.09	-	-	B3.07
22	Liability and Insurance	20	16-20	9	19	-	B4.05	Part 4		
	liability between the parties	18.2	16	-	-	-	B4.05.01	4.1, 8.3	6	B4.11
	joint & several liability within parties	-	-	-	-	-	-	-	-	-
	duration of liability	-	17	9.3	-	-	B4.05.02	4.3	-	B4.05
	limit of compensation & indemnity	-	18	9.3	-	-	B4.05.03	4.2, 4.5	-	-
	insurance for liability & indemnity	20	19	9.3	19.1	7.7	-	-	-	B1.09
	insurance of client's property	-	20	-	-	-	-	-	-	-
	insurance by other consultants	-	-	9.5	19.4	-	B4.05.04	-	-	-
23	Changes in Legislation	-	37	-	-	-	-	3.11	-	-
24	Annexure	Yes	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes

The Project Management Agreement and Conditions of Engagement issued by The Royal Institution of Chartered Surveyors and the Project Management Diploma Association of the RICS (United Kingdom) was received too late in the review process for inclusion in the table, nonetheless the agreement was included in the review process and consulted during research activities.

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The frame work and criteria for the review of these agreements involved addressing the following questions:

- a) Was the agreement Project Management specific, a generic Client/Consultant Agreement or for use by allied professions?.
- b) Did the agreement clearly establish its intent and its philosophical basis in formalising the relationship between the Client and the Project Manager?.
- c) Was the structure of the agreement appropriate and did it reinforce and clearly communicate the nature of the relationship between the Client and the Project Manager?.
- d) Was the content and coverage adequate or excessive in addressing the obligations and mechanisms established between the parties?.
- e) Did the agreement reasonably assign risks and obligations to the parties best able to manage them?.

It is important to note that the review was undertaken relative to the perceived relationship between a Client and an Executive Project Manager. The following table (Exhibit 2) summarises the results of the review in terms of the abovementioned criteria. (Refer to Appendix 2 for large scale version)

Exhibit 2
Summary of Review Findings of Nine Client/Consultant Agreements

Legend

MOF *Government of Victoria, Ministry of Finance, Conditions of Engagement for External Consultants, Dec 1991*

FIDIC *Federation Internationale Des Ingenieurs-Conseils, Client/Consultant Model Services Agreement, 2nd Edition 1991*

HDV *Health Department Victoria, Draft Project Director Agreement, March 1992*

Private PM *Private Consultant Project Manager's Consultant Agreement (source confidential)*

Agreement	Is this agreement specific to project management, an allied profession or a generic Client/Consultant Agreement?	Does the agreement establish its intent, objectives, basis & the relationship between the parties?	Is the structure of the agreement appropriate & does it reinforce the nature of the intended relationship ?	Does the agreement reasonably assign risks to the party best able to manage them ?	Is the content & coverage adequate? What are the good & bad aspects of the agreement? General Comments
MOF	General Client Consultant agreement, primarily used for architectural, engineering & project management services.	No. The first hint is found in Clause 4.2 where design is referred to. Services and duties are found at Clause 18	No. There is no perceivable structure, or apparent logic to the formation or order of the agreement.	As the nature of the relationship can only be inferred with the extent and type of service not being clear, it's hard to say!	The agreement handles the majority of the mechanical clauses reasonably well & does not appear to be obviously related to other reviewed agreements. It directly contemplates production in the architectural sense. The agreement fails to establish the nature of the relationship between the parties & the services to be rendered by the Consultant. Obligations of the parties, cost, time and quality aspects can be considerably improved with some sections of fees and liability.
FIDIC	General Client Consultant agreement, primarily used for architectural, engineering & project management services.	Yes, In the first paragraph of the forward. The stated general nature precludes a definitive statement of intent or the a specific relationship	It is a reasonable approach, in that it commences with the obligations of the parties and moves through a range of standard clauses. Project specific details are to be added in Part II & the appendices.	Yes, as far as one can without specifying the services.	Being an expressly generic agreement for international use, the agreement has a number of clauses which are not applicable or useful in this context. The agreement as a model however is reasonably balanced and equitable to the extent of the identifiable obligations & risks. The approach adopted in drafting the agreement relies on the parties augmenting the agreement with additional information. This reliance may be risky in certain circumstances and makes some parts of the agreement overly simplistic. Fees, Consultant's obligations & fees are weak aspects of the agreement, whilst its use of simple English is applauded
HDV	A project management specific agreement, prepared by HDV for a specific project	Yes, in part. In Clause 4.0 by reference to a range of general services & another separate document.	There is no obvious structure, as the clauses are not grouped in separate sections. The clauses run on from 1.0 to 18.0, in a relatively logical progression only.	The only perceived risk of the Project Manager is that of negligence & termination through poor performance. Refer Clause 13.1 & note "Ensure" is defined!	The agreement is considerably deficient in the obligations of the parties, the treatment of documents, fees, liabilities & dispute resolution. A long definition of the project stages is provided, the relevance of which is hard to determine apart from the 1st para in Clause 3.0 from which we learn little. The services stated lack substance & definition & are more of a "motherhood all care & no responsibility" nature. Time, cost & quality management responsibilities are essentially omitted, apart from Clause 13.0, which is closer to a time extension clause found in some building contracts. The agreement offers this process little.
Private PM	A project management specific agreement, prepared by a Project Manager for a specific project	Yes, in part. By reference to a range of services set out in Schedule D at the back of the agreement & in Clauses 2 & 3.	General conditions form the front section, with a series of schedule covering scope, fees, programme, Client, PM and other consultants services. The structure is not user friendly.	As for HDV above.	The agreement reviewed was a working draft and supplied in confidence & whilst it was some 12 months old, it pertained to an actual project. The HDV agreement and this agreement are remarkably similar, to the extent that clause numbering & content matched exactly in many instances. The agreement was more biased in favour of the Project Manager in fees & more specific in defining the project. In general, the same comments apply to this agreement as above for the HDV agreement.

Exhibit 2
Summary of Review Findings of Nine Client/Consultant Agreements
 (Continued)

RAIA	<i>Royal Australian Institute of Architects, Client/Architect Agreement, Oct 1991</i>
ACEA	<i>The Association of Consulting Engineers Australia, Guideline Terms of Agreement, Oct 1983, Revised Feb 1991</i>
PM2	<i>Master Builders Association of NSW, Project Management Agreement, August 1990</i>
WAPMA	<i>Western Australia Project Managers Association, Terms of Engagement for Project Management Services, Edition 90.1 (a) August 1990</i>

RAIA	An agreement specific to the architectural profession	Yes, in part. By reference to a range of services set out in Part A. But certainly no inference can be drawn for its use for project management.	The structure is simple & logical in Parts A, B & C, for services, general conditions & fees respectively. Fee condition B3 may be better in Part C.	As a range of standard services and additional services can be checked off & added, there is a better chance the parties will avoid duplications, gaps and inappropriate assignment of risk.	Being specific to the architectural profession, comments and criticisms must acknowledge that the agreement was not drafted to cover the provision of project management services & consequently one should not expect it to be suitable & it is not. The point needs to be made however that some architects do offer project management services and hold themselves out to be project managers. Notwithstanding the separate issues this fact raises, the Client/Architect Agreement is not appropriate for the provision of project management services in its current form. The agreement does however illustrate a useful structure. It also is deficient in definitions, cost, time & quality management aspects of service in addition to dispute resolution procedures.
ACEA	An agreement specific to the engineering profession	As for architects, engineers' roles are much more clearly understood by the industry, however no services are specified apart from recommended construction phases services and disclaimers	The structure is simple & logical in Parts 1 to 8, for roles of the parties, fees, liability, documents and other standard general conditions. Blank sheets in the form of annexures are added at the back for services, special obligations of the Client & payments.	Yes, as far as one can without specifying the services. The parties rely on determining separately the services and adding them into the annexure. Not as risky with engineering compared to PM.	Generally as for the RAI A above. The ACEA agreement however is generic, in that it can be used for a broad range of engineering disciplines, such as structural, mechanical, electrical, fire protection, hydraulic, transportation etc. which is probably why a standard checklist is not included in the agreement in the same way as the RAI A agreement. The agreement could be improved in the areas of the consultant's obligations generally and specifically with respect to time, cost & quality management.
PM2	A project management specific agreement, prepared by a Builders' Association	No. The agreement obliquely implies the nature of the relationship in the Recitals and in Parts C, D & E.	The structure is poor with the set out being confusing. Services are mixed up with general conditions. A range of schedules are to be completed at the back which are poorly constructed.	No. There appears to be little or no risk assigned to the Project Manager [Clause 22(c)]. The use of "best endeavours" by the PM is required frequently	The document does not live up to its title. The agreement contemplates the PM providing construction management services [Clause 15 (d) & (f)]. The agreement can be improved in the obligations of the parties, documentation, time, cost & quality management & liability. The agreement offers this process little.
WAPMA	A project management specific agreement, prepared by a Project Managers' Association	Yes. In the Forward and implied in Section A.	The structure of the RAI A Client/Architect Agreement and this document are remarkably similar. It even treats fees in two sections as does the RAI A.	Yes. By providing the services and establishing the parties obligations (Clauses B1 & B2). The agreement appears to be reasonably balanced and equitable.	The agreement shares many of the benefits of the RAI A agreement, whilst focusing specifically on project management needs. The basis of the agreement is set out which assists the parties' understanding the nature of the relationship. A definitions section is omitted, as is provision for a percentage based fee. Termination, time and quality management aspects could be improved in addition to dispute resolution. The agreement is better and more suitable than any of the previously reviewed documents and can be a useful aid in this process as it was developed by a PM Association (in Australia) and has been in the market place for over 2 years.

As mentioned earlier, the RAIA and ACEA agreements are included for interest. The FIDIC agreement is a document generated in Europe. The MOF agreement is a generic Client/Consultant agreement. Therefore, the agreements that can undergo equitable comparative analysis in the context of this paper are the HDV, Private PM and PM2 and WAPMA agreements.

One can see by scanning the table shown in exhibit 1, the relative coverage and biases of the various agreements.

The WAPMA and PM2 agreements are the only agreements held out to be specific to building project management and publicly available. The WAPMA agreement is considerably more sophisticated and appropriate than the PM2 agreement for the provision of (executive) project management services. It is not however a recognised industry standard agreement and can still be improved.

Most of the agreements had a range of general conditions which were similar. Some agreements were obviously clones, with minor tuning. Some agreements omitted quite basic clauses and none provided mediation as an alternative dispute resolution procedure, which is understandable as mediation is not yet widely used, but which desirably should be an alternative method for resolution of disputes provided in contracts as it can provide a process in which disputes may be resolved rapidly, for considerably less cost by the parties themselves, whilst providing a means to preserve the relationship between the parties, which may otherwise be destroyed through the alternative processes of arbitration or litigation.

It would be imprudent to draft an industry standard Client/Project Manager Agreement without detailed examination of those agreements referred to above. Furthermore, legal advice should be sought, in addition to consultation with government agencies, the insurance industry and associations representing project managers, design consultants and building owners.

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The process used in drafting such an agreement will determine whether or not resources are used effectively and efficiently. Most importantly however, there is little point in drafting an agreement that may not be recognised and used by the industry through lack of industry involvement in its genesis.

Widely recognised and used building contracts are those which have been jointly developed by the key industry bodies representing the main parties involved in the execution and administration of those contracts. For example the JCC building contracts and companion sub-contracts (currently undergoing their fifth revision and are widely used) were prepared by the Joint Contracts Committee, comprising The Royal Australian Institute of Architects (RAIA), the Building Owners and Managers Association of Australia Limited (BOMA), the Master Builders' Construction Housing Association of Australia Inc (MBCHAA) and the Building Industry Specialist Contractors Organisation of Australia Ltd (BISCOA).

Chapter Five
***The Philosophical Basis of a
Model Client/Project Manager Agreement***

Chapter Five
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Model Client/Project Manager Agreement***

The philosophical basis of a Client/Project Manager Agreement should be derived from a combination of considerations regarding:

- a) The context within which building project management is performed.
- b) The expectations of the players and stakeholders involved with the supply and receipt of project management services.
- c) The nature of project management as a professional discipline and its relationship to other allied professions.

5.01 THE CONTEXT

The basic nature of the building and construction industry is such that most projects are in themselves prototypes, addressing the individual needs of clients. Products produced in manufacturing industry undergo exhaustive testing and analysis prior to final production. Not so with building. Generally a project has only one chance at achieving its objectives. Moreover, projects are generally complex, technical ventures, which are subject to change in a variety of areas throughout many stages of the procurement process.

Building projects are normally influenced by and contributed to by a broad range of individuals and organisations, in the form of the different guises the Client may take, authorities, design consultants, suppliers, contractors and financiers, all participating and interacting within a complex process and a competitive market.

5.02 THE EXPECTATIONS

What do Clients think Project Managers do and what do they expect from Project Managers?

Why has project management been embraced by many in the industry. What is the need that Project Managers address?

The answers to these questions will differ from one person to the next depending on their knowledge of and exposure to project management in one or more of its main forms. These answers will however clarify the expectations of the key players and stakeholders who have an interest in the practice and results of project management.

These expectations will change as the industry evolves and project management becomes more widely known and understood. The parties to a Client/Project Manager Agreement will form their relationship on the basis of their expectations. If a Client believes a Project Manager will get the job done on time and on budget no matter what, the Client may expect exactly that. In order to fulfil the Client's expectations, the Project Manager would require a high level of control and authority. The Client may want a degree of comfort in the Project Manager meeting the objectives, by the Project Manager guaranteeing performance or the Client imposing penalties. Here the risk allocations take place and are expressed in the agreement.

5.03 THE NATURE OF PROJECT MANAGEMENT

The nature of project management has already been briefly discussed in Chapter Three and addressed in many papers and works. In essence, project management is primarily concerned with co-ordination, communication, forward planning, organisation of human resources, objective setting, activity and time planning etc.

Project management should be non production oriented in its own right. It is a range of skill and techniques used to facilitate, add value to and achieve project objectives.

The types of Project Manager as Barnett (1990) illustrated, can be categorised according to the degree of independence, commercial interest, and eventually the extent of risk they accept. The type of Project Manager will vary the responsibilities and in particular the services provided.

The *Executive* Project Manager as defined by Barnett has many characteristics similar to those of an architect or engineer. Many architects and engineers become Project Managers. The nature of the relationship and role can be the same in many instances. There are also a range of services which are now common between these professions, an issue which requires careful consideration in regard to overlapping services and territorial issues.

These professions are complementary and together make a powerful professional skill and management resource, particularly if they share similar risk bases.

5.04 THE PHILOSOPHY

By adopting the *Executive* (agent) category of Project Manager at the outset of the thesis and taking into consideration the above issues, the philosophy of the Client/Project Manager Agreement desired is one in which the Project Manager assumes risk for his own errors and omissions, but is not expected to assume the risk for project performance in terms of time, cost or quality, as the Project Manager is not expected to have control over these variables when acting as an *Executive* Project Manager.

The Project Manager would, according to the Client/Project Manager Agreement being advocated, provide an independant professional management service as an agent of the Client. This approach will not prejudice the objectivity of the Project Manager and should not introduce potential conflict of interest or promote a potential adversarial relationship.

Chapter Six
***The Structure of the
Model Client/Project Manager Agreement***

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Model Client/Project Manager Agreement***

The structure and format of the agreement can be used to reinforce the aims and objectives of the agreement by producing a document which flows logically, is easy to reference and provides a degree of flexibility, recognising that revision to the agreement will invariably take place to reflect project specific needs.

It is submitted, that the structure outlined below achieves these objectives.

Foreward.

An Explanatory Statement, noting that the document is a "model agreement" due to the broad range of potential uses, specific to Building Project Management and in particular the provision of *Executive* Project Management Services i.e. the provision of independent Professional Consultant Services as an agent for and on behalf of a Client in a non adversarial/profit relationship.

This section would serve to explain the general structure and content of the document, how the various sections and parts are integrated and the necessity to complete sections which are project specific.

In addition to the above, this section would set out and clarify the performance responsibilities and obligations generally accepted by the Project Manager within this context.

List of Contents.

Client/Project Manager Agreement.

The formal instrument to be completed and executed by the parties to the Agreement.

Definitions & Interpretations

Definitions for specific terms used, where necessary.

General Objective & Intent of the Agreement

Brief statements describing what is normally expected of this type of Project Manager, the nature of the relationship and the intent of the agreement in reflecting this relationship.

Services to be provided by the Project Manager

A checklist of a range of services available, with a brief explanatory note for each service, including within the checklist the requirement to designate responsibility for the provision of a particular service, either by the Project Manager, the Client (or Client's Consultant). Where a service normally provided by a Project Manager is not required it can also be identified.

This checklist approach minimises duplicated and omitted services, whilst clearly assigning responsibility. Not only are the obligations and risks identified for discussion, with an increased likelihood of realistic assignment, the document can become a reference for the industry and shopping list for Clients selecting Project Managers.

Generic Client/Consultant agreements cannot adopt this approach and therefore rely on the parties identifying the services to be rendered, then writing them into the agreement in the form of schedules or annexures.

The agreement's primary purpose is to clearly assign responsibilities and obligations. The risks which arise cannot be determined in isolation of the services to be provided and therefore an agreement which assists the parties in identifying, discussing and agreeing the services as an intergral part of itself should also inherently handle risks better than the alternative approach.

The actual extent, detail and grouping of services will need to be continually monitored and revised to accommodate the changing market requirements and an expanding management base as the project management body of knowledge within the industry grows.

The Role, Responsibility & Authority of the Parties

There should be clear statements of what each party should expect from the other in general terms. It should set out a general performance specification for each party, including the express authority given by one party to the other under specific circumstances. To accept risk, it is reasonable to expect assignment of responsibility and control. One cannot exercise control unless the necessary authority is assigned. It is therefore important that the parties understand their obligations in this regard and that those obligations are clearly set out.

General Conditions

Those conditions common to most agreements cover matters such as:

1. Personnel.
2. Scope of Work and Performance Obligations.
3. Payment Obligations.
4. Conflict of Interest.
5. Variations to Contract.
6. Documents.
7. Transfer or Assignment.
8. Completion Time.
9. Suspension or Deferment of the Project.
10. Liability and Insurance.
11. Proper Law of Contract.
12. Termination.
13. Settlement of Disputes.
14. Service of Documents.

The Project Manager's Fee & Conditions

This is self evident and most important. It was interesting to note that in the process of review described earlier, the one area that most Client/Consultant agreements concentrated most on was the section on fees.

It is important to set out clearly the processes for handling fee claims and payments under various circumstances. What is the basis of the fee? At what intervals can fee claims be made? How are fee payments affected by disputes? What happens if the Client is late in payment? What is the fee position if the project is suspended or abandoned? These are some of the questions which should be addressed in this section.

Special Conditions

There should be a section within which special conditions may be inserted. Whilst amending standard form contracts should be avoided if possible, there will always be circumstances where the parties wish to add, delete or revise a contract to address their specific needs. After all, the parties are entitled to contract under any conditions they wish within the law. Contract amendment is often driven by a desire by either or both of the parties to transfer risk, obligation or responsibility, some of which are invariably brought about by commercial considerations.

Two points which should be remembered by the parties when contemplating special contract conditions to or revision of standard conditions:

- a) A contract should not be altered without the assistance of an appropriately experienced legal adviser, and
- b) To transfer obligations and risks to a party less able to manage those obligations and risks, usually results in consequential adjustments to the price to be paid as a result of such transfer.

The first point should be obvious enough to parties, but the second point deserves further discussion. The NPWC/NBCC Joint Working Party Report "No Dispute" (May 1990) at page 6 adopted the "Abrahamson obligation/risk allocation principles" in building contracts. Whilst they were addressing the relationship between Clients and Contractors, the basic principles are the same for Clients and Project Managers. They are in essence:

A party to a contract should bear a risk where:-

- a) The risk is in the party's control;
- b) The party can transfer the risk, e.g. through insurance, and it is most economically beneficial to deal with the risk in this fashion;
- c) The preponderant economic benefit of controlling the risk lies with the party in question;
- d) To place the risk upon the party in question is in the interests of efficiency, including planning, incentive and innovation;
- e) If the risk eventuates, the loss falls on that party in the first instance and it is not practicable, or there is no reason under the above principles to cause expense and uncertainty by attempting to transfer the loss to another.

In essence this means that:

"Obligations and/or risks within the control of the Principal (Client) should be borne by the Principal. Similarly, obligations and/or risks within the control of the Contractor(Project Manager) should be borne by the Contractor. There should be no discrepancy between responsibility of a party regarding an obligation and/or risk and the other party's authority to control or influence that risk." ("No Dispute" p12)

Annexure to the Agreement.

This is the proforma upon which project specific details are entered, describing the project name and address, Project Manager and address, specific details with regard to fee breakup, time charges and disbursements, project budget and time requirements.

Chapter Seven
Conclusions & Recommendations

Chapter Seven

Conclusions & Recommendations

7.01 CONCLUSIONS

The Benefits of an Industry Standard Client/Project Manager Agreement

A standard Client/Project Manager Agreement would assist the Industry in the following ways:

1. *Educating the Industry, by defining the nature and role of the Project Manager including the broad range of services available.*
2. *Reinforce the practice of executing Client/Consultant Agreements, by providing an industry recognised and accessible system.*
3. *Promote relationships between Clients and Project Managers which reflect their aspirations and are equitable in terms of sharing obligations and risks.*
4. *Create a recognisable contract form, upon which to build precedent and industry practice, which should help reduce the incidents of disputes.*
5. *Provide a framework for assessing services provided by Project Managers, which will assist in the structuring and evaluation of competitive fee submissions.*
6. *Engender an understanding of services and responsibilities, to avoid gaps and overlaps between the Client, Project Manager and other consultants.*
7. *Lower the cost of professional indemnity insurance by assisting insurers in evaluate the risk of providing cover on an industry wide basis.*
8. *Reduce the degree of duplication in the drafting and redrafting of agreements.*

As the building and construction industry move further towards the use of project management in the procurement of projects, the need for an industry standard Client/Project Manager Agreement will increase. Project Managers should ensure that an appropriate agreement is executed with their Clients, based on an industry standard agreement. This should be a requirement of the Code of Professional Conduct of the Australian Institute of Project Management (AIPM).

At the end of the day, a Client and a Project Manager are entitled to enter into any contractual relationship they wish. They should however both be aware of "normal industry practice" in this area of project management, the understanding of it and the normally expected relationship between a Client and Project Manager, as it will be this standard against which the contract will be measured in part should disputes arise and be litigated.

A range of Client/Consultant Agreements are currently used which are either not project management specific, or could be substantially improved.

The development of an industry standard Client/Project Manager Agreement, complements the process of professionalisation initiated by the AIPM and can augment project management educational programs. The profession can derive a range of real and intangible benefits in supporting this venture, the most significant of which, will be the establishment of clear, balanced and equitable relationships with Clients. Such an Agreement may also reduce potential disputes and lower the cost of professional indemnity insurance.

7.02 RECOMMENDATIONS

1. *The Australian Institute of Project Management (AIPM) formally resolve to support the genesis of an industry standard Client/Project Manager Agreement, establish a working party with defined terms of reference and timelines, with the objective of preparing an agreement through a consultative process with industry groups as soon as possible.*
2. *The AIPM working party review the work contained in this thesis, if appropriate seek consent to use the work as a basis for discussion within the working party, prior to amendment (if necessary) and distribution within the industry for submission of comments.*
3. *Determine the level of support within the industry and those organisations which may wish to endorse and support the venture, in the first instance for professional independent review and advice and ultimately for sponsorship and production.*
4. *The AIPM include within their Code of Professional Conduct a requirement for members to formalise their engagements by execution of a suitable agreement.*
5. *When completed, distribute copies of the Agreement to the academic institutions offering project management, architectural, engineering and building courses, for inclusion in their practice related subjects.*
6. *In due course publish material announcing the release of the Agreement with associated information regarding its use and benefits.*
7. *Investigate the need for Client/Project Manager Agreements which accommodate the types of Project Manager other than the Executive Project Manager, or alternatively the possibility of developing a model Client/Project Manager Agreement for use in the majority of building and construction projects.*

Chapter Eight
Bibliography

Chapter Eight

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Appendix 1
Exhibit 1 Large Scale

Exhibit I Contents of Nine Client/Consultant Agreements used for Building and Construction in Australia

MOF	Government of Victoria, Ministry of Finance, <i>Conditions of Engagement for External Consultants, Dec. 1991</i>
FIDIC	<i>Federation Internationale Des Ingenieurs-Consel's, Client/Consultant Model Services Agreement, 2nd Edition 1991</i>
HDY	<i>Health Department Victoria, Draft Project Director Agreement, March 1992</i>
NPWC	<i>National Public Works Conference, General Conditions of Engagement of Consultants, May 1992</i>
Private PM	<i>Private Consultant Project Manager's Consultant Agreement (source confidential)</i>
RALA	<i>Royal Australian Institute of Architects, Client/Architect Agreement, Oct 1991</i>
ACEA	<i>The Association of Consulting Engineers Australia, Guideline Terms of Agreement, Oct 1983, Revised Feb 1991</i>
PM2	<i>Master Builders Association of NSW, Project Management Agreement, August 1990</i>
WAPMA	<i>Western Australia Project Managers Association, Terms of Engagement for Project Management Services, Edition 90.1 (a) August 1990</i>

No	CLAUSE	MOF		FIDIC		HDY		NPWC		Private PM		RALA		ACEA		PM2		WAPMA	
		Chaus	No	Yes	Chaus	Yes	Chaus	No	Yes	Chaus	Yes	Chaus	Yes	Chaus	Yes	Chaus	Yes	Chaus	Yes
1	Agreement		1	12											8.8				
2	Definitions & Interpretation counting of days																2		B4-10
3	Evidence of Contract		2	21				2											B4-08-
4	Service of Documents, Notices		3	41		18		4	19					8.4		3, 4.6			B4-09
5	Directions of the Principal		4					14					B2.02	Part 2					
	documentation		4.1										B2.02	2.1					B2.01
	budget component		4.2										B2.02, B2.04						B2.01
	mode of direction (instruction)		4.3	8									B2.04	2.7		5, 19(c)			B2.01
6	Personnel																		
	principal's representative/authority		5	14				15					B1-10, B2-01	2.6		4(e), 4(c)			B2.04
	project manager's representative			14												4(c)			B1-10
	changes in personnel			15		4.1(f)			5.2										
7	Obligations of the Client		6	7				13					B2	Part 2					B2
	information provided by Principal							13					B2	2.1					B2.01, B2.03.3
	services of others			12									B1.08	2.4, 8.2					
	indemnity as agent																		
8	Obligations of the Consultant		18	3.4, 5		4		16				Part A, Annex J	Part A	Annex A					Part C,D,E,F, A1-, B1-01
	services & duties					3			3			B1.05							B1.05
	stages of service		18.5			10			10, Annex 3			B1.06							B1.06, B1.07
	responsibility for consultants								Annex 4, 5, 6			B1.08, B2.03							
	other consultants responsibilities			12															
	certificates on completion					11			11										
	final certificate					12			12										
	compliance with statutory requirements		18.3					16.3	Annex 3			Annex A, G							A4-06
	checking, signing and certification		18.4					16.4	Annex 3			B1.09, 0.11							
	inspection (not superintendence or supervision)											Annex A (B)							
	corrections		18.7, 18.8					16.5											B1.08
	project cost control		4.2			4.1(g)		16.6				B1.12		1.5, 4.4		23(c)			
	variations to project generally, time & cost			25				7				B1.04				19(b), 20			
	review of work by others		18.9					16.7				B3.08				19(b)			B1.03, B1.04
	quality assurance							16.8											B3.06
	confidentiality																		
9	Status of Consultant		7					12								29			B4-01
	authority of the consultant							3	1.1							8.4			
	Progress Reports		8									B1.02, B2.05		Annex A		8, 21			B1.02
10	Access (to the Client)		9					16.2	Annex 3							17, 18			A1.05
11	Access (to the Contract)			23, 24		14		7	14							19(a)			B1.03
12	Conflict of Interest		11	40		4.1(b)		11											

Exhibit 1 Contents of Nine Client/Consultant Agreements used for Building and Construction in Australia (Continued)

No	CLAUSE	MOP Clause	FIDIC Clause	HDY Clause	NFPC Clause	PrivatePM Clause	RALA Clause	ACEA Clause	PM2 Clause	WAPMA Clause
14	Documents	12, 18.6			9			Part 5		B4.01
	ownership	12.1			9.1		B4.02			B4.01
	copyright	12.2	39		9.3		B4.01	5.1, 5.2, 5.3		B4.01
	warranty and indemnity				9.2					
	publication	12.1	42	8	12	8		5.4		
	patents	12.3			9.4			5.5		
	insurance of documents	12.4			19.3					
15	Transfer of Assignment	13	38 i, ii	4 i (b)	5	16	B4.04	8.1	28a	B4.03
	sub-contracts	18.5	38 iii		6	16	B1.07	8.2	28b	
16	Completion Time	14	22	13	16.1	13				
	work to programme			13.1						
	delays				13.2, 13.4					
	client initiated delays		25	13.4						
	changed circumstances		26	13.4			B1.04	3.9		
17	Suspension of the Project	15.5	27	16	8.5	17		7.3, 7.4		
18	Termination	15	27, 28, 29	15	8	15	B4.03	Part 7	26	B4.04
	method of termination	15.1	27	15.3	8.1	15.1, 15.3	B4.03	7.1, 7.2	26	B4.04
	fee entitlement upon termination	15.2	28	15.4	8.2	15.4	B4.03	3.8	27	B4.04
	change in constitution of the consultant	15.3		15.2	8.3			8.1(4)		
	incapacitation of consultant	15.4			8.4					
	abandonment, suspension or deferment of project	15.5	27	13.5, 15.7, 16	8.5	13.5(i), 15.7	B3.06	7.3, 7.4		
19	Settlement of Disputes	16	43, 44	17	17	18	B4.06	Part 6	31	B4.02
	continuation of work during disputes	16.1		17.1	17.1	18				
	procedure for resolution of disputes	16.2	44	17.2, 17.6	17.2	18	B4.06	6.1, 6.2	31	B4.02
	arbitration	16.3, 16.4	44	17.7, 17.8	17.2	18.3, 18.6	B4.06	6.2	32	
	claim for loss or damage		43		8.3					
20	Law of Contract	17	36		2	1.3		8.6		B3, B4.07
21	Fees & Payments	19	30	5	18	6	B3	Part 3	23	Section C
	basis of fees	19.1	30	5.1	18.2	6.1	schedule C	3.1	22, 23	B3.01, B3.06, C1.01
	fee on a percentage basis	19.2			18.3		C1	3.2, Annex C	23(b)	
	fee on a lump sum basis	19.3			18.4		C2	3.2	23(a)	C1.02, C1.06
	fee on a time charge basis	19.4			18.5		C3	3.2	23(c)	C1.04, C1.06
	method of payment	19.5	31	5.4, 5.5, 5.6	18.1	6.4-6.6, 6.9	B3.01	3.4, 8.5	20	B3.01
	travel, subsistence & accommodation	19.6	30	5.3	18.6	7	C5	3.3, Annex C		C1.05
	other reimbursements	19.7	30	7	18.6	7	B3.11, C6	3.3, Annex C		C1.05
	payment of expenses	19.8			18.6	7	C5, C6			C1.05
	disputed invoices		34	5.7		6.7			24(b), 25	C1.02(a)
	independent audit/fee claim check		35	5.8			B3.11			B3.09
	fees due as a result of variations to the project	10.3		14.2			B2.06, B3.04	3.9	24	B3.04, C1.03
	fees due as a result of delays			5.2, 13.5	18.3-4	6.2	B3.05	3.7	25	B3.04, C1.03
	fees due as a result of suspension or deferment	15.5	28		8.5		B3.06, B3.07	3.9		B3.05, C1.02, C1.03
	interest on overdue payment		31			6.8	B3.02	3.5	30	B3.01, B3.02
	security provided by the Client for fee payment							3.10		
	fee for special contracts						B3.09			B3.07
22	Liability and Insurance	20	16-20	9	19		B4.05	Part 4		
	liability between the parties		18.2	16			B4.05.01	4.1, 8.3	6	B4.11
	joint & several liability within parties									
	duration of liability			9.3			B4.05.02	4.3		B4.05
	limit of compensation & indemnity			9.3			B4.05.03	4.2, 4.5		
	insurance for liability & indemnity	20	19	9.3	19.1	7.7				B1.09
	insurance of client's property		20							
	insurance by other consultants			9.5	19.4		B4.05.04			
23	Changes in Legislation		37					3.11	Yes	Yes
24	Annexure	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes

Appendix 2
Exhibit 2 Large Scale

Exhibit 2
Summary of Review Findings of Nine Client/Consultant Agreements

Legend

MOF

*Government of Victoria, Ministry of Finance, Conditions of Engagement for External Consultants,
 Dec 1991*

FTDIC

*Federation Internationale Des Ingenieurs-Consells, Client/Consultant Model Services Agreement,
 2nd Edition 1991*

HDV

Health Department Victoria, Draft Project Director Agreement, March 1992

Private PM Private Consultant Project Manager's Consultant Agreement (source confidential)

Agreement	Is this agreement specific to project management, an allied profession or a generic Client/Consultant Agreement?	Does the agreement establish its intent, objectives, basis & the relationship between the parties?	Is the structure of the agreement appropriate & does it reinforce the nature of the intended relationship?	Does the agreement reasonably assign risks to the party best able to manage them?	Is the content & coverage adequate? What are the good & bad aspects of the agreement? General Comments
MOF	General Client agreement, primarily used for architectural, engineering & project management services.	No. The first bin is found in Clause 4.2 where design is referred to. Services and duties are found at Clause 18	No. There is no perceivable structure, or apparent logic to the formation or order of the agreement.	As the nature of the relationship can only be inferred with the extent and type of service not being clear, it's hard to say!	The agreement handles the majority of the mechanical clauses reasonably well & does not appear to be obviously related to other reviewed agreements. It directly complements production in the architectural sense. The agreement fails to establish the nature of the relationship between the parties & the services to be rendered by the Consultant. Obligations of the parties, cost, time and quality aspects can be considerably improved with some sections of fees and liability.
FTDIC	General Client agreement, primarily used for architectural, engineering & project management services.	Yes, in the first paragraph of the general nature precludes a definitive statement of intent or relationship	It is a reasonable approach, in that it commences with the obligations of the parties and moves through a range of standard clauses. Project specific details are to be added in Part II & the appendix.	Yes, as far as one can without specifying the services.	Being an expressly generic agreement for international use, the agreement has a number of clauses which are not applicable or useful in this context. The agreement as a model however is reasonably balanced and equitable to the extent of the identifiable obligations & risks. The approach adopted in drafting the agreement relies on the parties augmenting the agreement with additional information. This reliance may be risky in certain circumstances and makes some parts of the agreement overly simplistic. Fees, Consultant's obligations & fees are weak aspects of the agreement, whilst its use of simple English is applauded
HDV	A project management specific agreement, prepared by HDV for a specific project	Yes, in part. In Clause 4.0 by reference to a range of general services & another separate document.	There is no obvious structure, as the clauses are not grouped in separate sections. The clauses run on from 1.0 to 16.0, in a relatively logical progression only.	The only perceived risk of the Project Manager is that of negligence & termination through poor performance. Refer Clause 13.1 & note "Ensure" is defined!	The agreement is considerably deficient in the obligations of the parties, the treatment of documents, fees, liabilities & dispute resolution. A long definition of the project stages is provided, the relevance of which is hard to determine apart from the 1st para in Clause 3.0 from which we learn little. The services stated lack substance & definition & are more of a "motherhood all care & no responsibility" nature. Time, cost & quality management responsibilities are essentially omitted, apart from Clause 13.0, which is closer to a time extension clause found in some building contracts. The agreement offers this process little.
Private PM	A project management specific agreement, prepared by the Project Manager for a specific project	Yes, in part. By reference to a range of services set out in Schedule D at the back of the agreement & in Clauses 2 & 3.	General conditions form the front section, with a series of schedule covering scope, fees, programme, Client, PM and other consultants services. The structure is not user friendly.	As for HDV above.	The agreement reviewed was a working draft and supplied in confidence & whilst it was some 12 months ago, it pertained to an actual project. The HDV agreement and this agreement are remarkably similar, to the extent that clause numbering & content matched easily in many instances. The agreement was more biased in favour of the Project Manager in fees & more specific in defining the project. In general, the same comments apply to this agreement as above for the HDV agreement.

Exhibit 2
Summary of Review Findings of Nine Client/Consultant Agreements
 (Continued)

RAIA

Royal Australian Institute of Architects, Client/Architect Agreement, Oct 1991

ACEA

The Association of Consulting Engineers Australia, Guideline Terms of Agreement, Oct 1983, Revised Feb 1991

PM2

Master Builders Association of NSW, Project Management Agreement, August 1990

WAPMA

Western Australia Project Managers Association, Terms of Engagement for Project Management Services, Edition 90.1 (a) August 1990

RAIA	An agreement specific to the architectural profession	Yes, in part. By reference to a range of services set out in Part A. But certainly no inference can be drawn for its use for project management.	The structure is simple & logical in Parts A, B & C, for services, general conditions & fees respectively. Fee condition B3 may be better in Part C.	As a range of standard services and additional services can be checked off & added, there is a better chance the parties will avoid duplications, gaps and inappropriate assignment of risk.	Being specific to the architectural profession, comments and criticisms must acknowledge that the agreement was not drafted to cover the provision of project management services & consequently one should not expect it to be suitable & fit it not. The point needs to be made however that some architects do offer project management services and hold themselves out to be project managers. Notwithstanding the separate issues this fact raises, the Client/Architect Agreement is not appropriate for the provision of project management services in its current form. The agreement does however illustrate a useful structure. It also is deficient in definitions, cost, time & quality management aspects of service in addition to dispute resolution procedures.
ACEA	An agreement specific to the engineering profession	As for architects, engineers' roles are much more clearly understood by the industry, however no services are specified apart from recommended construction phases services and draftsmen	The structure is simple & logical in Parts 1 to 4, for roles of the parties, fees, liability, documents and other standard general conditions. Blank sheets in the form of annexure are added at the back for services, special obligations of the Client & payments.	Yes, as far as one can without specifying the services. The parties rely on determining separately the services and adding them into the annexure. Not as risky with engineering compared to PM.	Generally as for the RAIA above. The ACEA agreement however is generic, in that it can be used for a broad range of engineering disciplines, such as structural, mechanical, electrical, fire protection, hydraulic, transportation etc. which is probably why a standard checklist is not included in the agreement in the same way as the RAIA agreement. The agreement could be improved in the areas of the consultant's obligations generally and specifically with respect to time, cost & quality management.
PM2	A project management specific agreement, prepared by a Builders' Association	No. The agreement obliquely implies the nature of the relationship in the Recitals and in Parts C, D & E.	The structure is poor with the set out being confusing. Services are mixed up with general conditions. A range of schedules are to be completed at the back which are poorly constructed.	No. There appears to be little or no risk assigned to the Project Manager [Clause 22(6)]. The use of "best endeavours" by the PM is required frequently.	The document does not live up to its title. The agreement contemplates the PM providing construction management services [Clause 15 (d) & (f)]. The agreement can be improved in the obligations of the parties, documentation, time, cost & quality management & liability. The agreement offers this process title.
WAPMA	A project management specific agreement, prepared by a Project Managers' Association	Yes. In the Preamble and implied in Section A.	The structure of the RAIA Client/Architect Agreement and this document are remarkably similar. It even treats fees in two sections as does the RAIA.	Yes. By providing the services and establishing the parties obligations (Clauses B1 & B2). The agreement appears to be reasonably balanced and equitable.	The agreement shares many of the benefits of the RAIA agreement, whilst focusing specifically on project management needs. The basis of the agreement is set out which assists the parties understanding the nature of the relationship. A definitions section is omitted, as is provision for a percentage based fee. Termination, time and quality management aspects could be improved in addition to dispute resolution. The agreement is better and more suitable than any of the previously reviewed documents and can be a useful aid in this process as it was developed by a PM Association (in Australia) and has been in the market place for over 2 years.

Appendix 3
The Client/Project Manager Agreement

CLIENT/PROJECT MANAGER AGREEMENT
FOR THE PROVISION OF CONSULTANT PROJECT MANAGEMENT SERVICES
WITHIN THE BUILDING & CONSTRUCTION INDUSTRY

February 1993

Prepared by
Stephen M Morris ARAIA, MAIPM
Architect & Project Manager
B.Arch, Grad. Dip. Building Project Management

Copyright 1993

FOREWORD

This Agreement is suitable for use where a Client wishes to engage a Project Manager to provide an independent, professional, management service, as an agent of the Client on building and construction projects.

The generic nature of project management itself and the various forms that project management can take, create circumstances where it is important that the Client and the Project Manager clearly understand the nature of project management to be delivered and the attendant obligations and risks each party is to assume responsibility for.

The type of Project Manager and project management services contemplated by this Agreement is one of a professional, independent adviser, manager and co-ordinator of services, where no commercial interest with respect to equity in the Project, will flow to the Project Manager.

This Agreement is not suitable where a Project Manager is required by a Client to assume direct responsibility to provide services in a business, technical, design or construction nature.

These services are normally provided by Project Managers in the form of design and construct delivery systems, where responsibility for production and delivery is assumed by the Project Manager, with the associated risks, for a fee (or consideration) which reflects the services, responsibilities and risks undertaken by the Project Manager.

Amendment of this document should not be undertaken without legal advice and a clear understanding by all parties involved in such amendments, of the relationship to be formed between the Client and the Project Manager, services to be rendered, allocation of obligations and risks and other rules necessary to formalise the framework of the relationship, particularly where the agency concept is not to apply.

The services set out in Section 2 of this Agreement represent a range of services which would normally be provided by an *Executive Project Manager** contemplated by this Agreement.

The services are not necessarily exhaustive and provision is made for additional services to be added as necessary, within the context and framework of the Agreement and relationship.

Before executing the Agreement the parties should carefully examine Section 2 and agree on the services which are required and to whom responsibility is to be assigned.

This process is fundamental to allocating obligations and risks and will fundamentally influence the Project Manager's fee.

In addition to completing Section 2, the parties are required to complete the Annexure to the Agreement and set out any special conditions within Section 7 prior to executing the Agreement.

* As defined by Barnett A M (1990) Australian Construction Law Reports, Vol 8, No. 4, pp137-146.

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CLIENT/PROJECT MANAGER AGREEMENT

THIS AGREEMENT is made on theday

of 19

between

of

hereinafter called **the Client**,

and

of

hereinafter called **the Project Manager**

in respect of

hereinafter called **the Project**,

at

.....

hereinafter called **the Site**. (Insert actual location)

IT IS AGREED THAT:-

1. **The Project Manager will provide to the Client services in respect of the Project as described in the Sections One and Two.**
2. **The Client will pay the Project Manager for these services in accordance with the conditions set out in Section Six.**
3. **The Client will comply with the obligations imposed on the Client under this Agreement, subject to the relevant provisions as set out in Sections One to Six inclusive.**
4. **The Project Manager will comply with the obligations imposed on the Project Manager under this Agreement, subject to the relevant provisions as set out in Sections One to Six inclusive.**

AS WITNESS the hands of the parties hereto:-

Signed by or on behalf of the Client

In the presence of

Signature

Address

Signed by or on behalf of the Project Manager

In the presence of

Signature

Address

(Where each or either party is a corporation)

THE COMMON SEAL OF (The Client)
PTY LTD was affixed in accordance with its Articles of Association in the presence of

Director:

Company Secretary:

THE COMMON SEAL OF (The Project Manager)
PTY LTD was affixed in accordance with its Articles of Association in the presence of

Director:

Company Secretary:

DEFINITIONS & INTERPRETATION OF THIS AGREEMENT.

Definitions:

In this Agreement the following words and expressions shall have the meanings hereby assigned to them (except where the context otherwise requires):

"Agreement" or **"the Agreement"** or **"this Agreement"** means the document or all the documents which constitute or evidence the final and concluded agreement between the Client and the Project Manager concerning the Project.

"Authorities" means all Commonwealth, State, Territorial and Local Government departments, bodies, instrumentalities and other public authorities, which in any way affect or are applicable to the performance of the Project.

"Actual Expenses" means those items of expenditure expended or incurred by the Project Manager which are reimbursable by the Client under the terms of this Agreement.

"Brief" or **"the Brief"** means all information provided by the Client from time to time, describing the functional, operational, qualitative, quantitative, time and cost requirements in respect of the Project.

"Budget" or **"Project Budget"** as stated in the Annexure hereto means the monetary amount approved for the Project or each component of the Project and in accordance with the relevant cost plan.

"Client" or **"the Client"** means the party named in the Agreement and the Annexure hereto as such and includes his legal successors and permitted assigns.

"Consultant" includes any qualified person engaged by the Client or by the Project Manager on behalf of the Client to provide professional advice and/or services in connection with the Project.

"Contract" includes building and supply contracts between the Client, Contractors and suppliers, whether connected with the Project or not.

"Contractor" includes a construction manager, builder, trade contractor or supplier who has contracted directly with the Client for the purposes of the Project.

"Direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement which the Client may make, give or issue pursuant to the provisions of this Agreement.

"Documents" includes any data stored by any means and produced or used in the course of the Project.

"General Conditions" means the general conditions of this Agreement.

"Intellectual Property" means all copyright, patents, registered and unregistered trade marks, registered designs, trade secrets and know how.

"Master Programme" means the overall duration time for this Project including all phases as provided for in this Agreement.

"Person" includes a partnership or body corporate or unincorporated or joint venture as well as an individual or any other legal person.

"Project" or **"the Project"** means the specific job or undertaking as stated in the Annexure, for which the Project Manager has been engaged to act as Project Manager by the Client, pursuant to this Agreement.

.....

"Project Manager" or **"the Project Manager"** means the party named in the Agreement and the Annexure hereto who as party to the Agreement has been contracted to manage and co-ordinate the Project and includes his successors and permitted assigns.

"Services" or **"the Services"** means the services to be provided by the Project Manager and as identified in this Agreement.

"Day" means a normal working day based on a five day working week excluding Saturdays, Sundays, public holidays and rostered days off.

Interpretations

The clause headings and sub clause headings in these conditions shall not be deemed to be part thereof and shall not be used in the interpretation thereof or of this Agreement.

Words in this Agreement importing the singular shall be deemed to include the plural and vice versa where the context so requires. Words importing the masculine shall be deemed to include the feminine and the neuter.

Section One

GENERAL OBJECTIVE & INTENT OF THIS AGREEMENT

1.01 GENERAL OBJECTIVE.

The engagement of the Project Manager under this Agreement, is to provide the services associated with the procurement of the Project to comply with the Client's requirements in respect of function, cost, time, quality and durability as set out in this Agreement.

1.02 GENERAL INTENT OF AGREEMENT.

The Project Manager shall commence, carry out and complete the management and co-ordination of the Project, in accordance with the conditions and for the consideration set out in this Agreement and the Client shall pay for such services as set out in this Agreement.

It is the general intent of this Agreement to reflect the relationship between the Client and the Project Manager as an Executive Project Manager and agent for the Client as more fully described in this Agreement.

Section Two

SERVICES TO BE PROVIDED BY THE PROJECT MANAGER**2.0 GENERAL OBLIGATION**

The Project Manager shall carry out the services as identified in Clauses 2.01 to 2.05

2.01 GENERAL SERVICES.

In addition to the Project Manager's obligations as set out in Section Four, the Project Manager shall where indicated and to the extent specified hereunder, provide the following services for the duration of the Agreement. Where the Project Manager is not to provide a services as set out in this Clause 2.01, but the Client is to provide or be responsible for that service, the box marked "By Client" should be completed as appropriate.

*(tick the appropriate boxes and delete as appropriate where marked *)*

By Project Manager	By Client	Not Required	Services
.01			Project Reports:
.02			The Project Manager will report in writing (at intervals stated in the Annexure), to the Client who is to be kept fully informed on all aspects of the Project. Reports will include:- expenditure against budget and estimated cost at completion. progress compared against programme in terms of work completed and work yet to be completed. required modifications to programme and budget. design and construction changes. all other matters critical to the Project and to the interests of the Client pertaining to the Project.
.03			Cost Planning:
.04			The Project Manager * (will organise preparation of / prepare) overall and detail cost plans for the entire Project with cost requirements that fall within acceptable limits and are realistic and achievable and will constantly monitor cost performance.
.05			Time Planning.
.06			The Project Manager * (will organise preparation of / prepare) overall and detailed programmes for the entire Project with time requirements that fall within acceptable limits and are realistic and achievable and will constantly monitor time performance.
.07			General Organisation of the Project.
.08			The Project Manager shall set-up an effective Project Management system to take into account the size, nature, complexity, scope and purpose of the Project.
.09			Value Management.
.10			The Project Manager *(will organise preparation of / prepare) value management routines and reports on the Project at suitably early periods in the design evolution, to ensure the most appropriate balance between function, time, cost and quality objectives.
.11			Labour & Industrial Relations.
.12			The Project Manager *(will organise preparation of / prepare) labour and industrial relations plans for the Project, taking into account the nature of the Client's operations, project and industrial relations environment on the site and generally.
.13			Construction Techniques and Buildability.
.14			The Project Manager *(will organise preparation of / prepare) review of proposed and optional construction techniques and buildability of the Pproject.
.15			Building Materials and Equipment.
.16			The Project Manager *(will organise preparation of / prepare) reports on building materials and equipment proposed for the Project including initial procurement, maintenance and suitability for purpose.
.17			Life Cycle Costing.
.18			The Project Manager *(will organise preparation of / prepare) life cycle cost analysis of major elements of plant and equipment and other elements where quantities involved are such that life cycle costing is justified.

2.01 GENERAL SERVICES (Continued)

*(tick the appropriate boxes and delete as appropriate where marked *)*

By Project Manager	By Client	Not Required	Services
.19			Equipment Inventory and Procurement.
.20			The Project Manager *(will organise preparation of / prepare) an inventory of all equipment to the agreed level of detail with the Client, including provision of advice regarding procurement of new equipment and transfer and/or disposal of existing equipment.
.21			Quality Assurance.
.22			The Project Manager *(will organise preparation of / prepare) and administer an appropriate quality assurance program in respect of the work in relation to the Project.

2.02 PROJECT INCEPTION & PRE-DESIGN SERVICES

In addition to the Project Manager's services as identified in Clause 2.01, the Project Manager shall where indicated and to the extent specified hereunder provide the following services in connection with the Agreement. Where the Project Manager is not to provide a services as set out in this Clause 2.02, but the Client is to provide or be responsible for that service, the box marked "By Client" should be completed as appropriate.

*(tick the appropriate boxes and delete as appropriate where marked *)*

By Project Manager	By Client	Not Required	Services
.01			The Project Scope & Parameters.
.02			Establish with the assistance of the Client an agreed statement of the project objectives, overall scope and parameters known to influence the procurement of the Project, in terms of organisational and operational requirements, function, cost, time and quality.
.03			The Project Manager *(will organise preparation of / prepare) to the level of detail appropriate a broadly based reconciliation of the Client's project objectives as a basis of establishing the frame work for the Project.
.04			Finance & Feasibility Studies & Reports.
.05			To the extent appropriate arrange for technical appraisals, user studies, planning and design studies, statutory authority enquires, financial studies, reports, time programmes and marketing studies to establish the detailed feasibility and other relevant issues with respect to the Project.
.06			Project Procurement Advice.
.07			To the extent appropriate, advise on means of achieving project objectives with respect to project team composition, Project funding and financing, Project phases and time programmes, and general procurement options.
.08			Preparation of Project Brief, Space Programme & Analysis.
.09			To the extent appropriate, *(arrange for the preparation of / prepare) a functional brief describing the organisational structure, individual functional groups and their relationships, detailed space programme and detailed technical and physical requirements taking into account current and future needs.
.10			Site Use Studies.
.11			Arrange for analysis of the site and review of existing conditions, to establish locations of facilities, site improvements, landscape and services infrastructure etc.
.12			Consultation with Statutory Authorities & Zoning Analysis.
.13			To the extent appropriate, arrange preliminary conferences with statutory authorities to determine in general terms planning issues, potential conflicts, approval processes and timing and processes associated with re-zoning and appeals.

2.02 PROJECT INCEPTION & PRE-DESIGN SERVICES (Continued)

(tick the appropriate boxes and delete as appropriate where marked *)

By Project Manager	By Client	Not Required	Services
.14			Selection & Engagement of Consultants.
.15			To the extent appropriate, compile consultant briefs and terms of reference, make recommendations and assist the Client in the appointment of various types of consultants such as the following: a) Business & Commercial Consultants Advertising. Financial/Accounting. Insurance. Legal. Marketing. Public Relations. Property/Real Estate/Valuation. b) Design & Construction Consultants. Architect. Structural/Civil/Geotechnical. Land Surveyor. Electrical Engineer. Mechanical Engineer. Fire Protection Engineer. Transportation Engineer. Security. Acoustics. Landscape Architect. Interior Design. Hydraulics. Quantity Surveying/Cost Planning. Time Programming
.16			Research, Data Gathering & Analysis.
.17			To the extent appropriate, *(arrange for / undertake) general and detailed research relative to the Project requirements including:
.18			General site infrastructure & extent of utilities.
.19			Records of available accounts and operational expenditure.
.20			External utilities, capacity and location serving the site.
.21			Asbestos audit.
.22			Three dimensional physical survey of buildings.
.23			Descriptions of materials and structure.
.24			Determine all existing awards and building regulation dispensations.
.25			Establish position of warranties and guarantees.
.26			Topographical land survey including features, boundaries and underground services.
.27			Geotechnical survey.
.28			Survey and inventory of all potentially relocatable buildings, fittings and equipment.
.29			Arrange and conduct inspections of recent comparable and relevant facilities * (locally / interstate / overseas)
.30			Establish evaluation criteria and analysis objectives and provide qualitative analysis of the research and data gathered.
.31			Environmental Effects Statement.
.32			To the extent appropriate *(arrange for the preparation of / prepare) an environmental effects statement (EES), prepare for and attend public hearing and appeals as the proponent or opponent as the case may be.
.33			Heritage Studies and Building Assessment.
.34			To the extent appropriate *(arrange for the preparation of / prepare) heritage surveys, studies and opinions as necessary to support the Project objectives.

2.03 PROJECT DESIGN & CONSTRUCTION STAGE.

In addition to the Project Manager's services as identified in Clauses 2.01 and 2.02, the Project Manager shall where indicated and to the extent specified hereunder provide the following services in connection with the Agreement. Where the Project Manager is not to provide a services as set out in this Clause 2.03, but the Client is to provide or be responsible for that service, the box marked "By Client" should be completed as appropriate.

(tick the appropriate boxes and delete as appropriate where marked *)

By Project Manager	By Client	Not Required	Services
.01			Site Masterplanning.
.02			Monitor the quality and production of a masterplan for overall development and phasing of the Project showing its best utilisation.
.03			Schematic Design.
.04			Monitor quality and production of schematic designs prepared by the design team and coordinated by the principal design consultant.
.05			*(organise provision of / provide) indicative estimates of cost.
.06			Arrange for the preparation of suitable documents for submission to statutory authorities for planning approval. Liaise with planning authorities and monitor the progress of the application. Arrange for consultants to make representations and respond as necessary.
.07			Design Development.
.08			Monitor quality and production of design development by the design team, including as appropriate, developed sketch drawings, models, reports, advice on design of architectural and specialist services.
.09			*(organise provision of / provide) time programme.
.10			*(organise provision of / provide) estimates of cost.
.11			*(organise provision of / provide) advice regarding available options for the most appropriate form of building contract(s) for the project.
.12			*(organise provision of / provide) value management services.
.13			Contract Documentation.
.14			Monitor quality and production of documents sufficient for the calling of tenders and/or negotiating contracts including as appropriate coordination and integration of various consultants work.
.15			*(organise provision of / provide) time programme.
.16			*(organise provision of / provide) estimates of costs.
.17			To the extent appropriate and in consultation with the design and construction consultants, determine if necessary trade packages for documentation, to suit the agreed project procurement strategy.
.18			Arrange for all necessary documents to be compiled and submitted for building and other necessary approvals to statutory authorities or certification consultants as the case may be.
.19			Monitor the progress of such applications and arrange necessary response and revision in order to secure approvals as soon as practicable.

2.03 PROJECT DESIGN & CONSTRUCTION STAGE. (Continued)*(tick the appropriate boxes and delete as appropriate where marked *)*

By Project Manager	By Client	Not Required	Services
.20			Contract Administration.
.21			Assist the Client in determining a shortlist from which appropriately qualified and experienced trade and/or main contractors will be invited to tender.
.22			Assist the Client in determining the evaluation criteria for tender assessment.
.23			*(monitor calling of / call) tenders and/or negotiating contracts in conjunction with or on behalf of the Client.
.24			*(monitor analysis and advise / analyse and advise) in respect of tenders received.
.25			Arrange for the preparation and execution of contract documents.
.26			*(monitor administration of / administer) the contract including inspection of the works by the various design consultants as appropriate.
.27			*(monitor issue of / issue) contractual certificates for quality compliance, payments, variations, cost adjustments, extension of time, practical completion and other matters included in the building contract(s) and where appropriate, authorise on behalf of the Client.
.28			Cost Planning.
.29			*(monitor / manage) cost performance for the duration of the project.
.30			Time Planning.
.31			*(monitor / manage) time performance for the duration of the project.

2.04 PROJECT HANDOVER & COMMISSIONING STAGE.

In addition to the Project Manager's services as identified in Clauses 2.01, 2.02 and 2.03, the Project Manager shall where indicated and to the extent specified hereunder provide the following services in connection with the Agreement. Where the Project Manager is not to provide a services as set out in this Clause 2.04, but the Client is to provide or be responsible for that service, the box marked "By Client" should be completed as appropriate.

*(tick the appropriate boxes and delete as appropriate where marked *)*

By Project Manager	By Client	Not Required	Services
.01			Handover.
.02			*(assist with / arrange) the handover of the project in a state of readiness for occupation upon practical completion of the works.
.03			Commissioning Assistance.
.04			*(provide / arrange) management assistance in the explanation and utilisation of systems and equipment, initial startup and testing, adjustment and balancing, consultation with and training of Client's personnel.
.05			Post Construction Documentation.
.06			Arrange provision of "as constructed" drawings showing location of services and the like including any significant changes in the work during construction, together with any other data as appropriate.
.07			Arrange provision of maintenance and operational manuals for buildings, finishes, services, plant and equipment.
.08			Arrange provision of all records of testing, compliance and approval by authorities, warranties and guarantees in accordance with contract requirements.
.09			*(arrange provision of / provide) taxation depreciation schedules.
.10			Defects Liability Period.
.11			*(arrange for monitoring of / monitor) the performance of the completed building during the defects liability period of the construction contract/s and ensure that reporting of defects and attention to rectifications is thorough and punctual and of minimum disruption to the Client and occupants of the building / works.

2.04 PROJECT HANDOVER & COMMISSIONING STAGE. (Continued)

*(tick the appropriate boxes and delete as appropriate where marked *)*

By Project Manager	By Client	Not Required	Services
			Final Accounting.
.12			
.13	*(monitor the resolution of / resolve) the final accounting of the project including all variations and claims and report to the Client.		
			Final Certificate.
.14			
.15	Arrange for a final certificate to be issued by the principal design consultant upon satisfactory completion of all contractual obligations.		

2.05 SUPPLEMENTARY, SPECIAL & ADDITIONAL SERVICES.

In addition to the Project Manager's services as identified in Clauses 2.01, 2.02, 2.03 and 2.04, the Project Manager shall where indicated and to the extent specified hereunder provide the following services in connection with the Agreement. Where the Project Manager is not to provide a services as set out in this Clause 2.05, but the Client is to provide or be responsible for that service, the box marked "By Client" should be completed as appropriate.

*(tick the appropriate boxes and delete as appropriate where marked *)*

By Project Manager	By Client	Not Required	Services
			Project Promotions and Public Relations.
.01			
.02	Arrange for the preparation of press releases, special brochures and other promotional material including models and presentations at public relations and/or promotional meetings.		
			Expert Witness.
.03			
.04	Prepare material and/or opinions and serve as an expert witness in connection with any public hearing, arbitration, evaluation, assessment, mediation, conciliation, planning or building appeal, or legal proceeding.		
			Additional Services.
.05			
.06	The additional services listed hereunder are to be provided by the Project Manager and have not been included in the preceding description of services.		

*Section Three***THE ROLE, RESPONSIBILITY & OBLIGATIONS
OF THE CLIENT.****3.01 CLIENT'S INSTRUCTIONS**

The Client shall at the Client's expense, in a timely and orderly manner, give to the Project Manager adequate written Directions, defining the Client's requirements, including programme, budget, scope of work and all other Project criteria.

The Client warrants the accuracy and completeness of all Directions, particulars and information provided by him under this Agreement.

The Client shall promptly provide written Directions in response to any request for same by the Project Manager and all Directions shall be supplied directly by the Client to the Project Manager and not to any Consultant or Contractor.

3.02 SITE PARTICULARS & SPECIALIST CONSULTING.

All services required for the fulfilment of this Agreement, other than those to be provided by the Project Manager pursuant to this Agreement, shall be provided by the Client at the Client's expense and without limiting the generality of the foregoing shall include legal and survey particulars concerning the site, including particulars of existing structures, services and features, sub surface conditions and adjoining sites and structures and for the provision of specialist services not normally provided by a Project Manager.

Should the Client direct the Project Manager to obtain such particulars and specialist services, the Project Manager shall do so as agent of the Client and at the Client's expense.

3.03 CLIENT'S STATEMENT OF PROJECT MANAGER'S RESPONSIBILITIES.

The Client shall promptly notify each Consultant of the authority given to the Project Manager to act on behalf of the Client in the performance of the Project Manager's duties under this Agreement and shall promptly notify the Project Manager of such notification.

3.04 CONSULTANTS APPOINTED BY CLIENT.

Where the Client wishes to procure the services of and directly appoint other Consultants to the Project, the Client shall notify the Project Manager giving the Project Manager the opportunity to make a reasonable objection if any proposed Consultant is unacceptable to the Project Manager. The Client shall include in all each Consultant's conditions of engagement a condition requiring each Consultant to co-operate with the Project Manager and co-ordinate the Consultant's services with the services to be provided by the Project Manager.

The Project Manager shall be responsible for the management of the Consultants, but no direct contract shall exist between the Project Manager and such Consultants. The Client is to ensure that the conditions of engagement for such Consultants shall include provision that information required by the Project Manager in the performance of his duties, is provided when reasonably required by the Project Manager without charge to the Project Manager.

3.05 CLIENT'S REPRESENTATIVE.

The Client shall, if the Client is not a natural person (and may if the Client is a natural person) appoint a natural person as the Client's Representative for all matters relating to the Project. The Representative appointed by the Client will act for the Client in all matters and the Client agrees that all Directions given by the Client's Representative on behalf of the Client are binding on the Client.

Not more than one Client's Representative shall be delegated the same function at the same time.

For the purposes of this Agreement, the Project Manager shall recognise and accept such Client's Representative as lawfully entitled to exercise the powers, duties, discretions and authorities vested in the Client.

An appointment under this Clause does not prevent the exercise of a power, duty, discretion or authority by the Client and the Client may at any time revoke such appointment by notice to the Project Manager.

The Client may at any time replace the Client's Representative.

The Client shall forthwith notify the Project Manager in writing of:

- a) the appointment and the name of any Client's Representative and the functions delegated to such Client's Representative:
- b) any change to the appointment or function of the Client's Representative:
- c) the termination of the appointment of the Client's Representative.

3.06 SUPPLY OF NECESSARY EQUIPMENT & FACILITIES.

The Client shall make available to the Project Manager at the place and at the time provided for in the Agreement, the equipment and the facilities specified in the Annexure .

3.07 ARRANGE ACCESS FOR THE PROJECT MANAGER.

The Client shall as soon as practicable make arrangements to enable the Project Manager to enter upon the site and other lands as necessary, to enable the Project Manager to perform the Services to be provided under this Agreement.

3.08 GIVE NOTICE OF MATTERS LIKELY TO CHANGE SCOPE OR TIMING.

If the Client becomes aware of any matter which may change the scope or timing of the services or the Project, then the Client shall give written notice to the Project Manager immediately upon becoming aware of any such matter.

3.09 INDEMNITY AS AGENT.

The Client indemnifies and agrees to indemnify and keep indemnified the Project Manager against all claims, liability, actions, damages, cost, loss and expense that the Project Manager may suffer or incur arising directly or indirectly from the Project Manager undertaking any obligations under this Agreement, as agent on behalf of the Client.

*Section Four***THE ROLE, RESPONSIBILITY & AUTHORITY
OF THE PROJECT MANAGER.****4.01 ROLE OF THE PROJECT MANAGER.**

The Client hereby appoints the Project Manager as agent of the Client to act as Project Manager of the various activities involved and associated with the Project as set out in this Agreement.

4.02 PROFESSIONAL STANDARD OF CARE.

The Project Manager shall exercise the degree of skill, care and diligence normally exercised by members of the project management profession performing services of a similar nature, in accordance with ethics of the project management profession. The Project Manager shall employ competent staff with qualifications and experience appropriate for the work under this Agreement.

Notwithstanding the provisions of Clause 4.05, the Client's acceptance of the Project Manager's work under this Agreement shall not relieve the Project Manager from responsibility for the Project Manager's obligations to comply with the requirements of this Agreement.

4.03 OVERALL PROJECT BRIEF & PARAMETERS.

Except where otherwise provided in this Agreement, the Project Manager shall with the co-operation of the Client become familiar with the Client's Project needs and resources and reach an understanding of the terms of reference for the Project and establish for the Client's approval all relevant Project parameters, scope, general and performance objectives, which shall become the basis for the Project.

The Project Manager shall at the times required by this Agreement, compile this basic information and as the Project progresses shall from time to time monitor and report to the Client. The Project Manager shall amend the general and detailed Project objectives and parameters only as agreed by the Client and shall obtain the Client's approval before proceeding from one stage of the Agreement to the next as defined in Sections 2.02, 2.03 and 2.04.

4.04 GENERAL NATURE OF THE PROJECT MANAGER'S SERVICE.

Except where otherwise provided in this Agreement, the Project Manager shall, consistent with and subject to those requirements identified in Clause 2.01 of this Agreement, undertake:

- a) To translate the Client's requirements into a Project Brief and programme of work covering all aspects of the Project for the agreed Project duration;
- b) To define all management and technical functions and establish their boundaries;
- c) To ensure that systems and procedures for carrying out the Project are properly applied throughout the Project;
- d) To establish the roles and responsibilities of all parties to the Project clearly and co-ordinate such parties so that individually and collectively they are enabled to carry out their tasks efficiently;
- e) To ensure that progressive review takes place with respect to the scope, cost, programme and quality of all aspects of the Project;
- f) To assess changes promptly and make recommendations to the Client where necessary;

4.04 GENERAL NATURE OF THE PROJECT MANAGER'S SERVICE.(Continued)

- g) To assess the status of work at regular intervals, trace causes of deficiencies and take and expedite corrective action;
- h) To report on a regular basis and keep the Client fully informed on all aspects of the Project;
- i) To establish project accounting procedures and cost controls, which are capable of being audited, to cover all applicable stages of the Project.

4.05 PROJECT MANAGER'S RESPONSIBILITY & AUTHORITY

4.05.01 Service:

The Project Manager shall provide management and coordination skills and diligently perform the Services required to be undertaken by the Project Manager pursuant to this Agreement. In the performance of those Services, the Project Manager shall exercise reasonable skill and care and shall utilise appropriate business management methods.

Additional Services may from time to time be agreed between the parties. Any adjustment of the payment to the Project Manager as determined by this Agreement shall be agreed at the time.

4.05.02 Authority.

The Client expressly authorises the Project Manager to act as the Client's agent in such matters as are set out or implied in any Contract adopted for this Project.

4.05.03 Duty of Care & Exercise of Authority.

Notwithstanding the provisions of Clause 4.04, where the Services provided by the Project Manager include the exercise of powers or performance of duties authorised or required by the terms of a Contract between the Client and Contractor or Consultant, the Project Manager shall:

- a) Comply with the Contract as though the Client.
- b) If authorised by the Client to act as a certifier, do so honestly and fairly between the Client and the Contractor or Consultant, so as to arrive at a reasonable measure or value of work, quantities or time..
- c) If authorised by the Client vary the obligations of a Contractor or Consultant, subject to obtaining the prior approval of the Client to any variation which can have a substantial effect on costs, quality or time (except in any emergency when the Project Manager shall inform the Client as soon as practicable).

Where the Client requests the Project Manager to undertake responsibilities and duties and exercise powers under a Contract between the Client and a Contractor or Consultant, after the execution of this Agreement, the Project Manager shall be under no obligation to comply with the Client's request if the Project Manager has a reasonable objection to the request.

4.06 PROJECT MANAGER'S REPRESENTATIVE.

The Project Manager shall, if the Project Manager is not a natural person (and may if the Project Manager is a natural person) appoint a natural person as the Project Manager's Representative for all matters relating to the Project. The Representative appointed by the Project Manager will act for the Project Manager in all matters and the Project Manager agrees that all Directions given by the Project Manager's Representative on behalf of the Project Manager are binding on the Project Manager.

Not more than one Project Manager's Representative shall be delegated the same function at the same time.

For the purposes of this Agreement, the Client shall recognise and accept such Project Manager's Representative as lawfully entitled to exercise the powers, duties, discretions and authorities vested in the Project Manager.

An appointment under this clause does not prevent the exercise of a power, duty, discretion or authority by the Project Manager and the Project Manager may at any time revoke such appointment.

The Project manager may at any time replace the Project Manager's Representative.

The Project Manager shall forthwith notify the Client in writing of:

- a) the appointment and the name of any Project Manager's Representative and the functions delegated to the Project Manager's Representative:
- b) any change in the appointment or function of the Project Manager's Representative:
- c) the termination of the appointment of the Project Manager's Representative.

4.07 EXCLUSIONS TO PROJECT MANAGER'S RESPONSIBILITY.

4.07.01 Inspection.

Where the services provided by the Project Manager involve the arrangement and/or monitoring of contract administration pursuant to Clause 2.03.26 of this Agreement, the Project Manager shall arrange for appropriately qualified consultants approved in writing by the Client, to carry out such inspections as may be necessary in order to be reasonably satisfied that the Project is being progressively executed generally in accordance with those contracts covering the procurement of the Project.

The Project Manager is not responsible for superintendence or supervision of the construction of the Project or work performed under any Contract involving the procurement of the Project. The Project Manager is not responsible to the Client for the means, methods, techniques, sequences, procedures and use of equipment of any nature whatsoever, whether or not approved by the Project Manager which are employed by a Contractor or Consultant in executing any stage of the Project.

*Section Five***GENERAL CONDITIONS****5.01 STATUS OF THE PROJECT MANAGER.**

The Project Manager, in performing the services under this Agreement, shall act only as the authorised agent of the Client and shall not for any purpose be a servant or employee of the Client nor shall this Agreement create any partnership or other form of joint venture between the Client and the Project Manager.

5.02 ACCESS FOR THE CLIENT.

The Project Manager shall, during normal working hours and by appointment, give the Client or any person authorised by the Client, reasonable access to the premises where the work under the Agreement is being executed and shall arrange similar rights of access at all reasonable times for the Client's inspection of work performed for the Project at the locations where the work is being performed.

5.03 VARIATIONS TO THE PROJECT.**5.0301 Variations to the Project.**

The Project Manager shall in writing notify the Client of any desirable or necessary variations to the form, nature or timing of the Project from time to time.

If at any time during the progress of the work under the Agreement, the Client determines that the form, nature or timing should be varied, he may so instruct the Project Manager in writing and the Project Manager shall make necessary changes to his work.

5.03.02 Authorisation of Variations.

The Project Manager shall not authorise any alteration, addition or omission to the Project without the written consent of the Client, except where the Project Manager considers the matter to be one of urgency or emergency and notifies the Client accordingly within 7 days after the Project Manager so authorises such alteration, addition or omission, in which event the Client expressly agrees it shall confirm in writing that the Project Manager has authority to make such authorisation.

If the Project Manager becomes aware of any matter which the Project Manager considers may change or which has changed the scope, cost or timing of the Project, then he will give written notice to the Client thereof within a reasonable time.

5.03.03 Associated Adjustment of Fee.

Any resultant adjustment to the fee payable to the Project Manager shall be negotiated and agreed by the parties and failing agreement shall be determined in accordance with the dispute resolution procedures pursuant to Clause 5.13 of this Agreement.

5.04 COMPLETION TIME.

5.04.01 Time Management.

The Project Manager shall, upon execution of this Agreement, prepare and present to the Client a programme of delivery times for all the services and phases of service required under the Project, to meet the completion date stated in the Annexure to this Agreement and shall manage the Project in accordance with this programme.

During the course of the Project, the Project Manager shall progressively make the necessary adjustments to the programme and use his best endeavours so that the stated completion date is not put at risk. Should the Project Manager at any time believe that Project Manager cannot meet the completion date for any reason whatsoever, the Project Manager shall advise the Client in writing and suggest remedial or other action for the Client's determination.

Any adjustment to this programme and the completion of the phases or status of service as listed in the annexure may only be adjusted by mutual agreement between the Client and the Project Manager and confirmed by written direction from the Client.

If circumstances arise for which the Project Manager is not responsible, which require the acceleration of services and expenditure of costs which would not otherwise be attributable to the Project, these costs will be paid by the Client as additional fees, pursuant to Clause 6.07, unless otherwise agreed.

5.05 CONFLICT OF INTEREST.

The Project Manager shall notify the Client of any matter connected with the Project which may give rise to an actual or potential conflict of interest of the Project Manager at any time during the currency of this Agreement.

Following receipt of such notification, the Client shall determine any action arising and if determined necessary by the Client shall provide Directions to the Project Manager.

Information provided to the Client by the Project Manager pursuant to this Clause shall be treated as strictly confidential by the Client.

5.06 CONFIDENTIALITY & PUBLICITY.

The Project Manager shall not release any document or article or divulge any information gained in the course of the Project to the media or any person without the approval of the Client.

The Client shall not release any document or article or divulge any information provided by the Project Manager and marked confidential, to the media or any person without the approval of the Project Manager.

Should the Project Manager wish to submit any of the work produced under this Agreement for publication in journals, exhibitions or entry for awards, he shall obtain prior approval in principle and final written approval from the Client by submitting for a decision, full details of the material to be published.

Should the Client publicise the Project, then subject to approval of the Project Manager, he will acknowledge the contribution made by the Project Manager unless such acknowledgment is impracticable, in which case a Project Manager shall be advised accordingly.

If required in writing by either party, the parties shall enter into a separate agreement not to disclose to anyone else any confidential matter, document or information even after the expiry or Termination of this Agreement.

5.07 DOCUMENTS.

5.07.01 Ownership.

All project management solutions, programmes, management plans and all confidential documentation prepared by the Project Manager shall remain as confidential property of the Project Manager whether the work for which they are prepared is completed or not.

All information provided to the Project Manager by the Client shall remain the property of the Client and shall not, without prior written approval of the Client be supplied or conveyed to any other person or used for any purpose other than for the execution of the Services under this Agreement.

5.07.02 Copyright.

The Project Manager retains copyright of all documents prepared by him unless otherwise agreed in writing.

The Client, unless otherwise agreed in writing is licensed to use and copy those documents for the works and purposes for which they are intended and shall not be required to obtain the Project Manager's permission to copy for such use, provided that all fees properly due to the Project Manager in accordance with this Agreement have been paid, otherwise the Project Manager may terminate such license.

5.07.03 Warranty & Indemnity.

The Project Manager warrants that any intellectual property embodied in or used in connection with the work under this Agreement is the sole property of the Project Manager, or that the Project Manager is legally entitled to use same for the performance of the work under this Agreement.

The Project Manager shall indemnify and at all times keep the Client indemnified against any action, claim, suit or demand including claim, suit or demand for or liability to pay compensation or damages and costs or expenses associated therewith.

5.08 SERVICE OF DOCUMENTS & NOTICES.

Any notice required to be given under this Agreement, including a default notice, is to be given in writing and signed by or on behalf of the party giving notice and shall be deemed to have been properly served if the notice is:

- a) delivered personally to the party to whom the notice is given, at the address of that party as set out in this Agreement, on a business day between 9am and 5pm, or
- b) posted by registered or certified mail, addressed to the party to whom the notice shall be given, at the address of that party as set out in this Agreement, in which event, any notice served by registered or certified mail will be deemed to have been served three business days after the date of posting, where the notice is posted in the same state or territory as the address of the party to whom the notice is being given, and in all other cases will be deemed to have been served five business days after the date of posting.

Any party may by notice in writing to the other, notify the other party of a change of address for service of notices under this Agreement and if notice is given of change of address, that address shall for the purposes of this Clause 5.08 be deemed to be the address of that party set out in this Agreement.

Without limiting the generality of 'notice', it includes a document.

5.09 TRANSFER OR ASSIGNMENT.

Neither the Client nor the Project Manager shall assign, transfer, mortgage, charge or encumber all or any part of the work under the Agreement or any benefit or monies or interest thereunder without the prior written approval of the other party. Consent to assignment shall not be unreasonably withheld.

5.10 ABANDONMENT, SUSPENSION OR DEFERMENT OF THE PROJECT.

The Client may, abandon or indefinitely suspend or defer the Project or any part thereof at any time for any reason whatsoever.

If the Client abandons, suspends or defers the Project, the Client shall notify the Project Manager in writing that the Project has been abandoned, suspended or deferred.

The Project Manager, upon receipt of such notice shall immediately make arrangements to stop the Services under this Agreement and minimise any further expenditure.

Subject to Clause 5.14, the Project Manager shall be entitled to reasonable costs expended and to be incurred by such abandonment, suspension or deferment and shall be entitled to reasonable remuneration or compensation in respect of a period of abandonment, suspension or deferment, unless otherwise agreed between the Parties.

5.11 PROPER LAW OF THE AGREEMENT.

This Agreement and all dispute resolution procedures arising out of it, is governed by the laws of the State or Territory within which the Project is situated and the parties shall submit to the jurisdiction of the courts of that State or Territory.

5.12 CHANGES IN LEGISLATION.

If after the date of this Agreement there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia or any statutory authority and that change directly or indirectly increases or decreases the costs or reimbursable expenses expended or incurred by the Project Manager in performing the Services, then the fee and reimbursable expenses payable to the Project Manager under this Agreement shall be adjusted accordingly. For the purposes of this Clause 5.12, such an indirect increase or decrease shall be limited to change in fees, charges or levies imposed by any such laws, by-laws, regulations or ordinances but shall include changes to or removal of Sales Tax.

5.13 SETTLEMENT OF DISPUTES

5.13.01 Notice of Dispute

If a dispute between the Client and the Project Manager arises out of or in connection with the Agreement including a dispute concerning a Direction given by the Client or the Client's Representative, or rectification or frustration of the Agreement, then either party shall deliver by hand or send by certified mail to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.

5.13.02 Continuation of Work During Disputes.

Notwithstanding the existence of a dispute, the Client and the Project Manager shall at all times continue to fulfil their obligations under this Agreement, provided that such ongoing services and responsibilities do not touch upon the subject matter of the dispute in respect of which written notice has been given in accordance with Clause 5.13.01.

5.13.03 Procedure for Resolution of Disputes

Further Steps Required before Arbitration or Litigation

Alternative 1. Conference

Within 14 days after the service of notice pursuant to Clause 5.13.01 the parties shall confer at least once, to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible agree on methods of resolving the dispute by other means. At each such conference each party shall be represented by a person having authority to agree to any resolution of the dispute.

In the event that the dispute cannot be resolved or if at any time either party considers, on reasonable grounds that the other party is not making reasonable efforts to resolve the dispute, either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to expert determination, arbitration or litigation.

Alternative 2. Mediation

Within 14 days after the service of notice pursuant to Clause 5.13.01 the parties shall try in good faith to settle the dispute by Mediation under the rules of the Australian Commercial Disputes Centre (ACDC), prior to arbitration, litigation, or some other dispute resolution procedure.

- a) If a dispute arises out of or relates to this Agreement, termination, validity or subject matter thereof, the parties agree to first endeavour to settle the dispute by mediation administered by the ACDC. The mediator shall be agreed by the parties. The parties may consult the ACDC or other bodies regarding professional mediators.
- b) In the event that the dispute has not been settled [within twenty eight (28) days or such other period as agreed to in writing between the parties hereto] after the appointment of the mediator, the dispute may be submitted to expert determination, arbitration or litigation.

At mediation each party shall be represented by a person having authority to agree to any resolution of the dispute.

5.13.02 Procedure for Resolution of Disputes (Continued)

Alternative 2. Mediation (Continued)

In the event that the dispute cannot be resolved or if at any time either party considers, on reasonable grounds that the other party is not making reasonable efforts to resolve the dispute, either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to expert determination, arbitration or litigation.

Expert Determination.

If the dispute is not otherwise settled, through conference or mediation as provide for in this Clause, then within 7 days after service of the notice pursuant to Alternatives 1 or 2 of this Clause, the parties shall attempt to resolve such dispute by the determination of an independent third party acceptable to both parties. The other party may accept this cause of action or seek Arbitration under the following Clause. If the parties cannot agree on any independent third party within 7 days of date of service of the notice, then either party may request the President for the time being of the Australian Institute of Project Management (Chapter office closest to where the project is being carried out), to nominate the third party. The third party who has been agreed upon or appointed shall act as an expert and not as an Arbitrator.

At expert determination each party shall be represented by a person having authority to agree to any resolution of the dispute.

In the event that the dispute cannot be resolved or if at any time either party considers, on reasonable grounds that the other party is not making reasonable efforts to resolve the dispute, either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration or litigation

Arbitration.

Disputes under or arising out of this Agreement may be referred to the Arbitration of a person to be agreed between the Client and the Project Manager. If the parties fail to agree, within 21 days of one party giving the other notice in writing that the dispute is to be referred to arbitration, then either party may request the President for the time being of the Institute of Arbitrators Australia (Chapter closest to the location where the services are being carried out) to appoint an Arbitrator and the Arbitrator shall be so appointed.

The Conduct and Costs of Arbitration.

The Arbitration shall be conducted in accordance with and subject to the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations. All deposits required prior to and costs arising from any Arbitration proceedings, including interest and repayments, shall be born by the parties as the Arbitrator may direct.

5.14 TERMINATION & SUSPENSION OF THIS AGREEMENT.

5.14.01 Method of Termination.

Without prejudice to the other rights or remedies of the parties, this Agreement may be terminated:

- a) by mutual agreement between the Client and the Project Manager, or
- b) by either party giving written notice to the other party;
 - i) if either party is in substantial breach of the terms of this Agreement and the breach has not been remedied within 10 working days (or longer period as maybe agreed between the parties) after the service by either party on the other of a notice in writing requiring the breach to be remedied, or
 - ii) if either party serves on the other a notice in writing requiring that this Agreement be terminated on a date specified in the notice being not less than 10 days after the date of issue of the notice.

Upon termination, the Project Manager shall provide the Client with all documents produced up to the date of termination regardless of their stage of completion.

Termination shall be without prejudice to any claim which either party may have against the other arising out of any negligent act or omission prior to the date of termination.

For the purposes of this Clause, substantial breach shall include, but is not limited to:

- c) Failure of the Client to make any payment of the fee and reimbursable expenses to the Project Manager for a period in excess of 90 days after receipt of a fee claim where such outstanding payment is not the subject of a dispute.
- d) Failure of the Project Manager to maintain insurance as required by this Agreement.
- e) Failure of either the Client or the Project Manager to comply with Clauses 5.09 and 5.04.02 of this Agreement
- f) Negligence of the Project Manager in the conduct of services required by this Agreement, as reasonably determined by the Client.
- g) Conduct of the Project Manager whilst performing the services required by this Agreement and acting as agent of the Client, in a manner which in the reasonable opinion of the Client is fraudulent to the Client or dangerous to the physical well being of the Client, Client's personnel or other personnel employed on or around the site of the Project.

5.14 TERMINATION & SUSPENSION OF THIS AGREEMENT. (Continued)**5.14.02 Fee Entitlement Upon Termination.**

If the Agreement is terminated for any reason other than default by the Project Manager, the Client shall pay to the Project Manager a fair and reasonable fee for the work done under the Agreement as at the date of termination, together with reimbursement of any expenses reasonably incurred by the Project Manager in contemplation of its carrying out the balance of the work under the Agreement.

The amount of the fee payable by the Client to the Project Manager as a result of termination shall be as agreed between the Client and the Project Manager, or in the event of disagreement as determined under the provisions of Clause 6.04.

5.14.03 Change in Constitution of the Project Manager.

Where the Project Manager, being a partnership, company, consortium or other composite body, undergoes a change in its structure which in the reasonable opinion of the Client renders the Project Manager unsuitable, the Client may terminate this Agreement upon giving notice to the Project Manager.

The Project Manager's entitlement (if any) to fees upon such termination shall be the same as would apply under Clause 5.14.02 as termination by the Client for a reason other than default of the Project Manager.

5.14.04 Incapacitation of the Project Manager.

Where the Project Manager, due to circumstances beyond the Project Manager's control such as retirement, death, physical or mental injury of key personnel, is in the reasonable opinion of the Client rendered incapable of completing the work under the Agreement, the Client may terminate the Agreement without prejudice to the accrued rights of either party in relation to the other.

5.14.05 Payment in the Event of Abandonment, Suspension or Deferment of the Project.

Where the Client, pursuant to Clause 5.10, indefinitely suspends or defers the Project or part thereof at any time for any reason whatsoever, the Project Manager shall be entitled to payment of those fees and expenses that have been properly expended or incurred under the Agreement up to the effective date of suspension or deferment.

5.15 LIABILITY & INSURANCE.

5.15.01 Liability of the Project Manager.

- a) **The Project Manager shall be liable to the Client:**
 - i) if a breach of his duty to the Client is established against the Project Manager;
 - ii) for errors and omissions in the work of the Project Manager.
- b) **The Project Manager shall not be liable for:**
 - i) any cost forecast or financial viability not prepared by the Project Manager.
 - ii) the work of the Consultants and technical coordination thereof.
 - iii) the advice or recommendations that may be provided by any Consultant or adviser appointed by the Client.

5.15.02 Liability of the Client.

The Client shall be liable for the accuracy and completeness of all information provided by the Client to the Project Manager.

5.15.03 Duration of Liability.

The Project Manager shall be deemed to have discharged all liability in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of the period scheduled in the Annexure, or if no period is stated on the expiration of one year from the completion of the Project Manager's Services.

The Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against the Project Manager (or any employee of the Project Manager) in respect of the Services after that date.

5.15.04 Professional Indemnity.

The Project Manager shall hold professional indemnity insurance for the currency of the Agreement and the duration of liability for an amount not less than stated in the Annexure. The Project Manager shall continue to maintain a professional indemnity policy for the duration of liability for an amount sufficient to indemnify the Project Manager in respect of all liabilities arising out of this Agreement.

If and when requested by the Client, the Project Manager shall provide evidence of currency of the professional indemnity insurance policy covering the Project Manager whilst providing Services under this Agreement.

The Project Manager's liability shall not be limited or otherwise affected by the terms of any such insurance policy. In the event that the Client suffers loss or damage directly attributable to the Project Manager's negligence, the rights of the Client to recover damage shall not be affected by any terms of the professional indemnity insurance held by the Project Manager.

5.15 LIABILITY & INSURANCE. (Continued)**5.15.05 Maximum Amount of Liability.**

The maximum liability of the Project Manager to the Client arising out of the performance or non performance of the services, whether under the law of contract, tort or otherwise shall be the amount covered by the professional indemnity insurance referred to in this Clause.

If either party makes a claim for compensation against the other party and this is not established, the claimant shall entirely reimburse the other for his costs incurred as a result of the claim.

So far as the applicable law permits, the Client shall indemnify the Project Manager against the adverse effects of all claims including such claims by third parties which arise out of, or in connection with the Agreement:

- a) except insofar as they are covered by the Professional Indemnity Insurances arranged under this Clause.
- b) made after the expiry of the duration of liability referred to in this Clause.

Unless otherwise agreed, the Project Manager shall maintain a public liability policy of insurance not less than the amount stated in the Annexure covering the Project Manager in respect of any claim arising from its act or omission on the site of the Project.

5.15.06 Project Manager's Employees & Agents

Before commencing work under the Agreement, the Project Manager shall ensure that a suitable insurance policy is taken out giving cover to the Project Manager, the Project Manager's Employees and agents against any liability, loss, damage, claim, cost and expenses arising a common law or under any statute as a result of personal injury to or death of any person employed by the Project Manager or the Project Manager's agents, in or about the Project.

Section 6**PROJECT MANAGER'S FEE AND CONDITIONS.****6.01 CLIENT TO MAKE PAYMENT**

In consideration of the Project Manager performing the services, the Client shall pay the Project Manager the fee and reimbursable expenses at times and in the manner set out in this Agreement.

6.02 BASIS OF FEES

The Project Manager's fee shall be determined on a percentage, lump sum, time charge basis, or a combination thereof as set out and provided for in this Agreement.

Unless provided for in this Agreement the fee, disbursements and expenses shall constitute the Project Managers sole remuneration for the services provided under this Agreement and shall be deemed to include familiarisation and compliance with all the requirements, standards, procedures and Directions of the Client as they pertain to the Project.

6.02.01 Percentage Fees.

Where the fee is payable on a percentage basis the work under the Agreement shall be carried out in stages and with the respective fee percentages applying to each stage as stated in the Annexure.

The fee applying to each pre-construction stage shall be calculated progressively by applying the applicable fee percentage to the current estimated tender price, relative to the work under the Agreement. For the purpose of the fee calculation, the estimated tender price shall include allowances made for cost adjustments during the construction period, provisional sums and other costs of works which the Project Manager has provided management and coordination services for.

All fees due to be paid by the Client to the Project Manager for pre-construction services are to be paid and thereafter shall not be taken into account, for the purposes of calculating the remaining fee on the basis of contract let and the actual cost of construction which may vary from time to time.

The fee applying to the construction stage shall be calculated progressively during construction by applying the applicable fee percentage to the current contract value and shall include payments for cost adjustments, the value of approved contract variations including progressive adjustments of provisional sums on which the Project Manager has provided services for, excluding payments made for prolongation and delay costs.

6.02.02 Lump Sum Fee.

Where the fee is payable on a lump sum basis the fee shall be the lump sum stated in the Annexure and shall not be adjusted except as provided for in this Agreement.

6.02 BASIS OF FEES (Continued)

6.02.03 Time Charge Fee.

Where the fee is determined on a time charge basis, the amount payable by the Client to the Project Manager in respect of any person engaged by the Project Manager to perform the services, shall be the product of the hourly rate appropriate to the level of the task as set out in the Annexure and the number of hours worked by the person.

Where a Director or an Associate undertakes duties which would normally be performed by an employee, such remuneration shall be determined at the rates applicable to the level of such employee.

Hourly rates shall be applicable only to the Project Manager's professional and technical staff and no payment shall be made, unless otherwise agreed, in respect of time spent on services provided under the Agreement by support staff, including secretarial and administrative staff, as due allowance for such staff shall be incorporated in the overhead loading included in the hourly rates.

The Project Manager shall keep accurate time sheets to substantiate any fee claims based on a time charge basis.

6.03 PROGRESS PAYMENTS

Unless otherwise agreed, the Project Manager shall not render fee claims more frequently than at monthly intervals and the Client shall make payment to the Project Manager not later than 30 days after receipt of a fee claim.

If not satisfied that a claim is correct, the Client shall advise the Project Manager accordingly within 7 days after receipt of the fee claim and pay any undisputed amount not later than the 30 days after receipt of the fee claim period.

6.04 DISPUTED PAYMENT CLAIMS.

The Project Manager shall maintain up to date records which clearly identify and shall substantiate any claim or part of claim for payment and produce such substantiation if required by the Client.

Disputes arising from fee claims and withholding of payment are to be resolved in accordance with the dispute resolution procedures provided for in this Agreement.

6.05 OVERDUE PAYMENTS

Should the Client fail to pay any amount owing to the Project Manager within the time specified in this Agreement, then without limiting the Project Manager's other remedies under this Agreement, the Client in addition to the amount of the claim due, shall pay daily compounded interest to the Project Manager on the amount of the outstanding claim, from the due date until the date of payment. The rate of interest applicable shall be the current rate payable by the Project Manager for overdraft on his current account, or if no such facility exists, on the current Bankcard rate as published by the Commonwealth Bank.

6.06 DISBURSEMENTS & EXPENSES

Where not already included in the fee, the Client shall reimburse the Project Manager for expenses reasonably expended and properly incurred in connection with the services provided under this Agreement. Disbursements and expenses of an individual minor nature such as courier charges, document reproduction, telephone and similar expenses may be incurred by the Project Manager on behalf of the Client without prior approval of the Client. Major disbursements and expenses similar (but not limited to) the following, must have prior written approval of the Client, otherwise reimbursement may be rejected:

- a) travelling time allowance, where applicable, shall be paid at the appropriate hourly rate for time spent in travelling, where the Project Manager actually pays such an allowance.
- b) accommodation and meals shall be reimbursed at cost.
- c) where the site of the Project or meeting is located such that the distance from the Project Manager's office to and return exceeds 100 kilometres by the most direct route, car allowances shall be paid per kilometre in accordance with the current Australian Taxation Office rates.
- d) fares for travel by air shall be limited to the cost of economy class fares.
- e) the cost of reproducing documents in final form in quantity exceeding six copies, where directed by the Client, shall be reimbursed at commercial rates.
- f) the cost of other approved expenses shall be reimbursed at cost.

The Project Manager shall submit a claim as part of his monthly claim for such authorised expenses and disbursements and provide the Client with evidence of those costs, if requested.

Unless otherwise provided in the Agreement, the cost of computer time shall not be reimbursed.

6.07 CHANGES IN INSTRUCTIONS & PROTRACTED SERVICES.

If the Project Manager's work is increased or accelerated due to changes in the Client's Directions or requirements, or if the Project Manager's work is increased, or the Project Manager's services are protracted, due to causes beyond the Project Manager's control, then (unless the Project Manager's fee is already on a time charge basis) an additional fee shall be chargeable on a time charge basis, unless some other basis is agreed. Should any such additional fee become or appear likely to become chargeable, the Project Manager shall promptly notify the Client.

6.08 DEFERRED SERVICES.

If due to the Clients Direction or lack of Direction, a break in the continuity of the Project Manager's service occurs and instructions allowing the Project Manager to continue work are not received within 14 days of being requested by the Project Manager, then fees for the services completed at the time of cessation shall be determined and become due for payment within 30 days of the date of cessation and be paid in accordance with this Agreement.

6.09 REVIEW.

Where the Project Manager is required to take over work provided by or on behalf of the Client as a basis for the work for which he is primarily engaged, then before commencing such work he shall review the work so provided. If following this review it is necessary for the Project Manager to make good deficiencies in such work then an additional fee shall be chargeable on a time charge basis, unless some other basis is agreed upon. Should any such additional fee become or appear likely to become chargeable the Project Manager shall promptly notify the Client.

6.10 SPECIAL CONTRACTS.

If by Instruction of the Client subsequent to entering into this Agreement, the Project Manager is required to organise documentation and/or administration of a construction contract governed by special contract conditions, or a contract other than one of the standard lump sum contracts commonly used in the building industry and if as a result of this, additional work is performed by the Project Manager, an additional fee shall be charged in accordance with the work involved. Should any such additional fee become or appear likely to become chargeable, the Project Manager shall promptly notify the Client.

6.11 OTHER SERVICES.

Where for any services provided by the Project Manager the fee is not stated in this Agreement, such fee shall be on a time charge basis.

6.12 RECORDS.

Records of disbursements and expenses pertaining to services, records of additional services and records of services on a time charge basis shall be kept by the Project Manager on a generally recognised accounting basis and shall be available for inspection by the Client or his authorised representative at mutually convenient times.

ANNEXURE TO THE CLIENT/PROJECT MANAGER AGREEMENT

The Client is

of (address for service)

The Project Manager is

of (address for service)

The Project is

The Site is located at

4.06 **The Equipment & Facilities to be provide by the Client**

5.07.01 **The Completion Date**

Stages of the Project Manager's services

5.18.03 **The Duration of Liability**

5.18.04 **Professional Indemnity Insurance**.....

5.18.05 **Public Liability Insurance amount**.....

6.02.01 **Percentage Fee amount**

6.02.02 **Lump Sum amount**

6.02.03	Time Charge Rates	Director/Partner/Principal	\$...../hr
		Associate Director/Associate	\$...../hr
		Senior Project Manager	\$...../hr
		Project Manager	\$...../hr
		Programmer	\$...../hr

Reimbursable Expenses

Consultants to be appointed by the Client