

BEM FORM (1999)

**BEM MODEL FORM OF MEMORANDUM OF AGREEMENT BETWEEN
CLIENT AND CONSULTING ENGINEER FOR PROFESSIONAL SERVICES**

MEMORANDUM OF AGREEMENT made the day
of.....19

BETWEEN.....
.....(hereinafter called "the Client")

of the one part and
.....
.....
(hereinafter called "the Consulting Engineer") of the other part.

WHEREAS the Client in a letter dated has considered and
approved the general proposals recommended in a report dated.....
submitted by the Consulting Engineer and/or intends to proceed with.....

.....(hereinafter called "the Project") and has
requested the Consulting Engineer to provide professional services in connection with
.....
.....
.....(hereinafter called "the Works")

NOW IT IS HEREBY AGREED as follows :

1. The Client agrees to engage the Consulting Engineer to provide the professional services for the Works subject to and in accordance with the Conditions of Engagement hereinafter set out and the Consulting Engineer agrees to provide the professional services for the same subject to and in accordance with the said Conditions of Engagement.

2. This Memorandum of Agreement and the said Conditions of Engagement shall together constitute the Agreement between the Client and the Consulting Engineer.

3. For the Basic Professional Services described in paragraph 1(1)*, paragraph 1(2)* and paragraph 1(3)* of Part A of the Notification the Client shall pay the Consulting Engineer in accordance with:

* paragraph 1(1) of Part B of the Notification

* paragraph 1(2) of Part B of the Notification and the Multiplier shall be***

4. For the Additional Professional Services Not Included in Basic Services described in paragraph 2(1)*, paragraph 2(2)* and paragraph 2(3)* of Part A of the Notification the Client shall pay the Consulting Engineer in accordance with:

(i) paragraph 2(a) of Part B of the Notification and the Multiplier shall be***

(ii) paragraph 2(b) of Part B of the Notification and the Multiplier shall be***

and (iii) paragraph 2(e) of Part B of the Notification.

5. In addition to the above, the Client shall pay the Consulting Engineer the payments described in Part C of the Notification.

6. The intervals of payment shall be once a month*/once every two months*/once every three months* reckoned from the commencement of the Consulting Engineer's appointment.

7. The amount referred to in Clause 5.9 of the Conditions of Engagement on variation works shall be RM**

8. The Additional Professional Services Not Included in Basic Services to be carried out in accordance with paragraph 2(1)*, paragraph 2(2)* and paragraph 2(3)* of Part A of the Notification shall be

.....
.....
.....

*Delete whichever is not applicable.

** Fill in the amount agreed between the Client and the Consulting Engineer.

*** Fill in the appropriate Multiplier.

IN WITNESS whereof the parties have executed this Memorandum of Agreement the day and year first above written.

Signed by the said,

.....
Client

.....
(Witness)

.....
Consulting Engineer

.....
(Witness)

CONDITIONS OF ENGAGEMENT

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GENERAL CONDITIONS

1. DEFINITIONS

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

"Architect" means the architect appointed by the Client to act as architect for the building works.

"Builder's Work Drawings" means drawings normally prepared by the Contractor for approval by the Consulting Engineer which show details of work of a structural nature which is required to be carried out by a builder or other party to facilitate the execution of the engineering systems in buildings.

"Consulting Engineer" means any Professional Engineer or body corporate, partnership or sole-proprietorship practising as consulting engineers engaged by the Client to provide the professional services.

"Contractor" means any person or persons, firm or company under a contract with the Client to perform any work or to supply goods in connection with the Works or both and includes a sub-contractor.

"Cost of Works" means the cost to the Client of the Works however incurred including:

- (a) any payments (before deduction of any liquidated damages or penalties payable by the Contractor to the Client) made by the Client to the Contractor by way of bonus, incentive or ex-gratia payments or in settlement of claims;
- (b) a fair valuation of any labour, materials, manufactured goods, machinery or other facilities provided by the Client, and of the full benefit accruing to the Contractor from the use of construction plant and equipment belonging to the Client which the Client has required the Contractor to use in the execution of the Works;
- (c) the market value, as if purchased new, of any second-hand materials, manufactured goods and machinery incorporated in the Works;
- (d) the cost of geotechnical investigations; and
- (e) a fair proportion of the total cost to the Client of any work in connection with the provision or diversion of public utilities systems which is carried out, other than by the Contractor, under arrangements made by the Consulting Engineer, assessed with reference to the costs incurred by the Consulting Engineer in making such arrangements;

but excluding:

- (aa) administration expenses incurred by the Client;

- (bb) costs incurred by the Client under the agreement between the Client and the Consulting Engineer for professional services for the Works;
- (cc) interest on capital during construction, and the cost of raising money required for carrying out the construction of the Works;
- (dd) cost of land and wayleaves; and
- (ee) the price variation arising from escalation of prices as may be provided in the works contract.

“Engineering Systems” means all mechanical and electrical services, plant and equipment installed within the building lot, and comprises as may be required such items as are listed below:

- (a) lighting, power and electrical distribution system;
- (b) air-conditioning and mechanical ventilation system;
- (c) fire-fighting and prevention system;
- (d) stage lighting system and mechanism;
- (e) hot and cold water system;
- (f) steam generating system;
- (g) gas distribution system;
- (h) telephone distribution and intercommunication system;
- (i) lightning protection system;
- (j) electrical substation;
- (k) public address system, personnel location and call system;
- (l) radio and television system;
- (m) security system;
- (n) lift, hoist, dumbwaiter and escalator;
- (o) standby generator;
- (p) soil and waste water piping system;
- (q) pumping installation within the building;
- (r) integrated building management system;
- (s) compressed air and vacuum system; and
- (t) refrigeration and cooling water system.

"Installation Drawings" means drawings, prepared by the Contractor for approval by the Consulting Engineer, which show details of the Contractor's proposals for the execution of the Engineering Systems.

"Multiplier" means a factor derived from the elements covering:

- (a) annual salary;
- (b) fringe benefits including benefits from bonuses, the Employee's Provident Fund, Social Security Organisation, staff savings fund, subscriptions to professional institutions, leave, medical aid and insurances, seminars, conferences and workshops;
- (c) office administrative charges and expenses including rentals, telephones, telex, facsimile and postal charges, stationery, subscriptions to journals, promotion, training and scholarships, transport costs, legal and audit fees, bank charges and idle time; and
- (d) profits;

and in the case of site staff recruited especially for the Project, the multiplier shall be derived from the elements covering the annual salary, gratuity, benefits from the Employee's Provident Fund, Social Security Organisation, medical aid, insurances, overhead costs and profit only.

"Notification" shall mean the Notification of the Scale of Fees by the Board of Engineers, Malaysia.

"Project" means the project of which the Works form a part.

"Quantity Surveyor" means the quantity surveyor appointed by the Client to act as quantity surveyor for the building works;

"Record Drawings" means drawings normally prepared by the Contractor for approval by the Consulting Engineer, showing clearly the general scheme and details of the Works/Engineering Systems in buildings as completed.

"Salary Cost" means the annual salary of any person employed by the Consulting Engineer divided by 1800 (this being deemed to be the average annual total of effective working hours of an employee) and multiplied by the number of working hours spent by such person in performing any of the services in respect of which payment is to be made to the Consulting Engineer upon the basis of Salary Cost; and for the purpose of this definition the annual salary of a person for a period of less than a full year shall be calculated prorata to person's salary for such lesser period.

"Structural Engineering Works in Buildings" means all works in structural reinforced concrete, prestressed concrete, steel, timber and other materials or a combination of any of these, which are

designed to transmit the weight of, and the loads on, the buildings to the ground and include the foundations and excavations connected therewith.

"Tender Drawings" means drawings prepared by the Consulting Engineer in sufficient detail to enable those persons tendering to interpret correctly the design of the Works and to submit competitive tenders for the execution of the Works.

"Works" means the works in connection with which the Client has engaged the Consulting Engineer to perform professional services, and which may comprise:

- (a) Type A Work, namely – civil and structural engineering works (other than structural engineering works in buildings) and mechanical engineering works and electrical engineering works (other than engineering systems in buildings); and/or
- (b) Type B works, namely – structural engineering works in buildings of more than four storeys high; and/or
- (c) Type C works, namely – engineering systems in buildings of more than four storeys high.

2. **DURATION OF ENGAGEMENT**

- 2.1 The appointment of the Consulting Engineer shall commence from the date of the Agreement or from the time when the Consulting Engineer shall have begun to perform for the Client any of the professional services described in the Memorandum of Agreement, whichever is the earlier.
- 2.2 The Consulting Engineer shall not, without the consent of the Client, assign the benefit or in any way transfer the obligations of this Agreement or any part thereof.
- 2.3 If at any time the Client shall decide to postpone the Works, he shall by notice in writing to the Consulting Engineer terminate the Consulting Engineer's appointment under this Agreement, provided that the Client may, in lieu of so terminating the Consulting Engineer's appointment, require the Consulting Engineer in writing to suspend the carrying out of his professional services under this Agreement for the time being. In such event, the Consulting Engineer shall be paid in accordance with paragraph 6 of Part C of the Notification.
- 2.4 If the Client shall not have required the Consulting Engineer to resume the performance of his professional services in respect of any postponed work within a period of 12 months from the date of the Client's requirement to the Consulting Engineer to suspend the carrying out of his professional services, such work shall be considered to have been abandoned and this Agreement shall terminate.
- 2.5 In the event of the failure of the Client to comply with any of his obligations under this Agreement, or disregard the professional advice of the Consulting Engineer, or upon the occurrence of any circumstances beyond the control of the Consulting Engineer which are such as to delay for a period of more than 12 months or prevent or unreasonably impede the carrying out by the Consulting Engineer of his professional services under this Agreement, the Consulting Engineer may upon not less than 60 days notice in

writing to the Client terminate his appointment under this Agreement, provided that, in lieu of so terminating his appointment, the Consulting Engineer may:

- (a) forthwith upon any such failure or the occurrence of any such circumstances suspend the carrying out of his professional services hereunder for a period of 60 days (provided that he shall as soon as practicable inform the Client in writing of such suspension and the reasons therefor); and
- (b) at the expiry of such period of suspension either continue with the carrying out of his professional services under this Agreement or else, if any of the reasons for the suspension then remain, forthwith in writing to the Client terminate his appointment under this Agreement.

2.6 The Consulting Engineer shall, upon receipt of any notice or requirement in writing in accordance with Clause 2.3 or the termination by him of his appointment in pursuance of Clause 2.5, proceed in an orderly manner but with all reasonable speed and economy to take such steps as are necessary to bring to an end his professional services under this Agreement.

2.7 Unless terminated under Clause 2.3, Clause 2.4 or Clause 2.5 above the Consulting Engineer's appointment under this Agreement shall terminate when the Consulting Engineer shall make and issue the certificate authorising the final payment to the Contractor. The certificate authorising the final payment means the certificate to release the retention sum by the Client at the completion of the defects liability period/period of maintenance.

2.8 Any termination of the Consulting Engineer's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party to this Agreement.

2.9 The Consulting Engineer shall promptly notify the Client in writing of any situation or of the occurrence of any event beyond the control of the Consulting Engineer which makes it impossible for the Consulting Engineer to carry out his obligations hereunder. Upon confirmation in writing by the Client of the existence of any such situation or event, or upon the failure of the Client to respond to such notice within 30 days, the Consulting Engineer shall be relieved from all liability for failure to carry out his obligations. In case of disagreement between the parties as to the existence of such situation or event, the matter shall be submitted to arbitration in accordance with Clause 4.1 of these Conditions of Engagement.

3. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

3.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by the Consulting Engineer in connection with the Works shall remain vested in the Consulting Engineer, but the Client shall have licence to use such drawings and other documents for the purpose of constructing the Works and to have such drawings, specifications, calculations and documents submitted to the approving authorities for the same purpose. Save as aforesaid, the Client shall not make copies of such drawings or other documents nor shall he use the same in connection with the making or improvements of any works other than those comprised in the Works without the prior written approval of the Consulting Engineer and upon such terms as may be agreed between the Client and the Consulting Engineer.

- 3.2 The Consulting Engineer may with the consent of the Client, which consent shall not be unreasonably withheld, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Works.

4. SETTLEMENT OF DISPUTES

- 4.1 If at any time any question, dispute, or difference of opinion shall arise between the Client and the Consulting Engineer upon or in relation to or in connection with this Agreement or any part thereof either party may forthwith give to the other notice in writing of the existence of such question, dispute or difference of opinion and the same shall be referred to the arbitration of a person to be mutually agreed upon or failing agreement within two months from the date of the notice then to some person appointed by the President, for the time being, of the Institution of Engineers, Malaysia and such reference shall be deemed to be a submission under the Arbitration Act 1952 and any statutory modification or re-enactment thereof for the time being and the award of the Arbitrator shall be final and binding upon the parties. Work under this Agreement shall after consultation with the Client continue during arbitration proceedings and no payment the liability for which is not in issue or contingent upon the results of the proceedings shall be withheld on account of such proceedings.

5. OBLIGATIONS OF CONSULTING ENGINEER

- 5.1 The Consulting Engineer shall exercise all reasonable skill, care and diligence in the discharge of the professional services agreed to be performed by him. If in the performance of his professional services the Consulting Engineer has a discretion exercisable as between the Client and the Contractor, the Consulting Engineer shall exercise his discretion fairly.
- 5.2 If so required by the Client, the Consulting Engineer shall take out and maintain a Professional Indemnity Insurance for an amount to be agreed to by the Client. The premium for the Professional Indemnity Insurance shall be borne by the Client.
- 5.3 In the event that the Client does not require the Consulting Engineer to take out and maintain the Professional Indemnity Insurance as provided under Clause 5.2, the liability of the Consulting Engineer shall be limited to direct damages up to the value not exceeding the fees due on the damaged portion of the Works.
- 5.4 The Consulting Engineer shall not divulge any confidential information communicated to or acquired by him in the course of carrying out the work, duties and obligations under the terms of this Agreement. Such information shall not be used by the Consulting Engineer on other projects without the approval of the Client.
- 5.5 The Consulting Engineer shall not have any direct or indirect interests in any of the construction contracts for the Works that are the subject of this Agreement without first divulging his interests to the Client and obtaining the consent of the Client.
- 5.6 Except as the Client shall otherwise specifically agree in writing, the Consulting Engineer shall not permit his staff or subsidiary or associate to engage in any activities related to the Project other than the specified professional services.
- 5.7 The Consulting Engineer shall not accept any tender in respect of the Works unless the Client shall have given him instructions in writing to do so, and any acceptance so made

by the Consulting Engineer on the instructions of the Client shall be on behalf of the Client.

- 5.8 Any visits as are described in paragraph 1(1)(d)(vii), paragraph 1(2)(d)(viii) and paragraph 1(3)(d)(v) of Part A of the Notification as may be applicable shall be in addition to and shall not be considered as defined under Clause 8 of these Conditions of Engagement.
- 5.9 The Consulting Engineer shall not without the prior approval of the Client give any instructions which in the opinion of the Consulting Engineer are likely to increase the cost of the Works by more than that stated in Clause 7 of the Memorandum of Agreement, unless it is not in the circumstances practicable for the Consulting Engineer to obtain such approval particularly when the variations are of an emergency nature and any delay in carrying out such variation works can cause claims against the Client or involve danger to life and property. In such circumstances, the Consulting Engineer shall inform the Client as soon as possible of such variation works.
- 5.10(a) If during the period of the engagement of the Consulting Engineer any accident, failure or other event which occurs due to any cause whatsoever to, in, or in connection with the Works or any part thereof either during the execution of the Works or during the defects liability period/period of maintenance, the Consulting Engineer shall immediately report the accident, failure or event to the Client, and unless otherwise directed by the Client generally or in any particular respect, conduct a full investigation into the said accident, failure or event in order to determine the cause or reason for the accident, failure or event and submit a report thereon to the Client together with the Consulting Engineer's proposal for remedial works in respect thereof.
- (b) The Consulting Engineer shall not, however, cause remedial works to be carried out in respect thereof until directed to do so by the Client in writing. And upon being so directed the Consulting Engineer shall within fourteen days from the date of such direction proceed to cause the remedial works to be carried out.
- (c) Where the Client, his employees or any person or body appointed or authorised by him carries out any investigation in relation to such accident, failure or event, the Consulting Engineer shall render all such necessary assistance and facilities as may be required by the Client, his employees or such person or body, including the giving of access to all drawings, specifications, designs, records and other available information relating to the Works. Nothing in this Sub-clause, and nothing done under this Clause, shall relieve the Consulting Engineer of any of his obligations under this Agreement.
- (d) If the accident, failure or event is not due to the negligence of the Consulting Engineer, the services provided by the Consulting Engineer under Sub-clauses (a), (b) and (c) of this Clause shall be construed as Additional Professional Services Not Included In Basic Services and be paid for by the Client.
- 5.11 **Except otherwise agreed**, the Consulting Engineer's duties do not include a duty to advise as to the actual or possible presence of pollution or contamination or as to the risks of such matters having occurred, being present or occurring in the future nor shall the Consulting Engineer have any duty to consider such matters as influencing any aspect of the services to be performed by the Consulting Engineer under this Agreement.
- 5.12 The liability of the Consulting Engineer under this Agreement whether in contract or in tort, in negligence or for breach of statutory duty or otherwise excludes any claim which may arise out of or in connection with pollution or contamination.

6. REQUIREMENT FOR ADDITIONAL PROFESSIONAL SERVICES

- 6.1 The Consulting Engineer, whenever he sees fit, shall advise the Client as to the need for the Client to be provided with any of the Additional Professional Services Not Included in Basic Services as described in paragraph 2(1), paragraph 2(2) and paragraph 2(3) of Part A of the Notification as may be applicable.

7. ARRANGEMENTS FOR ADDITIONAL PROFESSIONAL SERVICES AND FEES

- 7.1 Where any of the professional services described in paragraph 2(1), paragraph 2(2) and paragraph 2(3) of Part A of the Notification as may be applicable are, in the opinion of the Consulting Engineer, necessary, the Consulting Engineer shall obtain the prior agreement of the Client to the arrangements which he proposes to make on the Client's behalf for the provision of such professional services. The Client shall be responsible to any person providing such professional services for the cost thereof. The fees for such professional services shall be the fees as prescribed by the recognised institutions governing the profession of such professionals.

8. SUPERVISION ON SITE

- 8.1 If in the opinion of the Consulting Engineer the nature of the Works, including the carrying out of any geotechnical investigation pursuant to paragraph 1(1)(a)(iii) and paragraph 1(2)(a)(iii) of Part A of the Notification as may be applicable, warrants full-time or part-time engineering supervision on site, the Client shall not unreasonably object to the appointment of such site staff.
- 8.2 Persons appointed pursuant to Clause 8.1 above shall be employed either by the Consulting Engineer or, if the Client and the Consulting Engineer shall so agree, by the Client directly, provided that the Client shall not employ any person as a member of the site staff unless the Consulting Engineer has first selected or approved such person as suitable for employment.
- 8.3 The terms of service of all site staff to be employed by the Consulting Engineer shall be subject to the approval of the Client, which approval shall not be unreasonably withheld.
- 8.4 The Client shall ensure that the contracts of employment of site staff employed by the Client shall stipulate that the person employed shall in no circumstances take or act upon instructions other than those of the Consulting Engineer.
- 8.5 If the Contractor is a fully or partly owned body of the Client, or if any partner or director of the Client has financial interest in the Contractor directly or indirectly, no person directly employed by the Client shall be used as a member of the site staff to carry out the construction supervision of the Works.
- 8.6 Where any of the professional services described in of paragraph 1(1)(d), paragraph 1(2)(d) and paragraph 1(3)(d) of Part A of the Notification as may be applicable are performed by site staff employed by the Client, the Consulting Engineer shall not be responsible for any failure on the part of such staff properly to comply with any instructions given by the Consulting Engineer.

- 8.7 Site inspection visits by the Consulting Engineer as described in paragraph 1(1)(d)(vii), paragraph 1(2)(d)(viii) and paragraph 1(3)(d)(v) of Part A of the Notification as may be applicable are entirely distinct from the continuous and or detailed supervision which would be secured by the employment of full-time or part-time engineering supervisors on the site.
- 8.8 Only the Consulting Engineer or his representative shall have authority to give instructions to the Contractor, resident engineer, superintending engineer, clerk-of-works and/or inspectors with regard to all matters connected with the execution of the works under the administration of the Consulting Engineer. All instructions from the Client shall be given to the Consulting Engineer or his representative.

9. **DELIVERY OF DOCUMENTS TO CLIENT ON TERMINATION BY THE CONSULTING ENGINEER**

- 9.1 In the event of a termination of this Agreement by the Consulting Engineer and upon the payment of the sums determined under paragraph 7 of Part C of the Notification, the Consulting Engineer shall deliver to the Client such completed drawings, specifications and other similar documents relevant to the Works as are in the possession of the Consulting Engineer who shall be permitted to retain copies of any documents so delivered to the Client.

10. **OBLIGATIONS OF CLIENT**

- 10.1(a) The Client shall supply to the Consulting Engineer, without charge and within a reasonable time, all necessary and relevant data and information in the possession of the Client and shall give such assistance as shall reasonably be required by the Consulting Engineer in the performance of his professional services under this Agreement.
- (b) Any data, report, map, photograph, plan, drawing, record or information given or forwarded by the Client to the Consulting Engineer pursuant to Sub-clause (a) of this Clause shall not relieve the Consulting Engineer of his obligations under Clause 5.1. The Client gives no warranty in any manner whatsoever for any data, report, map, photograph, plan, drawing, record or other information either as to the accuracy or sufficiency or as to how the same should be interpreted.
- (c) Without prejudice to the provisions of Sub-clauses (a) and (b) of this Clause, if the Client requires the Consulting Engineer to utilise any data, report, map, photograph, plan, drawing, record or information given or forwarded by the Client to the Consulting Engineer, the Consulting Engineer shall do so by exercising all reasonable skill, care and diligence in the discharge of his professional services. The Client shall not be considered in breach of his obligation under this Clause if such data, report, map, photograph, plan, drawing, record or information is found to be not sufficient for the Consulting Engineer's purpose of performing his obligations under this Agreement.
- (d) If such data, report, map, photograph, plan, drawing, record or information given or forwarded by the Client to the Consulting Engineer pursuant to Sub-clause (c) of this Clause is found to be not accurate or sufficient and if the Consulting Engineer is not negligent in discharging his professional services, any services rendered by the Consulting Engineer for the purpose of remedying the inaccuracy or insufficiency shall be construed as Additional Professional Services Not Included In Basic Services and be paid for by the Client.

- 10.2 The Client shall give his decision on all sketches, drawings, reports, recommendations, tender documents and other matters properly referred to him for decision by the Consulting Engineer in such reasonable time as not to delay or disrupt the performance by the Consulting Engineer of his professional services under this Agreement.
- 10.3 (a) It is the responsibility of the Client to seek and take advice (other than under the terms of this Agreement) as to:
- (i) whether pollution or contamination may affect the site or may be relevant to the Project or the Works; and
 - (ii) the extent of the investigation that may be necessary for the purpose.
- (b) On receiving the advice mentioned in Sub-clause (a) of this Clause, the Client shall be responsible:
- (i) to have the necessary investigation carried out (other than under the terms of this Agreement); and
 - (ii) to have the necessary work carried out in order to keep the pollution and contamination within the level acceptable to the authorities.
- (c) The Client shall save harmless and indemnify the Consulting Engineer from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever on account of or in relation to pollution or contamination which may affect the site or may be relevant to the project or works, or which may be higher than the level acceptable to the authorities irrespective whether the pollution or contamination is caused solely or in part by the project or works.

11. TYPES OF SERVICES AND PAYMENT

- 11.1 The Consulting Engineer may be engaged for the performance of any or all of the professional services described in Part A of the Notification.
- 11.2 The fees applicable to the relevant professional services rendered by the Consulting Engineer shall be as described in Part B and Part C of the Notification.
- 11.3 Wherever payment is made on the basis of Salary Cost times Multiplier as described in paragraph 1(2) of Part B of the Notification, the Consulting Engineer shall submit to the Client at the time of submission of the monthly accounts such supporting data as may be agreed between the Client and the Consulting Engineer.
- 11.4 In the event of determining the payment due to the Consulting Engineer under paragraph 6(1)(a) of Part C of the Notification following the termination or suspension by the Client of the Works in which it is necessary to assess the payment to be made by reference to the cost of the Works, then to the extent that such cost is not known, the assessment shall be made upon the basis of the Consulting Engineer's best estimates of cost.
- 11.5 Where the Consulting Engineer is of the opinion that site staff should not be appointed, or where the necessary site staff is not available at site due to sickness or any other reasonable cause, the Consulting Engineer shall subject to paragraph 1(2) of Part B of the Notification be paid in accordance with paragraph 2 of Part B of the Notification for

site visits which would have been unnecessary but for the absence or non-availability of site staff.

- 11.6 All sums due from the Client to the Consulting Engineer in accordance with the terms of this Agreement shall be paid within 42 days of the submission by the Consulting Engineer of his accounts to the Client and any sums unpaid at the expiry of such period of 42 days shall bear interest thereafter such interest to accrue from day to day at the rate of 2 percent per annum above the current prime rate. If such delay of payment shall continue for a further period of 3 months, then in lieu of the imposition of the interest rate of 2% per annum above the current prime rate, the Consulting Engineer may terminate this Agreement by giving written notice of the same of the Client.
- 11.7 If any item or part of an item of an account rendered by the Consulting Engineer is disputed or subject to question by the Client, the payment by the Client of the remainder of that account shall not be withheld on those grounds and the provisions of Clause 11.6 shall apply to such remainder and also to part of the disputed or questioned item to the extent that the Client agrees to pay but subject to adjustments after settlement of the disputed or questioned item.
- 11.8 All professional fees due under this Agreement are exclusive of Service Tax, the amount of which shall be paid by the Client to the Consulting Engineer at the rate and in the manner as prescribed by law.
