

The **SCALA** **REDBOOK**

FOR THE APPOINTMENT OF **CONSULTANTS**



Including: Architects
Building Surveyors
CDM Co-ordinators
Project Managers
Quantity Surveyors
Service Engineers
Structural Engineers

**NEW 2008
EDITION**

A MODEL FORM OF AGREEMENT FOR THE COMMISSIONING OF CONSTRUCTION CONSULTANTS

PREFACE

There is a responsibility upon those providing for the construction and maintenance of buildings and their environment to ensure that such works are undertaken in an efficient, effective and economic manner consistent with good design, quality and sound workmanship.

This document has been prepared to assist and guide local authorities and others undertaking construction or maintenance works who commission external consultants. The method of procurement of consultants' services must be specified and the document amended accordingly.

This Model Form of Agreement covers the services provided by architects, project managers, quantity surveyors, building surveyors, structural and service engineers and CDM co-ordinators. It sets out their duties and also those of the client and the lead designer. Although many authorities and others will already have their own terms and conditions for the engagement of consultants, it is suggested that the contents of this document represent the basic service required if building work is to be properly designed, budgeted and managed to meet employer's requirements.

Earlier editions of this document were designed to be used in conjunction with the JCT Standard Form of Building Contract (with quantities) but this edition may be used with most of the standard forms of contract now in common use. Depending upon the size and complexity of a project, and/or the use of other forms of contract, it may be decided that not all the clauses or sections contained in the document are appropriate and amendments will be necessary. The document includes a table setting out the scope of services, which will be applicable on most projects. For the more complex projects an option has been provided for incorporation of the CIC Services Tables, from the CIC Consultant's Contract, as it provides more detail suitable for such projects. SCALA is grateful for CIC's co-operation and permission in this respect.

The document outlines the responsibilities and services to be provided by the client and consultants some or all of whom may be required on any one specific project. The concept of a lead function is included in order to clarify areas of responsibility for the various members of the design team. The duties involved in the lead function can apply to an additional member of the team providing that role, such as a project manager, or added to those of another member of the team.

On a contract where an architect is employed as a designer of the project, he would normally fulfil the lead function and his fee would include for this element of work. There may however be projects where an architect is not employed as the lead consultant and another discipline takes on the lead function. It is important that the client specifies the lead consultant prior to the agreement of appropriate fees.

In referring to the activities of a number of different professional consultants, it is necessary to draw distinctions as to their roles relative to various types of project. This particularly applies to the respective roles of the architect and the building surveyor who perform broadly similar functions but generally for different types of work.

This 2008 edition reflects current industry payment practices, in the context of the Housing Grants Construction and Regeneration Act 1996 (the Construction Act). It makes provision for Key Result Areas (KRA's), to enable payment to be linked to performance. In respect of the adjudication provisions of the Construction Act, the agreement adopts the provisions of the Scheme for Construction Contracts as the rules for adjudication as the simplest way of ensuring compliance with the Act. To further reflect current practice, third party rights are addressed and net contribution clauses provided for.

SCALA offers a grateful acknowledgement and thanks to Rob Tate, a construction consultant, expert witness and adjudicator, who took the lead role on behalf of SCALA. Also to Tony Blackler who reviewed and re-drafted the earlier edition, advised on and wrote the new clauses. The document was enabled by and benefited from his considerable and expert knowledge as a leading construction solicitor.

FOREWORD

This Model Form of Agreement for Commissioning and Construction Consultants has been prepared in seven parts.

Part 1 - Memorandum of Agreement

This part comprises the Memorandum of Agreement between the Client and the Consultant. It refers to Part 7, "PLAN OF WORK & DUTIES OF CONSULTANTS", which lists key events and duties to be carried out by the respective Consultants.

Part 2 - Conditions of Appointment

This part describes the conditions which normally apply to a Consultant's appointment. If different or additional conditions apply, they should be set out in the Memorandum of Agreement.

Part 3 - Provision for fees and expenses

This part describes the method of payment for each Consultant's services and expenses, and defines the costs of the works in relation to each profession.

Part 4 - Scheme Particulars and Introduction

The Scheme Particulars are completed by the Client Authority with, if necessary, an appendix to cover any particular requirements of the Authority concerned over and above those included in the base document.

It is essential that a clearly defined brief for the project is prepared by the client as a basis for the appointment of consultants.

The Client, in using the AGREEMENT, will need to complete Part 1 - Project Particulars. It is likely that individual client authorities will have particular procedures and requirements not specifically covered in this section, eg quality assurance procedures and construction or property related standing orders. Authorities are advised to seek guidance from their legal officer and to prepare a list of such

procedures and requirements as an appendix to the scheme particulars for inclusion in the AGREEMENT.

Part 5 – Fee Schedule

This consists of tables for completion in respect of fees payable. It provides for payment by lump sum, percentage or time charge. The tables must be completed to show the type of fee payable, the amount of fee, the timing and amount of each payment. Payments may be made periodically, geared to work stages or to achievement of KPI's. Therefore, the schedule provides for basing payment on performance, in the specific context of the particular project.

Part 6 - Definitions

This part contains a list of terms used throughout this AGREEMENT and in construing this AGREEMENT.

Part 7 - The Duties of Consultants

This part schedules the basic duties of each of the Consultants related to work stages.

The intention of this document is to provide a clear statement of the service to be performed and the schedule may be amended, through enhancements or deletions, to cover the specific requirements of the particular project.

Stages A and B of the Plan of Work cover the preliminary services inception and feasibility and may not form part of the basic service for which a percentage lump sum fee would normally be appropriate. In many cases A-B services would be available from an in-house team leading to the formulation of a firm brief which would provide the basis for the appointment of consultants for the remaining work stages. In the event of A-B work being required of consultants, it is likely to be appropriate that this work is subject to a time charge and that, until the full scope of the project has been agreed, there would be insufficient basis for the agreement of a lump sum or percentage fee for the Basic Service. Any such arrangement must be recorded in the fee schedule in Part 5.

Part 8 - Specimen Certificates

This part contains specimens of the certificates that are referred to in this AGREEMENT and are required to be signed as indicated therein.

IMPORTANT: Appropriate advice should be obtained before completion of the AGREEMENT. In particular as to its suitability in the specific circumstances which the Client has in mind.

Whilst every effort has been made to ensure that the AGREEMENT operates lawfully and effectively, SCALA Limited, its servants, agents and representatives accept no liability whatsoever for any loss or damage arising out of or occasioned by the use of the AGREEMENT and is not, by its preparation of the AGREEMENT, to be taken to have provided advice as to the suitability of the AGREEMENT in any particular situation.

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