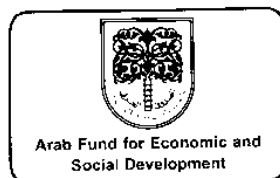
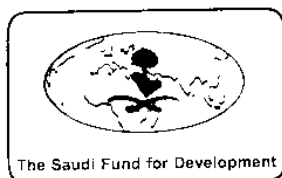
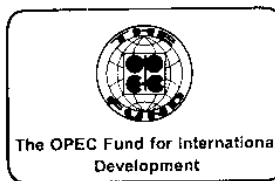


**DEVELOPMENT INSTITUTIONS
MEMBERS OF
THE COORDINATION GROUP**



**MODEL AGREEMENT FOR CONSULTING SERVICES
FOR
DESIGN AND SUPERVISION OF CONSTRUCTION OF
CIVIL ENGINEERING WORKS / ELECTRICAL AND
MECHANICAL WORKS**

First Edition 1995



Table of Contents

	Page
Preface	5
Preamble	7
Clauses	
1 - Incorporation of Preamble in the Agreement	7
2 - Definitions and Interpretations	8
2-1 Definitions	8
2-2 Documents Constituting the Agreement	9
2-3 Interpretation	9
3 - Appointment of the Consulting Engineer	9
4 - Relation Between the Parties	10
5 - Commencement and Completion of the Services	10
6 - Obligations of the Consulting Engineer	10
6-1 Standard of Performance	10
6-2 Exercise of Discretionary Powers	10
6-3 Observing Local Laws	10
6-4 Conflict of Interest	11
6-5 Specialist Advice and Services	11
6-6 Sub-Contracting	12
6-7 Duties Relating to Supervision of Construction	12
6-8 Completion of Parts of the Works	13
6-9 Confidentiality	13
6-10 Ownership of Documents	13
6-11 Reporting	14
6-12 Equipment and Materials Furnished by the Client	14
7 - Liability of the Consulting Engineer	14
8 - Indemnification of the Client by the Consulting Engineer	14
9 - Insurance	15
10 - The Consulting Engineer's Personnel	15
11 - Obligations of the Client	17
12 - Indemnification of the Consulting Engineer by the Client	19
13 - Taxes	19
14 - Postponement and Termination	20

14-1	By Notice of the Client	20
14-2	Force Majeure	20
14-3	Default by the Client	21
14-4	Entitlements of Consulting Engineer upon Postponement or Termination	21
14-5	Default by the Consulting Engineer	21
14-6	Claims for Default	21
14-7	Rights and Liabilities of the Parties	22
15	- Remuneration of the Consulting Engineer	22
16	- Payments to the Consulting Engineer	23
17	- Assignment	24
18	- Partnerships	24
19	- Notices	25
20	- Language	25
21	- Applicable Law	26
22	- Settlement of Disputes	26
23	- Modification of the Agreement	26
24	- Entry into Force	27

Appendices

1	- Appendix (A) : Scope of Services	31
2	- Appendix (B) : Schedule of Completion of Services	33
3	- Appendix (C) : The Consulting Engineer's Personnel	35
4	- Appendix (D) : Personnel, Equipment, Facilities and Services to be Provided by the Client	37
5	- Appendix (E) : Remuneration and Payments	39

PREFACE

This Model Agreement for Consulting Services for Civil Engineering works / Electrical and Mechanical Works contains standard conditions approved by the Coordination Group consisting of Islamic Development Bank, Abu Dhabi Fund for Development, the OPEC Fund for International Development, the Saudi Fund for Development, Arab Fund for Economic and Social Development, Kuwait Fund for Arab Economic Development, and Arab Bank for Economic Development in Africa. It is intended for use by the borrowers from these institutions for the engagement of consulting engineers for the types of projects indicated. The document was prepared by a sub-committee of the Coordination Group. In preparing it the sub-committee was mindful of the need to take into account the reasonable interests of both the Client and the Consulting Engineer.

Although the conditions contained in the document are mainly in the nature of general conditions applicable to assignments relating to civil engineering works / electrical and mechanical works certain variations were necessary to take account of the different nature of these categories of works or projects. Hence, alternative Clauses are included in the text for use according to the type of project. On occasion, it was also necessary to provide alternative formulations within the same Clause or alternative Clauses to allow for different circumstances. Instructions are given in the footnotes for adapting the model conditions-mainly through deletions - to particular circumstances.

It should be noted that by its very nature this Model Agreement cannot be complete. It contemplates the addition of several appendices when an agreement is being actually prepared. In particular, one of these appendices should state in detail the services to be rendered by the consulting engineer which will no doubt vary according to the category and nature of the project. Other appendices relate to: (i) the schedule of completion of the services, (ii) the consulting engineer's personnel, (iii) personnel, equipment, facilities and services, if any, to be provided by the Client, and (iv) remuneration and payments to the consulting engineer. Of course, other appendices may be added, if required, with appropriate reference thereto in the body of the agreement.

While the conditions contained in this Model Agreement are recommended for use by borrowers from the Member Institutions of the Coordination Group, such use is not necessarily mandatory. The model conditions are generally intended to assist borrowers in preparing consulting agreements for projects which are to be financed and to indicate to them the subject-matter which, generally speaking, must be covered in such agreements if they are to meet with approval. Departure from these conditions will be acceptable, provided the subject-matter of the model conditions is adequately covered in the proposed agreement or if the departure is sufficiently justified.

Finally, it remains to state that in recommending this Model Agreement the Member Institutions of the Coordination Group accept no responsibility to any party using the model conditions contained in it and any responsibility shall rest solely with such party.

**MODEL AGREEMENT FOR CONSULTING SERVICES
FOR
DESIGN AND SUPERVISION OF CONSTRUCTION OF
CIVIL ENGINEERING WORKS / ELECTRICAL AND
MECHANICAL WORKS (*)**

This Agreement is made on _____ between
_____ (hereinafter called
the Client) and _____ (hereinafter
called the Consulting Engineer).

Preamble

Whereas, the Client is desirous that Consulting Engineering Services be rendered for the following Project:

(Name and brief description of the Project)

Whereas, the Consulting Engineer has represented to the Client that he possesses the necessary skills, competence and capability to render the Services required under this Agreement and has submitted a proposal to the Client dated _____ for carrying out these Services.

Whereas, the Client has accepted the aforesaid proposal of the Consulting Engineer, subject to such modifications as reflected in this Agreement and the Appendices thereto.

Now, therefore, the Parties hereto have agreed as follows:

1. Incorporation of Preamble in the Agreement.

The above preamble shall be deemed to constitute an integral part of this Agreement which shall be construed accordingly.

(*) Delete as appropriate.

2. Definitions and Interpretations

2.1. Definitions

In this Agreement, unless otherwise required by the context, the following terms, whenever used, shall have the respective meaning shown against each:

- (a) "Agreement" means this Agreement and the documents and appendices forming part hereof as defined in Sub-Clause 2.2 of this Agreement.
- (b) "Consulting Engineer" means the firm or firms, company or companies entered hereinabove as party or parties to this Agreement.
- (c) "Project" means the Project referred to in the preamble to this Agreement.
- (d) "Services" means the work and services described in Appendix (A) hereto as such work and services are amended or modified from time to time by agreement in writing between the parties.
- (e) "Works" means the works (including any equipment to be permanently incorporated therein) covered by the Project or any part thereof and in respect of which the services of the Consulting Engineer are required under this Agreement.
- (f) "Construction" or "Construction of Works" means building, manufacturing, erection or installation of Works.
- (g) "Month" means any period of one month according to the Gregorian Calendar.
- (h) "Day" means the period between one midnight and the next.
- (i) "Local Currency" means the currency of the country where the Project is located and "foreign currency" means any other currency.
- (j) "Sub-consultant" means any entity to which the Consulting Engineer sub-contracts any part of the Services with the approval of the Client.
- (k) "Local personnel" means personnel domiciled in the country where the Project is located who are employed by the Consulting Engineer or any Sub-Consultant thereof for the purpose of the Services, and "foreign personnel" means any other personnel.

2.2. Documents Constituting the Agreement

The following documents shall be deemed to form and be read and construed as part of the Agreement:

(a) The Letter of Acceptance

(b) The Appendices, namely

- (i) Appendix (A) : Scope of Services;
- (ii) Appendix (B) : Schedule of Completion of Services;
- (iii) Appendix (C) : The Consulting Engineer's Personnel;
- (iv) Appendix (D) : Personnel, Equipment, Facilities and Services to be Provided by the Client; and
- (v) Appendix (E) : Remuneration and Payments.

(c) The Consulting Engineer's proposal dated _____ insofar as it is not inconsistent with this Agreement or any other document forming part thereof but only to the extent that such proposal amplifies the Services or describes the methodology to be adopted by the Consulting Engineer in performing them.

2.3. Interpretation

2.3.1. The headings shall not limit, alter or affect the meaning of any provision in this Agreement.

2.3.2. Words importing the singular also include the plural and the masculine includes the feminine and vice versa, unless the context otherwise requires.

3. Appointment of the Consulting Engineer

3.1. The Client hereby appoints the Consulting Engineer to perform the Services on the terms and conditions set forth in this Agreement and the Consulting Engineer accepts the appointment and undertakes to carry out the Services.

3.2. Insofar as the Consulting Engineer comprises more than one firm and/or company associated together for the purpose of performing the Services, all such firms and/or companies shall be jointly and severally liable for the obligations of the Consulting Engineer under this Agreement. Such firms and/or companies shall designate and authorize one of their number to liaise on their behalf with and represent them vis-a-vis the Client who shall be entitled to deal with them through such representative.

4. Relation Between the Parties

Nothing stated herein shall be construed as establishing a relation of master and servant or principal and agent between the parties.

5. Commencement and Completion of the Services

- 5.1. Unless otherwise agreed between the parties, the Services shall be commenced within _____ days [after entry into force of this Agreement/after issue by the Client of the order of commencement].*
- 5.2. The Services shall be performed and completed in accordance with the Schedule set forth in Appendix (B) hereto.

6. Obligations of the Consulting Engineer

6.1. Standard of Performance

The Consulting Engineer shall perform the Services and carry out all his obligations under this Agreement, including his obligations under Clause 5 hereof, with all due care, skill, diligence and efficiency in accordance with the highest standards recognized in the profession. In performing the Services the Consulting Engineer shall act as the faithful adviser of the Client and shall safeguard the legitimate interests of the Client. Any approval by the Client of any reports, plans, drawings, specifications, designs or recommendations made by the Consulting Engineer shall not absolve the Consulting Engineer of any of his obligations under this provision.

6.2. Exercise of Discretionary Powers

Insofar as the Services involve the exercise of any discretionary powers or the performance of duties relating to the administration or application of any contract between the Client and a third party, the Consulting Engineer shall act fairly as between the Client and such third party and with due regard to the terms and conditions of such contract.

6.3. Observing Local Laws

The Consulting Engineer, his employees and Sub-Consultants, whilst in the country in which the works are to be carried out, shall respect the laws of the said country.

* Delete as appropriate.

6.4. Conflict of Interest

- 6.4.1. The remuneration of the Consulting Engineer under this Agreement shall constitute his only remuneration in connection with its performance and neither he nor his personnel shall accept any trade commission, discount, allowance or indirect payment or benefit from any third party in connection with the performance of the Services or of any obligation of the Consulting Engineer under this Agreement.
- 6.4.2. The Consulting Engineer shall not have any benefit, whether directly or indirectly, of any royalty on or any gratuity or commission in respect of any patented or protected article or process used in or for the purpose of the Works, except as otherwise agreed in writing with the Client in relation to any patent or proprietary process owned by the Consulting Engineer.
- 6.4.3. The Consulting Engineer agrees that, except as otherwise authorized by the Client in writing, any entity to which the Consulting Engineer is affiliated or vice versa shall be disqualified from providing goods, works and services for the Project. For the purpose of applying this provision, the Consulting Engineer shall make such disclosures to the Client as may be necessary in the circumstances.
- 6.4.4. The Consulting Engineer shall not become the medium or assignee of any payments to be made by the Client to any contractor or supplier, unless he is specifically requested in writing by the Client to become such a medium. The foregoing is without prejudice to certification of payments by the Consulting Engineer.

6.5. Specialist Advice and Services

The Consulting Engineer shall provide all the expert technical advice and skills which are normally required for the type of services provided for in this Agreement. Where specialist technical advice, not being within the contemplation of the Scope of Services stated in Appendix (A) hereto, is required, the Consulting Engineer may with the prior written agreement of the Client, arrange for the provision of such specialist services, and the Client shall either pay for such services or reimburse the Consulting Engineer for all reasonable costs relating thereto. However, the Consulting Engineer shall bear full and unseverable responsibility for all the services including the specialist technical advice and assistance which is obtained.

6.6. Sub-Contracting

The Consulting Engineer may not sub-contract any part of the Services or any of his obligations under this Agreement to any third party except with the prior written consent of the Client. Any such third party and the terms and conditions of the sub-contract made with him as well as any modification or the termination thereof shall be subject to the approval of the Client in writing. Notwithstanding any such approval, the Consulting Engineer shall remain fully responsible for the performance by any such sub-contractor of the part or parts of the Services so sub-contracted as well as any other obligations hereunder in relation thereto.

6.7. Duties Relating to Supervision of Construction

6.7.1. The Consulting Engineer, when in charge of the supervision of construction of Works, may [make/approve]* minor alterations to the design, and issue variation orders relating to the construction of Works, as may be necessary and expedient, under advice to the Client in advance or within 3 days of making such alterations or variations. But the Consulting Engineer shall obtain the prior written approval of the Client to any alteration in the design or other variation order which involves additional costs to the Client estimated to exceed an amount of _____ and also to any alteration in the design or other variation order when the aggregate value of all variation orders reaches an amount of _____.

6.7.2. Notwithstanding the provisions of Sub-Clause 6.7.1., if an emergency occurs, which in the opinion of the Consulting Engineer requires immediate action in the Client's interest, the Consulting Engineer shall have authority to issue orders on behalf of and at the expense of the Client as may be required to deal with the emergency. The Consulting Engineer shall immediately inform the Client of any such orders and shall follow such advice with an estimate of the expected costs.

* Delete the word "make" in the case of electrical and mechanical works where the design is made by the Contractor.

6.8. Completion of Parts of the Works

When the Consulting Engineer shall determine that an integral part of the Works has been completed, which is capable of being accepted in accordance with the terms and conditions of a contract between the Client and the respective contractor, the Consulting Engineer shall give at least (10) days prior written notice to the Client that such integral part is ready for tests and state the date for such tests.

Such tests shall be carried out under the supervision of the Consulting Engineer and in the presence of a representative of the Client if the Client so desires. Upon completion of such tests the Consulting Engineer shall [Issue a Certificate of Completion/prepare a Certificate of Completion recommending acceptance of the Works to the Client]*. Such Certificate may be issued notwithstanding any minor deficiencies, subject to the Contractor undertaking to carry out as soon as possible thereafter the works necessary to remove these deficiencies and provided that no Completion Certificate shall be issued except for complete components of the Project.

6.9. Confidentiality

All information, data, documents and designs provided to the Consulting Engineer by the Client or developed by the Consulting Engineer in the course of performing the Services shall be treated by him as confidential and shall not be published or disclosed to any third party without the prior written approval of the Client. Subject to such approval, which shall not be unreasonably withheld, the Consulting Engineer may publish descriptive articles with or without illustrations, with respect to the Services.

6.10. Ownership of Documents

All plans, drawings, specifications, designs, reports and other documents prepared by the Consulting Engineer in the course of performing the Services shall become and remain the property of the Client and while in the custody of the Consulting Engineer shall be fully available to the Client. The Consulting Engineer shall, not later than the date of completion of the Services or the premature termination thereof, deliver all such documents to the Client together with a detailed inventory thereof. The Consulting Engineer may retain copies of such documents but may not use them for purposes unrelated to this Agreement without the prior written consent of the Client.

* Delete as appropriate.

6.11. Reporting

The Consulting Engineer shall submit to the Client the reports and documents specified in Appendices (A) and (B) hereto, in the form, language or languages, number of copies and within such time periods as specified in the relevant Appendix.

6.12. Equipment and Materials Furnished by the Client

Equipment and materials furnished to the Consulting Engineer by the Client or purchased with funds wholly made available or reimbursed by the Client shall be the property of the Client and shall be so marked. Upon completion or termination of the Services the Consulting Engineer shall furnish to the Client an inventory of such equipment and remaining materials, and shall dispose of such equipment and remaining materials as directed by the Client.

7. Liability of the Consulting Engineer

The Consulting Engineer shall be liable to the Client for any breach of the obligations of the Consulting Engineer under this Agreement. However, the Consulting Engineer's liability to compensate the Client in respect of any damage or loss shall be limited to an amount of _____, provided that the liability of the Consulting Engineer shall not be subject to such limit in the event of damage or loss suffered by the Client as a result of gross negligence or wilful default in the performance of his obligations by the Consulting Engineer or his personnel.

8. Indemnification of the Client by the Consulting Engineer

The Consulting Engineer shall indemnify and hold harmless the Client against all claims, actions, proceedings, demands and costs, including legal fees and expenses in connection therewith, arising as a result of:

- (a) any death, injury or damage to the property of any third party (including personnel of the Client or the Consulting Engineer) caused by any error, omission, negligence or wilful act of the Consulting Engineer or his personnel; and
- (b) any infringement by the Consulting Engineer in the course of performing the Services of any copyright, patented invention, article, design or proprietary process of any third party.

Provided that the Consulting Engineer shall not be liable to indemnify the Client in respect of any claim relating to injury or loss of life or damage to

property arising solely from acts or omissions of the Client, his servants or agents or if the infringement of any right of third parties was the result of instructions given by the Client in writing.

9. Insurance*

9.1. The Consulting Engineer shall take out and maintain at his own cost, but on terms satisfactory to the Client the following insurances:

- (a) Professional liability insurance with a minimum coverage of _____.
- (b) Third party liability insurance with a minimum coverage of _____.
- (c) Employer's liability and workmen's compensation insurance as required by law in respect of the Consulting Engineer's personnel engaged in carrying out the Services in the Client's country.

The Consulting Engineer shall at the request of the Client produce evidence that the aforesaid insurances have been taken and maintained and that the current premiums therefor have been paid.

9.2.** The Consulting Engineer shall take out and maintain such additional insurance cover at the Client's cost as may be requested in writing by him.

10. The Consulting Engineer's Personnel

10.1. The Consulting Engineer shall provide such qualified and experienced personnel as are required to carry out the Services, and such personnel, unless designated by name in Appendix (C) hereto, shall be subject to the approval of the Client.

* This provision may dispensed with or modified if the Consulting Engineer is a parastatal organization and is not allowed to carry any of the insurances referred to in the provision.

** If considered appropriate, particularly in the light of analysis of the risks associated with the Services, an alternative Sub-Clause 9.2 may be inserted reading as follows:

"9.2. Without prejudice to the provisions of Sub-Clause 9.1. (a) hereof, the Consulting Engineer shall take out and maintain at the Client's cost additional insurance coverage for liability in the amount of _____ against professional liability in respect of performance of the Services. Such insurance shall be taken out and maintained with such insurers and upon such terms as may be approved by the Client, and, in particular the policy of insurance shall provide for payment to the Client of any insurance money payable thereunder upon materialization of any of the risks covered".

10.2. For the purpose of site supervision, the Consulting Engineer shall give priority in recruitment to local [and/or Arab/Islamic/OPEC Countries]* personnel insofar as they are available and suitable for the tasks involved.

10.3. The titles, agreed job descriptions and minimum qualifications and experience of personnel to be assigned by the Consulting Engineer for carrying out the Services are stated in Appendix (C) hereto together with the names of the such personnel already approved for this purpose by the Client. Insofar as any personnel required for performing the Services have not been approved by the Client at the time hereof, the Consulting Engineer shall submit to the Client for review and approval a copy of their biographical data (with supporting documents, if so required by the Client) and, in the case of foreign personnel to be assigned to the country where the Project is to be located, a medical certificate relating to each evidencing his fitness for service in that country. All requests for approval of assignment of personnel for carrying out the Services shall be submitted to the Client at least two (2) months before the date when the proposed assignment is to take effect.

10.4. The Consulting Engineer shall furnish to the Client monthly statements of the staff assigned by him to the site of the Project and his forecast of staff requirements for the coming three (3) months. The Consulting Engineer shall also submit for the approval of the Client the schedule of holidays of his site staff which shall be prepared with due regard to the tasks to be performed at the site.

10.5. Replacement or Removal of Personnel

10.5.1. Should it become necessary for the Consulting Engineer to replace any of the personnel assigned by him to the site, he shall, after obtaining the approval of the Client for such replacement, arrange for substitute personnel with equivalent or better qualifications and experience. The cost of replacement of such personnel shall be borne by the Consulting Engineer except where such replacement is necessitated by illness or accident attributable to the conditions of work, in which case such cost shall be borne by the Client.

* State as appropriate.

10.5.2. The Client may instruct the Consulting Engineer to remove and/or replace any of the personnel assigned by him to the site of the Project, stating in such instruction the reason therefor. If the personnel to be removed or replaced is guilty of misconduct or if the Client has reasonable cause to be dissatisfied with the performance of such personnel, the costs relating to his repatriation, together with any dependants, and to his replacement shall be borne by the Consulting Engineer.

11. Obligations of the Client

- 11.1. The Client shall furnish without charge and within a reasonable time all pertinent data and information available to him relating to the Project and shall give such assistance as shall reasonably be required by the Consulting Engineer for the carrying out of his duties under this Agreement. The Client shall give his decision on all sketches, drawings, reports, recommendations and other matters properly referred to him for decision by the Consulting Engineer within a reasonable time so as not to delay or disrupt the performance by the Consulting Engineer of his duties under this Agreement.
- 11.2. The Client shall assist the Consulting Engineer, his personnel and, where applicable, their dependants, in respect of the timely granting of or facilitating the following:
- (i) visas for entry to and exit from the country where the Works are to be carried out and such licenses and permits as may be necessary;
 - (ii) access to all sites and locations involved in the execution of the Services;
 - (iii) the privilege of (a) bringing into the country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of such personnel and (b) remittance by such personnel of such portion, as may be permitted in accordance with the laws and regulations of the country where the Works are to be carried out, of amounts earned by such personnel under their employment contracts in connection with the Services.
 - (iv) insofar as the Consulting Engineer's remuneration is payable in the Client's country, a firm authorization from the country's Central Bank or other appropriate authority that the foreign exchange component of the remuneration under this Agreement shall be transferable to the Consulting Engineer's home country; and

- (v) repatriation of the Consulting Engineer's personnel in the event of emergencies.
- 11.3. The Client will render assistance in connection with clearance through customs of any equipment, materials and supplies required for the Services and such clearance also of the personal effects of the Consulting Engineer's personnel.
- 11.4. Except when exemption has been arranged, the Client shall compensate the Consulting Engineer for the unrecovered cost of any taxes, duties, levies and other impositions under the laws and regulations in the country where the Works are carried out in respect of:
- (i) any equipment, materials and supplies brought into the said country for the purpose of carrying out the Services and which will be subsequently withdrawn therefrom;
 - (ii) any property brought into the aforesaid country by the Consulting Engineer or his personnel for their personal use and which will be subsequently withdrawn therefrom upon the departure of the Consulting Engineer and his personnel; and
 - (iii) any stamp and other duties payable on documents.
- 11.5. The Client shall make available, free of charge for use by the Consulting Engineer and his personnel for the purpose of carrying out the Services, the equipment, facilities and services described in Appendix (D).
- 11.6. In the event of delay in making available to the Consulting Engineer the equipment, facilities or services set forth in Appendix (D), the Consulting Engineer shall notify the Client of such delay and shall be entitled to an appropriate extension of time for performance of the Services and a proportional remuneration for completion of the Services, insofar as additional costs are incurred by the Consulting Engineer.
- 11.7. If the anticipated equipment and/or facilities are not forthcoming the Client and the Consulting Engineer shall agree on how the affected part of the Services shall be carried out and upon a revised remuneration therefor, insofar as additional costs are incurred by the Consulting Engineer.
- 11.8. The Client will, in conjunction with the Consulting Engineer, arrange for the selection and provision of counterpart personnel to be trained by and work under the exclusive direction of the Consulting Engineer. Such personnel shall be integrated in the Consulting Engineer's Project team in accordance

with their abilities in such a way that it is possible for them to undertake progressively more responsibilities and tasks so that they may, after completion of their training, eventually be assigned for operation and maintenance of the Project or for other appropriate duties. In the event that any member of the counterpart personnel fails to perform adequately the work assigned to him by the Consulting Engineer and provided such work is consistent with the position occupied by such staff member, the Consulting Engineer may request that he be replaced and such request shall not be unreasonably refused.

- 11.9. The Client undertakes to arrange for the provision of services by third parties, if so provided and to the extent stated in Appendix (D) hereto. The Consulting Engineer shall co-operate with such firms and/or individuals engaged by the Client for the provision of such services. In the event that the Consulting Engineer is delayed in obtaining the services of others as set forth in Appendix (D), he shall notify the Client of such delay and shall be entitled to an appropriate extension of the time for performance of the Services and a proportional remuneration for completion of the Services, insofar as any additional expenses are incurred by the Consulting Engineer. If the anticipated services are not forthcoming, the Client and the Consulting Engineer shall agree on how the affected part of the Services will be carried out and upon additional remuneration therefor insofar as such services are to be performed by the Consulting Engineer.

The Client shall hold the Consulting Engineer harmless against any losses or claims resulting from the failure of third parties to provide the services to be arranged by the Client in accordance with Appendix (D).

12. Indemnification of the Consulting Engineer by the Client

The Client shall indemnify the Consulting Engineer and hold him harmless against any loss of life or property, injury, damage, actions, proceedings, claims by third parties, costs, including legal fees and expenses, suffered or incurred by the Consulting Engineer as a result of any wrongful act, negligence or breach of contract on the part of the Client or his servants.

13. Taxes

The Consulting Engineer shall be exempt in the Client's country from tax on income derived from the performance of the Services or be reimbursed by the Client in respect of such tax, provided that the Consulting Engineer shall not be entitled to such exemption or reimbursement in the following circumstances:

- (a) If he is a national or subject of or resident in the Client's country.
- (b) If the Consulting Engineer would otherwise be liable to tax on such income or any part thereof in accordance with any agreement between the Client's country and the home country of the Consulting Engineer for the avoidance of double taxation, but only to the extent of such liability.
- (c)* If the Consulting Engineer has a fixed base in the Client's country regularly available for him for performing his activities and the income is attributable to such fixed base, provided that an office made available to the Consulting Engineer or established by him solely for the purpose of performance of the Services shall not be deemed as a fixed base for the purpose of this provision.

14. Postponement and Termination

14.1. By Notice of the Client

The Client may by written notice to the Consulting Engineer at any time give prior notice of his intention to omit any part of the Services or to abandon the Services in whole or the remaining part thereof and terminate this Agreement. Unless otherwise agreed between the parties, the effective date of termination of this Agreement shall not be less than sixty (60) days after receipt of such notice. But the Consulting Engineer shall upon receipt of such notice take immediate steps to bring the Services to a close and to reduce expenditure to a minimum.

14.2. Force Majeure

The Consulting Engineer shall promptly notify the Client, in writing, of any situation or event arising from circumstances beyond his control and which he could not reasonably have foreseen which makes it impossible for the Consulting Engineer to carry out in whole or in part his obligations under this Agreement. Provided that the occurrence of such a situation or event is sufficiently verified and is acknowledged by the Client, who may not unreasonably withhold his acknowledgement, the Services shall be deemed to be postponed for a period of time equal to that caused by the Force Majeure and a reasonable period not exceeding one (1) month for remobilization by the Consulting Engineer for continuation of the Services.

* As an alternative to paragraph (c) the following may be used, if considered appropriate:

"(c) If, notwithstanding the absence of an agreement between the Consulting Engineer's home country and the Client's country for the avoidance of double taxation, the Consulting Engineer would be entitled to a tax credit in his home country in respect of income tax paid in the Client's country, but only to the extent of such tax credit."

14.3. Default by the Client

The Consulting Engineer may by written notice to the Client terminate this Agreement:

- (i) if he has not received payment of that part of any invoice, which is not contested, within ninety (90) days of the submission thereof; or
- (ii) if the Services have been postponed as provided for in Sub-Clause 14.2 and the period of postponement has exceeded six (6) months.

14.4. Entitlements of Consulting Engineer upon Postponement or Termination.

Upon postponement of the Services or termination of this Agreement under Sub-Clauses 14.1, 14.2 or 14.3 hereof, and subject to the obligation of the Consulting Engineer to reduce expenditure to a minimum as stated in Sub-Clause 14.1 hereof, the Consulting Engineer shall be entitled to receive the remuneration due up to the effective date of postponement or termination and reimbursement in full for such of the costs specified in Appendix (E) as shall have been incurred prior to the effective date of such postponement or termination and for all costs incidental to the orderly termination of the Services, including return travel of the Consulting Engineer's personnel, their dependants and effects.

14.5. Default by the Consulting Engineer

The Client shall notify the Consulting Engineer, in writing, if he considers that the Consulting Engineer is in breach of any of his obligations under this Agreement, stating the default on the part of the Consulting Engineer constituting such breach. In the event that the Consulting Engineer does not respond to such notice within fifteen (15) days or fails to rectify the default within a reasonable period not exceeding thirty (30) days, the Client may by further notice to the Consulting Engineer terminate the Agreement as of the date stated in such further notice. Such termination shall be without prejudice to the right of the Client to claim damages for default of the Consulting Engineer.

14.6. Claims for Default

Any claim for damages on the ground of default in the performance of this Agreement or in connection with its termination shall be the subject of negotiation and agreement between the Client and Consulting Engineer and, failing such agreement, shall be referred for determination under Clause 22 of this Agreement.

14.7. Rights and Liabilities of the Parties

Termination of this Agreement, for whatever reason, shall not prejudice or affect the accrued rights or claims of either party to this Agreement against the other.

15. Remuneration of the Consulting Engineer

- 15.1. In consideration of performing the Services and his other obligations under this Agreement the Consulting Engineer shall be remunerated by the Client in accordance with the conditions and schedule of remuneration and payments set forth in Appendix (E) hereto.
- 15.2. In the event that supplementary services, in addition to those provided for in Appendix (A) hereto, are required as a result of alterations or modifications to the Services or the schedule of performance thereof, specifically requested by the Client in writing and agreed with the Consulting Engineer, or in the event of delay in performance of the Services due to circumstances beyond the control of the Consulting Engineer and which could not reasonably have been foreseen by him, the Consulting Engineer shall, insofar as he has incurred any extra costs, receive additional remuneration computed either on time basis or as may be otherwise agreed between the Client and the Consulting Engineer, together with any reimbursable expenses incurred. The Consulting Engineer shall also be entitled to additional remuneration on the aforesaid basis in respect of any additional services not covered by Appendix (A) hereto, which are necessarily incidental to the termination of the Agreement, other than termination for breach by the Consulting Engineer of any part of his obligations under this Agreement.
- 15.3. In case of delay on the part of the Client or of any contractor or delay in the execution of the Works due to the taking of the Works or any part thereof out of the hands of any contractor because of his failure to properly perform his obligations under the contract between him and the Client, then to the extent that the Consulting Engineer incurs extra costs as a result of such delay, he shall be entitled to additional remuneration computed on time basis or as otherwise agreed between the Client and the Consulting Engineer, together with any reimbursable costs actually incurred.
- 15.4. If at any time before the completion of the Works, any part thereof shall be damaged or destroyed as a result of military operations, political disturbances or any other cause beyond the control of the Consulting Engineer, the Client shall pay to the Consulting Engineer an appropriate remuneration, as may be agreed, for any additional services in respect of

work which may be required to be [redesigned and/or supervised]* by the Consulting Engineer as a result of such damage or destruction.

15.5. Changes in Legislation

If in the country in which the Project is being carried out there shall occur, subsequent to the date of this Agreement, changes to any national or state statute, ordinance, decree or other law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such national or state statute, ordinance, decree, law, regulation or by-law which results in increased or decreased costs to the Consulting Engineer in connection with the performance of the Services, such additional or reduced cost shall be paid by or credited to the Client and the agreed remuneration adjusted accordingly.

16. Payments to the Consulting Engineer

16.1. The Client shall effect payments to the Consulting Engineer in accordance with the payment schedule and in the manner set forth in Appendix (E).

16.2. Amounts due to the Consulting Engineer shall be paid promptly. If the Client fails to pay the Consulting Engineer within** _____ (_____) days of the date of receipt of an invoice in respect of an amount which has fallen due, the Client shall [pay interest to the Consulting Engineer from the date of expiry of this period until the date of actual payment at the rate specified in Appendix (E)/ reimburse the Engineer in respect of such reasonable costs or bank charges as may be actually incurred by the Consulting Engineer as a result of the delay in payment after the expiry of the said period].***

16.3. If any item or part of an item of an invoice submitted by the Consulting Engineer is disputed or questioned by the Client, he shall so inform the Consulting Engineer within thirty (30) days of receiving the invoice stating the reasons for disputing or questioning such item or items of the invoice. Payment by the Client of the undisputed item or items of the invoice shall not be withheld on the grounds that any other item is disputed or subject to question and the provisions of Sub-Clause 16.2 hereof shall apply to

* The words "to be redesigned and/or supervised" would be appropriate if the assignment of the Consulting Engineer relates to the Civil Engineering Works which are to be designed by the Consulting Engineer. However for Electrical and Mechanical Works to be designed by the Contractor or Supplier the above works should be substituted by the words "to be supervised".

** A period of 60 days is recommended.

*** Delete as appropriate.

the undisputed part of the invoice and also to any disputed or questioned item or items of the invoice to the extent of the amount thereof subsequently agreed or determined as due to the Consulting Engineer.

- 16.4. All payments made by the Client in foreign currency as required by Appendix (E) hereto shall be transferrable abroad by the Consulting Engineer, unless and insofar as otherwise provided in the said Appendix.
- 16.5. Whenever it shall be necessary to evaluate one currency in terms of another for the purpose of the payment of an amount specified in Appendix (E) the rate of exchange applicable shall, unless otherwise agreed in writing, be the selling rate published by the Central Bank in _____ on the date of payment.
- 16.6. The Consulting Engineer shall keep accurate accounts and records in respect of the Services rendered under this Agreement in accordance with recognized and sound accounting practices and shall permit the Client or his designated representatives to inspect and audit such accounts periodically during the period of performance of this Agreement and thereafter for a period of one year.

17. Assignment

- 17.1. The Consulting Engineer shall not, without the prior written consent of the Client, assign any part of his obligations under this Agreement.
- 17.2. The Consulting Engineer shall not, without the prior written consent of the Client, assign any benefit under this Agreement, other than the assignment to the Consulting Engineer's bankers of any monies due or to become due.

18. Partnerships

- 18.1. Should the Consulting Engineer be a partnership and at any time take an additional partner or partners, he or they shall thence be deemed to be included in the expression the "Consulting Engineer".
- 18.2. Should the Consulting Engineer be a partnership, the Agreement shall not be affected by the death or withdrawal of one or more members of the partnership.

19. Notices

19.1. Any notice, request or consent required or permitted to be given or made pursuant to this Agreement shall be in writing. Any such notice, request or consent shall be deemed to have been duly given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex telegram or facsimile to such Party at the following address:

For the Client :

Attention : _____

Cable Address : _____

Telex : _____

Facsimile : _____

For the Consulting

Engineer :

Attention : _____

Cable Address : _____

Telex : _____

Facsimile : _____

19.2 Notice will be deemed to be effective as follows:

- (a) in the case of personal delivery or registered mail, on delivery;
- (b) in the case of telegrams after 72 hours of transmission;
- (c) in the case of telexes or facsimiles after 48 hours of transmission provided subsequent confirmation in writing is received within 5 days of transmission;

19.3. A Party may change its address for notices hereunder by giving the other Party notice of such change pursuant to this Clause.

20. Language

The ruling language for communications between the Client and the Consulting Engineer shall be _____.

21. Applicable Law

This Agreement shall be governed by and shall be construed and applied in accordance with the law of _____.

22.* Settlement of Disputes

22.1. If any dispute, or controversy shall arise between the Client and the Consulting Engineering relating to the interpretation or application of this Agreement and which cannot be settled amicably, the matter in dispute shall be referred to a Board of Arbitration composed of three (3) arbitrators. One arbitrator shall be nominated by the Client and one by the Consulting Engineer and the third arbitrator, who shall be the chairman of the Board of Arbitration, shall be appointed by both parties. If either party fails to appoint his arbitrator within one month of the appointment of the arbitrator by the other party, or if the two parties fail to agree on the third arbitrator within two months of the date of the request to refer the dispute to arbitration, such arbitrator or arbitrators shall be appointed by _____ at the request of either or both parties.

22.2. The decision of the Arbitration Board shall be final and binding on both the Client and the Consulting Engineer. Conduct of the arbitration shall be subject to the law of _____. The award of costs incidental to the proceedings shall be at the discretion of the Arbitration Board.

22.3. Unless otherwise agreed by the parties arbitration proceedings shall take place at _____.

23. Modification of the Agreement

The terms and conditions of this Agreement, including the scope of Services may be modified by agreement of the parties provided such agreement shall be in writing.

* Alternative Clause

22. Any dispute or controversy between the parties hereto relating to the interpretation or application of this Agreement and which cannot be settled amicably through negotiations between the parties shall be submitted to the court of competent jurisdiction in the country of the Client.

24. Entry into Force

This Agreement shall come into force and effect upon signature by both parties [and fulfilment of the following condition/s]*:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives in _____ copies in the city of _____ on the day and year first above written.

For the Client

(Designation)

**For the Consulting
Engineer**

(Designation)

* Delete as appropriate.



Appendices

- 1- Appendix (A) : Scope of Services
 - 2- Appendix (B) : Schedule of Completion of Services
 - 3- Appendix (C) : The Consulting Engineer's Personnel
 - 4- Appendix (D) : Personnel, Equipment, Facilities and Services to be Provided
by the Client
 - 5- Appendix (E) : Remuneration and Payments
-



Scope of Services



Appendix (B)

Schedule of Completion of Services



The Consulting Engineer's Personnel



Appendix (D)

**Personnel, Equipment, Facilities and
Services to be Provided by the Client**



Remuneration and Payments

The remuneration for professional services which shall include salaries, overhead costs, profits, travel, accommodation, miscellaneous costs and expenses of the consultant and sub-contractors, shall be paid according to the following schedule:

- (i) _____ % (_____ percent) upon signing the Agreement against a bank guarantee. The advance payment shall be deducted from the total amount due to the Consultant.
- (ii) _____ % (_____ percent) upon presentation of the first Progress Report.
- (iii) _____ % (_____ percent) upon presentation of the second Progress Report.
- (iv) _____ % (_____ percent) upon presentation of the Draft Final Report.
- (v) _____ % (_____ percent) upon presentation of the Final Report.
- (vi) _____ % (_____ percent) upon acceptance of the Final Report and delivery of all documents.

The total foreign currency requirement amounts to US \$ _____ equivalent to _____ % of total amount of the Consultant's remuneration.

