



COLLEGE OF  
INVESTIGATIVE  
AND REMEDIAL  
CONSULTING ENGINEERS OF AUST.

## **GUIDELINES FOR COMMISSIONING**

### **CONSULTING INVESTIGATIVE AND REMEDIAL ENGINEERING SERVICES**

#### **SPECIAL NOTE**

**These guidelines include advice and potential clauses for use in specific 'Terms of Engagement' to be agreed between the Client and the CIRCEA Member – these guidelines shall not be construed to be contract conditions and are subject to revision without notice.**

# GUIDELINES FOR COMMISSIONING CONSULTING INVESTIGATIVE AND REMEDIAL ENGINEERING SERVICES

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# **GUIDELINES FOR COMMISSIONING CONSULTING INVESTIGATIVE AND REMEDIAL ENGINEERING SERVICES**

## **TERMS OF ENGAGEMENT**

### **1.0 INTRODUCTION**

#### **1.1 Definitions**

- Unless specifically agreed otherwise, all consultancy work, and agreed variations, undertaken by the Consultant will be in accordance with these Terms of Engagement and any associated 'Letter of Offer' of services and related schedules.
- 'Terms' shall mean the Terms of Engagement.
- Any additional clauses/terms contained in the Consultant's 'Letter of Offer' to provide services shall form a part of the Terms. No other term or condition shall be incorporated unless specifically agreed to in writing by the Consultant.
- These Terms shall apply to the exclusion of any contrary provisions which may appear on any order form, or other document issued by the Client to form the contract for services between the Consultant and the Client.
- The relationship between the Consultant and Client, and any relationship arising pursuant to the services provided by the Consultant, shall be governed by the laws of the State or Territory of Australia in which the Consultant's fee proposal or Letter of Offer was issued.
- 'The Consultant' shall mean and include the body or person with whom the Consultant contracts for, or in relation to the performance of functions of the provision of goods or services and, in the event that the Client is an incorporated body, shall include related corporations and associated entities.
- 'The Client' shall mean and include the body or person with whom the Consultant contracts for, or in relation to the performance of functions or the provision of goods or services and, in the event that the Client is an incorporated body, shall include related corporations and associated entities.
- The 'Letter of Offer' shall mean the fee proposal, budget estimate, schedule, letter with attached schedule, or letter provided to the Client by the Consultant settling on the basis on which the Consultant would be prepared to undertake work and/or provide services to the Client.
- The 'Services' shall mean the various goods and services stipulated in the Letter of Offer by the Consultant to the Client.
- The 'Project' shall mean the work described in the 'Letter of Offer' to which these Terms apply.
- A 'Subcontractor' shall mean and include:
  - any person, firm or company with whom the Consultant may arrange for any work to be performed for the Client, and
  - any person who is now or hereafter a servant, agent or subcontractor of any of the persons referred to above.
- The term the 'College' shall be taken in these guidelines to refer to the College of Investigative and Remedial Consulting Engineers of Australia. The activities of the College covers the whole of Australasia. The College is incorporated in New South Wales under the Associations Incorporations Act 1984.
- Taxing shall be taken to mean the process of verification of a consulting engineer's invoiced charges under an agreed scheme of arrangement between the consulting engineer and the client.

#### **1.2 Agreement**

In the interests of both the client and the consulting engineer it is recommended that they should enter into a written agreement for each commission. The agreement should be based on the guidelines set out in this publication.

#### **1.3 College Membership Standards**

As a guide for clients the general standards of professional practice, ethics and qualifications implied by membership of the College of Investigative and Remedial Consulting Engineers of Australia are outlined below:

Every member of the College

- (a) is a corporate member of the Institution of Engineers, Australia or of an approved equivalent Australian or foreign learned society;
- (b) is registered in the Australian “National Professional Engineers Register” (NPER), or has the equivalent registration in a foreign learned society;
- (c) has had a minimum of twenty years professional experience;
- (d) possesses an acknowledged level of expertise in a nominated field or fields which qualify the member to be an expert in the estimation of the member’s peers;
- (e) has entered into an agreement with an established and registered insuring agency to obtain professional indemnity cover commensurate with the monetary risk inherent in the consulting activities undertaken, with a minimum cover of \$Aust 1,000,000.
- (f) is required to maintain an organization devoted exclusively to the member’s profession;
- (g) is independently situated to accept commissions for engineering design, inspection or review from the general public, and operated from a clearly designated place of work without restriction from other employment activities;
- (h) is a member of the Investigative & Remedial Engineers Limitation Scheme approved under Professional Standards Legislation; Liability under this scheme is set at \$1,000,000;
- (i) is paid for advice and services solely by clients’ fees.

#### **1.4 Remuneration**

Except in the case of either registered charity or voluntary work a member shall not undertake professional work without remuneration adequate to ensure that the member is able to carry out all responsibilities in accordance with recognised professional standards. The College has established through its research the costs of forensic quality professional engineering practice operation.

### **2.0 PRELIMINARIES**

#### **2.1 Scope and Purpose**

- (a) The information contained herein is intended as a guide both for the specialist consulting engineer and for the client with the intention to reach an agreement on the commission and to set the remuneration commensurate with the consulting engineer’s level of skill, responsibility and full practice costs.
- (b) The information applies to consulting engineering commissions of an investigative, remedial or forensic nature, as distinct from design and other services associated with new installation or construction.
- (c) The information covers all professional engineering disciplines without distinction.
- (d) The information is intended to apply solely to the activities of recognised specialist consulting engineers.

#### **2.2 Services and Performance Criteria**

(a) Arbitrator

An arbitrator shall be taken to mean an expert consulting engineer appointed by the parties to a dispute to act to resolve the dispute on their behalf. An arbitrator is to be appointed and to act under the Commercial Arbitration Act of the State in question.

(b) Cancellation Fee

A cancellation fee shall be taken to mean a sum of money to be paid by prior arrangement with the client to the consulting engineer in the event of a cancellation of a commission.

(c) Client

Client shall be taken to mean the person, persons, association or corporate entity as the case may be who enters into a contract with the consulting engineer for the purposes of instructing him or her to perform a commission.

(d) Commission

A commission shall be taken to mean the authorisation to perform a specific task or tasks issued to the consulting engineer by the client.

(e) Conciliator and Mediator

A conciliator and/or mediator shall be taken to mean an expert consulting engineer who is appointed by the parties to a dispute to act to resolve the dispute in accordance with the processes of Alternative Dispute Resolution.

(f) Consulting Engineer

A consulting engineer, for the purposes of these guidelines, shall be taken to mean a professionally qualified engineer who meets the College membership standards (see 1.3 above).

(g) Expert Witness

An expert witness shall be taken to mean a consulting engineer engaged by a party involved in litigation or arbitration to provide a commentary on evidence with respect to the consulting engineer's field of specialty or expertise. It is understood that an expert witness is not party to a dispute but the necessity to comment on work carried out by the consulting engineer's own practice does not invalidate the expert witness status.

(h) Forensic Consultancy

Forensic consulting engineering shall be taken in a broad sense to mean investigations and the preparation of reports which seek to clarify engineering matters to an intelligent lay readership, and which are sufficiently carefully researched and prepared as to withstand the scrutiny of the courtroom or other arbitrating body.

(i) Inspection

Inspection shall be taken to mean the viewing of site work by a consulting engineer where the engineer determines the need for such viewing or is reliant upon the client or the client's agent for notification to attend.

Where the Consultant provides site inspection or testing services during construction, such inspections and services will be for the purposes of

- Reviewing and advising on construction
- Documenting compliance, or non-compliance of the works with respect to the Project specification.

The provision of inspection services, including the provision of verbal advice by site personnel shall not relieve a contractor of its responsibilities under any contract.

(j) Investigative Consultancy

Investigative consulting engineering commissions shall be taken to mean those commissions which call upon the consulting engineer to determine in retrospect the cause of failure, damage, underperformance or inadequacy in relation to the consulting engineer's accepted field of specialisation.

(k) Performance

In providing the Services, the Consultant only undertakes to exercise the degree of skill, care and diligence normally exercised by Consultants in similar circumstances. There shall be no liability whatsoever in respect of a failure to exercise a level of skill, care and diligence, beyond the level of skill, care and diligence described.

(l) Prime Consultant

The prime consultant shall be taken to mean the consulting engineer directly engaged by the client to execute a particular commission, as distinct from specialist consultants whom the prime consultant may in turn appoint.

(m) Referee

A referee shall be taken to mean an expert consulting engineer appointed by a court to assist and report to a Judge on the technical aspects of a matter in dispute. A referee is to be appointed and to act under the New South Wales Supreme Court rules section 72 or equivalent procedure in the State in question.

(n) Remedial Consultancy

Remedial consulting engineering commissions shall be taken to mean those commissions which call upon the consulting engineer to determine a means of correction or repair in engineering projects designed by others.

(o) Retainer Fee

A retainer shall be taken to mean a sum of money paid by a client to a consulting engineer prior to the execution of work on behalf of that client.

The retainer shall not be intended to cover any of the services described in these Guidelines.

The retainer shall be considered as compensation for being at call and maintaining a continuing interest in the matter.

(p) Specialist Consultant

A specialist consultant shall be taken to mean a consulting engineer whom the prime consultant may engage and brief for a specialist activity on behalf of a client.

If the Consultant considers it appropriate to do so, the Consultant may with the Client's prior approval, which shall not be unreasonably withheld, engage a specialist consultant to assist the Consultant in specialist areas.

(q) Supervision

Supervision shall be taken to mean the site monitoring of work by a consulting engineer where the engineer alone is responsible for the timing of the monitoring visits.

Commonly supervision services may involve the engagement of a resident clerk of works continuously over a construction period.

The Client acknowledges that the Consultant does NOT supervise construction work and cannot be held liable for any work undertaken by others on the Project.

Where verbal advice, or site approval, is given by the Consultant, there shall be no liability/responsibility on the Consultant unless such advice is confirmed in writing.

### **3.0 CONDITIONS OF ENGAGEMENT**

#### **3.1 Client's Brief**

(a) Issue of Brief

Due to the inherently indeterminate nature of investigative work the client shall, at the outset of the working contract, define the limits within which the specialist consulting engineer is expected to perform. Alternatively, the consulting engineer shall upon engagement seek to define in a written submission to the client the objects of the enquiry.

The Client shall provide to the Consultant all necessary briefing and information concerning the Client's requirements for the undertaking of the work by the Consultant. For the purposes of the Project, the Client accepts that the Consultant will rely on the information supplied by the Client.

(b) Brief to Give Essential Freedoms of Action

The client shall not expect to confine the consulting engineer's area of enquiry in such a manner that would hinder the investigation of matters that would be judged relevant by an informed third party. Nor shall a consulting engineer accept commissions on terms that would cast doubt on the objectivity of the final result.

(c) Extension of Brief

If during the course of an investigation the consulting engineer should determine that the agreed brief would not permit the full elucidation of the fundamental issues involved then the consulting engineer shall inform the client of the need to extend the brief. If in these circumstances the client were to forbid the consulting engineer to extend the investigation or to decline to reimburse the consulting engineer for the additional work involved then the consulting engineer shall be free to terminate the commission and the client shall be obliged to pay the consulting engineer all fees incurred up to the time of such termination.

### 3.2 Appointment of Prime Consultant

(a) Commissions Requiring the Engagement of More than One Specialist Consulting Engineer

Where independent consulting engineering practices of different specialties are required to work jointly in the execution of a client commission it shall be necessary for the client to appoint one of the consultants as a prime consultant. The prime consultant shall deal exclusively with the client and shall appoint and brief such specialist consulting engineers as specialist consultants as are found to be necessary as the agent of the client.

In the case where part of the commission falls outside the field of expertise of the consulting engineer the engineer shall advise the client at the outset of the need to engage a specialist consultant or specialist consultants of the appropriate discipline and field of expertise.

If during the course of a commission the need for the services of a specialist consultant become apparent, the consulting engineer shall advise the client in advance of the need to engage such services and shall obtain the client's clearance prior to making an engagement.

The rules governing dealings between the prime consultant and each specialist consultant are set out in sub-section 4.5(d).

(b) Basis of Engagement

The client, in commissioning the consulting engineer, shall be deemed to acknowledge the judgement of the latter in determining the course of the investigation and the management of the work of specialist consultants.

### 3.3 Agreement on Fees

(a) Agreement at Outset

The basis of the fee structure for the commission shall be agreed between the client and the consulting engineer prior to the establishment of the commission.

Unless otherwise agreed, the Client's formal instruction to proceed with the work shall be assumed by the Client signing and returning a copy of the Agreement or Letter of Offer prepared by the Consultant.

(b) Requirement of Consulting Engineer to Disclose Rates

There shall be a contractual duty on the part of the consulting engineer to provide a catalogue of hourly rates if requested specifically to do so by the client, in which case the consulting engineer shall make a disclosure of all rates including those of support staff which it is intended to apply when billing for the commission. Following initial disclosure the consulting

engineer shall also notify the client of any later change to the rates as for example if, during a lengthy commission, changes were made to compensate for inflation.

### **3.4 Copyright and Use of Documents**

#### **(a) Copyright**

Copyright in all documents, including drawings, reports, specifications, bills of quantity, video tapes, calculations, computer disks, etc. prepared by or at the request or direction of the Client, shall be and remain the property of the Consultant.

The client alone shall have a licence to use the documents referred to above, in connection with the project for which they are prepared.

The Client shall not use, nor make copies of any documents prepared by the Consultant in connection with any work other than the Project, without the express written approval of the Consultant.

If the Client is in breach of any obligation to make payment to the Consultant, the Consultant reserves the right to revoke the licence referred to above and the Client shall cause to be returned to the Consultant all documents referred to above and all copies thereof.

#### **(b) Electronic Copies of Documents**

Where electronic versions of documents including letters/reports/drawings produced by the Consultant are provided, the same are supplied in good faith and on the basis that the Client/recipient will not use, or distribute copies or parts thereof of the documents without specific permission from the Consultant.

Any unauthorized distribution of the documents, or parts thereof will be considered a breach of the Consultant's copyright and/or confidentiality. The Consultant does NOT take any responsibility or liability for the correctness of any documents electronically transmitted.

#### **(c) Diaries and Documents**

Original diaries or documents shall not be surrendered to court records under any circumstances. Where copies of such records are subpoenaed, the Consultant will obliterate any material which in the Consultant's opinion does not directly relate to the matter in hand.

All expenses associated with the provision of such copies shall be paid to the Consultant by the Client.

As a general principle however the act of issuing a subpoena for lodgement of documents is a precaution exercised by the Court to ensure their availability and shall not under any circumstances interfere with the ability of the engineer to pursue his professional activities.

Where specifically authorized by the Client or Client's representative the copies of documents and the file originals shall be submitted by the consulting engineer to a notary public for certification, and the originals shall be returned to the consulting engineer's records.

All expenses incurred shall be payable by the Client.

## **4.0 SCOPE OF LIABILITY**

### **4.1 Direct and Indirect Loss**

The liability of the Consultant to the Client arising out of the performance or nonperformance of the Consultant's services, whether under the law of contract, torts or otherwise, shall be limited to the cost of rectifying the works which are directly associated with the Services provided by the Consultant.

Under no circumstances, whether as a result of any act, neglect or default or otherwise howsoever, shall the Consultant have any liability for or in relation to any work, reports, information, plans, designs or specifications supplied or performed by any third party, including a third party engaged by, or at the suggestion of the Consultant.

The Client shall indemnify and hold the Consultant harmless against all claims, costs and demands by third parties (including the Client's agents, contractors or subcontractors) in respect of the Services provided by the Consultant.

#### **4.2 Maximum Amount of Liability**

The maximum liability of the Consultant to the Client arising out of the performance or non-performance of the services, whether under the law of contract, tort or otherwise, shall be the amount specified in the Letter of Offer, or if no amount is specified, \$A 1,000,000.

#### **4.3 Duration of Liability**

No action shall lie against the Consultant at the suit of the Client after the expiration of one year from the Consultant's involvement in the Project. The cessation of the Consultant's involvement shall be defined by the date of the Consultant's completion of the services in respect of the Project.

The client (and persons claiming through or under the client) shall not be entitled to commence any action or claim whatsoever against the consulting engineer (or any employee of the consulting engineer) in respect of the services after that date.

#### **4.4 Extent of Warranty**

The consulting engineer shall not give any warranty nor accept any liability in relation to the performance or non-performance of the services except to the extent, if any, required by law or specifically provided for in this agreement.

If apart from this clause any warranty were to be implied whether by law, custom or otherwise, that warranty is excluded to the full extent permitted by law.

Nothing herein contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

#### **4.5 Management of Commissions**

##### **(a) General**

The consulting engineer shall endeavour to serve the interests of the client in accordance with the engineer's abilities, training and skill, and consistent with the rights and safety of the public at large. The consulting engineer shall work for the observance of the spirit of the statutory code requirements.

##### **(b) Grounds for Expenditure of Fees**

Between the time of awarding the commission to the consulting engineer and that of conclusion or termination of appointment the consulting engineer is to be regarded as the agent of the client, and as being free to exercise unrestricted professional judgement in the resolution of the enquiry in hand. The client shall have no grounds later to imply that the consulting engineer caused excessive time to be expended, whether personally, by members of the engineer's staff or by other appointed specialist consultants. Rather, the client shall seek to control or monitor the commission by asking the consulting engineer to report at previously agreed intervals on progress and expenditure, and/or to notify that previously

agreed fee thresholds have been reached.

(c) Reporting on Fee Expenditure or Job Progress

There shall be a contractual duty on the part of the consulting engineer to report on job progress or the expenditure if requested specifically to do so by the client in which case the consulting engineer shall agree with the client the intervals of time and/or the thresholds at which reports should be made.

(d) Referral to a Specialist Consultant

(i) Recognition of Need for Referral

Where as part of a larger commission a consulting engineer becomes aware of the need for specialist advice the consulting engineer shall advise the client of the need and seek the approval of the client to engage a specialist consultant. This shall apply irrespective of whether the consulting engineer is a general or a specialist practitioner.

(ii) Referring Consultant's Interface with Specialist

It shall be the referring consultant's duty to instruct the specialist consultant in the full details, so far as the former is aware, pertaining to the case in hand. The referring consultant shall act as an intermediary in all dealings with the client and shall summarise all instructions to the specialist in the form of a written brief.

(iii) Division of Professional Responsibility for Specialist Advice

In the event of a dispute over the adequacy of the advice or subsequent claim the delineation of the area within which the specialist engineer is required to work, expressed in a written brief, must be of crucial importance. The referring consulting engineer shall therefore delineate clearly in written form the division of professional responsibility.

Alternately or coincidentally specialist consultants may submit in writing the terms of reference of their commission.

(iv) Servicing of Referral

The referring consulting engineer (prime consultant) shall correspond with the specialist consultant at all significant phases of the latter's commission. At the conclusion of the specialist consultant's commission the prime consultant shall endeavour to ensure by all means at the prime consultant's disposal that the client is properly briefed as to the outcome of the specialist consultant's findings. To this end specialist consultant's findings shall be incorporated in the prime consultant's report, with the original report included unabridged as an appendix. The commentary included by the prime consultant in the body of the report shall be fair and reasonable in applying the specialist consultant's findings to answer the client's brief.

## 4.6 Quality Management Systems

While the consulting engineer shall exercise appropriate care in the documentation and services offered to the client there shall be no commitment implied to conform to the provisions of AS 3901 "Quality Systems for Design/Development, Production, installation and Servicing" unless specifically requested by the client.

## 5.0 PROPOSALS AND FEES

### 5.1 Basis for Fees

#### Fee Calculation

It is assumed that, other than in the case of percentage and/or lump sum fees to cover certain

eventualities all fee calculations for investigative, remedial and forensic work shall be computed on a time basis.

### Time/Rate Fees

Budget estimates provided in any Letter of Offer for a 'time' or 'rate' basis of working are NOT Lump Sum, or Fixed Price amounts. Also, as any budget estimate provided by the Consultant to the Client is based on the Consultant's perception of the 'scope of work' required in a particular situation, the budget estimate shall only be considered a 'speculation' of the extent of work required.

## **5.2 Basis of Hourly Rate Fee Charges**

### (i) Setting of Fee Rates

It shall be the right of each practice to establish its own base rates and salary coefficients taking into account such factors as are outlined below.

### (ii) Base Rates

The base hourly fee rates shall be set by the consulting engineer and agreed with the client. The College has established through its research the costs of forensic-quality professional engineering practice operation. In the absence of specific written advice to the contrary from the client or the consulting engineer the method of base rate computation set out in clauses (iii) and (iv) apply.

The hourly rates shall be set either

- (a) for each specific staff member, distinguishing between principals, senior engineers, junior engineers, secretaries, technical support personnel and any other category the consulting engineer considers relevant for the practice operation, or
- (b) for engineering staff only and the average practice overheads for support staff incorporated within the rate.

### (iii) Computation of Base Rates

The base rates shall in the absence of any other agreement be computed for each staff member in the following manner.

$$\text{Base Rate} = \frac{\mathbf{S} \times \mathbf{C}}{\mathbf{H}}$$

Where **S** is the total salary package of the staff member including non-contributory superannuation, car, allowances, benefits, bonuses, overtime etc.

**H** is the number of chargeable hours spent in the practice by the staff member within the current year

**C** is a salary coefficient in the range given in (iv) below.

In the absence of any agreement the College has established through its research that 1240 hours represent the total number of chargeable hours spent in a year by the average full-time employee.

### (iv) Choice of Salary Coefficient

In the absence of any other agreement the salary coefficient shall be assessed according to the following criteria:

- (a) Where the commission entailed the use of standard procedures generally employed in engineering practice the typical salary coefficient would be 3.4.
- (b) Where the commission entailed an investigative function in which the practice was

responsible for obtaining the necessary information by enquiry and which carried a responsibility over and above the need for simple code compliance the salary coefficient would be 4.6.

- (c) Where the commission required that new ground be broken in the matter of research, investigation or the application of existing procedures, the typical salary coefficient would be 5.8.

Note: These coefficients may be interpolated for intermediate cases.

- (v) Expert Witness Fees

Unless varied specifically by the consulting engineer and client and advised in writing accordingly, the hourly rate for the principal engaged in conference, or under cross-examination, or in attendance at Court as Expert Witness, shall be the base rate multiplied by a factor of 1.5.

- (vi) Refresher Fees

For time spent reading for expert witness and similar commissions, researching practice files and similar review the base rate shall be taken unadjusted.

### **5.3 Lump Sum Fees**

Any lump sum fee provided by the Consultant to the Client in the Letter of Offer assumes that the various materials, goods, services, plans etc., specified in the Letter of Offer are provided by the Client to the Consultant at no cost, and at the place and time designated.

#### Part Lump Sum: Part Time/Rate Fees

Where the Consultant's Letter of Offer allows for both 'Lump Sum' and hourly rates plus disbursements, the Lump Sum component of the fee assumes the Client's compliance with the term above.

Lump Sum fees are intended to avoid a multiplicity of small charges and to cover the cost to the consulting engineer of incurring responsibilities of various kinds.

### **5.4 Computation of Rates**

- (a) The computation of hourly rates for all staff shall be carried out along the lines set out in sub-section 5.2 of these guidelines. The base salaries used for computation shall include all extra allowances, services in lieu of salary, bonuses, study leave and sabbatical leave expenses averaged over the duration of employment.
- (b) It shall be left to the consulting engineer's discretion whether to include for support staff in the engineer's own rate or whether to charge for support staff on the basis of their individual timesheets.

### **5.5 Travel Fees**

For time spent travelling between the consultant's office and sites, conferences, client's offices and other locations on activities directly associated with client's brief, the base rate shall be taken unadjusted.

### **5.6 Office Based Stand-by Fees**

Should the consultant not be paid a retainer fee, an office based stand-by fee shall be applicable.

Unless varied specifically by the consultant and advised in writing accordingly time spent in office on notice prior to attendance in court or attendance at legal or client conference shall be charged at a rate calculated by multiplying the base rate by a factor of 0.50.

This rate shall be charged for the individual on call irrespective of whatever other charge is made concurrently against the individual. It shall be computed from the time the individual is considered to be on call until either of the following events occur

- (a) the individual is notified by the legal representative or the client to attend court or conference
- (b) the individual is notified that he or she is no longer on call.

### **5.7 Extended Commissions**

During the course of the commission the consultant may see fit to offer the client a revised multiplier where individuals employed by the practice other than the principal are engaged in a single undertaking for periods of time in the order of one year.

### **5.8 Computer Time**

In addition to specific hourly rates for principals and staff engaged upon a commission the consulting engineer shall also be entitled to make an hourly charge for computer time.

### **5.9 Practice Management Fees**

#### (i) Preamble

Unless varied specifically by the consulting engineer and the client the following practice management fees shall be applied to the commission.

#### (ii) Fees to Cover Referral to Specialist Consultant

In order to cover the prime consultant with respect to the shared professional responsibility the prime consultant shall be entitled to charge an amount equal to thirty percent (30%) of the specialist consultant's fee or such fee which will reimburse the prime consultant for the engagement and practice overhead costs associated with such specialist service.

#### (iii) Fees to Cover Quality Management Assurance Certification or Audit

Should the consulting engineer be required to carry out a commission in terms of AS3901 the client may elect -

- (a) to require a certified statement as to the implementation of a quality management system within the consulting engineer's practice. Such a certification shall be provided at an add-on premium of a lump sum or a percentage of the commission fee, whichever is agreed between the consulting engineer and the client

Note:

Pending further experience in these matters the College anticipates that an additional fee equal to 25% of the fee for the commission would be required for the extra work of practice certification, with this percentage rising for small commissions. This recommendation will be reviewed as more information comes to hand

or alternatively

- (b) to require an audited statement as to the compliance of the project or commission with the requirements of the quality assurance program established by the consulting engineer's practice. Such an audit shall be provided at an add-on premium of a lump sum or a percentage of the commission fees plus audit costs, whichever is agreed between the consulting engineer and the client.

Note:

Pending further experience in these matters the College anticipates that an additional fee equal to 50% of the fee for the commission would be required for the extra work associated with a Quality Management Assurance audit, with this percentage rising for small commissions. This recommendation will be reviewed as more information comes to hand.

(iv) Fees to Cover Client Briefing

Where the consulting engineer is called upon to brief a client by offering advice and guidance on a matter which in the opinion of the engineer involves a responsibility over and above the time basis charge for the commission, then he shall be paid a briefing fee in addition to the time basis fees involved.

The quantum of the briefing fee shall be one of:

- (i) Thirty percent (30%) of the consultant's time basis fees in addition to those fees, or
- (ii) Five percent (5%) of the estimated fee for the full commission involved in the briefing, or
- (iii) an amount based on a practice-specific analysis of risk exposure, whichever is appropriate in the estimation of the consulting engineer.

(v) Fees to Cover Certification

Where the consulting engineer is called upon to provide certification for work carried out by other parties the consultant shall be entitled to the payment of a one-off lump sum charge to compensate for the responsibility and duty of later justification incurred in issuing such certification.

The quantum of the certification charge shall be one of:

- (i) Thirty percent (30%) in excess of fees incurred in verifying and preparing the certification, or
- (ii) Ten percent (10%) of the current replacement value of works which required full engineering checking analysis, or
- (iii) One percent (1%) of the current replacement value of works subject to a general brief of inspection, or
- (iv) An amount based on a practice-specific analysis of risk exposure  
whichever is appropriate in the estimation of the consulting engineer.

(vi) Retainers

If in the opinion of the consulting engineer acceptance of a commission will lead to an extended time frame for the use of the practice's services, as (but not exclusively) in the matter of a dispute between the client and another party, then the consulting engineer shall be at liberty to charge a lump-sum retainer payable in advance of commencement of the work.

The quantum of the retainer shall be a matter for the consulting engineer and the client to agree upon, but in the absence of any other basis shall be either

- (i) Ten (10) hours of the consulting engineer's principal's rate, or
- (ii) Ten percent (10%) of the consulting engineer's estimate of the fees involved in the commission,

which-ever is more appropriate.

The retainer is to cover a particular interval of time which may be specified by the consulting engineer in advance or failing this be taken as six calendar months. At the conclusion of the

interval of time covered by the retainer the contract between the consulting engineer and the client shall be deemed to have lapsed, and the consulting engineer may renegotiate with the client.

A retainer payment is the purchase of an option on the part of a client to use the consulting engineer's services. It is separate from any hourly charge for services and shall not be discounted against such services.

Where the Consultant requests a fee deposit from the Client, the Consultant will be entitled to delay commencement of work on the Project until the Client's payment of the fee deposit has been received, regardless of any other verbal or written authorisation provided by the Client.

If the Consultant proceeds on the basis of a verbal commission for either new work, or a variation to work already commissioned, both the Client and the person instructing the Consultant will be deemed to have formerly accepted the Terms.

## **5.10 Disbursements**

### (a) General Disbursements

Reimbursement of all expenses and disbursements except as noted hereunder shall be at the cost plus twelve and one half percent (12.5%) or such rate as shall be determined on a practice-specific cost basis.

### (b) Retrieval of Information

The consultant may charge a discovery fee per document set, plus secretarial time plus retrieval costs for access to practice archives.

### (c) Vehicle Expenses

The consultant shall apply a rate for practice motor vehicle travel per kilometre, in both directions, for travel from the practice office or equivalent. Rates shall be based on current published data issued by a recognised motoring authority such as NRMA or RACV. Rental vehicles shall be computed under Disbursements above.

## **5.11 Opening of Files**

Where the consulting engineer is required to reopen a file from the practice records that has been dormant for more than twelve months an opening fee plus time basis refresher fees may be charged to the Client.

## **5.12 Resolution of Disputed Fees**

In the event of dispute between Client and Consulting Engineer over matters pertaining to fees on an individual commission, it shall be acknowledged by both parties that the matter shall be referred to a taxing committee of review set up by the College including a consulting engineer approved by the Client.

Fees for taxing and allocation of the same shall be agreed by the parties prior to the setting up of the taxing committee of review. The Client shall accept that time sheet and other practice administration material supplied by the Consulting Engineer shall remain confidential to the committee of review and it shall not be admissible during the course of the proceedings for the Client to make a submission on this material other than to lodge a claim as to the necessity of service.

The findings of the taxing committee of review shall be binding upon both parties.

## **6.0 TERMINATION**

This Agreement may be terminated by either party by fourteen (14) days written notice in the event of substantial failure by the other party to perform in accordance with the Terms hereof. Such termination shall not be effective if that failure has been remedied by expiration of the period specified in the written notice.

### **6.1 Payment Lump Sum on Cancellation**

The Consulting Engineer shall be entitled to the payment of a lump-sum fee, known as a 'termination payment' in the event of the cancellation by the Client of a previously arranged commission.

### **6.2 Payment before Conclusion of Works**

If the Agreement is terminated before the conclusion of all work for which the Consultant has been engaged, the Consultant will be entitled to be paid for all works and reimbursable expenses in respect of work performed as at the date of termination in accordance with the Letter of Offer and these Terms, plus reasonable termination expenses.

This payment shall be in addition to all fees and charges due and payable for services provided and expended on the commission, up to and including the date of termination by the Client.

The termination payment shall provide for compensation to the Consultant for disruption of activities in arranging for the originally planned continued execution of the commission. It shall not be discounted against further work in the event of a resumption of the commission.

### **6.3 Death/Insolvency of Client**

Any agreement or contract made in accordance with these Terms and associated Letter of Offer shall survive the death or insolvency of the Client, with the Client's rights and obligations passing to his successors, receiver, administrator or liquidator. Nevertheless, the Consultant shall be entitled to immediately terminate provision of the Services, with all fees and costs to the date of termination being due and payable as a secured creditor against the tangible assets of the Client.

### **6.4 Assignment and Transfer**

Neither party may assign, transfer or sublet any obligation under this Agreement with the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor from any obligation under this Agreement.

## **7.0 PAYMENT OF ACCOUNTS**

The Client shall pay the Consultant the Fee and Disbursements as set out in the Letter of Offer together with such other amounts in respect of other services agreed to be provided.

Unless specifically stated otherwise, the Consultant's Letter of Offer assumes that fees will be paid on a progressive basis throughout the currency of the Project. Should the Client fail to pay any progress payment in a timely manner and/or in accordance with the agreed/stated Schedule and payment terms, then the Consultant reserves the right to withhold any documents and/or cease work on the Project.

Unless otherwise agreed:

- Payment shall be by electronic funds transfer, bank cheque or cash
- Invoices are due and payable with seven (7) days of date of invoice
- Interest is charged on overdue accounts at the compound rate of 18.5% per annum.

GST (Goods and Services Tax) is generally payable on the Services provided by the Consultant. As such, GST will be added to any Budget Estimate, Fee, Price or Consideration quoted by the Consultant unless the Budget Estimate, Fee, Price or Consideration quoted states that GST has been included.

Where designs and specifications are provided by the Consultant to the Client, the design fee must be paid prior to commencement of work on-site, or utilisation of the design information prepared by the Consultant.

If notice is not given by the Client to the contrary within fourteen (14) days of the date of an account issued by the Consultant, it will be assumed that the quantum of the account is accepted without dispute.

If the Client wishes to dispute a Consultant's account, written notice shall be given to the Consultant within fourteen (14) days of the date of the account.

### **7.1 Payments to Specialist Consultants**

The Client shall also accept responsibility for the payment of all moneys payable to Specialist Consultants together with an administration fee payable to the Consultant of 12.5% of the specialist sub-consultant's fees.

Should a specialist consultant be engaged on the Project, these Terms shall be deemed to also apply to engagement of the sub-consultant.

### **7.2 Variation by Client**

Should the Client vary the 'scope of work' required to complete the Services (either orally or in writing), the Consultant will charge for such additional work at the Consultant's current hourly & other rates for personnel and equipment.

Any additional disbursements incurred will also be to the Client's account.

Where the scope of the Services is reduced by the Client, then the Consultant reserves the right to charge an additional fee to cover the Consultant's preparatory work and loss of profit on the work not undertaken, and Services not provided.

### 7.3 Variation by Consultant

Should conditions or situations arise during the course of the work that require the 'scope of work' to be adjusted, then the Consultant will endeavour to advise the Client within a reasonable time (usually 7 days) that the budget requires adjustment. There may however be occasions when the Consultant cannot advise the Client of the need to adjust the budget in advance of undertaking the additional work necessary.

Should the Client decide not to authorize the additional or varied work, then the Consultant reserves the right to immediately cease work on the Project and require the Client to immediately pay all the Consultant's costs and disbursements incurred to the date of cessation of work.

### 7.4 Verification and Payment of Fees

#### Taxing

See 5.12 above.

##### (a) Preliminary

Taxing shall be subject to arrangement through a taxing committee of review set up by the College (see clause 5.12 – Resolution of Disputed Fees). There shall be an obligation on the part of the committee of review to appoint a consulting engineer approved by the client to the taxing committee who in all reasonable respects is at least a peer of the taxed consultant, in terms of specialisation, seniority and fee structure.

##### (b) Submission of Documents to Taxing Committee

The taxed consultant shall arrange to submit copies of all internal documents required by the taxing committee, relating to correspondence with the client, hourly rate computations, time sheets and fee calculations. The taxed consultant shall allow the taxing committee access to view originals of the abovementioned documents, job files and the like without removing the same from the taxed consultant's premises.

Such documents are to be made available within seven days of receiving a request for inspection or at such reasonable time as can be agreed when there is an advised difficulty.

##### (c) Duration of Taxing Process

The taxing committee shall agree in advance with both the client and the taxed consultant on a time frame for the taxing process. Any departure from this schedule shall be referred to the committee of review for adjudication.

##### (d) Fees for Taxing

- (i) There shall be a non-refundable application fee payable by the claimant to the College upon making a formal request for the establishment of the TAXING COMMITTEE OF REVIEW.

Such application fee shall be as determined by the College Committee from time to time. No other charges shall be made to either disputant by the College.

- (ii) Fees by the TAXING CONSULTANT shall be as set out by the College Committee from time to time and shall include a pro bono component.

- (iii) Fees charged by the Client's NOMINATED CONSULTING ENGINEER shall be agreed between those two parties.

Should a determination be made by the TAXING COMMITTEE OF REVIEW which incorporates a fee applicable to the client's NOMINATED CONSULTING ENGINEER then that fee component shall not exceed that set by the College for the TAXING CONSULTANT as in 7.4 (d) above.

## 7.5 Terms of Payment

- (i) Due Date for Payment

In the absence of agreement to the contrary between the consulting engineer and the client normal commercial terms of payment within thirty days of the date of issue of the account shall apply.

- (ii) Disputed Accounts

If notice is not given by the client to the contrary within seven days of receipt of an account issued by the consulting engineer it will be assumed that the quantum of the account is accepted without dispute.

If the client wishes to dispute the account first notice shall be given within seven days of receipt of the account and notice in writing shall be forwarded to the consulting engineer within fourteen days.

- (iii) Interest on Overdue Payment

If the client fails to pay all monies as and when due to the consulting engineer then in addition to all other rights and remedies the consulting engineer shall be entitled to recover

- (a) interest at a rate five percent (5%) in excess of the rate payable by the consulting engineer for overdraft on his current account; the interest shall be calculated on daily balances from the date thirty days after the date of the account to the date of payment of the account by the client
- (b) costs of the time spent by the consulting engineer and his staff in correspondence and other matters made necessary by the client's failure to make payment by the due date, computed as per the consulting engineer's nominated hourly rates.

## 8.0 COMPLAINTS AND DISCIPLINARY PROCEDURES

The procedures for the handling of complaints by clients, and the process of the disciplinary handling of the members of the college, shall be as set out in the IRELLS SCHEME OF LIMITATION OF LIABILITY – SCHEDULE 1 – COMPLAINTS AND DISCIPLINARY MATTERS – COLLEGE CODE. Refer the Secretariat for a hard copy and see the internet links on [www.circea.org](http://www.circea.org).