ARCHITECTS

STANDARD TERMS AND CONDITIONS FOR ARCHITECTURAL SERVICES

ENTERED INTO BETWEEN

GASS Architecture Studios (PTY) Ltd
REGISTRATION NUMBER: 2017/097734/07
(“the Architect”)

AND

(“the Client”)
PREAMBLE
WHEREAS the parties have agreed that the architect will provide professional services to the client in respect of a project to be undertaken by the client, the parties agree to the architect’s following standard terms and conditions:

1. DEFINITIONS

The following words and expressions shall have the meanings indicated, except where the context otherwise requires. Where words and phrases are bold in the text of this document they shall bear the meaning as defined in this 1.1 and where such words and phrases are not bold they shall bear the meaning consistent with the context:

1.1. “Agreement” – means these Standard Terms and Conditions for Architectural Services;

1.2. “Architect” – means GASS Architecture Studios (Pty) Ltd;

1.3. “Client” – means the party appointing ________________ to provide Architectural Services;

1.4. “Day” – means a twenty-four (24) hour day commencing at midnight (00:00), which excludes Saturdays, Sundays and statutory holidays;

1.5. “Party” – The architect or the client entering into this agreement

1.6. “Project” – means the project to be undertaken by the client in respect of which the architect receives instructions to perform work; and

1.7. “Services” – means the Architectural Services rendered by the architect to the client under this agreement.

1.2 Interpretation

This agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

1.2.1 The headings of clauses and sub-clauses have been inserted for convenience only and shall not affect the interpretation of this agreement.

1.2.2 Any reference to one gender shall include the other gender and the neuter.

1.2.3 Words in the singular shall include the plural and vice versa.

1.2.4 The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday.

1.2.5 Where figures are referred to in numerals and words, should any conflict arise between the two, the words shall prevail.
1.2.6 Should any conflict arise between these Standard Terms and Conditions and any other agreement entered into between the architect and the client, the former shall prevail.

1.2.7 Notice in terms of this agreement may be given as set out hereunder and shall be deemed to have been duly received when:

1.2.7.1 Delivered by hand – on the day of delivery; and

1.2.7.2 Sent by electronic mail – three (3) days after transmission.

2. GENERAL PROVISIONS

2.1. Entire Agreement

This agreement constitutes the entire agreement between the parties and no representations, terms, conditions or warranties not contained in this agreement shall be binding upon the parties unless reduced to writing and signed by the parties hereto. No agreement or addendum varying, adding to, cancelling or deleting from this agreement shall be effective unless reduced to writing and signed by both parties.

2.2. Any relaxation, indulgence or delay by any party in exercising, or any failure by any party to exercise, any right under this agreement shall not be construed as a waiver of that right and shall not affect the ability of that party to subsequently exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

2.3. Cession / Assignment

Neither party to this agreement shall be entitled to assign and/or delegate and/or cede any part of its rights and/or obligations under this agreement to any person without prior written consent of the other party.

2.4. Governing Law

The law applicable to this agreement shall be the law of the Republic of South Africa.

2.5. Severability

If any provision or clause of this agreement is declared as invalid, void or unenforceable by a Court of competent jurisdiction, such provision shall be deemed modified to the least degree necessary to remedy such invalidity and the remainder of the agreement will not be impaired or affected thereby. Each other term, provision and clause of this agreement will be of full force and effect, and valid and enforceable to the fullest extent permitted by Law.

2.6. Amendments and Annexures

No amendment or annexure to this agreement shall be valid unless such amendment or annexure is reduced to writing and signed by both parties hereto.

3. DURATION OF AGREEMENT

3.1. This agreement shall apply from the date on which the architect accepts the first instruction from the client or from the date on which the architect commences rendering services to the client, whichever occurs earlier.

3.2. This agreement shall have been discharged when the architect has completed the services and has received full payment of all amounts due.

4. THE ARCHITECT’S SERVICES

4.1. This agreement shall apply -
4.1.1. to all services, irrespective of the circumstances under which the services are rendered, and work instructed by the client and executed by the architect unless specifically amended by written agreement, which agreement shall be signed by both parties; and

4.1.2. to the exclusion of any terms and conditions which the client may seek to impose.

5. THE PARTIES' RIGHTS AND OBLIGATIONS

5.1. The client shall –

5.1.1. timeously, having due regard to when its obligations are to be performed so as not to delay the architect in the rendering of the services:

5.1.1.1. accurately specify its requirements and provide site and other information to the architect;

5.1.1.2. make decisions and provide instructions;

5.1.1.3. relax restrictions and building lines and obtain local authority and any other approvals or consents as necessary;

5.1.1.4. make available, at the client's cost, any other services deemed necessary by the architect;

5.1.1.5. notify the architect of the appointment of any third parties and instruct such third parties to co-operate with, adhere to and comply with all reasonable requests by the architect;

5.1.1.6. pay all costs and charges levied by any authority, association or body, unless otherwise agreed between the parties;

5.1.1.7. review the designs, plans and specifications submitted by the architect on an ongoing basis and confirm that the architect has accurately interpreted the client's requirements and advise the architect immediately if the architect has, in the client's view, not accurately interpreted its requirements, failing which, the client's silence shall be deemed to constitute that the architect has accurately done so;

5.1.2. allow the architect a reasonable time within which to render the services;

5.1.3. use and benefit from the documents and/or designs prepared and/or produced by the architect for the sole purpose of its intended use on the project undertaken by the client subject to compliance with the terms and conditions of this agreement;

5.1.4. pay the architect's invoices timeously;
5.1.5. upon request by the architect, provide proof that funding is available for the ongoing requirements of the project and/or provide a guarantee acceptable to the architect for the payment of the architect’s fees and disbursements; and

5.1.6. be obliged to make full disclosure of all terms of this agreement to any bank, financial institution or funder of any specific project and shall indemnify the architect against all claims associated with any failure to make such non-disclosure.

5.2. The architect shall, in the rendering of services -

5.2.1. rely on the accuracy of information provided by the client;

5.2.2. give advice and render services under prevailing conditions and shall not be responsible for changes in circumstances;

5.2.3. when rendering its services exercise a reasonable degree of skill, care and diligence and act in accordance with the ethics and standards of the architectural profession and applicable legislation;

5.2.4. if the architect’s services include inspection and/or certification, exercise such function in an independent and professional manner;

5.2.5. when performing inspections and/or issuing certificates, be responsible only for having identified and dealt with those aspects of the works that can be identified by ordinary visual inspection;

5.2.6. not be obliged to issue or hand over any designs, drawings, materials and/or documentation unless paid for in full by the client;

5.2.7. retain the copyrights associated with any designs, drawings and documentation produced by the architect or any person in the architect’s employ;

5.2.8. render only such services as are generally regarded as architectural services to the extent included in the architect’s scope of employment;

5.2.9. decide on the appropriate personnel to render the architect, considering that it is the architect’s policy that services be rendered at the appropriate level of seniority, having due regard to the nature and complexity of the services to be rendered;

5.2.10. do so on the architect’s understanding and interpretation of the client’s requirements and relevant laws, statutes, regulations, rules and practices applicable at the time of the rendering of the services.

5.3. The parties acknowledge and agree that the architect shall have no obligations towards any party who is not a party to this agreement.

5.4. Undertakings which may be required from the architect by third parties and/or reliance placed on the work, certifications or any other actions performed by the architect in any way associated with this agreement, shall not create any legal nexus to or any other obligation on
the architect. The client hereby agrees to indemnify the architect against all claims arising from all undertakings required from the architect by any bank, financial institution or funder of any specific project.

6. FEES

6.1. The architect is entitled to fees as set out in the latest Government Gazette relating to professional fees for architectural services, applicable at the time of last signature of this agreement, unless otherwise agreed between the parties, which agreement shall be reduced to writing and signed by both parties.

6.2. The architect shall have the right to receive payment as soon as the architect receives any instruction or request from the client to perform work in terms of this agreement and the architect performs same.

6.3. The parties agree that the right to payment shall only be exercised once funding is received by the client for the project (whether received by this client or any subsequent developer of the project), alternatively if the work required to be executed by the architect associated with the project includes work from design development stage onwards, whichever is the earlier.

6.4. Should the client request a specific fee proposal from the architect, the fee proposal shall be the basis for the architect’s entitlement to receive payment and shall be provided to the client on the basis that the architect’s fee provides for a maximum of 3 (three) revisions per drawing. Any work requested from the architect after the third revision shall be charged on a time-spent basis at a rate of R2000 per hour, or any part thereof.

7. PAYMENT

7.1. The architect’s invoices are due and payable within 30 days of receipt thereof unless agreed otherwise, which agreement shall be reduced to writing and signed by both parties.

7.2. The parties agree that invoices shall be valid if presented electronically.

7.3. The client shall pay all invoiced amounts by electronic bank transfer or direct deposit to the architect’s bank account, the details of which appear on the architect’s invoice.

7.4. Should the client fail to pay any invoice within 30 (thirty) days from the date of presentation, the client shall be liable for interest on the outstanding amount from time to time at 2% (two percent) above the interest rate applicable from time to time to prime borrowers of the architect’s bank.

7.5. The client shall not withhold payment unreasonably nor apply set-off to such payment unless expressly agreed between the parties.

7.6. Should the client dispute any aspect of an invoice issued by the architect the client shall give written notice with reasons within thirty (30) days and shall not delay payment of the undisputed amount.
8. TERMINATION, SUSPENSION AND DEFERMENT OF SERVICES

8.1. The architect shall be entitled, at its election and without prejudice to any other right it may have, to terminate or suspend the whole of or part of the services, by giving the client not less than 5 (five) days prior written notice of its election to do so.

9. TOTAL AGGREGATE OF ARCHITECT’S LIABILITY

9.1. The architect’s total aggregate liability shall be limited to the amount actually received under the architect’s professional indemnity insurance policy (after policy exclusions, legal costs and tax) as a result of a claim notified to insurers in relation to a claim received by the architect or any specific event which may give rise to a claim. The client waives all claims against the architect exceeding the stated total aggregate liability and agrees to indemnify and hold the architect harmless against any claims exceeding the architect’s total aggregate liability.

10. RESOLUTION OF DISPUTES

10.1. Should any dispute whatsoever arise between the parties, either party hereto may declare a dispute by delivering notice of the details thereof to the other party, which dispute may be referred to adjudication prior to arbitration.

10.2. Prior to arbitration and should the parties so agree, the dispute shall be referred to a single adjudicator. The adjudicator shall be selected by agreement between the parties within fourteen (14) days of agreeing to such adjudication. Failing such agreement, the adjudicator shall be nominated on the application of either party by the Association of Arbitrators (Southern Africa).

10.3. The adjudication shall be conducted in accordance with the latest version of the rules current at the time of the notice of arbitration, published by the Association of Arbitrators of Southern Africa.

10.4. The adjudicator shall deliver a copy of his reasoned opinion to each party within forty (40) days of his appointment.

10.5. The opinion so expressed by the adjudicator shall be final and binding on the parties unless either party within twenty one (21) days of the delivery of the opinion, notifies the other party of its unwillingness to accept the said opinion, in which event the dispute shall be referred to arbitration in terms of this agreement.

10.6. The costs of adjudication shall be determined by the adjudicator and shall be borne equally by the parties and shall be due and payable to the adjudicator on presentation to them of the adjudicator's invoices.

10.7. Each party shall bear any other costs it may have incurred in connection with the adjudication.

10.8. The adjudication proceedings shall not prejudice the rights of the parties in any manner whatsoever in the event of the dispute proceeding to arbitration.

10.9. Arbitration shall be heard by a single arbitrator who shall be nominated by agreement between the parties within fourteen (14) days of the rejection of the adjudicator's opinion in terms of 10.5, alternatively following the direct reference of the dispute to arbitration. Failing such
agreement, the arbitrator shall be nominated, on the application of either party, to the Association of Arbitrators (Southern Africa).

10.10. The arbitrator shall have power to open up, review and revise any opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him/her, and of which notice shall have been given as aforesaid, in the same manner as if no such opinion, decision, requisition or notice had been given.

10.11. The arbitration shall be conducted according to the most recent rules of the Association of Arbitrators (Southern Africa) current at the time of the declaration of the dispute.

10.12. The parties agree that the arbitration proceedings shall not be subject to the provisions of s23(a) of the Arbitration Act 42 of 1965.

10.13. Any award made by the arbitrator will be final and binding on the parties and may be made an order to any court to whose jurisdiction the parties are subject.

10.14. Nothing contained in this clause shall preclude any party from obtaining intermediate relief on an urgent basis from a court of competent jurisdiction, pending the decision of the arbitrator.

10.15. Clause 10 (Resolution of Disputes) of this agreement shall survive termination of this agreement.

SIGNED AT _______________________ ON THIS _____ DAY OF __________________ 2017.

_____________________________
Signed on behalf of the Architect

1. _________________________________
Witness

2. _________________________________
Witness

SIGNED AT _______________________ ON THIS _____ DAY OF __________________ 2017.

_____________________________
Signed on behalf of the Client

1. _________________________________
Witness

2. _________________________________
Witness