

CESA BEST PRACTICE WEBINARS

**THE ALL-NEW CESA SUITE OF
PROFESSIONAL SERVICES AGREEMENTS**

20 JULY 2022



CESA SUITE OF PROFESSIONAL SERVICES AGREEMENTS, JULY 2022

- ✓ **MODEL PROFESSIONAL SERVICES AGREEMENT, MAY 2021**
- ✓ **SHORT FORM OF AGREEMENT, OCTOBER 2021**
- ✓ **COMPACT FORM OF AGREEMENT, FEBRUARY 2022**
- ✓ **MODEL SUBCONSULTANCY AGREEMENT, OCTOBER 2021**
- ✓ **JOINT VENTURE AGREEMENT, NOVEMBER 2021**
- ✓ **PRE-BID AGREEMENT, NOVEMBER 2016**



CESA PROFESSIONAL SERVICES AGREEMENTS

BRIEF HISTORY

- CESA Model Form of Agreement first published in about 1954
- The original documents included the terms of the agreement, the scope of services and the terms of remuneration and fee scales.
- After 2000, scope of services and fees published by ECSA and deleted from the CESA agreements
- CESA Form of Agreement was discontinued some time after 2004 in favour of documents like PROCSA and Cidb, but reintroduced in 2014 due to popular demand.
- In the meantime other Forms of Agreement such as Sub-Consultancy, Short Form and JV Agreement were developed
- These separate forms of agreement were not properly aligned with the Model Form
- 2016 detailed review and comment by the late Ivor Evans
- 2019-2021 process of development of the new suite of documents.

CESA PROFESSIONAL SERVICES AGREEMENTS OVERVIEW

- Well tried and tested
- Regularly reviewed, amended and improved
- Aligned with local and international best practice.
- The essence of all CESA Forms of Agreement: simple and easy to understand, avoiding unnecessary “legalese”.
- Many other professional services agreements loosely based around the old CESA Form of Agreement
- A complete set of professional forms of agreement which talk to each other, covering most consulting engineering services situations.
- **IDEAL FOR SOUTH AFRICAN CONDITIONS**



MODEL PROFESSIONAL SERVICES AGREEMENT AND SPECIFIC DATA

- 1. DEFINITIONS AND INTERPRETATION**
- 2. OBLIGATIONS OF THE CONSULTING ENGINEER**
- 3. OBLIGATIONS OF THE CLIENT**
- 4. DURATION OF AGREEMENT**
- 5. REMUNERATION**
- 6. LIABILITY AND INSURANCE**
- 7. GENERAL PROVISIONS (General legal matters)**
- 8. DISPUTE RESOLUTION**

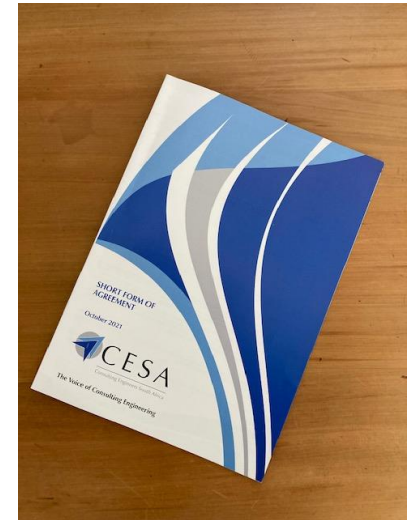
- 9. SPECIFIC DATA AND APPENDICES**

HIGHLIGHTS OF THE 2021 FOA

- **Closely based on and retains all the fundamental features of the “old” CESA Form of Agreement, but it is a completely overhauled PSA, NOT a face-lift**
- **“Intellectual Property Rights” defined**
- **“Sub contracting” only with client’s approval**
- **Clause dealing with “Time for Completion” added**
- **Wording of “Force Majeure” clause amended in the light of the Covid-19 pandemic**
- **Termination clause reworded**
- **Extension of Time clause improved**
- **Payment – subclause added disallowing payment set-off by client**
- **Limit of compensation – no change, remains 2 x fees**
- **After much discussion decided not to include Adjudication as means of dispute resolution.**
- **Many editorial and small changes to various clauses**
- **Reviewed by CESA SCM Committee in a rigorous process of reviewing, checking, correcting and amending**
- **Specific Data and Appendices updated and more detail provided, particularly wrt Construction Monitoring**

SHORT FORM OF AGREEMENT

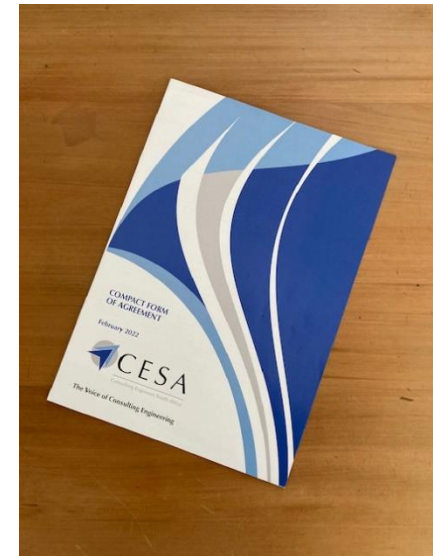
- Original version goes back many years and known as “Abridged Conditions of Appointment for Consulting Services”
- Very popular document used by Clients and Members for smaller projects
- Previous version May 2011
- New Short Form of Agreement is closely modeled on the main Model Form of Agreement and is essentially a new document but includes the important provisions of previous versions
- Intended for use on routine, smaller projects of relatively low value (say < R5million) and short duration (say < 12 months).
- Ideal for specialist engineering projects such as investigations, reports, and similar studies
- NOT suitable for use on multi-disciplinary projects, nor large, complex projects and not suitable where JV’s or subconsultants involved
- No Specific Data section, scope of services and remuneration references ECSA Guideline in the Agreement.
- Same with time for completion.
- Intended to be quick and easy to complete but should cover everything if completed properly.



COMPACT FORM OF AGREEMENT

FEBRUARY 2022

- A completely new and unique document – “BABY FORM OF AGREEMENT”-
- Intended for use on routine, small projects of relatively low value and complexity.
- Only use where a single consulting engineer is involved and not involving a JV, Subconsultants, or multi-disciplinary.
- Ideal for specialist appointments such as investigations, reports and similar studies.
- Modeled on the main CESA Model Professional Services Agreement but only describes the essential requirements for a consulting engineering services agreement.
- 1 ½ pages, 18 simple short clauses, plus the signed Agreement
- Covers the following:
 - ❖ Commencement and completion
 - ❖ Basic consulting engineer and client obligations:
Engineer to cooperate and perform with reasonable skill, care and diligence, client to assist, provide information and pay
 - ❖ Payment terms
 - ❖ Unforeseen circumstances including force majeure
 - ❖ Basic legal requirements (termination for non-payment, liability limited in time and quantum (1 x fees), PI insurance required, ownership of documents, confidentiality)
 - ❖ Dispute Resolution by adjudication.
 - ❖ Scope of services, fees and construction monitoring references ECSA



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Consulting Engineering
Excellence’**