

**GENERAL****Interpretation**

The headings to the Conditions are for convenience only and do not affect interpretation.

Words denoting natural persons include corporations and firms and vice versa.

Any notice or other document required under the Agreement is to be in writing and given or served by any effective means to the address of the recipient stated in the Agreement or such other address, including a postal address or fax number notified to the other party.

Communications between the Client and the Architect that are not such notices or document may be sent to any other address, including an e-mail address, notified to the other party as an appropriate address for specific communications. Communications take effect on receipt, but if not in writing are of no effect unless and until confirmed in writing by the sender or the other party.

Communications sent by special delivery or recorded delivery are deemed (subject to proof to the contrary) to have arrived at the appropriate address on the second working day after posting.

Where under this Agreement an action is required within a specific period of days, that period includes Saturdays and Sundays but excludes any day that is a public holiday.

Reference to a statute or statutory instrument includes any subsequent amendments, consolidation or replacement of it.

The provisions of this Agreement do not exclude any rights at common law or in equity except where expressly stated to do so.

The provisions of this Agreement continue to bind the Client and the Architect as long as necessary to give effect to their respective rights and obligations.

**OBLIGATIONS AND AUTHORITY OF THE ARCHITECT****Duty of care**

The Architect exercises reasonable skill care and diligence in conformity with the normal standards of the Architect's profession in performing the Services including any specified Roles and discharging all the obligations under this clause.

**The Architect:**

- a) performs the Services, so far as reasonably practicable, in accordance with the Brief and anytime-scale or cost limit agreed with the client;
- b) performs the Services in accordance with any project procedures agreed from time to time;
- c) provides adequate professional, financial and technical resources;
- d) Co-operates with any of the persons named in the Project Data or whose appointment is foreseen or foreseeable and, as applicable, co-ordinates and integrates information received into the Architect's

- e) work;
- e) does not make or cause to be made any material alteration to the Project or Services without the knowledge and consent of the Client;
- f) maintains effective monitoring and review procedures;
- g) exercises impartial and independent judgement;
- h) keeps the Client informed of progress in the performance of the Services.

**Duty to advise**

The Architect advises the Client upon becoming aware of:

- i. a need to review or vary the Services, the Timetable and/or the fees;
- ii. a need to review or vary any part of the information provided by the Client, or the Brief, the Construction Cost or Relevant Cost, the Timetable or any Client's instruction and/or any approved design;
- iii. any information or decisions required from the Client or others in connection with performance of the Services;
- iv. a need to appoint Other Persons, other than those named in the Project Data, to perform work or services in connection with the Project;
- v. any other significant matter or risk that may affect delivery or quality of the Project and the Client issues instructions to resolve the matter.

**Statutory Regulations**

The Architect advises the Client about the application of statutory requirements to the Services and the information which must be submitted for consents by statutory authorities, and of any related obligations of the Client. In any conflict between the statutory requirements and this Agreement the former take precedence.

**Architect's authority**

The Architect acts on behalf of the Client in the matters set out or necessarily implied in the Agreement, but has no authority, without the Client's prior approval:

- a) to enter into any contractual or other commitment on behalf of the Client;
- b) to terminate the employment of any Other Person appointed by the Client;
- c) to issue any instruction to any Other Person which would or might delay completion of the Project or, where applicable, exceed the approved Relevant Cost (plus any contingency or similar provisions), or vary the quality of the Project, except to a contractor in the event of an emergency to prevent danger to persons or material damage to the Project.

**Architect's Representative**

The Architect's Representative:

- a) undertakes or directs the performance of the specified Services;
- b) has full authority to act on behalf of the Architect for all purposes in connection with the matters set out or necessarily implied in the Agreement.

The Architect may not replace the Architect's Representative without the prior consent of the Client (which consent is not unreasonably withheld or

delayed) except in the event of emergency, permanent incapacity, death, sickness or where such person leaves the employment of the Architect. Any replacement is to be a person approved by the Client (which consent is not unreasonably withheld or delayed). Where practicable, the Architect arranges for an appropriate handover period between the person being replaced and the replacement.

If, in the Client's reasonable opinion, the performance or conduct of any person engaged in performance of the Services is unsatisfactory, the Client may request the removal of such person.

#### **Completion of Services**

The Architect notifies the Client when the Architect considers the Services are complete.

On completion of the Services, on reasonable demand and payment of fees and other amounts properly due, the Architect returns to the Client any documents, or other property provided by the Client for use by the Architect in connection with the Project.

### **OBLIGATIONS AND AUTHORITY OF THE CLIENT**

#### **The Client's Representative**

The Client's Representative has full authority to act on behalf of the Client for all purposes in connection with the matters set out or necessarily implied in the Agreement.

#### **Information, decisions, approvals, etc.**

The Client supplies the initial statement of the Client's requirements and advises the relative priorities of the Client's requirements or the Brief, the Construction Cost and the Timetable.

The Client supplies, free of charge, all the information in the Client's possession, or which is reasonably obtainable, and which is necessary for the proper and timely performance of the Services including any such information in a health and safety file, or other information about or affecting the site or construction work and the Architect is entitled to rely on such information.

The Client gives decisions and approvals as necessary for the proper and timely performance of the Services.

The Client may issue instructions to the Architect, but if the Architect gives written notice of reasonable objection to an instruction the Architect need not comply with it.

Where the Architect has responsibility to direct and/or co-ordinate the work or services of or give instructions to Other Persons, such instructions are issued only through the Architect and the Client does not hold the Architect responsible for any instructions issued otherwise.

#### **Appointment and payment of Other Persons**

Where work or services, other than those to be performed by the Architect, are required, the Client

appoints and pays Other Persons under separate agreements to perform such work or services, holds them responsible for the competence and performance of their work or services, and requires them to Co-operate with the Architect.

The Client confirms in writing to the Architect the services to be performed by such persons, their disciplines and the expected duration of their employment.

The Client holds the contractor or contractors appointed to undertake construction works responsible for the management and operational methods necessary for the proper carrying out and completion of the construction works in compliance with the building contract or contracts and for health and safety provisions on the Site.

#### **Applications for consent**

The Client instructs the making of applications for consents under planning legislation, building acts, regulations or other statutory requirements and by freeholders and others having an interest in the Project. The Client pays any statutory charges and any fees, expenses and disbursements in respect of such applications.

The Client acknowledges that planning permission and other approvals from third parties may not be granted at all, or in accordance with any anticipated time-scale.

#### **Legal advice**

The Client procures such legal advice and provides such information and evidence as required for the resolution of any dispute between the Client and any other parties providing work or services in connection with the Project.

### **ASSIGNING AND SUB-CONTRACTING**

#### **Assigning**

Neither the Architect nor the Client at any time assigns the Agreement or any rights arising under it without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

#### **Sub-contracting**

With the consent of the Client, which consent is not unreasonably withheld, the Architect may appoint a sub-consultant or sub-consultants to perform part of the Services. The Architect confirms such consent in writing. Any such sub-contracting does not relieve the Architect of responsibility for carrying out and completing the Services in accordance with the Agreement. Such consent is not required in respect of persons such as agency or self-employed staff, or firms providing draughting or other services hired by the Architect.

#### **Specialist services**

The Architect may recommend that the Client appoints another consultant, contractor or specialist with appropriate knowledge and experience to perform an element of the Services where in the opinion of the Architect it would benefit the Project to do so. The Client may consent to make such appointment, which consent is not unreasonably withheld. On such

appointment the Client notifies in writing the Architect, who is relieved of responsibility and liability for that element of the Services.

The Architect Co-operates with such other consultant, contractor or specialist appointed by the Client.

#### **PAYMENT**

The fees for performance of the Services and/or any additional services, together with any specified Expenses are calculated as specified on the Fee Proposal.

Where the Project is for construction works, the Basic Fee for performance of the Services, including the specified number of site visits during the construction period, is:

1. a percentage of the Relevant Cost calculated in accordance with the Fee Proposal and/or
2. a calculated or fixed lump sum or sums in accordance with the Fee Proposal or
3. time charges in accordance with the Fee Proposal

#### **Percentage Fees**

Where this clause applies, the specified percentage or percentages are applied to the Relevant Cost. Interim fee calculations are based on the current Relevant Cost. The final fee is calculated on the agreed final Relevant Cost.

#### **Time Charges**

A time-based fee is ascertained by multiplying the time reasonably spent in the performance of the Services by the specified hourly or daily rate for the relevant personnel. Time 'reasonably spent' includes the time spent in connection with performance of the Services in travelling from and returning to the Architect's office.

#### **Fee Adjustment**

Additional Fees, calculated on a time basis unless otherwise agreed, are payable to the Architect if:

1. the Architect is involved in extra expense for reasons beyond the control of the Architect. Reasons for such entitlement include, but are not limited to, the Architect being required to vary any item of work commenced or completed pursuant to the Agreement and/or performance of the Services is delayed, disrupted or prolonged;
2. the costs of any work, installation or equipment, for which the Architect performs Services, are omitted from the Relevant Cost.

The Architect informs the Client on becoming aware that this clause will apply.

#### **Services not Completed**

Where for any reason the Architect provides only part of the specified Services, the Architect is entitled to fees calculated as follows:

1. for completed Services, as specified for those Services;
2. for completed stages, as specified for those stages;
3. for Services or stages not completed, a fee proportionate to that specified based on the estimated percentage of completion.

Where a tender is invited for work or services as instructed by the Client, but such work or services are not proceeded with, the Architect is entitled to fees calculated on the relevant cost current at the date of invitation to tender.

#### **Expenses & Disbursements**

Expenses other than specified Expenses and incurred with the prior authorisation of the Client and any disbursements made on the Client's behalf are reimbursed at net cost plus any specified handling charge.

#### **Maintain Records**

The Architect maintains records of time spent on Services performed on a time basis and of any expenses and disbursements to be reimbursed at net cost and makes these available to the Client on reasonable request.

#### **Payment**

Payment under the Agreement becomes due to the Architect on issue of the Architect's invoice. The final date for such payments by the Client is 14 days from the date of issue of an invoice. Instalments of fees are calculated on the basis of the estimated percentage of completion of the Services or stages or other services or any other specified method. The Architect issues invoices showing any accrued instalments of the fee and other amounts due, less any amounts previously paid and state the basis of calculation of the amounts due. The Architect submits the final account for fees and any other amounts due when the Architect considers the Services have been completed.

#### **Late payment**

Any sums due and remaining unpaid at the expiry of 30 days bear simple interest of 1% per month until the date that payment is received.

For the avoidance of doubt the Architect's entitlement to interest at the specified rate also applies in respect of any amounts that are awarded to the Architect in adjudication, arbitration or legal proceedings.

#### **Payment on suspension**

If the performance of any or all of the Services is suspended, or the Agreement or termination is terminated, the Architect issues an account or accounts for and is entitled to payment of:

1. any part of the fee and other amounts due at the date of suspension or termination; and
2. any direct costs properly and necessarily incurred by the Architect by reason of the suspension and any resumption or the termination together with any licence fee due if the notice of suspension or termination is given:
  - a. by the Client, except where the suspension or termination arises from a material or persistent breach of the obligations under the Agreement by the Architect;
  - b. by the Architect because of a material or persistent breach of the obligations under the Agreement by the Client; or
  - c. by the Architect if prevented from or

impeded in performing the services for reasons beyond the Architect's control.

### **Recovery of costs**

The Client or the Architect pays to the other party all costs reasonably incurred (including costs of time spent by principals, employees and advisors)

- in respect of obtaining payment of any amounts properly due, or
- in successfully resisting or defending any claim or part of a claim brought by the other

### **VAT**

In addition to the fees and expenses, the Client pays any Value Added Tax chargeable on the Architect's fees and expenses.

## **COPYRIGHT AND USE OF INFORMATION**

### **Copyright**

The Architect owns the copyright in the original work produced in the performance of the Services and generally asserts the Architect's moral rights to be identified as the author of such work.

No part of any design by the Architect may be registered by the Client without the consent of the Architect in writing.

### **Use of information**

The Client has a licence to copy and use and allow Other Persons providing services to the Project to copy and use drawings, documents, bespoke software and all other such work produced by or on behalf of the Architect in performing the Services, hereinafter called 'the Material', but the Architect is not liable for any use of the Material other than for the purposes for which it was prepared.

Where the Material relates to a design prepared by or on behalf of the Architect, such purposes include operation, maintenance, repair, reinstatement, alteration, promotion, leasing and/or sale of the Project but exclude the reproduction of the design for any part of any extension of the Project, and/or for any other project except on payment of a licence fee specified in the Agreement or subsequently agreed.

Provided that:

1. if it is intended to make any permitted use after the date of the last Service performed under the Agreement the Architect, following a request from the Client, promptly confirms the degree of completion of the Material;
2. if at any time the Client is in default of payment of any fees or other amounts properly due, the Architect may suspend further use of the licence on giving 7 days notice of the intention of doing so. Use of the licence may be resumed on receipt of such outstanding amounts.

Where the Material relates to a design prepared by or on behalf of the Architect, the Architect has the right to publish photographs of the Project, and the Client gives reasonable access to the Project for this purpose for 2 years after practical completion of the construction works.

The Architect requires the consent of the Client, which consent is not unreasonably withheld, before publication of any other information about the Project unless reasonably necessary for performance of the Services.

Neither the Client nor the Architect discloses to any other person Confidential Information unless:

- disclosure is necessary for the proper performance of the Services, or in order to take professional advice in relation to the Agreement or the Services, or in order to obtain/maintain insurance cover as required by the Agreement;
- is in the public domain other than due to wrongful use or disclosure, or
- disclosure is required by law or because of disputes arising out of or in connection with the Agreement.

The Client and the Architect take all reasonable steps to ensure that relevant employees or agents, including any sub-consultants of the Architect, are aware of the parties' obligations under this clause.

### **Patents, etc.**

The fee for performance of the Services includes all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Architect of any invention or design for the purpose of performing the Services.

## **LIABILITIES AND INSURANCE**

Any action or proceedings arising out of or in connection with this Agreement whether in contract, tort, statutory duty or otherwise is commenced before the expiry of the period stated in the Agreement from practical completion or the date of the last Service performed under the Agreement, whichever is the earlier.

### **Limit of Liability**

In any such action or proceedings, the Architect's liability for loss or damage is limited to the sum stated in the Agreement.

The Client does not hold principals, employees, sub-consultants or agents of the Architect liable in respect of any negligence, default or other liability arising from performance of the Services.

### **Professional Indemnity Insurance**

The Architect maintains professional indemnity insurance, with a limit of indemnity of not less than the amount stated in the Agreement in respect of each and every claim or series of claims arising out of the same originating cause provided such insurance continues to be offered on commercially reasonable terms to architects of a similar size and financial standing to the Architect at the time when the insurance is taken out or renewed, as the case may be.

Such insurance is:

- Limited to the amount stated in the Fee Proposal
- subject only to such other limitations, exceptions and exclusions as are commonly included in such policies;

- maintained until at least the expiry of the period stated in the Agreement from the date of the last Service performed under the Agreement or (if earlier) practical completion of construction of the Project.

The Architect, when reasonably requested by the Client, produces for inspection a broker's letter or certificate confirming that the professional indemnity insurance required under the Agreement has been obtained and/or is being maintained.

The Architect informs the Client if such insurance ceases to be available at commercially reasonable terms or subsequent to the date of this Agreement an aggregate limit applies to any matters other than those specified in the Agreement in order that the Architect and Client can discuss the best means of protecting their respective positions.

## **SUSPENSION OR TERMINATION**

### **Suspension**

The Client may suspend the performance of any or all of the Services by giving not less than 7 days notice in writing to the Architect specifying the Services affected.

The Architect may suspend performance of the Services and the obligations on giving not less than 7 days' notice to the Client of the intention and the reasons for doing so in the event:

1. That the Client is in default of payment of any fees or other amounts due; or
2. That the Client is in material or persistent breach of the obligations under the Agreement; or
3. That the Architect is prevented from or impeded in performing the Services for reasons beyond the Architect's control; or
4. of force majeure.

After receipt of a suspension notice or the expiry of the notice period the Architect ceases performance of the suspended Services in an orderly and economical manner.

If the reason for the suspension is remedied the Architect resumes performance of the Services and obligations within a reasonable period.

Any period of suspension arising from a valid notice is added to any programmed date for completion of any or all of the Services.

### **Termination**

The Client may by giving not less than 14 days' notice in writing to the Architect terminate this Agreement stating the reasons for doing so.

The Architect may give not less than 14 days' notice in writing to the Client in the event that:

1. any period of suspension arising exceeds six months and the Client fails to issue instructions to proceed with the suspended Services; or
2. the Client fails to remedy the reason for the suspension; or
3. a suspension arises and the Architect and the Client fail to agree an appropriate course of action.

The Architect may upon the expiry of the notice period terminate the Agreement.

This Agreement may be terminated immediately by notice from either party if:

- I. the other party commits an act of bankruptcy or is subject to a receiving or administration order, and/or goes into liquidation, and/or becomes insolvent, and/or makes any arrangements with creditors; or
- II. the Architect becomes unable to perform the Services through death or incapacity.

On termination of this Agreement, a copy of the Material not previously provided to the Client is delivered on demand to the Client by the Architect, subject to the terms of the licence and payment of any outstanding fees and other amounts due plus the Architect's reasonable copying charges.

Termination of this Agreement is without prejudice to any rights and remedies of either party.

## **PAYMENT**

### **Notice of withholding**

A written notice from the Client to the Architect is given, not later than 5 days before the final date for payment of any amount due to the Architect, if the Client intends to withhold payment of any part of that amount stating the amount proposed to be withheld and the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it. Any amount to be withheld does not include any claim under any other contract between the Client and the Architect.

If no such notice is given the amount due is the amount stated as due in the account. The Client does not delay payment of any undisputed part of an account.

## **COMPLAINTS & DISPUTE RESOLUTION**

In the case of a complaint please contact the project lead or one of our other directors. We will aim to respond within one working day.

If you feel we are in dispute and cannot resolve this through dialogue, we suggest you contact the Architects Registration Board (ARB) for advice. We would seek in the first instance to settle any dispute without the need for legal proceedings and are happy to discuss what may be options for Alternative Dispute Resolution, the ARB and RIBA will also give advice.

If we are unable to resolve your complaint through dialogue, then the matter may be referred to Arbitration or Adjudication. Please see the ARB website for further advice.