

**Standard Conditions of
Appointment for a**

Consultant

2010

SPECIMEN

This and the following 14 pages (numbered 2–15) are the Standard Conditions of Appointment for a Consultant 2010 referred to in the Agreement relating to

The Project, namely:

between

The Client, namely:

initials

and

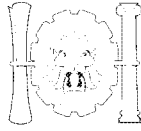
The Consultant, namely:

initials

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Wales**



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RSUA

The components of a Standard Agreement are the Conditions of Appointment, the Schedules of Project Data, Services and Fees and Expenses, any appendices and a Memorandum of Agreement or Letter of Appointment.

This edition of the Standard Conditions of Appointment combines Parts A and B in the 2007 edition. A list of other changes can be found on the reverse of the pack cover sheet and is also available online at www.ribabookshops.com/agreements.

The Standard Conditions of Appointment are applicable for a Client who is acting for business or commercial purposes or is a Public Authority.

The Standard Conditions may also be used for a Client who is a consumer i.e. 'a natural person acting for purposes outside his trade, business or profession' but the agreement will be subject to the Unfair Terms in Consumer Contracts Regulations 1999. The Regulations require the terms of Agreement, i.e. these Conditions and the Memorandum or Letter of Appointment to be individually negotiated – see Standard Agreement 2010: Notes.

Individual architects are required to be registered with the Architects Registration Board (www.arb.org.uk), and are subject to its Code and to the disciplinary sanction of the Board in relation to complaints of unacceptable professional conduct or serious professional incompetence.

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Standard Conditions of Appointment for a Consultant 2010

1 Definitions and interpretation etc.

Definitions

1.1 Where defined terms are used in this Agreement they are distinguished by an initial capital letter. The following definitions apply to all documents comprising this Agreement and are in addition to those set out elsewhere in this Agreement.

Brief means the latest statement of requirements for the Project issued or approved by the Client:

- at inception, any initial statement by the Client;
- after clarification of the objectives, the Design Brief (or Output Specification); and
- any subsequent development into the Project Brief.

The Brief shall include any information or drawings prepared by or on behalf of the Consultant and approved by the Client during the development of the Brief.

Collaborate means to co-operate with and to provide to or receive from Other Persons information reasonably necessary, as and when requested, for performing the Services or for such Other Persons to carry out their work or services, to consider and, where competent to do so, to comment on such information.

Confidential Information means all information relating to the Client's and the Consultant's business and affairs which either party directly or indirectly receives or acquires from the other party or any representative of the other party either in writing or verbally.

Construction Cost means:

- the Client's target cost for constructing the Project as specified in the Project Data or where no such amount is specified a fair and reasonable amount; or subsequently
- the latest professionally prepared estimate approved by the Client; or where applicable
- the actual cost of constructing the Project upon agreement or determination of a final account for the Project; and

includes (without limitation):

- the cost as if new of any equipment and/or materials provided or to be provided by the Client to a contractor for installation during construction of the project;
- any direct works carried out by or on behalf of the Client; and
- provision for contractor's profit and overheads; and

excludes:

- Value Added Tax;
- fees;
- the costs of resolution of any dispute;
- the Client's legal and in-house expenses;
- any loss and/or expense payments paid to a contractor;
- any adjustment for any liquidated damages deducted by the Client.

Other Person means any person, company or firm, other than the Consultant or any sub-consultant of the Consultant, including but not limited to consultants, contractors, sub-contractors, specialists, statutory bodies or undertakers, approving or adopting authorities, who have performed or will perform work or services in connection with the Project.

Project is defined in the Project Data.

Project Data means the matters set out in the 'Project Data' schedule, which may be varied by agreement.

Services means the services to be performed by the Consultant specified in the 'Services' schedule, which may be varied by agreement.

Timetable means the Client's initial programme for performance of the Services as specified in the Project Data, or where no such programme is specified it shall be a fair and reasonable period. Subsequently, the Timetable shall be the latest programme approved by the Client.

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Interpretation

- 1.2 The headings and notes to the Conditions are for convenience only and do not affect interpretation. Words denoting natural persons include corporations and firms and vice versa.

Communications

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

Communications between the Client and the Consultant that are not such notices or documents may be sent to any other address, including an e-mail address, notified by 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 shall be deemed (subject to proof to the contrary) to have arrived at the appropriate address on the second working day after posting.

Public holidays

- 1.4 Where under this Agreement an action is required within a specified period of days from a specified date, that period commences immediately after that date. The period shall include Saturdays and Sundays but shall exclude any day that is a public holiday.

Duration

- 1.5 The provisions of this Agreement are without prejudice to the respective rights and obligations of the parties and continue in force as long as necessary to give effect to such rights and obligations.

Applicable law

- 1.6 This Agreement is subject to the law of England and Wales or Northern Ireland or Scotland as specified in the Project Data and subject to clause 9.3 the parties submit to the exclusive jurisdiction of the specified jurisdiction.

2 Obligations and authority of the Consultant

Duty of care

- 2.1 The Consultant shall exercise reasonable skill, care and diligence in accordance with the normal standards of the Consultant's profession in performing the Services and discharging all the obligations under this clause 2.

Duty to inform

- 2.2 The Consultant shall keep the Client informed of progress in the performance of the Services and of any issue that may materially affect the Brief, the Construction Cost, the Timetable, or the quality of the Project.

- 2.3 The Consultant shall inform the Client upon becoming aware of:

2.3.1 a need to appoint Other Persons, other than those named in the Project Data, to perform work or services in connection with the Project; and/or

2.3.2 any information, decision or action required from the Client or others in connection with performance of the Services.

Collaboration

- 2.4 The Consultant shall Collaborate with Other Persons named in the Project Data, or whose appointment is foreseeable and, as applicable, shall co-ordinate and integrate the information received into the Consultant's work.

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Consultant's authority

2.5 The Consultant shall act on behalf of the Client in the matters set out or necessarily implied in this Agreement or in project procedures agreed with the Client from time to time, but has no authority, without the Client's prior approval:

2.5.1 to enter into any contractual or other commitment on behalf of the Client;

2.5.2 to terminate the employment of Other Persons appointed by the Client; or

2.5.3 to make or cause to be made any material alteration to or addition to or omission from the Services or the approved design.

In the event of an emergency, the Consultant may issue instructions to a contractor to prevent danger to persons or material damage to the Project without the Client's prior approval, and shall confirm such action in writing to the Client without delay.

Consultant's Representative

2.6 The Consultant's Representative shall have full authority to act on behalf of the Consultant for all purposes in connection with performance of the Services but not to vary the terms of the Agreement.

Photography

2.7 The Consultant shall have the right to publish photographs of the Project, and the Client shall give reasonable access to the Project for this purpose for 2 years after practical completion of the construction works.

Publicity

2.8 The Consultant shall obtain the consent of the Client, which consent is not unreasonably withheld or delayed, before publication of any other information about the Project, unless reasonably necessary for performance of the Services.

Confidentiality

2.9 The Consultant shall not disclose to any other person Confidential Information unless:

2.9.1 disclosure is necessary for the proper performance of the Services, or in order to take professional advice in relation to this Agreement or the Services, or in order to obtain/maintain insurance cover as required by this Agreement;

2.9.2 it is in the public domain other than due to wrongful use or disclosure; or

2.9.3 disclosure is required by law or because of disputes arising out of or in connection with this Agreement.

3 Obligations and authority of the Client

Client's Representative

3.1 The Client's Representative shall have full authority to act on behalf of the Client for all purposes in connection with the matters set out in this Agreement but not to vary the terms of the Agreement.

Information, decisions, approvals, etc

3.2 The Client shall supply the initial statement of the Client's requirements and shall advise the relative priorities of the Client's requirements, the Brief, the Construction Cost and the Timetable.

3.3 The Client shall provide, free of charge, all the information in the Client's possession, or reasonably obtainable, which is necessary for the proper and timely performance of the Services and the Consultant shall be entitled to rely on such information.

3.4 The Client shall give decisions and approvals and shall take such actions necessary for the proper and timely performance of the Services.

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Instructions

- 3.5 The Client (or the Lead Consultant, or other consultant designated by the Client) may issue reasonable instructions to the Consultant.
- 3.6 Where the Consultant has responsibility to direct and/or co-ordinate the work or services of or give instructions to Other Persons, such instructions shall be issued only through the Consultant and the Consultant shall not be responsible for any instructions issued otherwise.

Applications for consent

- 3.7 The Client shall instruct the making of applications for consents under planning legislation, building acts, regulations or other statutory requirements and others having an interest in the Project. The Client shall pay any statutory charges and any fees, expenses and disbursements in respect of such applications.

Appointment of Other Persons

- 3.8 Where work or services, other than those to be performed by the Consultant, are required, the Client shall appoint and pay Other Persons under separate agreements to perform such work, services or products and shall require them to Collaborate with the Consultant. Such Other Persons shall include site inspectors or clerks of works.

The Client shall confirm in writing to the Consultant the services to be performed by Other Persons, their disciplines and the expected duration of their employment.

The Client acknowledges that the Consultant does not warrant the competence, performance, work, services, products or solvency of any such Other Persons.

- 3.9 The Client shall hold the contractor appointed to undertake construction works and not the Consultant 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.

Time and cost

- 3.10 The Client acknowledges that the Consultant does not warrant:

3.10.1 that planning permission and other approvals from third parties will be granted at all, or if granted, will be granted in accordance with any anticipated time-scale;

3.10.2 compliance with the Construction Cost and/or the Timetable, which may need to be reviewed for such matters as, but not limited to:

- (a) approved variations arising from design development or requested by the Client;
- (b) delays caused by any Other Person; and/or
- (c) any other factors beyond the control of the Consultant.

Legal advice

- 3.11 The Client shall procure such legal advice and provide such information and evidence as required for the resolution of any dispute between the Client and any other parties in connection with the project.

Confidentiality

- 3.12 The Client shall not disclose to any Other Person Confidential Information unless:

3.12.1 disclosure is necessary to take professional advice in relation to this Agreement or the Services;

3.12.2 it is in the public domain other than due to wrongful use or disclosure; or

3.12.3 disclosure is required by law or because of disputes arising out of or in connection with this Agreement.

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4 Assignment and sub-contracting

Assignment^[1]

- 4.1 Neither the Consultant nor the Client shall at any time assign the benefit of this Agreement or any rights arising under it without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

Sub-contracting

- 4.2 With the consent of the Client, which consent shall not be unreasonably withheld or delayed, the Consultant may appoint a sub-consultant or sub-consultants to perform part of the Services. Any such sub-contracting shall not relieve the Consultant of responsibility for carrying out and completing the Services in accordance with this Agreement. Such consent shall not be required in respect of agency or self-employed staff.

Specialist services

- 4.3 If during performance of the Services it is the Consultant's opinion that it would benefit the Client, the Consultant may recommend that the Client appoints Other Persons with appropriate knowledge and experience to perform part of the Services. If the Client agrees to make such appointment, it shall be made without undue delay. On such appointment the Client shall give written notice to the Consultant, who shall be relieved of responsibility and liability for that element of the Services.

The Consultant shall Collaborate with such Other Persons.

5 Fees and expenses

Calculation of fees

- 5.1 The fees for performance of the Services and/or any additional services shall be calculated in accordance with this clause 5 and as specified in the schedule of Fees and expenses.

Basic Fee

- 5.2 The Basic Fee for performance of the Services shall be:

- 5.2.1 where the Project is for the design and carrying out of construction works, including the specified number of site visits during the construction period:

- (a) a percentage or percentages applied to the Construction Cost in accordance with clause 5.4; and/or
- (b) a lump sum or sums in accordance with clause 5.5; and/or
- (c) time charges in accordance with clause 5.6; and/or
- (d) any combination of these; and/or
- (e) another agreed method.

- 5.2.2 for other professional services:

- (a) a lump sum or sums in accordance with clause 5.5.1; and/or
- (b) time charges in accordance with clause 5.6; and/or
- (c) another agreed method.

Other fees

- 5.3 For performance of Other Services specified in the Services schedule, but not included in the Basic Fee, the fee for each service shall be:

- 5.3.1 a lump sum or sums in accordance with clause 5.5.1; and/or

- 5.3.2 time charges in accordance with clause 5.6; and/or

- 5.3.3 another agreed method.

[1] Assignment in Scotland.

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Percentage fees

5.4 Where this clause 5.4 applies, the Basic Fee shall be calculated by applying:

5.4.1 the specified percentage applied to the final Construction Cost; or

5.4.2 the relevant specified percentage for each work stage to the Construction Cost at the end of the previous stage.

Lump sums

5.5 Where this clause 5.5 applies, the Basic Fee shall be:

5.5.1 the specified lump sum or lump sums; or

5.5.2 a lump sum or lump sums for each work stage calculated by applying the specified percentages to the Construction Cost for the developed design current at the end of RIBA Stage D; or

5.5.3 a lump sum for each work stage calculated by applying the relevant specified percentage to the Construction Cost current at the end of the previous stage.

Time charges

5.6 Where this clause 5.6 applies, the time-based fee shall be 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 and in travelling from and returning to the Consultant's office.

Revision of lump sums and other rates

5.7 Every 12 months, lump sums complying with clause 5.5, less any amounts previously claimed, and rates for time charges shall be revised in accordance with changes in the Average Earnings Index and rates for mileage and printing shall be revised in accordance with changes in the Consumer Price Index.

Each 12-month period shall commence on the anniversary of the Effective Date of this Agreement specified in the Project Data, or where clause 5.5.2 or 5.5.3 applies the date of calculation of the lump sums.

Fee adjustment

5.8 The Basic Fee:

5.8.1 shall be adjusted including due allowance for any loss and/or expense if:

- (a) material changes are made to the Brief and/or the Construction Cost and/or the Timetable; and/or
- (b) the Services are varied by agreement.

5.8.2 shall not be adjusted for any reduction of the Construction Cost arising solely from deflationary market conditions not prevailing at the Effective Date. The Basic Fee shall continue to be based on the Construction Cost current prior to the date of such reduction.

Additional fees

5.9 Where the Consultant for reasons beyond the Consultant's reasonable control incurs extra work or loss and expense for which the Consultant would not otherwise be remunerated, the Consultant shall be entitled to additional fees calculated on a time basis as set out in clause 5.6 unless otherwise agreed. Matters in relation to which the Consultant shall be entitled to additional fees include but are not limited to circumstances where:

5.9.1 the Consultant is required to vary any item of work commenced or completed pursuant to this Agreement or to provide a new design after the Client has authorised the Consultant to develop an approved design;

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- 5.9.2 the nature of the Project requires that substantial parts of the design cannot be completed or must be specified provisionally or approximately before construction commences;
- 5.9.3 performance of the Services is delayed, disrupted or prolonged; and
- 5.9.4 the cost of any work, installation or equipment for which the Consultant performs Services is omitted from or not included in the Construction Cost.

This clause 5.9 shall not apply where any adjustment under clause 5.8.1 applies to the same events.

The Consultant shall inform the Client on becoming aware that this clause 5.9 will apply. This clause 5.9 shall not apply where any change or extra work or expense arises from a breach of this Agreement by the Consultant.

Supplementary agreements

- 5.10 If the Consultant consents to enter into any supplementary agreement, the terms of which are agreed by the Consultant after the date of this Agreement, the Consultant shall be entitled to payment of the Consultant's reasonable costs of so doing, including but not limited to legal advice, and the amount of any additional professional indemnity insurance premium.

Tender not accepted

- 5.11 Where the Consultant is instructed by the Client to invite a tender or tenders for work or services in connection with the Project but no tender is made or accepted, the Consultant shall be entitled to fees due up to and including RIBA Work Stage H applied to the Construction Cost or that part of it relating to the said work or services current at the date of invitation to tender.

Expenses and disbursements

- 5.12 The Client shall reimburse the Consultant for expenses in the manner specified in the Schedule of Fees and expenses.

Maintain records

- 5.13 The Consultant shall maintain records of time spent on Services performed on a time basis for the purpose of verifying charges under clause 5.6 and shall in addition maintain records of any expenses and disbursements to be reimbursed at net cost. The Consultant shall make such records available to the Client on reasonable request.

Payment

- 5.14^[2] Payment under this Agreement shall be made as follows:

- 5.14.1 Payment shall become due to the Consultant on the date of issue of the Consultant's account. The final date for payment of any amount due to the Consultant shall be 28 days from the issue of the relevant account.

- 5.14.2 The Consultant shall issue accounts at intervals of not less than one month or as specified in the schedule of Fees and expenses setting out any accrued instalments of the fee and other amounts due, less any amounts previously paid and stating the basis of calculation of the amounts due. Instalments of fees shall be calculated on the Consultant's reasonable estimate of the percentage of completion of the Services or stages or other services or any other specified method.

- 5.14.3 The Consultant shall submit the final account for fees and any other amounts due when the Consultant reasonably considers the Services have been completed.

Payment notices

- 5.15 The Client shall give a written notice to the Consultant:

[2] In the event of non-payment of any amount properly due to the Consultant under this Agreement, the Consultant is entitled to interest on the unpaid amounts under the provisions of clause 5.19, may suspend use of the licence under the provisions of clause 6, may suspend or terminate performance of the Services and other obligations under the provisions of clause 8, or may commence dispute resolution procedures and/or debt recovery procedures.

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5.15.1 within 5 days of the date of issue of an account specifying the amount the Client proposes to pay and the basis of calculation of that amount; and

5.15.2 not later than 5 days before the final date for payment of any amount due to the Consultant 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.

If no such notices are given the amount due shall be the amount stated as due in the account. The Client shall not delay payment of any undisputed part of the account.

Set-off

5.16 The Client shall not withhold any amount due to the Consultant under this agreement unless the amount has been agreed with the Consultant or has been decided by any tribunal to which the matter is referred as not being due to the Consultant.

All rights of set-off at common law or in equity which the Client would otherwise be entitled to exercise are expressly excluded.

Payment on suspension or termination

5.17 If the Consultant or the Client issues a notice under clause 8 suspending performance of any or all of the Services or terminating performance of the Services and/or other obligations, the Consultant shall issue an account or accounts on the expiry date of the notice or as soon as reasonably practicable and the Consultant shall be entitled to:

5.17.1 payment of any part of the fee and other amounts properly due on the expiry date of the notice; and

5.17.2 payment of any licence fee due under clause 6; and

5.17.3 reimbursement of any loss and/or expense properly and necessarily incurred by the Consultant by reason of the suspension or the termination, save where the Client gives notice of suspension or termination by reason of the material or persistent breach of the Agreement by the Consultant.

5.18 If the reason for suspension is remedied, the Consultant shall be entitled to reimbursement of the reasonable costs of resumption of performance of the Services and other obligations in accordance with clause 8.1.4 (a).

Late payment

5.19 In the event that any amounts are not paid by the Client or the Consultant when properly due, the payee shall be entitled to simple interest on such amounts until the date that payment is received at the daily rate equivalent to 8% over the dealing rate of the Bank of England Rate current at the date that payment becomes overdue, together with such costs reasonably incurred and duly mitigated by the payee (including costs of time spent by principals, employees and advisors) in obtaining payment of any sums due under this Agreement.

The payee's entitlement to interest at the specified rate shall also apply in respect of any amounts that are awarded in adjudication, arbitration or legal proceedings.

Recovery of costs

5.20 The Client or the Consultant shall pay to the other party who successfully pursues, resists or defends any claim or part of a claim brought by the other:

5.20.1 such costs reasonably incurred and duly mitigated (including costs of time spent by principals, employees and advisors) where the matter is resolved by negotiation or mediation; or

5.20.2 such costs as may be determined by any tribunal to which the matter is referred.

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VAT

- 5.21 In addition to the fees and expenses, the Client shall pay any Value Added Tax chargeable on the Consultant's fees and expenses.

6 Copyright and use of information

Copyright

- 6.1 The Consultant shall own the copyright in the original work produced in the performance of the Services and generally asserts the Consultant's moral rights to be identified as the author of such work.
- 6.2 No part of any design by the Consultant may be registered^[3] by the Client without the consent of the Consultant in writing.

Use of information

- 6.3 The Client shall have 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 Consultant in performing the Services, hereinafter called the 'Material'.

The Material may be used for the construction of the Project and for the operation, maintenance, repair, reinstatement, alteration, promotion, leasing and/or sale of the Project. The Material may not be used for 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 this Agreement or subsequently agreed.

The Consultant shall not be liable if the Material is modified other than by or with the consent of the Consultant or used for any purpose other than the purposes for which it was prepared.

Provided that:

- 6.3.1 if it is intended to make any permitted use after the date of the last Service performed under this Agreement:
- (a) the Consultant, following a request from the Client, shall confirm the degree of completion of the Material; and
 - (b) the Client shall pay to the Consultant any specified licence fee or a reasonable licence fee;
- 6.3.2 if at any time the Client is in default of payment of any fees or other amounts properly due, the Consultant 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;
- 6.3.3 the Client obtains or ensures that any third party obtains any necessary licence and pays any fees arising for access to any software used to produce any of the Material.

Patents etc.

- 6.4 The Basic Fee for performance of the Services shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Consultant of any invention or design for the purpose of performing the Services.

7 Liability and insurance

Time limit for action or proceedings

- 7.1 No action or proceedings arising out of or in connection with this Agreement whether in contract, in tort^[4], for breach of statutory duty or otherwise shall be commenced after the expiry of the period specified in the Project Data from the date of the last Services performed under this Agreement or, if

[3] Under the Registered Designs Regulations 2001.

[4] Delict in Scotland.

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earlier, the date of practical completion of construction of the Project or such earlier date as prescribed by law.

Limit of liability

7.2 In any such action or proceedings:

7.2.1 The Consultant's liability for loss or damage shall not exceed the amount of the Consultant's professional indemnity insurance specified in the Project Data, providing the Consultant has notified the insurers of the relevant claim or claims as required by the terms of such insurance.

7.2.2 No employee of the Consultant, including any officer or director of a company or a member of a limited liability partnership or any agent of the Consultant, shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from performance of the Services.

Net contribution

7.3 Without prejudice to the provisions of clause 7.2, the liability of the Consultant shall not exceed such sum as it is just and equitable for the Consultant to pay having regard to the extent of the Consultant's responsibility for the loss and/or damage in question and on the assumptions that:

7.3.1 all other consultants and contractors providing work or services for the Project have provided to the Client contractual undertakings on terms no less onerous than those of the Consultant under this Agreement;

7.3.2 there are no exclusions of or limitations of liability not joint insurance or co-insurance provisions between the Client and any other person referred to in this clause; and

7.3.3 all the persons referred to in this clause have paid to the Client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for that loss and/or damage.

Professional indemnity insurance

7.4 The Consultant shall maintain until at least the expiry of the period specified in clause 7.1 professional indemnity insurance with a limit of indemnity of not less than the amount or amounts specified in the Project Data provided such insurance continues to be offered on commercially reasonable terms to the Consultant at the time when the insurance is taken out or renewed.

Such insurance shall be:

7.4.1 limited to the amounts (if any) specified in the Project Data as in the aggregate in any year of insurance; and

7.4.2 subject only to such other limitations, exceptions and exclusions as are commonly included in such policies.

7.5 The Consultant, when reasonably requested by the Client, shall produce for inspection a broker's letter or certificate confirming that such insurance is being maintained.

7.6 The Consultant shall inform 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 Project Data in order that the Consultant and Client can discuss the best means of protecting their respective positions.

Supplementary Agreements

7.7 Where it is specified in the Project Data:

7.7.1 that the Consultant will be required to enter into a collateral warranty or warranties in favour of funders, purchasers or first tenants and the terms of the warranty together with the names or categories of other parties who will sign such agreements are appended to this Agreement, the Consultant shall enter into such agreement or agreements within a reasonable period of being

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requested to do so by the Client, providing that such warranties give no greater benefit to the beneficiaries than is given to the Client under this Agreement and all fees and other amounts properly due to the Consultant have been paid;

- 7.7.2 that a Third Party Rights Schedule^[5] in favour of funders, purchasers or first tenants is applicable and appended to this Agreement, the rights of such third parties shall come into effect on the date of receipt by the Consultant of a notice from the Client stating the name of each interested party and the nature of the interest in the Project; and/or
- 7.7.3 that a supplementary agreement is applicable under which the Consultant is to provide services to a contractor appointed by the Client to complete the design and construction of the Project, and such agreement is appended to this Agreement, the Consultant shall enter into such agreement with the Client and the contractor appointed to complete the design and construction of the project within a reasonable period of being requested to do so by the Client, providing that all fees and other amounts due have been paid.

Rights of third parties

- 7.8 Except for the rights conferred by clause 7.7.2, nothing in this Agreement shall confer or is intended to confer any right to enforce any of its terms on any person who is not a party to it other than lawful assignees.

8 Suspension or termination

Suspension

- 8.1 The provisions for suspension are:
- 8.1.1 The Client may suspend the performance of any or all of the Services and/or other obligations by giving not less than 7 days' notice in writing to the Consultant specifying the Services affected.
- 8.1.2 The Consultant may suspend performance of the Services and/or other obligations on giving not less than 7 days' notice to the Client of the intention and stating the reasons for doing so in the event:
- (a) that the Client fails to pay any fees or other amounts due by the final date for payment unless, where applicable, the Client has given effective notice under clause 5.15.2 of the intention to withhold payment of any part of a Consultant's account; or
 - (b) that the Client is in material or persistent breach of the obligations under this Agreement; or
 - (c) that the Consultant is prevented from or impeded in performing the Services for reasons beyond the Consultant's reasonable control; or
 - (d) of force majeure.
- 8.1.3 The Consultant shall cease performance of the suspended Services and/or other obligations in an orderly and economical manner on the expiry of the notice period after receipt or giving of a notice of suspension.
- 8.1.4 If the reason for a notice of suspension arises from a default:
- (a) which is remedied, the Consultant shall resume performance of the Services or other obligations within a reasonable period; or
 - (b) which is not remedied by the defaulting party, the other party shall have the right to treat performance of the Services or other obligations affected as terminated on giving reasonable written notice.
- 8.1.5 Where Services are suspended by the Client and not resumed within 6 months the Consultant shall have the right to treat performance of the Services and/or other obligations affected as terminated on giving at least 7 days' further written notice to the Client.

[5] Not in Scotland.

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8.1.6 Any period of suspension arising from a valid notice given under clause 8.1.1 or clause 8.1.2 shall be added to the latest Timetable for completion of the relevant Services.

Termination

8.2 The provisions for termination are:

8.2.1 The Client or the Consultant may by giving reasonable notice to the other terminate performance of the Services and/or other obligations, stating the reasons for doing so and the Services and obligations affected.

8.2.2 Performance of the Services and/or other obligations may be terminated immediately by notice from either party if:

(a) 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

(b) the Consultant becomes unable to perform the Services through death or incapacity.

8.2.3 On termination of performance of the Services and/or other obligations, a copy of the Material not previously provided to the Client shall be delivered on demand to the Client by the Consultant, subject to the terms of the licence under clause 6.3 and payment of any outstanding fees and other amounts due under clause 5.19 plus the Consultant's reasonable copying charges.

9 Dispute resolution^[6]

9.1 The Client and the Consultant may attempt to settle any dispute or difference arising under the Agreement by negotiation or mediation, if suitable, or either party may refer the matter to adjudication, arbitration or legal proceedings as specified in the Project Data.

Adjudication

9.2 The provisions for adjudication are:

9.2.1 Where a dispute or difference is to be referred to adjudication, the parties may agree who shall act as adjudicator, or the adjudicator shall be a person nominated at the request of either party by the nominator specified in the Project Data.

9.2.2 For the avoidance of doubt, the Adjudicator may allocate between the parties the costs relating to the adjudication, including the fees and expenses of the adjudicator, in accordance with the provisions of clause 5.20.

This provision is ineffective unless it is confirmed in writing by the referring party to the other party and to the adjudicator after notice is given of the intention to refer the dispute to adjudication.

Arbitration

9.3 The provisions for arbitration are:

9.3.1 Without prejudice to any right of adjudication, where in the Project Data an arbitration agreement is made and either party requires a dispute or difference (except in connection with the enforcement of any decision of an adjudicator) to be referred to arbitration then that party shall serve on the other party a notice of arbitration to that effect and the dispute or difference shall be referred to a person to be agreed between the parties or, failing agreement within 14 days of the date on which the notice is served, a person appointed by the appointor specified in the Project Data on the application of either party.

9.3.2 Where the law of England and Wales or Northern Ireland is the applicable law:

[6] The Consultant is expected to operate in-house procedures to promptly handle complaints and disputes relating to specific project or performance matters.

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- (a) the Client or the Consultant may litigate any claim for a pecuniary remedy which does not exceed £5,000 or such other sum as is provided by order made under section 91 of the Arbitration Act 1996;
- (b) in such arbitration the Construction Industry Model Arbitration Rules (CIMAR) current at the date of the reference shall apply; and
- (c) the arbitrator shall not have the power referred to in Section 38(3) of the Arbitration Act 1996.

9.3.3 Where the law of Scotland is the applicable law such arbitration shall be conducted under the rules set out in the current edition of the Scottish Arbitration Code for use in Domestic and International Arbitration.

10 Consumer's right to cancel^[7]

- 10.1 The consumer Client has the right to cancel this Agreement for any reason by delivering or sending (including by electronic mail) a cancellation notice to the Consultant at any time within the period of 7 days starting from the date when this Agreement was made.
- 10.2 The notice of cancellation is deemed to be served as soon as it is posted or sent to the Consultant or in the case of an electronic communication on the day it is sent to the Consultant.
- 10.3 If the Consultant was instructed to perform any services before the Agreement was made or before the end of the 7 day period and the instruction or instructions were confirmed in writing, the Consultant shall be entitled to any fees and expenses properly due before the Consultant receives the notice of cancellation.
- 10.4 The notice of cancellation is to be addressed to the Consultant and state:

The Client <name> hereby gives notice that the Agreement with the Consultant <insert name> and signed [on our behalf] by <name of person(s) who [will sign] [signed]> on <date of signing> is cancelled.

Client signature(s):

<address>

<date>

[7] This clause applies where the Project relates to work to the Client's home or a second home including a new home and the Client is a consumer who is acting for purposes outside his/her trade, business or profession and has signed this Agreement in his/her own name, i.e. not as a limited company or other legal entity.