

**Terms of Appointment (continued)**

**10. Complaints**

10.1 In the event that the Client has a complaint in respect of our performance and services under this Agreement, without prejudice to any other remedy available under the Agreement, he shall be entitled to have access to our complaints handling procedure maintained, written copies of which are available on request.

**11. Disputes**

11.1 If a dispute arises out of this Agreement the Client and ourselves shall attempt to agree a settlement in good faith. The internal complaints procedure mentioned in Clause 8.1 should facilitate this for disputes less Than £50,000.

11.2 If the dispute is not thus resolved either the Client or ourselves may at any time give notice to the other in writing that he wishes to refer the dispute to an adjudicator, provided the contract is in writing and/or is not with a residential occupier. The person who is to act as the adjudicator shall be agreed between the Client and ourselves within 2 days of such notice having been given, or failing agreement, be a person appointed by the President or Vice-President of the RIBA within 5 days of such notice having been given. The referring party shall refer the dispute in writing to the adjudicator within 7 days of such notice having been given.

11.3 The adjudication shall be conducted in accordance with the Construction Industry Council Model Adjudication Procedures current at the time of entering into this Agreement. Clause 30 of the Construction Industry Council Model Adjudication Procedures shall be amended to add the following sentence:

"No party shall be entitled to raise any right of setoff, counterclaim and/or abatement in connection with any enforcement proceedings.

11.4 The adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law.

11.5 The adjudicator shall reach a decision:

- a) within 28 days of the referral of the dispute to the adjudicator, or
- b) within 42 days of the referral of the dispute to the adjudicator if the referring party so consents, or
- c) in a period exceeding 28 days from referral of the dispute to the adjudicator as the Client and ourselves may agree after such referral.

11.6 The adjudicator is not liable for anything he does or omits to do in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. Any employee or agent of the adjudicator shall be similarly protected from liability.

11.7 The decision of the adjudicator shall, subject to the provisions of Clauses 11.8 and 11.9 below, be binding until the dispute is finally determined by arbitration either under the contract or as part of our internal complaints procedure for disputes less than £50,000.

11.8 The Client and ourselves may agree to accept the decision of the adjudicator as finally determining the dispute.

11.9 If the Client or ourselves is dissatisfied with the decision of the adjudicator:

- a) the dispute may be determined by agreement between the parties, or
- b) the dispute may be referred at the instance of either of the parties to be determined by an arbitrator in accordance with Clause 12 below.

**12. Arbitration**

12.1 Any dispute arising under this Agreement, including those for more than £50,000 and/or those where adjudication would not apply, may be referred at the instance of either of the parties to be determined by an arbitrator. The person who is to act as an arbitrator shall be agreed between the parties within 28 days of the one giving written notice of his wish to refer the decision to an arbitrator or, failing agreement at the end of that period, shall be a person appointed by the President or Vice-President of the RIBA at the instance of either party. The arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules current at the time of entering into This Agreement.

**13. Liability**

13.1 Our liability shall be limited to such sum as it would be just and equitable for ourselves to pay having regard to the extent of our responsibility for the loss or damage suffered on the basis that all other consultants, the contractor and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those applying in the case of this Agreement and shall be deemed to 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 such loss or damage.

13.2 Our liability shall be limited to the amount of the professional indemnity insurance required by virtue of Clause 5.1 above and is wholly conditional upon all invoices rendered by us having been paid in full by the Client.

13.3 No action or proceedings for any breach of this Agreement shall be commenced by either party after the expiry of the period of limitation.

**14. Notice**

14.1 Any notice to be given under this Agreement shall be in writing and delivered by hand or sent by recorded delivery post to the party at the address shown in this Agreement or to such an address as the other party may have specified from time to time by written notice to the other.

14.2 Such notice shall be deemed to have been received on the day of delivery if delivered by hand and otherwise on the next working day.

14.3 Where under this Agreement an act is required to be completed within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday that day shall be excluded.

**15. Publicity and Publication**

15.1 Upon payment of all fees properly due under this agreement and in conformity with the terms of Clause 6 (Copyright) the Client accepts responsibility to ensure that all copies of drawings or photographs of projects designed by us and reproduced by the Client or his agents or for his benefit, are appropriately credited.

15.2 Acceptance of these Terms and Conditions shall constitute agreement to:

- a) Project details and/or drawings and/or photographs being used for publication or publicity purposes by the Architect or their agents.
- b) Professional signboard(s) being placed at and/or on the said works

**Terms of Appointment**

**1. Introduction**

1.1 We shall provide the services with reasonable skill, care and diligence.

**2. Client's obligations**

2.1 The Client shall supply such information to us at such times as is reasonably required for the performance of our services.

2.2 The Client shall notify us in writing of any agent appointed to act on behalf of the Client and of any change or dismissal of the agent.

2.3 The Client shall notify us in writing of any instruction to vary the services.

**3. Assignment and subcontracting**

3.1 Neither the Client nor ourselves shall assign the whole or any part of this Agreement without the consent of the other in writing. Such consent shall not be unreasonably withheld.

**4. Payment**

4.1 The Client shall pay us for the performance of the services, the fees and charges as are set out in the Fee Offer. Nothing shall preclude us from claiming fees and/or expenses in instalments where appropriate. All fees and charges under The Agreement are exclusive of Value Added Tax which if due shall be paid concurrently in addition. The 'due date for payment shall be 7 days (see Clause 14.3 below) after the date of the submission of The invoice.

4.2 The 'final date for payment' shall be 7 days after the due date for payment. Payment shall be made no later than the final date for payment.

4.3 The Client must, not later than 5 days after the due date for payment, give to ourselves written notice stating the amount which the Client proposes to pay and the basis on which that amount is calculated. Where no such notice is given the amount to be paid is that stated in the invoice.

4.4 Where the Client intends to withhold payment of any amount either stated in our invoice or in a written notice given by the Client under Clause 4.3 above, the Client must give written notice to ourselves not later than 5 days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.

4.5 Any amounts due to us under this Agreement which remain unpaid by the Client after The final date for payment shall incur overdue charges (interest) at the rate of 1.5% per month calculated from the invoice date and is subject to a minimum charge of £10.

4.6 In the event that the Client is in default over payment of amounts at the final date for payment and no notice of intention to withhold payment from such amount has been given under Clause 4.4 above, we may suspend performance of any or all of the services. The right is subject to ourselves first giving the Client not less than 7 days' written notice of such intention and stating the grounds for suspension. The right to suspend performance shall cease when the Client makes payment of the amount due. Any such period of suspension shall be disregarded for the purposes of contractual time limits previously agreed for the completion of the services. Such suspension shall not be treated as a suspension under Clause 8 below.

4.7 We shall notify the Client in writing as soon as it becomes reasonably apparent that any work additional to the subject of this Agreement will be required.

4.8 Where we are involved in additional work because of:

- changes in the scope of the works, and/or
- changes in the programme of the works, and/or
- changes instructed to the services, and/or
- the commencement of adjudication, arbitration or litigation

The Client shall pay to us additional fees calculated (unless otherwise agreed) on the time charge basis in accordance with the recommendation of the Royal Institute of British Architects (RIBA).

**5. Professional indemnity insurance**

5.1 We are required to comply with the regulations of ARB & RIBA in respect of the maintenance of professional indemnity insurance. We shall use reasonable endeavours to maintain such professional indemnity insurance above ARB & RIBA limits, provided that it is available at commercially reasonable rates.

5.2 Not used

5.3 We shall immediately inform the Client if the insurance referred to in Clause 5.1 above ceases to be available at commercially reasonable rates in order that the best means of protecting the respective positions of the Client and ourselves can be implemented.

**6. Copyright**

6.1 The copyright in all designs and documents prepared by us shall remain our intellectual property. Subject to us having been appointed up to and including, RIBA work stages EF & G (Production Information) and all fees and expenses properly due under this Agreement having been paid, we will grant to the Client an irrevocable, non-exclusive, royalty-free licence to copy and use the documents for any purpose directly related to the project.

6.2 We shall not be liable for any use of the documents for any purpose other than that for which they were prepared and provided. We shall be entitled to fees in respect of any other use.

7. Not used

**8. Suspension and termination**

8.1 The Client may suspend our performance of all or any of the services by giving 7 days' written notice to us. If the services have been suspended for a period of more than 12 months either party may terminate the Agreement, by giving written notice to that effect.

8.2 The Client may terminate our appointment under this Agreement by giving 7 days' written notice to us.

8.3 Where the services have been suspended by the Client and the Agreement has not been terminated, the Client may, by giving reasonable written notice to us, require us to resume the performance of the services.

8.4 If the Client materially breaches its obligations under this Agreement we may serve on the Client a notice specifying the breach and requiring its remedy within 28 days, and if the Client thereafter fails to remedy that breach within that period we may terminate this Agreement by giving written notice to the Client.

8.5 If either party:

- commits an act of bankruptcy or has a receiving or administrative order made against it, and/or
- goes into liquidation, and/or
- becomes insolvent, and/or
- makes any arrangement with its creditors

the other may suspend performance of the services or may terminate the appointment by giving written notice to the Client..

**9. Consequences of suspension and termination**

9.1 If performance of the services has been suspended under Clause 4 or the Agreement has been terminated pursuant to the provisions of Clause 8 above:

a) The Client shall pay to us any instalments of the fees due up to the date of suspension or termination together with a fair and reasonable proportion of the next following instalment commensurate with the services performed by us.

b) Unless the Agreement has been terminated by the Client because of material breach by us the Client shall pay us within 14 days of written demand, consequential costs necessarily incurred as a result of the suspension or termination.

9.2 Termination of the Agreement shall be without prejudice to the rights and remedies of the parties.

9.3 These rights are in addition to those granted to us under Clause 4 above.

(continued)