

**Standard Conditions of
Appointment for an
Architect
2010
(2012 revision)**

Incorporating Amendment 1, September 2011

This and the following 14 pages (numbered 2–15) are the RIBA Standard Conditions of Appointment for an Architect 2010 (2012 revision) referred to in the Agreement relating to

The Project, namely:

between

The Client, namely:

Initials

and

The Architect, namely:

Initials

RIBA Agreements 2010, 2012 revision are produced in association with:



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Wales**



RSUA

**Royal Society of
Ulster Architects**

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.

A list of the principal changes from the 2010 Conditions 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 ie '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, ie these Conditions and the Memorandum or Letter of Appointment to be individually negotiated – see *Standard Agreement, 2012 revision: Notes*.

Individual architects are required to be registered with the Architects Registration Board, 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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An agreement in electronic format will comprise the Conditions together with the core and/or other components that are also available online in Rich Text Format (RTF) as required. These components, eg schedules and notes and model letters, can be customised using most commonly used word-processing software, such as MS Word, to meet project requirements or modified to match the house style of the practice.

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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 Architect 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, as and when requested, information reasonably necessary for performing work or services and, where the Architect considers itself competent to do so, to comment on such information.

Confidential Information means all information relating to the Client's and the Architect'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, by electronic mail or verbally.

Construction Acts means the *Housing Grants Construction and Regeneration Act 1996* and the *Local Democracy Economic Development and Construction Act 2009*.

Construction Cost means:

- the Client's initial budget 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 Architect or any sub-consultant of the Architect, including but not limited to consultants, contractors, sub-contractors, specialists, site inspectors or clerks of works, 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 Architect 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.

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 Architect that are not such notices or documents may be sent to any other address, including an email address, notified by the other party as an appropriate address for specific communications. Communications take effect on receipt, but are of no effect unless and until confirmed by the recipient or the other party in writing or by email.

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 continue to bind the Client and the Architect as long as necessary to give effect to their respective 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 Architect

Duty of care

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

Duty to inform

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

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

- 2.3.1 a need to appoint Other Persons 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 Other Persons in connection with performance of the Services.

Collaboration

- 2.4 The Architect shall Collaborate with Other Persons named in the Project Data or who can reasonably be expected to perform work or services and, as applicable, shall integrate relevant information received from such persons into the Architect's work.

Architect's authority

- 2.5 The Architect 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 Architect 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.

Architect's Representative

- 2.6 The Architect's Representative shall have full authority to act on behalf of the Architect for all purposes in connection with performance of the Services save where advised to the contrary.

Photography

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

Publicity

- 2.8 The Architect shall obtain the consent of the Client, which consent shall not be 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 Architect shall not disclose 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 save where advised to the contrary.

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 Architect 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.

Instructions

- 3.5 The Client (or the Lead Consultant, or other consultant designated by the Client) may issue reasonable instructions to the Architect.
- 3.6 Where the Architect 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 Architect and the Architect 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 from 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 Architect, are required, the Client shall appoint or otherwise engage Other Persons to perform such work or services and shall require them to Collaborate with the Architect.

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

The Client acknowledges that the Architect 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 Architect 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 Architect does not warrant:
- 3.10.1 that planning permission and other approvals from third parties will be granted at all, or 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) variation in market prices;
 - (c) delays caused by any Other Person; and/or any other factors beyond the control of the Architect;
 - (d) the discovery at any time of previously unknown conditions.

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 Person.

Confidentiality

- 3.12 The Client shall not disclose 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.

4 Assignment and sub-contracting

Assignment^[1]

- 4.1 Neither the Architect 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 Architect may appoint a sub-consultant or sub-consultants to perform part of the Services. Any such sub-contracting shall not relieve the Architect 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 Architect's opinion that it would benefit the Client, the Architect 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 Architect, who shall be relieved of responsibility and liability for that element of the Services.

The Architect 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 Fees and Expenses Schedule, 2012 revision, or in the Letter of Appointment.

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.

Percentage fees

- 5.4 Where this clause 5.4 applies, and subject to clause 5.8.2, the Basic Fee shall be the specified percentage applied to the actual Construction Cost:

Lump sums

- 5.5 Where this clause 5.5 applies, and subject to clause 5.8.2, 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 on completion of Work Stage D; or
 - 5.5.3 a lump sum for each work stage calculated by applying the relevant specified percentage to the Construction Cost 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 Architect'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 shall be adjusted:
- 5.8.1 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, save to the extent that any change arises from a breach of this Agreement by the Architect; and/or
 - (b) the Services are varied by agreement;
 - 5.8.2 where percentage fees in accordance with clauses 5.4, 5.5.2 or 5.5.3 apply, to compensate for any reduction of the Construction Cost arising solely from deflationary market conditions not prevailing at the Effective Date.

Additional fees

- 5.9 Where the Architect for reasons beyond the Architect's reasonable control incurs extra work or loss and expense for which the Architect would not otherwise be remunerated, the Architect 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 Architect shall be entitled to additional fees include but are not limited to circumstances where:
- 5.9.1 the Architect 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 Architect to develop an approved design;
 - 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 Architect performs Services is omitted from or not included in the Construction Cost.

The Architect shall inform the Client on becoming aware that this clause 5.9 will apply.

This clause 5.9 shall not apply to the extent that any adjustment under clause 5.8.1 applies to the same events or to any other change or extra work or expense which arises from a breach of this Agreement by the Architect.

Supplementary agreements

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

Tender not accepted

5.11 Where the Architect 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 Architect 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 Architect for expenses in the manner specified in the Schedule of Fees and Expenses.

Maintain records

5.13 The Architect 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 Architect shall make such records available to the Client on reasonable request.

Payment notices

5.14^[2] The Architect shall issue payment notices at the intervals specified in the schedule of Fees and expenses.

Each notice shall comprise the Architect's account setting out the sum that the Architect considers to be due at the payment due date including all accrued instalments of the fee and other amounts due, less any amounts previously paid and stating the basis on which that sum is calculated, which shall be 'the notified sum'. The payment due date shall be the date of the Architect's payment notice. Instalments of fees shall be calculated on the Architect's reasonable estimate of the percentage of completion of the Services or stages or other services or any other specified method.

The Client shall pay the notified sum within 14 days of the date of issue of the relevant notice (which shall be the 'final date for payment') unless:

- (a) The Architect has become insolvent (as defined in the Construction Acts at any time between the last date on which the Client could have issued the Notice under 5.15 and the final date for payment);
- (b) The Client issues a notice under 5.15.

Otherwise the amount due and payable shall be the notified sum. The Client shall not delay payment of any undisputed part of the notified sum.

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

[2] In the event of non-payment of any amount properly due to the Architect under this Agreement, the Architect 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.

Notice of intention to pay less

- 5.15 If the Client intends to pay less than the notified sum the Client shall give a written notice to the Architect not later than five days before the final date for payment specifying the amount that the Client considers to be due on the date the notice is served, the basis on which that sum is calculated and, if any sum is intended to be withheld, the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it. The Client shall on or before the final date for payment make payment to the Architect of the amount if any specified in the written notice.

If no such notice is given the amount due and payable shall be the notified sum stated as due in the Architect's account. The Client shall not delay payment of any undisputed part of the account. If the Client issues such a notice and the matter is referred to an adjudicator who decides that an additional sum greater than the amount stated in the notice of intention to pay less is due, the Client shall pay that sum within seven days of the date of the decision or the date which apart from the notice would have been the final date for payment.

Set-off

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

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 Architect or the Client suspends performance of any or all of the Services or terminates performance of the Services and/or other obligations the Architect shall issue an account or accounts as soon as reasonably practicable and the Architect shall be entitled to:

5.17.1 payment of any part of the fee and other amounts properly due to the date of the last instalment and a fair and reasonable amount up to the date of termination or suspension; and

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

5.17.3 reimbursement of any loss and/or damages caused to the Architect 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 Architect.

- 5.18 If the reason for suspension is remedied, the Architect 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) and whether or not the reason for the suspension is remedied, the Architect shall also be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by the Architect as a result of the exercise of the Architect's right to suspend performance.

Late payment

- 5.19 In the event that any amounts are not paid by the Client or the Architect when properly due, the Architect shall be entitled to simple interest on such amounts until the date that payment is received at the daily rate equivalent to 8% per year 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 Architect (including costs of time spent by principals, employees and advisors) in obtaining payment of any sums due under this Agreement.

The Architect'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 Architect 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.

VAT

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

6 Copyright and use of information

Copyright

- 6.1 The Architect shall own all intellectual property rights including 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.
- 6.2 No part of any design by the Architect may be registered^[3] by the Client without the consent of the Architect in writing.

Use of information

- 6.3 The Client shall have a licence to copy and use drawings, documents and all other such work produced by or on behalf of the Architect 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.

Copying or use of the Material by an Other Person shall be deemed to be permitted under a sub-licence granted by the Client, whether such Material was issued by the Client or on the Client's behalf.

The Architect shall not be liable if the Material is modified other than by or with the consent of the Architect 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 Architect, following a request from the Client, shall confirm the degree of completion of the Material; and
 - (b) the Client shall pay to the Architect 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 Architect may suspend further use of the licence and any sub-licences on giving seven 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.

[3] Under the *Registered Designs Regulations 2001*.

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 Architect 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 negligence or 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 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 Architect's liability for loss or damage shall not exceed the amount of the Architect's professional indemnity insurance specified in the Project Data, providing the Architect 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 Architect, including any officer or director of a company or a member of a limited liability partnership or any agent of the Architect, 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 7.2.1, the liability of the Architect shall not exceed such sum as it is just and equitable for the Architect to pay having regard to the extent of the Architect's responsibility for the loss and/or damage in question and on the assumptions that:

7.3.1 all other consultants, contractors and Other Persons have provided to the Client contractual undertakings on terms no less onerous than those of the Architect under this Agreement;

7.3.2 there are no exclusions of or limitations of liability nor 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 Architect 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 Architect at the time when the insurance is taken out or renewed.

Such insurance shall be subject only to such other limitations, exceptions and exclusions as are commonly included in such policies.

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

[4] 'Delict' in Scotland.

- 7.6 The Architect shall inform the Client if such insurance ceases to be available at commercially reasonable terms or subsequent to the date of this Agreement any restrictions are attached to the policy or an aggregate limit applies to any matters other than those specified in the Project Data in order that the Architect 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 Architect will be required to enter into a collateral warranty with a third party or third parties and the terms of which together with the names or categories of other parties who will sign similar warranties are appended to this Agreement, the Architect shall enter into such agreement or agreements within a reasonable period of being requested to do so by the Client;
- 7.7.2 that a *Third Party Rights Schedule*^[5] in favour of a third party or third parties is applicable and appended to this Agreement; the rights of a third party shall come into effect on the date of receipt by the Architect of a notice from the Client stating the name of the third party and the nature of its interest in the Project; and/or
- 7.7.3 that a supplementary agreement is applicable under which the Architect 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 Architect 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.

It shall be a condition that any such supplementary agreement or third party rights shall confer no greater benefit to the beneficiaries than is conferred to the Client under this Agreement and that all fees and other amounts properly due to the Architect have been paid at the date when it comes into effect.

Rights of third parties

- 7.8 Except for the rights conferred by clauses 7.2.2 and 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 or end the performance of any or all of the Services and/or other obligations by giving not less than seven days' notice in writing to the Architect specifying the Services affected.
- 8.1.2 The Architect may suspend performance of any or all of its obligations on giving not less than seven days' notice in writing to the Client of the intention and stating the ground or grounds on which it is intended to do so. Such ground or grounds include but are not limited to:
- (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 of the intention to pay less than the amount stated in an Architect's account; or
 - (b) that the Client is in material or persistent breach of the obligations under this Agreement; or
 - (c) that the Architect is prevented from or impeded in performing the Services for reasons beyond the Architect's reasonable control; or
 - (d) *force majeure*.
- 8.1.3 The Architect 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.

[5] Not in Scotland.

- 8.1.4 If the reason for a notice of suspension arises from a default:
- (a) which is remedied, the Architect 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 either party and not resumed within six months the other Party shall have the right to treat performance of the Services and/or other obligations affected as terminated on giving at least seven days' further written notice to the other Party.
- 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 disregarded in computing for the purposes of any contracting time limit the time taken by the Architect to complete any work directly or indirectly affected by the exercise of the Architect's right to suspend performance.

Termination

- 8.2 The provisions for termination are:
- 8.2.1 The Client or the Architect 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 other party becomes unable to perform its obligations 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 Architect, subject to the terms of the licence under clause 6.3 and payment of any outstanding fees and other amounts due plus the Architect's reasonable expenses.

9 Dispute resolution^[6]

- 9.1 The Client and the Architect 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 Either party may give notice at any time of the intention to refer a dispute or difference to an adjudicator.
- 9.2.1 Referral of the dispute to such adjudicator shall be made within seven days of such notice.
- 9.2.2 The appointment of the adjudicator shall be made in accordance with the procedures identified in the Project Data.
- 9.2.3 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.
- 9.2.4 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.

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

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:

- (a) the Client or the Architect 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 in accordance with the provisions of the *Arbitration (Scotland) Act 2010*.^[7]

10 Consumer's right to cancel^[8]

10.1 The consumer Client has the right to cancel this Agreement for any reason by delivering or sending (including by email) a cancellation notice to the Architect at any time within the period of seven 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 Architect or in the case of an electronic communication on the day it is sent to the Architect.

10.3 If the Architect was instructed to perform any services before the Agreement was made or before the end of the seven day period and the instruction or instructions were confirmed in writing, the Architect shall be entitled to any fees and expenses properly due before the Architect receives the notice of cancellation.

10.4 The notice is to be addressed to the Architect and state:

The Client <name> hereby gives notice that the RIBA Standard Agreement, 2012 revision with the Architect <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] The parties will need to consider whether any of the default rules in the *Arbitration (Scotland) Act* are to be modified or identified as not applicable.

[8] 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, ie not as a limited company or other legal entity.