

Principal Designer

Professional Services Contract 2018



Guidance Notes

FOR CONSULTATION PURPOSES ONLY

Guidance Notes

These guidance notes explain the provisions of the RIBA Principal Designer Professional Services Contract 2018 for the appointment of a Principal Designer and provide guidance on what to consider when completing the Contract Details and the Schedule of Services; they do not form part of the Contract.

Summary of the Contract

- The RIBA Principal Designer Professional Services Contract 2018 is divided into four main parts:
 - the Agreement
 - the Contract Details
 - the Contract Conditions
 - Definition of Terms
 - Clauses
 - the Schedule of Services.
- A Contract Checklist is included for consideration before signing the Contract.
- Additional briefing documents will also form part of the Contract, if they are listed in item D of the Contract Details.
- The Contract is between the Client (the person or organisation that wishes to commission the professional services, known as the 'Services') and the Principal Designer (the person or organisation performing the 'Services') who is to undertake the Principal Designer role on the Project. Together they are referred to as the 'Parties' to the Contract.

When to Use this Contract

- The RIBA Principal Designer Professional Services Contract is suitable for the appointment of a Principal Designer under the CDM Regulations 2015. The RIBA recommends that the default choice for the Principal Designer should be the Architect/Consultant.
- The RIBA Principal Designer Professional Services Contract is suitable for commissions procured on any form of procurement for simple, non-complex, commercial projects of any value, in which the building works will be carried out using forms of building contract, such as the *RIBA Standard or Concise Building Contract*, the *JCT Minor Works Building Contract* or the *JCT Intermediate Building Contract*.
- The RIBA Principal Designer Professional Services Contract is not suitable for the appointment of a Principal Designer on non-commercial work undertaken for a consumer client, such as work done to the Client's home, including renovations,

extensions, maintenance and new buildings, provided that the Client has elected to use the Contract in their own name, i.e. not as a limited company or other legal entity or where the property will be let. Domestic projects are subject to the Consumer Rights Act 2015 and in such cases the *RIBA Domestic Professional Services Contract* should be used. This has the option for the Architect/Consultant to be appointed as the Principal Designer.

- The RIBA Principal Designer Professional Services Contract is devised as a Contract between a Principal Designer and a business Client or a public authority and is a 'construction contract' to which the Housing Grants, Construction and Regeneration Act 1996 (HGCRA, also known as the Construction Act), as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009, applies.
- Business Clients include charities, religious organisations and not-for-profit bodies. Where the Client is a public authority, it may be necessary to include provisions relating to the Freedom of Information Act 2000 and to corrupt gifts and payments under the Bribery Act 2010.

Client's Rights and Obligations

- The Client has various obligations under the Contract. The principal ones are:
 - informing the Principal Designer of the Project requirements and of any subsequent changes required and agreeing steps to mitigate the consequences
 - providing the information which is necessary for the proper and timely performance of the Services
 - making decisions and giving approvals as necessary for the performance of the Services
 - paying the Principal Designer for the Services performed
 - appointing or otherwise engaging any Other Client Appointments required to perform work or services under separate agreements and requiring those appointed to collaborate with the Principal Designer.
- The Client also has rights under the Contract. The principal one is the right to suspend or terminate the Principal Designer's Services.

Principal Designer's Rights and Obligations

- The Principal Designer has various obligations under the Contract. The principal ones are:
 - exercising the reasonable skill, care and diligence to be expected from a Principal Designer experienced in the provision of such services for projects of similar size, nature and complexity to the Project
 - receiving and reviewing the Project Brief and advising on the duty holder's responsibilities under the CDM Regulations 2015
 - informing the Client on progress in the performance of the Services and of any information, decision or action required or of any health and safety issues that may materially affect the delivery of the Project
 - collaborating with any Other Client Appointments appointed or otherwise engaged by the Client to perform work or services.

The obligations apply to the extent achievable using the standard of care outlined in clause 3.1.

- The Principal Designer also has rights under the Contract, the principal ones are:
 - the right to retain copyright in the documents produced in performing the Services (the Client is given a licence to copy and use the documents for purposes related to the construction of the Project or its subsequent use or sale)
 - the right to suspend or terminate performance of the Services because of the Client's failure to pay any fees or other amounts due.

The Agreement

- The Agreement is the part of the Contract that is signed and dated by both Parties and records the Client's and the Principal Designer's rights and obligations under the Contract.
- The Parties choose whether to sign the Agreement as a simple contract or as a deed, following the same method of execution as the Contracts with the other consultants employed for the Project. The choice determines the statutory limitation period within which a Party can bring a claim for breach of contract:
 - simple contract: 6 years from Practical Completion or date of breach, if earlier
 - deed: 12 years from Practical Completion or date of breach, if earlier.

Completing the Contract Details

When completing the Contract Details, where an option APPLIES tick ☒ the box to confirm that the section has been adopted. It is also necessary that any amendments made by hand to the Contract are initialled by both Parties.

The Contract Details provide the specific details of the Project:

- **Items A and B – the Client and the Principal Designer:** Provide details of the Client, the Client's named representative, the Principal Designer and the Principal Designer's primary point of contact. Note that if these details are changed at a later date, it is important that the Parties inform each other and agree in writing.
- **Item C – Site Address:** Provide the address of the site where the Project is to be carried out.
- **Item D – Project Brief:** Provide a description of the Project and the Client's statement of requirements for the Project for which the Services are being provided. The target Project Programme, such as dates for tender issue or for the commencement and completion of construction works, can be inserted.
- **Item E – Other Client Appointments:** Give the details of any other consultant appointments (which could be individuals or organisations) to be made by the Client to enable the Principal Designer to undertake work in connection with the Project. For example, these may include architects, structural and building services engineers, cost consultants, etc.
- **Items F, G, H and I – Basic Fee, Time Charges, Expenses and Payment:** Specify the basis for:
 - determining the calculation of the Basic Fee, e.g. a specified percentage applied to the Construction Cost, a fixed lump sum, time charges, design cost per square metre (gross or net) or any other agreed method (item F)

- stating the intended number and/or frequency of meetings that the Principal Designer is going to attend during the Project (item F)
- recording the rates for any time charges (item G)
- setting out the arrangements for charging for expenses and disbursements (item H)
- the payment frequency of the fees (item I).

To ensure that the Principal Designer's accounts issued to the Client are effective as Payment Notices, as set out in clause 5.11, each invoice issued by the Principal Designer should incorporate the following wording:

This is the amount due in respect of the Services provided, calculated as set out in this invoice and in accordance with the Fees and Expenses agreed in our Professional Services Contract dated *[insert date of Contract]*. This invoice constitutes a Payment Notice complying with section 110A(3) of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009. The payment due date is the date of this Payment Notice.

- **Item J – Professional Indemnity Insurance:** State the amount of professional indemnity insurance to be maintained for the Project, and any specific limitations in respect of claims arising on account of pollution or contamination or asbestos. The amount of professional indemnity insurance to be maintained for the Project should be reasonable in relation to the risks and should pass the reasonableness test under the Unfair Contract Terms Act 1977.
- **Item K – Dispute Resolution:** The Parties may choose which dispute resolution method(s) they will use should a dispute arise. Adjudication is available to either Party to select at any time as a statutory right. Below is a brief description of each method:
 - **Mediation** involves a third party helping the Parties to try to come to an agreement resolving their dispute. If managed well, mediation can be less expensive than other methods of dispute resolution and is therefore encouraged by the courts.
 - **Adjudication** involves a third party providing an independent decision on the dispute and is available to the Parties if the Contract is a Construction Contract under the Housing Grants, Construction and Regeneration Act 1996. The decision is binding in law unless one of the Parties refers the matter to arbitration or to litigation. Adjudication is generally a faster process, but not usually recommended for complex issues.
 - **Arbitration** is an alternative to court litigation and involves a third party (or parties) delivering a final and binding decision. Arbitration can involve only two parties so it would not normally be appropriate for multi-party disputes.
 - **Litigation** is an alternative to arbitration and involves a court delivering a final and binding decision.

If the Parties cannot reach agreement on a person to act as Mediator, Adjudicator or Arbitrator, a nomination shall be made by the Royal Institute of British Architects.

The Client can refer a complaint to the appropriate professional body if the Principal Designer's conduct or competence appears to fall short of the standards in the relevant code(s) of professional conduct.

- **Item L – Information Formats:** If the Principal Designer is producing documents for the Project using Computer Aided Design (CAD), any other proprietary software or Building Information Modelling (BIM), these will normally be provided to the Client in PDF format only, unless an alternative format has been agreed and set out in item L of the Contract Details.

The Schedule of Services

- The Schedule of Services is used to define the Services to be performed by the Principal Designer.
- The Services cover the range of services a Principal Designer is authorised to perform and is responsible for, based on the CDM Regulations 2015.
- If additional services are needed for the Project, these can be included at the end of the Schedule.
- Performance of the Services must be in accordance with the normal standards of the Principal Designer's profession.

Contract Conditions

- The Contract Conditions set out in concise terms the rights and obligations of the Parties.

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The RIBA Principal Designer Professional Services Contract 2018 is endorsed by the following organisations:



RIAS

Royal Incorporation of
Architects in Scotland

RSAW 

Royal Society of Architects
in Wales



Royal Society of
Ulster Architects



Chartered Institute of
Architectural Technologists

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Principal Designer

Professional Services

Contract 2018



FOR CONSULTATION PURPOSES ONLY

Contract Checklist

ONCE THE CONTRACT DETAILS HAVE BEEN COMPLETED, AND BEFORE THE AGREEMENT IS SIGNED, CHECK THIS LIST TO ENSURE THAT ALL OF THE KEY TERMS HAVE BEEN CONSIDERED.

	YES
Has the Project Brief and Client's statement of requirements been agreed?	<input type="checkbox"/>
Has the target Project Programme been agreed?	<input type="checkbox"/>
Have any Other Client Appointments been agreed?	<input type="checkbox"/>
Have the fees and expenses and payment frequency been agreed?	<input type="checkbox"/>
Has the amount of professional indemnity insurance that is to be allowed for the Project been agreed and has this been arranged?	<input type="checkbox"/>
Has a dispute resolution process been agreed in case something goes wrong?	<input type="checkbox"/>
Has the Schedule of Services been completed and agreed?	<input type="checkbox"/>
Has the Client been made aware that it has duties under the CDM Regulations 2015?	<input type="checkbox"/>
Have all the Contract Details been completed?	<input type="checkbox"/>



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Agreement

This Agreement is between:

The Client (refer to item A of the Contract Details for full information)

AND

The Principal Designer (refer to item B of the Contract Details for full information)

Who agree as follows:

- The Principal Designer shall perform all of the obligations of a Principal Designer herein and the Services set out in the Schedule of Services in accordance with the terms of the Contract.
- The Client shall pay the Principal Designer the fees and expenses set out in the Contract Details for the Services and shall perform the Client's obligations in accordance with the terms of the Contract.
- The Contract is the RIBA Principal Designer Professional Services Contract 2018.

Signed/Executed as a:

☐ simple contract

☐ deed

This agreement should be signed and executed on the same basis as the Architect/Consultant appointment, if any.

For and on behalf of the Client (complete as appropriate):

Client **is not** a registered company

Name:

Signature:

Client's signature witnessed by:

Name:

Address:

Signature:



OR

Client **is** a registered company

Company registration
number:

First signatory (Director/Company Secretary):

Name:

Signature:

Client's signature witnessed by:

Name:

Address:

Signature:

Second signatory (Director/Company Secretary) – *optional*:

Name:

Signature:

For and on behalf of the Principal Designer (complete as appropriate):

Principal Designer **is not** a registered company

Name:

Signature:

Principal Designer's signature witnessed by:

Name:

Address:

Signature:

OR

Principal Designer **is** a registered company

Company registration
number:

VAT registration
number:

First signatory (Director/Company Secretary):

Name:

Signature:

Principal Designer's signature witnessed by:

Name:

Address:

Signature:

Second signatory (Director/Company Secretary) – *optional*:

Name:

Signature:

This Agreement is dated and delivered on:



Contract Details

A. The Client

Name:

Address:

Registered address
(if different):

Telephone number:

Email address:

Named representative (insert the name of a representative with authority to act on behalf of the Client for all purposes under the Contract)

B. The Principal Designer

Name:

Address:

Registered address
(if different):

Telephone number:

Email address:

Named representative (insert the name of a primary point of contact with authority to act on behalf of the Principal Designer for all purposes under the Contract)

C. Site Address

D. Project Brief

Project description
and Client's
statement of
requirements:

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Additional briefing documents provided (include reference numbers and dates)

Document	Reference number	Date

Continue on a separate sheet if necessary.

Construction Cost

The Construction Cost, as defined in the Contract Conditions, is:

£

Project Programme

Insert key dates – e.g. tender dates, commencement/completion of building works, as appropriate:

Item	Target date

Continue on a separate sheet if necessary.

Other services:

Continue on a separate sheet if necessary.

VAT

State whether VAT applies to the Basic Fee:

- ☐ VAT applies
- ☐ VAT does not apply

Meetings

The Principal Designer shall attend the following meetings during the Project:

Stage	Purpose	Total number and/or frequency allowed for	Fee ¹
Stage 0			
Stage 1			
Stage 2			
Stage 3			
Stage 4			
Stage 5			
Stage 6			
Stage 7 ²			

G. Time Charges

Time charges for any additional fees, and/or where the Basic Fee incorporates time charges, shall be calculated on the basis of the following rates:

Person/grade	Rate, excluding VAT (state whether £ per hour or £ per day)

Continue on a separate sheet if necessary.

¹ State whether the fee for attending these meetings is included in the Basic Fee (insert 'BF') or will be provided on a time-base charge (insert 'TC').

² It is anticipated that meetings at Stage 7 will be commissioned as a separate professional services or operating contract.

H. Expenses

The specified expenses listed below, excluding VAT, shall be charged:

☐ at net cost plus a handling charge, which shall be calculated at the following percentage of net cost %

☐ by the addition of the following fee to the total fee £

☐ by the addition of % to the Basic Fee

☐ other (please specify)

Set out the details of the specified expenses:

Continue on a separate sheet if necessary.

Other expenses, including disbursements, such as payments to the local authority for planning and Building Regulations submissions, shall be charged at net cost plus the following percentage of net cost %

Where applicable, travel shall be charged at the following rate per mile £

Hard copies of documents shall be charged at the following rate per page:

	A4	A3	A2	A1	A0
Black and white	£ <input type="text"/>	£ <input type="text"/>	£ <input type="text"/>	£ <input type="text"/>	£ <input type="text"/>
Full colour	£ <input type="text"/>	£ <input type="text"/>	£ <input type="text"/>	£ <input type="text"/>	£ <input type="text"/>

I. Payment

Payment Notices for instalments of fees shall be issued and paid:

☐ on a weekly basis

☐ on a monthly basis

☐ at the end of each stage

☐ other (please specify)

J. Professional Indemnity Insurance

The amount of professional indemnity insurance cover to be maintained for the Project in respect of each and every claim or series of claims arising out of the same

originating cause shall be £

Professional indemnity insurance cover shall be maintained by the Principal Designer for the above amount, except for claims arising out of:

pollution or contamination, with an annual aggregate limit of £

asbestos, with an annual aggregate limit of £

K. Dispute Resolution

Mediation

The Parties may agree to try to resolve their differences through mediation without prejudice to any other dispute resolution rights.

Adjudication

Either Party has the statutory right (but no obligation) to refer a dispute, at any time, to adjudication. If it so chooses, the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended shall apply. The Adjudicator's decision is binding unless the dispute is subsequently referred to arbitration or litigation.

Final Dispute Resolution Process *(select either arbitration or litigation)*

Arbitration

The Parties select arbitration for final dispute resolution.

Applies

OR

Litigation

The Parties select court proceedings for final dispute resolution.

Applies

If the Parties cannot reach agreement on a person to act as Mediator, Adjudicator or Arbitrator, a nomination shall be made by the Royal Institute of British Architects.

L. Information Formats

This relates to electronic documents produced by the Principal Designer in connection with the Services:

information and documents produced by the Principal Designer shall be provided to the Client in PDF format only

other *(please specify)*

Contract Conditions

Definition of Terms

Basic Fee: the fee for the Services excluding VAT and any additional charges, such as expenses, disbursements, etc.

Building Contract: the contract between the Client and the Contractor for the construction of the Project.

CDM Regulations 2015: the Construction (Design and Management) Regulations 2015 and any guidance as issued, amended or replaced from time to time by the Health & Safety Executive, which govern the management of health, safety and welfare for construction projects.

Client: the person or organisation referred to in item A of the Contract Details. This also includes the Client's representative where one is appointed by the Client with full authority to act on behalf of the Client for all purposes in connection with the matters set out in the Contract, except where advised to the contrary.

Confidential Information: all information relating to the Project and the Client and Principal Designer's business and affairs which either Party directly or indirectly receives or acquires from the other Party or any representative of the other Party whether in writing, by electronic mail or verbally and which is not otherwise already in the public domain.

Construction Cost: the Client's target cost for the building works as specified in the Project Brief, as set out in item D of the Contract Details (being the Client's initial budget), and subsequently the latest estimate approved by the Client or, where applicable, the actual cost of constructing the Project upon agreement or determination of the final account for the Project. The Construction Cost includes the cost of any equipment and/or materials provided by the Client to the Contractor for installation as part of the Project, and any direct works carried out by or on behalf of the Client. The Construction Cost excludes VAT, professional fees, the cost of resolution of any dispute, the Client's legal and in-house expenses and any loss and/or expense payments made to the Contractor or any adjustment for any liquidated damages deducted by the Client.

Construction Phase: the period of time beginning when construction work on a Project starts and ending when construction work in that Project is completed.

Contractor: the party referred to as the Contractor in the Building Contract.

Final Date for Payment: the date, specified in clause 5.12, by which a payment that is due shall be paid.

Health and Safety File: the file required by the CDM Regulations 2015, which contains relevant health and safety information needed to allow future construction works, including cleaning, maintenance, alterations, refurbishment and demolition, to be carried out safely.

Notified Sum: the sum set out in a Payment Notice or in a default notice.

Other Client Appointments: other consultants or services appointments which have been, or will need to be, made by the Client to enable the Principal Designer to undertake its work in connection with the Project.

Party/Parties: the signatories to the Agreement: the Client and the Principal Designer described in items A and B of the Contract Details.

Payment Notice: a notice that the Principal Designer issues to the Client, in accordance with clauses 5.9 to 5.14, showing the payment that the Principal Designer considers is due and how it was calculated.

Practical Completion: when the works are so certified under the terms of the Building Contract.

Pre-construction Information: information in the Client's possession or which is reasonably obtainable by or on behalf of the Client, which is relevant to the construction work and is of an appropriate level of detail and proportionate to the risks involved.

Pre-construction Phase: any period of time during which design or preparatory work is carried out for a project, which may continue during the Construction Phase.

Principal Contractor: is a contractor appointed by the Client as Principal Contractor under the CDM Regulations 2015.

Principal Designer: is the party that the Client has appointed to perform the Services.

Project: as described in the Project Brief, item D of the Contract Details.

Project Brief: the Client's requirements for the Project, as initially set out in item D of the Contract Details.

Project Programme: the Client's initial programme for the Project, as specified in item D of the Contract Details.

Schedule of Services: the schedule specifying the Services and additional services to be undertaken by the Principal Designer in connection with the Project, which is incorporated into the Contract.

Services: the professional services to be performed by the Principal Designer specified in the Schedule of Services, which may be varied by agreement.

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Clauses

1. General Interpretation

- 1.1** Where under the Contract an action is required to be taken within a specified period, in calculating a period, a day shall be a calendar day and a date shall be a calendar date. When a period is calculated it shall exclude Saturdays, Sundays and public holidays.
- 1.2** The provisions of the Contract continue to bind the Client and the Principal Designer as long as is necessary to give effect to the Parties' respective rights and obligations.
- 1.3** The Contract supersedes any previous agreement or arrangements between the Client and Principal Designer in relation to the Services (whether oral or written) and represents the entire agreement between the Client and the Principal Designer in relation to the Services. All additions, amendments and variations to the Contract shall be binding only if in writing and signed by the duly authorised representatives of both the Client and the Principal Designer. The Client and the Principal Designer shall not claim to have relied upon any statements or representations made by the other Party other than those set out in the Contract.
- 1.4** If any clause or part of any clause of the Contract is ruled by the courts or declared to be invalid or unenforceable in any way, it shall be severed from the Contract and this shall not affect any other clause of the Contract, nor the validity of the remaining clauses of the Contract, which shall remain in full force.
- 1.5** The Contract is subject to the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 1.6** Subject to clause 3.1 of the Contract Conditions, to the extent that either Party processes personal data, as part of the Contract, the Party undertakes to do so in compliance with the General Data Protection Regulation (GDPR) and to keep such personal data in a secure technological environment.

2. Client's Responsibilities

- 2.1** The Client shall:
- 2.1.1** inform the Principal Designer of the Project Brief and the Services required and of any subsequent changes required and agree steps to mitigate the consequences
 - 2.1.2** provide to the Principal Designer, free of charge, information in the Client's possession, or which is reasonably obtainable, and which is necessary for the proper and timely performance of the Services and the Principal Designer shall be entitled to rely on such information
 - 2.1.3** make decisions and give approvals as necessary for the proper and timely performance of the Services
 - 2.1.4** appoint or otherwise engage any Other Client Appointments required to perform work or services under separate agreements and require them to collaborate with the Principal Designer and to comply with their obligations under the CDM Regulations 2015. The Client shall confirm in writing to the Principal Designer the work or services to be performed by any Other Client Appointments
 - 2.1.5** hold the Other Client Appointments and not the Principal Designer responsible for the proper carrying out and completion of the work or services entrusted to them under any Other Client Appointments
 - 2.1.6** hold the Contractor(s) appointed to undertake construction works, and not the Principal Designer, responsible for the proper carrying out and completion of construction works in compliance with the Building Contract

2.1.7 not hold the Principal Designer responsible for any instructions issued by the Client to the Other Client Appointments or Contractor.

2.2 The Client may issue reasonable instructions to the Principal Designer. The Client's named representative, as indicated in item A of the Contract Details, shall have full authority to act on behalf of the Client for all purposes in connection with the matters set out in the Contract.

2.3 The Client acknowledges that the Principal Designer does not warrant:

2.3.1 compliance with the Project Programme and Construction Cost, which may need to be reviewed for, but not limited to:

- (a) variations instructed by the Client
- (b) delays caused by any Other Client Appointments, the Contractor or any other factor that is not the responsibility of the Principal Designer under the Contract
- (c) the discovery at any time of previously unknown conditions which were not reasonably foreseeable at the date of the Contract

2.3.2 the competence, performance, work, services, products or solvency of any Other Client Appointments or the Contractor.

2.4 The Client shall not disclose Confidential Information unless:

2.4.1 disclosure is necessary to take professional advice in relation to the Contract or the Services

2.4.2 it is already in the public domain other than due to wrongful use or disclosure by the Client

2.4.3 disclosure is required by law or because of disputes arising out of or in connection with the Contract.

3. Principal Designer's Responsibilities

3.1 In the performance of the Services and discharging all the obligations under the Contract, the Principal Designer will exercise the reasonable skill, care and diligence to be expected of a Principal Designer experienced in the provision of such services for projects of a similar size, nature and complexity to the Project. Notwithstanding anything that may appear elsewhere to the contrary, whether under the Contract or otherwise, the Principal Designer's duties and obligations shall be deemed to be subject to the exercise of such reasonable skill, care and diligence and nothing contained in this Agreement or elsewhere shall be construed as imposing on the Principal Designer any greater duty than the exercise of such reasonable skill, care and diligence.

3.2 The Principal Designer shall:

3.2.1 perform the Services with due regard to the Project Brief

3.2.2 inform the Client of progress in the performance of the Services and of any information, decision or action required or of any health and safety issues that may materially affect the delivery of the Project

3.2.3 inform the Client of any information, decision or action required from the Client or Other Client Appointments in connection with the performance of the Services

3.2.4 collaborate with any Other Client Appointments named in the Contract Details or any other parties who might reasonably be expected to perform work or services and, where indicated in the Services, co-ordinate relevant information received from such persons with the Principal Designer's Services, but the Principal Designer shall not be responsible for the content of the information received

- 3.2.5 make no material alteration to the Services or the approved design without the prior written consent of the Client, except in an emergency, whereupon the Principal Designer shall confirm such actions to the Client without delay.
- 3.3 The Principal Designer 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. The Principal Designer shall obtain written consent from the Client, which shall not be unreasonably withheld or delayed, before the publication of any information about the Project, unless reasonably necessary for the performance of the Services.
- 3.4 The Principal Designer shall not disclose Confidential Information unless:
 - 3.4.1 disclosure is necessary for the proper performance of the Services, or in order to take professional advice in relation to the Contract or the Services, or in order to obtain/maintain insurance cover as required by the Contract
 - 3.4.2 it is already in the public domain other than due to wrongful use or disclosure by the Principal Designer
 - 3.4.3 disclosure is required by law or because of disputes arising out of or in connection with the Contract.

4. Assignment and Sub-contracting

- 4.1 Neither the Principal Designer nor the Client shall at any time assign the benefit of the Contract or any rights arising under it without the prior written consent of the other. Such consent shall not be unreasonably withheld or delayed.
- 4.2 The Principal Designer shall not sub-contract performance of any part of the Services without the prior consent of the Client, and such consent shall not be unreasonably withheld or delayed.

5. Fees and Expenses

- 5.1 The fees for performance of the Services and/or any additional services shall be calculated in accordance with this clause and as specified in the Contract Details.
- 5.2 The Basic Fee for performance of the Services shall be as specified in item F of the Contract Details and may be any or a combination of:
 - 5.2.1 the specified percentage or percentages applied to the Construction Cost. Until the actual cost of the building work is known, the percentages are applied to the latest approved estimate of the cost of the building works or the Building Contract sum. The total fee shall be adjusted based on the final Construction Cost on completion of the Services. The cost shall exclude VAT, fees and any claims made by or against the Contractor(s)
 - 5.2.2 the separate percentages specified for each RIBA Plan of Work stage applied to the Construction Cost at the end of the previous stage
 - 5.2.3 the specified lump sum or sums
 - 5.2.4 the time charges ascertained by multiplying the time reasonably spent in the performance of the Services by the specified hourly or daily rate for the relevant personnel, as set out in item G of the Contract Details. Time 'reasonably spent' includes the time spent in connection with performance of the Services in travelling from and returning to the Principal Designer's office
 - 5.2.5 any other agreed method.
- 5.3 Lump sums and rates for time charges, mileage and printing shall be revised every 12 months in accordance with changes in the Consumer Prices Index. Each 12-month period commences on the anniversary of the date of the Contract.

5.4 The Basic Fee shall be adjusted:

- 5.4.1** including due allowance for any loss and/or expense, if material changes are made to the Project Brief and/or the latest approved estimate of the cost of the building work and/or the Project Programme save to the extent that any changes arise from a breach of the Contract by the Principal Designer, and/or the Services are varied by agreement
- 5.4.2** where percentage fees in accordance with clause 5.2.1 or 5.2.2 apply, to compensate for any reduction of the Construction Cost arising solely from deflationary market conditions not prevailing at the date of the Contract.

5.5 If the Principal Designer is involved in extra work or incurs extra expense for reasons beyond the Principal Designer's reasonable control, additional fees shall be calculated on a time basis in accordance with clause 5.2.4 at the rate(s) set out in item G of the Contract Details where:

- 5.5.1** the cost of any work, installation or equipment, in connection with which the Principal Designer performs Services, is not included in the Construction Cost
- 5.5.2** the Principal Designer is required to vary any Service already commenced or completed or to provide a new design after the Client has authorised development of an approved design
- 5.5.3** performance of the Services is delayed, disrupted or prolonged.

5.6 The Principal Designer shall inform the Client on becoming aware that clause 5.5 shall apply. Clause 5.5 shall not apply to the extent that any change or extra work or expense arises from a breach of the Contract by the Principal Designer.

5.7 The Client shall reimburse the Principal Designer for expenses and disbursements in the manner specified in item H of the Contract Details.

5.8 The Principal Designer shall maintain records of time spent on Services performed on a time basis and for any expenses and disbursements to be reimbursed at net cost. The Principal Designer shall make such records available to the Client on reasonable request.

Payment Notices

5.9 The Principal Designer shall issue Payment Notices at the intervals specified in item I of the Contract Details.

5.10 In the event of non-payment of any amount properly due to the Principal Designer under the Contract, the Principal Designer is entitled to interest on the unpaid amounts under the provisions of clause 5.21. The Principal Designer may:

- 5.10.1** suspend or terminate performance of the Services and other obligations under the provisions of clause 9
- 5.10.2** commence dispute resolution procedures and/or debt recovery procedures.

5.11 Each Payment Notice shall comprise the Principal Designer's account, 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 amount specified, which shall be the Notified Sum. The payment due date shall be the date of the Principal Designer's Payment Notice. Instalments of fees shall be calculated on the Principal Designer's reasonable estimate of the percentage of completion of the Services or stages or other services or any other specified method.

5.12 The Client shall pay the Notified Sum within 14 days of the date of issue of the relevant Payment Notice (which shall be the Final Date for Payment) unless:

- 5.12.1** the Principal Designer has become insolvent (as defined in the Housing Grants, Construction and Regeneration Act 1996) at any time between the last date on which the Client could have issued the notice under clause 5.15 and the Final Date for Payment
- 5.12.2** the Client issues a notice under clause 5.15.

- 5.13** The Client shall not delay payment of any undisputed part of the Notified Sum.
- 5.14** The Principal Designer shall submit the final Payment Notice for fees and any other amounts due when the Principal Designer reasonably considers the Services have been completed.

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 Principal Designer not later than 5 days before the Final Date for Payment, specifying:
- 5.15.1** the amount that the Client considers to be due on the date the notice is served
 - 5.15.2** the basis on which that sum is calculated
 - 5.15.3** the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it.
- 5.16** The Client shall, on or before the Final Date for Payment, make payment to the Principal Designer of the amount, if any, specified in the written notice.
- 5.17** If no such notice is given, the amount due and payable shall be the Notified Sum stated as due in the Principal Designer's account. The Client shall not delay payment of any undisputed part of the account.
- 5.18** 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 7 days of the date of the decision or the date which, in the absence of the notice, would have been the Final Date for Payment.
- 5.19** The Client shall not withhold any amount due to the Principal Designer under the Contract unless the amount has been agreed with the Principal Designer or has been decided by any tribunal to which the matter is referred as not being due to the Principal Designer. All rights of set-off at common law or in equity which the Client would otherwise be entitled to exercise are expressly excluded.
- 5.20** If the performance of any or all of the Services and/or obligations is suspended or terminated, the Principal Designer shall be entitled to:
- 5.20.1** 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 suspension or termination to reflect any work undertaken but not completed at the time of suspension or termination and payment of any licence fee due under clause 6
 - 5.20.2** reimbursement of any loss and/or damages caused to the Principal Designer due to the suspension or the termination, except where the Principal Designer is in material or persistent breach of the obligations under the Contract.
- 5.21** In the event that any amounts are not paid when properly due, the Principal Designer shall be entitled to simple interest on such amounts until the date that payment is received at 8% per year over the dealing rate of the Bank of England, current at the date that payment becomes overdue, together with such costs as are reasonably incurred by the Principal Designer (including costs of time spent by principals, employees and advisers) in obtaining payment of any sums due under the Contract.
- 5.22** The Client or the Principal Designer shall pay to the other Party who successfully pursues, resists or defends any claim or part of a claim brought by the other:
- 5.22.1** such costs as are reasonably incurred (including costs of time spent by principals, employees and advisers) where the matter is resolved by negotiation or mediation
 - 5.22.2** such costs as may be determined by any dispute resolution body, to which the matter is referred.

- 5.23** In addition to the fees and expenses, the Client shall pay any VAT chargeable on the Principal Designer's fees and expenses.
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6. Copyright and Licence

- 6.1** The Principal Designer shall own all intellectual property rights, including the copyright in documents produced in performing the Services.
- 6.2** The Client shall have a licence to copy and use such documents for which all fees and other amounts properly due have been paid, only for purposes related to construction of the Project or its subsequent use or sale.
- 6.3** Where produced using proprietary software, documents shall be provided to the Client in PDF format only, unless an alternative format has been agreed and set out in item L of the Contract Details.
- 6.4** Copying or use of the documents by any Other Client Appointments providing services to the Project shall be deemed to be permitted under a sub-licence granted by the Client, whether such documents were issued by the Client or on the Client's behalf.
- 6.5** The Principal Designer shall not be liable for any use of the documents other than for the purpose for which they were prepared and provided by the Principal Designer.
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7. Principal Designer's Liability

- 7.1** No action or proceedings arising out of or in connection with the Contract whether in contract, in tort, for negligence or breach of statutory duty or otherwise shall be commenced after the expiry of 6 or 12 years, depending on how the Contract is executed, from the date of Practical Completion or the date of completion of the last Services, whichever is the earlier.
- 7.2** In any such action or proceedings:
- 7.2.1** the Principal Designer's liability for loss or damage shall not exceed the amount of the Principal Designer's professional indemnity insurance specified in item J of the Contract Details
 - 7.2.2** no employee of the Principal Designer or any agent of the Principal Designer shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from performance of the Services.
- 7.3** In respect of any claim by the Client under the Contract, and without prejudice to the provisions of clause 7.2.1, the Principal Designer's liability shall be limited to such sum as shall be agreed between the Parties or adjudged by the court to be the proportion of the loss to the Client caused by the Principal Designer's failure to exercise reasonable skill, care and diligence in the performance of its duties under the Contract. This proportion is to be calculated on the basis that:
- 7.3.1** all other consultants, contractors and Other Client Appointments providing work or services for the Project are deemed to have provided to the Client contractual undertakings in respect of their work or services on terms materially no less onerous than those which apply to the Principal Designer under the Contract
 - 7.3.2** there are deemed to be no exclusions or limitations of liability or joint insurance or co-insurance provisions between the Client and any other persons referred to in this clause
 - 7.3.3** all the persons referred to in this clause are 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 that loss and/or damage.

8. Professional Indemnity Insurance

- 8.1** The Principal Designer shall maintain, until the expiry of the period specified in clause 7.1, professional indemnity insurance with a limit of indemnity not less than the amount or amounts specified in item J of the Contract Details, provided such insurance continues to be offered on commercially reasonable terms to the Principal Designer at the time when the insurance is taken out or renewed. The Principal Designer, when reasonably requested by the Client, shall produce for inspection a broker's letter or certificate confirming that such insurance has been obtained and/or is being maintained.
- 8.2** The Principal Designer shall inform the Client if such insurance ceases to be available on commercially reasonable terms or, subsequent to the date of the Contract, any restrictions are attached to the policy or an aggregate limit applies to any matters other than those specified in the Contract Details in order that the Principal Designer and the Client can discuss the best means of protecting their respective positions.
- 8.3** Nothing in the Contract confers any right to enforce any of its terms on any person who is not a party to it, other than lawful assignees.

9. Suspension or Termination

- 9.1** The Client may suspend or terminate performance of any or all of the Services and other obligations under the Contract by giving the Principal Designer at least 7 days' written notice and stating the reason for doing so.
- 9.2** The Principal Designer may suspend or terminate performance of any or all of the Services and other obligations under the Contract by giving the Client at least 7 days' written notice and stating the grounds on which it intends to do so. Such grounds are limited to:
- 9.2.1** the Client's failure 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 the Principal Designer's Payment Notice
 - 9.2.2** that the Client is in material or persistent breach of its obligations under the Contract
 - 9.2.3** that the Principal Designer is prevented from or impeded in performing the Services for reasons beyond the Principal Designer's control
 - 9.2.4** force majeure
 - 9.2.5** any other reasonable grounds for suspension or termination of the Contract.
- 9.3** In the event of suspension or termination, the Principal Designer shall cease performance of the Services and/or other obligations under the Contract in an orderly and economical manner on the expiry of the notice period after receipt or issue of a notice of suspension or termination.
- 9.4** If the reason for a notice of suspension or termination arises from a default:
- 9.4.1** which is remedied, the Principal Designer shall resume performance of the Services and other obligations under the Contract within a reasonable period
 - 9.4.2** which is not remedied by the defaulting Party, the Contract shall be ended by the non-defaulting Party giving at least 7 days' further written notice.
- 9.5** Where Services are suspended by either Party after serving notice under clause 9.1 or clause 9.2 and not resumed within 6 months, the Principal Designer has the right to treat performance of the Services as ended on giving at least 7 days' further written notice to the Client.

- 9.6** Any period of suspension arising from a valid notice given under clause 9.1 or clause 9.2 shall be disregarded in computing, for the purposes of any specified time limit, the time taken by the Principal Designer to complete any work directly or indirectly affected by the exercise of the right of the Principal Designer to suspend performance.
- 9.7** Performance of the Services and/or other obligations may be terminated immediately by notice from either Party if:
- 9.7.1** the other Party becomes bankrupt 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
 - 9.7.2** the other Party becomes unable to perform its obligations through death or incapacity.
- 9.8** On termination of performance of the Services and/or other obligations under the Contract, a copy of any documents produced pursuant to the Services and not previously provided by the Principal Designer to the Client, shall be delivered to the Client by the Principal Designer, subject to the terms of the licence under clause 6.2 and payment of any outstanding fees and other amounts due plus the reasonable expenses of the Principal Designer.
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10. Dispute Resolution

Mediation

- 10.1** Subject to clause 10.2, the Parties may attempt to settle the dispute, in the first instance, by mediation as specified in item K of the Contract Details.

Adjudication

- 10.2** Either Party may, under its statutory rights, give notice at any time of its intention to refer a dispute or difference to an Adjudicator.
- 10.3** Referral of the dispute to an Adjudicator shall be made within 7 days of the issue of the notice.
- 10.4** The Parties may agree who shall act as the Adjudicator or the Adjudicator shall be a person nominated, at the request of either Party, by the nominating body specified in item K of the Contract Details.
- 10.5** The Adjudicator may allocate between the Parties the costs relating to the adjudication, including the fees and expenses of the Adjudicator.
- 10.6** The adjudication rules shall be as stated in item K of the Contract Details.
- 10.7** If the initial/preferred dispute resolution process is not successful, the dispute shall be referred to the final resolution process, as set out in item K of the Contract Details.

Arbitration

- 10.8** Where it is stated in item K of the Contract Details that arbitration applies as an alternative to litigation:
- 10.8.1** without prejudice to any right of adjudication, where in item K of the Contract Details 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 appointing body specified in item K of the Contract Details on the application of either Party

- 10.8.2 the Client or the Principal Designer may refer to litigation any claim for a financial remedy which does not exceed the financial limit provided by order made under section 91 of the Arbitration Act 1996
- 10.8.3 in such arbitration the Construction Industry Model Arbitration Rules (CIMAR) current at the date of the referral shall apply
- 10.8.4 the Arbitrator shall not have the power referred to in section 38(3) of the Arbitration Act 1996.

Litigation

- 10.9 Where it is stated in item K of the Contract Details that litigation applies, either Party may start court proceedings to settle a dispute.

11. Information Formats

- 11.1 Provided that all fees and/or other amounts properly due are paid, the Client shall have a licence to copy and use the electronic documents, detailed in item L of the Contract Details, only for purposes related to construction of the Project. Such licence is subject always to clause 6.2.
- 11.2 Copying or use of the electronic documents by any Other Client Appointments providing services to the Project shall be deemed to be permitted under a sub-licence granted by the Client, whether such documents were issued by the Client or on the Client's behalf.
- 11.3 The Principal Designer shall not be liable for any use of the electronic documents other than for the purpose for which they were prepared.
- 11.4 Without prejudice to the Principal Designer's obligations under the Contract, the Principal Designer does not warrant, expressly or impliedly, the integrity of any electronic data delivered in accordance with the provisions of item L of the Contract Details.
- 11.5 The Principal Designer shall have no liability to the Client in connection with any corruption or any unintended amendment, modification or alteration of the electronic documents which occurs after they have been issued by the Principal Designer.



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Schedule of Services

The Services cover the range of services expected of a Principal Designer based on the CDM Regulations 2015 which the Principal Designer is authorised to perform and shall be responsible for.

The Principal Designer will, so far as is reasonably practicable, and subject to clause 3.1 in the Contract Conditions, deliver the following services:

- Plan, manage and monitor the Pre-construction Phase and co-ordinate matters relating to health and safety during the Pre-construction Phase to ensure that the Project is carried out without unreasonable risks to health or safety
- Take into account the general principles of prevention and, where relevant, the content of any Construction Phase plan and Health and Safety File when:
 - design, technical and organisational aspects are being decided in order to plan the various items or stages of work which are to take place simultaneously or in succession
 - reviewing estimates of the period of time required to complete such work or work stages
- Identify and eliminate or control foreseeable risks to the health or safety of any person:
 - carrying out or liable to be affected by construction work
 - maintaining or cleaning a structure
 - using a structure designed as a workplace
- Ensure all Other Client Appointments comply with their duties under the CDM Regulations 2015
- Ensure that all persons working in relation to the Pre-construction Phase co-operate with the Client, the Principal Designer and each other, regarding health or safety
- Assist the Client in the provision of the Pre-construction Information, promptly and in a convenient form, to every designer and contractor appointed, or being considered for appointment, to the Project, so far as it is within the Principal Designer's control
- Liaise with the Principal Contractor for the duration of the Principal Designer's appointment and share with the Principal Contractor information relevant to the planning, management and monitoring of the Construction Phase and the co-ordination of health and safety matters during the Construction Phase
- Assist the Principal Contractor in preparing the Construction Phase plan by providing to the Principal Contractor all information the Principal Designer holds that is relevant to the Construction Phase plan including:
 - Pre-construction Information obtained from the client
 - any information obtained from designers that is provided to the Principal Designer about health and safety risks
- Prepare a Health and Safety File appropriate to the characteristics of the Project, which must contain information relating to the Project that is likely to be needed during any subsequent project to ensure the health and safety of any person



- Ensure that the Health and Safety File is appropriately reviewed, updated and revised from time to time to take account of the work and any changes that have occurred
- Pass the Health and Safety File to the Client at the end of the Project or pass the Health and Safety File to the Principal Contractor if the Principal Designer's appointment ends before the end of the Project
- Other *(please specify)*

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