

# **Sub-consultant**

## Professional Services Contract 2018



# Guidance Notes

FOR CONSULTATION PURPOSES ONLY

# Guidance Notes

These guidance notes explain the provisions of the RIBA Sub-consultant Professional Services Contract 2018 for the appointment of a Sub-consultant 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 Sub-consultant 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.
- The RIBA Sub-consultant Professional Services Contract should also include the Head Agreement between the Client and Architect/Consultant together with any Collateral Warranties, etc.
- 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 Architect/Consultant (the person or organisation that wishes to commission the professional services, known as the 'Services') and the Sub-consultant (the person or organisation performing the 'Services'). Together they are referred to as the 'Parties' to the Contract.

## When to Use this Contract

- The RIBA Sub-consultant Professional Services Contract is suitable for when an Architect/Consultant wishes or perhaps is required by the Client to appoint a Sub-consultant to carry out part of the Architect/Consultant's Services, where the contract terms are compatible with and specifically contain the same limitations as the Head Agreement between the Architect/Consultant and the Client.
- The Conditions of Contract are derived from the RIBA Concise Professional Services Contract and are compatible with the other RIBA Professional Services Contracts.
- The RIBA Sub-consultant Professional Services Contract can be used when one Architect/Consultant is to be sub-contracted to another Architect/Consultant.
- The RIBA Sub-consultant Professional Services Contract is not suitable for use where the Client appoints sub-consultants or specialists directly.

- The RIBA Sub-consultant Professional Services Contract is not suitable for the appointment of a Principal Designer as a Sub-consultant under the Construction (Design and Management) Regulations 2015. The RIBA recommends that the default choice for the Principal Designer should be the Architect/Consultant who should be appointed under a separate and distinct Professional Services Contract, such as the *RIBA Principal Designer Professional Services Contract 2018*.
- The RIBA Sub-consultant Professional Services Contract is devised as an agreement between the Sub-consultant and the Architect/Consultant 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.
- The RIBA Sub-consultant Professional Services Contract is suitable for commercial work and non-commercial work directly undertaken for a consumer Client, such as work done to the Client's home.
- The Provision of Services Regulations 2009 define the minimum amount of information which service providers must make available to Clients, including the registered status of service providers (architects or consultants) who will be party to the contract.
- The RIBA Sub-consultant Professional Services Contract may be used in conjunction with a sub-consultant warranty, which forms a legally binding contract between the Client and the Sub-contractor.

## Architect/Consultant's Rights and Obligations

- The Architect/Consultant has various obligations under the Contract, the principal ones are:
  - informing the Sub-consultant 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 Sub-consultant for the Services performed.
- The Architect/Consultant also has rights under the Contract. The principal one is the right to suspend or terminate the Sub-consultant's Services.

## Sub-consultant's Rights and Obligations

- The Sub-consultant has various obligations under the Contract, the principal ones are:
  - exercising the reasonable skill, care and diligence to be expected from a Sub-consultant experienced in the provision of such services for projects of similar size, nature and complexity to the Project
  - performing the Services with due regard to the Project Brief and discharging all the obligations in such a manner that will not cause the Architect/Consultant to be in breach of its obligations under the Head Agreement
  - informing the Architect/Consultant of progress in the performance of the Services and, upon becoming aware, of any issue that may materially affect the Project Brief, Project Programme, Construction Cost or quality of the Project, and of any information, decision or action required in mitigation

- collaborating with any Other Client Appointments appointed or otherwise engaged by the Client or Architect/Consultant to perform work or services.

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

- The Sub-consultant also has rights under the Contract. The principal ones are:
  - the right to retain copyright in the drawings and documents produced in performing the Services unless the Architect/Consultant has had to pass these on to the Client (the Architect/Consultant is given a licence to copy and use the drawings and 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 Architect/Consultant'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 Architect/Consultant's and the Sub-contractor'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 Head Agreement. 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.
- Whether or not obliged to do so, the Architect/Consultant should obtain the Client's consent to sub-contract performance of the Architect/Consultant's Services, although consent does not diminish the Architect/Consultant's liability to the Client, regardless of the fact that the work may be sub-contracted.

## 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 Architect/Consultant and the Sub-consultant:** Provide details of the Architect/Consultant, the Sub-consultant and both Parties' named representatives. 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 a statement of the requirements for the Project for which the sub-contract Services are being provided. The target Construction Cost and the key dates for commencement

and completion of sub-contract works or for the commencement and completion of the 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 or the Architect/Consultant to undertake work in connection with the Project. For example, these may include structural and building services engineers, cost consultants, contractors, 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 and visual site inspections that the Sub-consultant 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 Sub-consultant's accounts issued to the Architect/Consultant are effective as Payment Notices as set out in clause 5.12, each invoice issued by the Sub-consultant 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. Consideration should be given to the extent and level of cover appropriate in view of the Architect/Consultant's liabilities under the Head Agreement for work carried out by the Sub-consultant.
- **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.

Complaints can be referred to the appropriate professional body if the Sub-consultant'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 Sub-consultant is producing drawings and 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 Architect/Consultant in PDF format only, unless an alternative format has been agreed and set out in item L of the Contract Details.
- **Item M – Supplementary Agreements:** Set out the additional documents which should be appended to the agreement, such as Collateral Warranties and Third Party Rights Schedules.

The Contract is designed to be used with such of the supplementary documents as may be indicated in item M of the Contract Details. The RIBA recommends the use of the following:

- CIC Collateral Warranty: Sub-consultant/Client (2018) in favour of the head client
- Collateral Warranty: Purchaser/Tenant (2018) in favour of purchasers/tenants
- CIC Collateral Warranty: Consultant/Funder (2018) in favour of a financier of the development.

All of the above-mentioned documents are available from the CIC at [www.cic.org.uk](http://www.cic.org.uk). These and any other forms selected in item M of the Contract Details should be attached as numbered appendices to the Contract.

Before agreeing to enter into any Supplementary Agreements, it may be advisable to take legal advice and discuss the issue with an insurer/broker.

## The Schedule of Services

- The Schedule of Services is used to define the Services to be performed by the Sub-consultant and maps the Services to the stages in the RIBA Plan of Work.
- As this form of sub-contract can relate to any number of roles and disciplines, the specific services and tasks should be listed in the Schedule of Services for each stage. Performance of the Services must be in accordance with the normal standards of the Sub-consultant's profession.

- The Services should be compatible with the Architect/Consultant's obligations under the Head Agreement and accurately reflect the Architect/Consultant's requirements and the Services that the Sub-consultant has agreed to provide, particularly where the Sub-consultant is to perform restricted services, such as only specifying specialist work.

## Contract Conditions

- The Contract Conditions set out in concise terms the rights and obligations of the Parties. They should be compatible with the Architect/Consultant's obligations under the Head Agreement, which may have been amended. In those circumstances, the Parties should consider carefully whether a similar amendment should be made to these Contract Conditions, particularly as the Sub-consultant is required to perform the Services 'in such manner that will not cause the Architect/Consultant to be in breach of their obligations under the Head Agreement'.
- The Architect/Consultant should especially consider whether the copyright and licence provisions of clause 6 of the Contract Conditions allow it to comply with its obligations under the Head Agreement.

The RIBA Sub-consultant 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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# **Sub-consultant** Professional Services Contract 2018



# 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 statement of requirements been agreed?  | <input type="checkbox"/> |
| Has the target Construction Cost been agreed/advised?   | <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 with due consideration to the Architect/Consultant's liabilities under the Head Agreement in respect of work to be carried out by the Sub-consultant 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"/> |
| Have the details of the Head Agreement and Collateral Warranties been included?   | <input type="checkbox"/> |
| Have all the Contract Details been completed?   | <input type="checkbox"/> |



# Agreement

## This Agreement is between:

The Architect/Consultant (refer to item A of the Contract Details for full information)

AND

The Sub-consultant (refer to item B of the Contract Details for full information)

## Who agree as follows:

- The Sub-consultant shall perform the Services set out in the Schedule of Services in accordance with the terms of the Contract.
- The Architect/Consultant shall pay the Sub-consultant the fees and expenses set out in the Contract Details for the Services and shall perform the Architect/Consultant's obligations in accordance with the terms of the Contract.
- The Contract is the RIBA Sub-consultant Professional Services Contract 2018.

## Signed/Executed as a:

☐ simple contract☐ deed

This agreement should be signed and executed on the same basis as the Head Agreement.

## For and on behalf of the Architect/Consultant (complete as appropriate):

Architect/Consultant **is not** a registered company

Name:

Signature:

*Architect/Consultant's signature witnessed by:*

Name:

Address:

Signature:



**OR**

Architect/Consultant **is** a registered company

Company registration  
number:

First signatory (Director/Company Secretary):

Name:

Signature:

*Architect/Consultant's signature witnessed by:*

Name:

Address:

Signature:

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

Name:

Signature:

**For and on behalf of the Sub-consultant (complete as appropriate):**

Sub-consultant **is not** a registered company

Name:

Signature:

*Sub-consultant's signature witnessed by:*

Name:

Address:

Signature:

**OR**

Sub-consultant **is** a registered company

Company registration  
number:

VAT registration  
number:

First signatory (Director/Company Secretary):

Name:

Signature:

*Sub-consultant's signature witnessed by:*

Name:

Address:

Signature:

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

Name:

Signature:

**This Agreement is dated and delivered on:**



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# Contract Details

## A. The Architect/Consultant

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 Architect/Consultant for all purposes under the Contract)



## B. The Sub-consultant

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 Sub-consultant for all purposes under the Contract)

## C. Site Address

## D. Project Brief

Project description  
and 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. submission of planning application, commencement/completion of building works, as appropriate:

| Item | Target date |
|------|-------------|
|      |             |
|      |             |
|      |             |
|      |             |
|      |             |

Continue on a separate sheet if necessary.

## E. Other Client Appointments

List any other consultants or services appointments which have been or will need to be made by the Client and/or Architect/Consultant to enable the Sub-consultant to undertake its work in connection with the Project:

Role:

Role:

Role:

Role:

*Continue on a separate sheet if necessary.*

## F. Basic Fee

State the basis of the Basic Fee at each stage, e.g. specified percentage of Construction Cost, fixed lump sum, time charge, design cost per square metre (gross or net) or other agreed method. Fees may be a total for each stage or apportioned to the specified roles being undertaken.

The roles and tasks are to be as stated in the Schedule of Services and the fees, excluding VAT, are as follows and are to be paid in accordance with item I of the Contract Details:

| Stage   | Fee | Notes |
|---|-----|-------|
| <i>Continue on a separate sheet if necessary.</i> |     |       |





### Site inspections

The Sub-consultant shall visit the site to carry out visual site inspections to review the general progress and quality of the work:

| Stage   | Total number and/or frequency allowed for | Fee <sup>1</sup> |
|---------|---|------------------|
| Stage 5 |   |                  |
| Stage 6 |   |                  |

Where additional site inspections are necessary, or requested in writing by the Client, in addition to those identified above, the Architect/Consultant shall apply time charges, as set out in item G of the Contract Details.

### 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<br>(state whether £ per hour or £ per day) |
|--------------|--|
|              |  |
|              |  |
|              |  |
|              |  |
|              |  |
|              |  |
|              |  |
|              |  |
|              |  |
|              |  |

Continue on a separate sheet if necessary.

### 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:

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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 drawings and 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 monthly basis

☐ at the end of each stage

☐ in accordance with the agreed draw-down schedule dated  ref:

☐ 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 Sub-consultant 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.

OR

#### Litigation

The Parties select court proceedings for final dispute resolution.

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.

☐ Applies

☐ Applies

## L. Information Formats

This relates to electronic drawings and documents produced by the Sub-consultant using Computer Aided Design (CAD), any other proprietary software, or Building Information Modelling (BIM) in connection with the Services. Select the preferred option:

☐ information, drawings and documents produced by the Sub-consultant shall be provided to the Client in PDF format only

OR

☐ information, drawings and documents produced by the Sub-consultant shall be provided to the Client in PDF format and in the file format(s) listed below on the condition that the PDF format file takes precedence and the Sub-consultant is not liable for any loss or degradation of information resulting from the translation from the original file format to any other file format or from the recipients' reading of it in any other software or another version of the software referred to below:

| Software<br>(e.g. AutoCAD,<br>Revit, ArchiCAD) | Version | File format<br>(e.g. dwg, dxf, dgn,<br>ifc, rvt) | Type of data<br>(e.g. 2D or 3D CAD files,<br>BIM models,<br>spreadsheets) |
|--|---------|--|---|
|  |         |  |   |
|  |         |  |   |
|  |         |  |   |

OR

☐ information, drawings and documents produced by the Sub-consultant shall be provided to the Client in accordance with the agreed BIM protocol dated  ref:

## M. Supplementary Agreements

Subject to clause 4.4, the following supplementary documents are applicable (tick only such agreements as it is agreed the Sub-consultant should enter into):

☐ Collateral Warranty in favour of the Client

☐ on the terms of the CIC Collateral Warranty: Sub-consultant/Client (2018)

OR

☐ on the terms attached hereto as Appendix  provided such terms are substantially no more onerous than the above

☐ Collateral Warranty in favour of any first purchaser of a non-residential freehold interest in the Project up to a maximum number of  such warranties

☐ on the terms of the CIC Collateral Warranty: Purchaser/Tenant (2018)

OR

☐ on the terms attached hereto as Appendix  provided such terms are substantially no more onerous than the above

☐ Collateral Warranty in favour of any first purchaser of a non-residential leasehold interest in the Project up to a maximum number of  such warranties

☐ on the terms of the CIC Collateral Warranty: Purchaser/Tenant (2018)

OR

☐ on the terms attached hereto as Appendix  provided such terms are substantially no more onerous than the above

☐ Collateral Warranty in favour of any financier of the Project

☐ on the terms of the CIC Collateral Warranty: Consultant/Funder (2018)

OR

☐ on the terms attached hereto as Appendix  provided such terms are substantially no more onerous than the above

☐ other (*please specify*)

As an alternative to Collateral Warranties, the Parties may agree that third party rights are granted in favour of those parties indicated below:

☐ Third party rights pursuant to the Contracts (Rights of Third Parties) Act 1999 are granted in favour of:

(1)  on the terms attached hereto as Appendix

(2)  on the terms attached hereto as Appendix

(3)  on the terms attached hereto as Appendix

## N. Head Agreement

The Architect/Consultant shall either:

☐ attach a copy of the Head Agreement (or redacted version of the Head Agreement) to the Contract, attached hereto as Appendix ☐

OR

☐ make available a copy of the Head Agreement (or redacted version of the Head Agreement) to the Sub-consultant upon request.

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# Contract Conditions

## Definition of Terms

**Architect<sup>3</sup>/Consultant:** the person or organisation appointed by the Client under the Head Agreement.

**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.

**Client:** the person or organisation referred to in the Head Agreement with the Architect/Consultant.

**Collateral Warranty:** a contract that provides contractual rights, including the right to recover losses, in favour of a third party who does not have a direct contractual relationship with the Sub-consultant.

**Confidential Information:** all information relating to the Project and the Client and Architect/Consultant's business and affairs which either Party directly or indirectly receives or acquires from the other Party or any representative of the other Party 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 or to be 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.

**Final Date for Payment:** the date, specified in clause 5.13, by which a payment that is due shall be paid.

**Head Agreement:** the Contract between the Architect/Consultant and the Client (or the redacted version provided by the Architect/Consultant).

**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 Sub-consultant to undertake its work in connection with the Project.

**Party/Parties:** the signatories to the Agreement: the Architect/Consultant and the Sub-consultant described in items A and B of the Contract Details.

<sup>3</sup> 'Architect' is a legally protected title in the UK, which can only be used by people registered under the Architects Act 1997 with the Architects Registration Board (ARB).

**Payment Notice:** a notice that the Architect/Consultant issues to the Client, in accordance with clauses 5.10 to 5.15, showing the payment that the Architect/Consultant considers is due and how it was calculated.

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

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

**Project Brief:** the Architect/Consultant'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 and including any revisions made by the Architect/Consultant and approved by the Client.

**Schedule of Services:** the schedule specifying the Services to be undertaken by the Sub-consultant in connection with the Project, which is incorporated into the Contract.

**Services:** the professional services to be performed by the Sub-consultant specified in the Schedule of Services, which may be varied by agreement.

**Third Party Rights Schedule:** the schedule defining the rights granted, as an alternative to a Collateral Warranty, to a third party who is not a party to the Contract, such as a funder, purchaser or tenant, to enforce certain benefits of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999.

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# Clauses

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## 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 Architect/Consultant and the Sub-consultant 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 Architect/Consultant and the Sub-consultant in relation to the Services (whether oral or written) and represents the entire agreement between the Architect/Consultant and the Sub-consultant 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 Architect/Consultant and the Sub-consultant. The Architect/Consultant and the Sub-consultant 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.

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## 2. Architect/Consultant's Responsibilities

- 2.1** The Architect/Consultant shall:
- 2.1.1** inform the Sub-consultant 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 Sub-consultant, free of charge, information in the Architect/Consultant's possession, or which is reasonably obtainable, and which is necessary for the proper and timely performance of the Services and the Sub-consultant 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 arrange for the Client to appoint or otherwise engage any Other Client Appointments required to perform work or services under separate agreements and require them to collaborate with the Sub-consultant. The Architect/Consultant shall confirm in writing to the Sub-consultant the work or services to be performed by any Other Client Appointments.
- 2.2** The Architect/Consultant may issue reasonable instructions to the Sub-consultant. The Architect/Consultant's named representative, as indicated in item A of the Contract Details, shall have full authority to act on behalf of the Architect/Consultant for all purposes in connection with the matters set out in the Contract.

**2.3** The Architect/Consultant acknowledges that the Sub-consultant 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 Architect/Consultant
  - (b) fluctuations in market prices
  - (c) delays caused by any Other Client Appointments, the Contractor or any other factor that is not the responsibility of the Sub-consultant under the Contract
  - (d) 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 Architect/Consultant 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 Architect/Consultant
- 2.4.3** disclosure is required by law or because of disputes arising out of or in connection with the Contract.

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**3. Sub-consultant's Responsibilities**

**3.1** In the performance of the Services and discharging all the obligations under the Contract, the Sub-consultant will exercise the reasonable skill, care and diligence to be expected of a Sub-consultant experienced in the provision of such services for projects of a similar size, nature and complexity to the Project and discharging all the obligations under the Contract in such a manner that shall not cause the Architect/Consultant to be in breach of its obligations under the Head Agreement or any Collateral Warranties or Third Party Rights Schedules referred to in item M of the Contract Details and of which the Sub-consultant has been made aware. Notwithstanding anything that may appear elsewhere to the contrary, whether under this Contract or otherwise, the Sub-consultant'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 Sub-consultant any greater duty than the exercise of reasonable skill, care and diligence.

**3.2** The Sub-consultant shall:

- 3.2.1** perform the Services with due regard to the Project Brief
- 3.2.2** inform the Architect/Consultant of progress in the performance of the Services and, upon becoming aware, of any issue that may materially affect the Project Brief, Project Programme, Construction Cost or quality of the Project, and any information, decision or action required in mitigation
- 3.2.3** act on behalf of the Architect/Consultant in the matters set out in the Contract or in relation to any project procedures agreed with the Architect/Consultant from time to time, subject to the Architect/Consultant's prior written approval
- 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 appropriate, co-ordinate relevant information received from such persons with the Sub-consultant's design, but the Sub-consultant 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 Architect/Consultant, except in an emergency, whereupon the Sub-consultant shall confirm such actions to the Architect/Consultant without delay.
- 3.3 The Sub-consultant shall not disclose Confidential Information unless:
- 3.3.1 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
- 3.3.2 it is already in the public domain other than due to wrongful use or disclosure by the Sub-consultant
- 3.3.3 disclosure is required by law or because of disputes arising out of or in connection with the Contract.

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## 4. Assignment, Sub-contracting and Supplementary Agreements

- 4.1 Neither the Sub-consultant nor the Architect/Consultant 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 Sub-consultant shall not sub-contract performance of any part of the Services without the prior consent of the Architect/Consultant, which consent shall not be unreasonably withheld or delayed. Such consent shall not be required for agency or self-employed staff.
- 4.3 In the event that any of the Services are sub-contracted or assigned, and if so requested by the Architect/Consultant, the Sub-consultant shall enter into Collateral Warranties in favour of the Architect/Consultant and in favour of the Client on terms to be agreed, or in the absence of such agreement, in the form of a CIC Collateral Warranty: Sub-consultant/Client (2018).
- 4.4 If the Architect/Consultant enters into any Collateral Warranty(ies) or grants any third party rights to any person or persons having an interest in the Project and the work included within the scope of such Collateral Warranty(ies) or third party rights is wholly or partially carried out by the Sub-consultant pursuant to the Contract, then the Sub-consultant will, on demand by the Architect/Consultant, enter into Collateral Warranty(ies) or third party rights in favour of the same parties in respect of Services under the Contract in the form indicated in item M of the Contract Details. On demand by the Architect/Consultant the Sub-consultant shall further enter into a Collateral Warranty in favour of the Client in respect of its work on the Project in the form indicated in item M of the Contract Details.

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## 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 specified lump sum or sums

- 5.2.3 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 Sub-consultant's office
- 5.2.4 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 Sub-consultant, and/or the Services are varied by agreement
- 5.4.2 where percentage fees in accordance with clause 5.2.1 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 Sub-consultant is involved in extra work or incurs extra expense for reasons beyond the Sub-consultant's reasonable control, additional fees shall be calculated on a time basis in accordance with clause 5.2.3 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 Sub-consultant performs Services, is not included in the Construction Cost
- 5.5.2 the Sub-consultant is required to vary any Service already commenced or completed or to provide a new design after the Architect/Consultant has authorised development of an approved design
- 5.5.3 the nature of the Project reasonably requires that substantial parts of the design are not completed or that they are specified provisionally or approximately before construction commences
- 5.5.4 performance of the Services is delayed, disrupted or prolonged.
- 5.6 The Sub-consultant shall inform the Architect/Consultant on becoming aware that clause 5.5 shall apply and no additional fees are to be incurred without the agreement of the Architect/Consultant. 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 Sub-consultant.
- 5.7 The Architect/Consultant shall reimburse the Sub-consultant for expenses and disbursements in the manner specified in item H of the Contract Details.
- 5.8 The Sub-consultant 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 Sub-consultant shall make such records available to the Architect/Consultant on reasonable request.
- 5.9 Where a tender or tenders for work or services are invited in connection with the Project but no tender is submitted or accepted, the Sub-consultant shall be entitled to fees due up to and including the receipt of tenders based on the construction work or that part of it relating to the Services current at the date of tender.

#### **Payment Notices**

- 5.10 The Sub-consultant shall issue Payment Notices at the intervals specified in item I of the Contract Details.

- 5.11** In the event of non-payment of any amount properly due to the Sub-consultant under the Contract, the Sub-consultant is entitled to interest on the unpaid amounts under the provisions of clause 5.22. The Sub-consultant may:
- 5.11.1** suspend use of the copyright licence under the provisions of clause 6
  - 5.11.2** suspend or terminate performance of the Services and other obligations under the provisions of clause 9
  - 5.11.3** commence dispute resolution procedures and/or debt recovery procedures.
- 5.12** Each Payment Notice shall comprise the Sub-consultant'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 Sub-consultant's Payment Notice. Instalments of fees shall be calculated on the Sub-consultant's reasonable estimate of the percentage of completion of the Services or stages or other services or any other specified method.
- 5.13** The Architect/Consultant 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:
- 5.13.1** the Sub-consultant has become insolvent (as defined in the Housing Grants, Construction and Regeneration Act 1996) at any time between the last date on which the Architect/Consultant could have issued the notice under clause 5.16 and the Final Date for Payment
  - 5.13.2** the Architect/Consultant issues a notice under clause 5.16.
- 5.14** The Architect/Consultant shall not delay payment of any undisputed part of the Notified Sum.
- 5.15** The Sub-consultant shall submit the final Payment Notice for fees and any other amounts due when the Sub-consultant reasonably considers the Services have been completed.
- Notice of Intention to Pay Less**
- 5.16** If the Architect/Consultant intends to pay less than the Notified Sum, the Architect/Consultant shall give a written notice to the Sub-consultant, not later than 5 days before the Final Date for Payment, specifying:
- 5.16.1** the amount that the Architect/Consultant considers to be due on the date the notice is served
  - 5.16.2** the basis on which that sum is calculated
  - 5.16.3** the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it.
- 5.17** The Architect/Consultant shall, on or before the Final Date for Payment, make payment to the Sub-consultant of the amount, if any, specified in the written notice.
- 5.18** If no such notice is given, the amount due and payable shall be the Notified Sum stated as due in the Sub-consultant's account. The Architect/Consultant shall not delay payment of any undisputed part of the account.
- 5.19** If the Architect/Consultant 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 Architect/Consultant 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.
- 5.20** The Architect/Consultant shall not withhold any amount due to the Sub-consultant under the Contract unless the amount has been agreed with the Sub-consultant or has been decided by any tribunal to which the matter is referred as not being due to the Sub-consultant. All rights of set-off at common law or in equity, which the Architect/Consultant would otherwise be entitled to exercise, are expressly excluded.

- 5.21** If the performance of any or all of the Services and/or obligations is suspended or terminated, the Sub-consultant shall be entitled to:
- 5.21.1** 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
  - 5.21.2** reimbursement of any loss and/or damages caused to the Sub-consultant due to the suspension or the termination, except where the Sub-consultant is in material or persistent breach of the obligations under the Contract.
- 5.22** In the event that any amounts are not paid when properly due, the Sub-consultant 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 Sub-consultant (including costs of time spent by principals, employees and advisers) in obtaining payment of any sums due under the Contract.
- 5.23** The Architect/Consultant or the Sub-consultant shall pay to the other Party who successfully pursues, resists or defends any claim or part of a claim brought by the other:
- 5.23.1** 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
  - 5.23.2** such costs as may be determined by any dispute resolution body, to which the matter is referred.
- 5.24** In addition to the fees and expenses, the Architect/Consultant shall pay any VAT chargeable on the Sub-consultant's fees and expenses.

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## **6. Copyright and Licence**

- 6.1** The Sub-consultant shall own all intellectual property rights, including the copyright (unless the Architect/Consultant has had to pass copyright to the Client) in the drawings and documents produced in performing the Services, and this clause generally asserts the Sub-consultant's moral right to be identified as the author of such work.
- 6.2** No part of any design by the Sub-consultant may be registered under the Registered Designs Regulations 2001 by the Architect/Consultant without the written consent of the Sub-consultant.
- 6.3** The Architect/Consultant shall have a licence to copy and use such of the drawings and 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, but they may not be used for reproduction of the design for any part of any extension of the Project or any other project without the Sub-consultant's written consent.
- 6.4** Where produced using CAD, BIM or other proprietary software, drawings and documents shall be provided to the Architect/Consultant in PDF format only, unless an alternative format has been agreed and set out in item L of the Contract Details.
- 6.5** Copying or use of the drawings and documents by any Other Client Appointments providing services to the Project shall be deemed to be permitted under a sub-licence granted by the Architect/Consultant, whether such drawings and documents were issued by the Architect/Consultant or on the Architect/Consultant's behalf.
- 6.6** The Sub-consultant shall be liable to the Architect/Consultant in respect of any reasonably foreseeable and fully mitigated expenses, losses or damages suffered by the Architect/Consultant as a result of the work of the Sub-consultant being in breach of copyright or any other intellectual rights of any third party.



- 6.7 The Sub-consultant shall not be liable for any use of the drawings and documents other than for the purpose for which they were prepared and provided by the Sub-consultant.
- 6.8 Notwithstanding the above clauses, should the Head Agreement impose obligations on the Architect/Consultant in relation to the copyright in any of the Sub-consultant's work produced or to be produced and/or a licence to use such documents, the Sub-consultant hereby agrees that it shall give such rights and undertake such obligations in relation to its work to enable the Architect/Consultant to fully comply with the provisions in the Head Agreement.

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## 7. Sub-consultant'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 Sub-consultant's liability for loss or damage shall not exceed the amount of the Sub-consultant's professional indemnity insurance specified in item J of the Contract Details
  - 7.2.2 no employee of the Sub-consultant or any agent of the Sub-consultant shall be personally liable to the Architect/Consultant for any negligence, default or any other liability whatsoever arising from performance of the Services.
- 7.3 In respect of any claim by the Architect/Consultant under the Contract, and without prejudice to the provisions of clause 7.2.1, the Sub-consultant'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 Architect/Consultant caused by the Sub-consultant'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, appointed by the Architect/Consultant, providing work or services for the Project are deemed to have provided to the Architect/Consultant contractual undertakings in respect of their work or services on terms materially no less onerous than those which apply to the Sub-consultant 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 Architect/Consultant 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 Architect/Consultant 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.

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## 8. Professional Indemnity Insurance

- 8.1 The Sub-consultant 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 Sub-consultant at the time when the insurance is taken out or renewed. The Sub-consultant, when reasonably requested by the Architect/Consultant, 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 Sub-consultant shall inform the Architect/Consultant 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 Sub-consultant and the Architect/Consultant 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.

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## **9. Suspension or Termination**

- 9.1** The Architect/Consultant may suspend or terminate performance of any or all of the Services and other obligations under the Contract by giving the Sub-consultant at least 7 days' written notice and stating the reason for doing so.
- 9.2** The Sub-consultant may suspend or terminate performance of any or all of the Services and other obligations under the Contract by giving the Architect/Consultant 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 Architect/Consultant's failure to pay any fees or other amounts due by the Final Date for Payment, unless, where applicable, the Architect/Consultant has given effective notice under clause 5.16 of the intention to pay less than the amount stated in the Sub-consultant's account
  - 9.2.2** that the Architect/Consultant is in material or persistent breach of its obligations under the Contract
  - 9.2.3** that the Sub-consultant is prevented from or impeded in performing the Services for reasons beyond the Sub-consultant'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 Sub-consultant 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 Sub-consultant 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 Sub-consultant has the right to treat performance of the Services as ended on giving at least 7 days' further written notice to the Architect/Consultant.
- 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 Sub-consultant to complete any work directly or indirectly affected by the exercise of the right of the Sub-consultant 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 If the Services to be performed under the Head Agreement are terminated for any reason whatsoever the performance of all Services under this Agreement shall immediately terminate.
- 9.9 On termination of performance of the Services and/or other obligations under the Contract, a copy of any drawings and documents produced pursuant to the Services and not previously provided by the Sub-consultant to the Architect/Consultant, shall be delivered to the Architect/Consultant by the Sub-consultant, subject to the terms of the licence under clause 6.3 and payment of any outstanding fees and other amounts due plus the reasonable expenses of the Sub-consultant.

## 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 Architect/Consultant or the Sub-consultant 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.
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## **11. Information Formats**

- 11.1** Provided that all fees and/or other amounts properly due are paid, the Architect/Consultant shall have a licence to copy and use the electronic drawings and documents detailed in item L of the Contract Details only for purposes related to construction of the Project or its subsequent use or sale, and they may not be used for reproduction of the design for any part of any extension of the Project or any other project. Such licence is subject always to clause 6.3.
- 11.2** Copying or use of the electronic drawings and documents by any Other Client Appointments providing services to the Project shall be deemed to be permitted under a sub-licence granted by the Architect/Consultant, whether such drawings and documents were issued by the Architect/Consultant or on the Architect/Consultant's behalf.
- 11.3** The Sub-consultant shall not be liable for any use of the electronic drawings and documents other than for the purpose for which they were prepared.
- 11.4** Without prejudice to the Sub-consultant's obligations under the Contract, the Sub-consultant 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 Sub-consultant shall have no liability to the Architect/Consultant in connection with any corruption or any unintended amendment, modification or alteration of the electronic drawings and documents which occurs after they have been issued by the Sub-consultant.

# Schedule of Services

List the specific services that the Sub-consultant will carry out at each stage of the Project. The Services will be performed in accordance with the stages defined in the RIBA Plan of Work.

## Stage 0 – Strategic Definition

*It is anticipated that Stage 0 services will be commissioned as a separate professional services contract or letter of appointment. However, if the Sub-consultant is appointed before the Project Brief is developed, Stage 0 services can be included.*

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*Continue on a separate sheet if necessary.*

## Stage 1 – Preparation and Brief

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## Stage 2 – Concept Design

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## Stage 3 – Developed Design

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## Stage 4 – Technical Design

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FOR CONSULTATION PURPOSES ONLY

## Stage 5 – Construction

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## Stage 6 – Handover and Close Out

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## Stage 7 – In Use

*Services required as part of any ongoing (long-term) Stage 7 – In Use activities are not listed. It is anticipated that such services will be commissioned as a separate professional services or operating contract. However, any minor roles and services may be added if required.*

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## Other Services

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FOR CONSULTATION PURPOSES ONLY

**FOR CONSULTATION PURPOSES ONLY**

FOR CONSULTATION PURPOSES ONLY

