



STANDARD CONDITIONS OF APPOINTMENT

FOR

RKITEK DESIGN LTD (THE FIRM)



## 1. Definitions & interpretation, etc.

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### *Definitions*

1.1. Where defined terms are used in this document they are distinguished by an initial capital letter.

The following definitions apply to all documents comprising the Agreement and are in addition to those set out elsewhere in the Agreement.

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

- Any initial statement by the Client
- After clarification of the objectives, the Design Brief (or Output)
- Any subsequent development into the Project Brief

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

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

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

**CDE** is the Common Data Environment is a central information repository and single source of information for any given project that can be accessed by all stakeholders in that project. All the data within the CDE can be accessed with the ownership retained by the originator of the information. The physical form of the CDE can be a cloud server or an extranet depending on the size and type of the project and is subject to cyber and system hygiene

**CDM Regulations** mean the Construction (Design and Management) Regulations 2015 as amended or re-enacted

**Construction Cost** means

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

includes (without limitation):

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

excludes:

- Value Added Tax
- Fees
- The costs of resolution of any dispute
- The Client's legal and/or expense payments paid to a contractor
- Any adjustment for any liquidated damages deducted by the Client

**Cyber and System Hygiene** are the agreed conditions and practices that serve to preserve cyber and system safety and security by individual users in a project

**Deliverable Material** means documents, drawings, digital models, bespoke software and all other such work which are completed submissions suitable for use in a project

**The Firm** means the person, company or firm identified as acting in the capacity as defined in Part A of the particulars in this Agreement. Rkitek is the trading name for Rkitek Design Ltd



**Information Manager** is the Firm and is responsible for establishing governance and assuring data and information flow to and from the common data environment (CDE) during the design, construction, operation and maintenance, and disposal or decommissioning of a project

**Material** means documents, drawings or digital models, however provided can be for review or a deliverable

**Memorandum of Agreement** means the Form of Appointment & Memorandum of Agreement to which these Agreement Conditions of engagement are annexed

**Need to Know** is the grant of access to data or information relating to sensitive parts of a project or systems where such access is sufficiently necessary to perform a role satisfactorily and safely

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

**Principal Designer** as defined in the CDM Regulations 2015

**Principal Contractor** as defined in the CDM Regulations 2015

**Project** is defined by the **Project Data**

**Project Data** means the matters set out in the **Project Data** which may be varied by agreement

**Review Material** means documents, drawings, digital models, bespoke software and all other such work which are incomplete submissions and are for review and not to be use in the project

**Services** means the services to be performed by the Firm specified in the **Services Schedule**, which may be varied by agreement

**Site Inspectors** or Clerks of Works or others appointed by the Client to perform inspection services in connection with the construction of the Project.

**Smart** is the application of autonomous or semi-autonomous technology systems to achieve greater utilisation of resources, limiting or reducing resource consumption to maintain or improve processes

**TMD** is the T-Mark Document Control system is a smart tool that the Firm uses to monitor, manage and control the access on a need to know basis to the Material that is accessed via the CDE.

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

### *Interpretation*

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

### *Applicable law*

- 1.3. The law applicable to this Agreement shall be the law of England and Wales unless stated otherwise in the Form of Appointment/Memorandum of Agreement.

### *Communications*

- 1.4. Any notice or other document required under the Agreement shall be in writing and given or served by any effective means to the address of the recipient specified in the Agreement or such other address, including a postal address or fax number notified to the other party
  - 1.4.1. Communications between the Client and the Firm that are not such notices or documents may be sent to any other address, including an e-mail address, notified by the other party as an appropriate address for specific communications. Communications take effect on receipt, but if not in writing are of no effect unless and until confirmed in writing by the sender or the other party
  - 1.4.2. Communications sent by special delivery or recorded delivery shall be deemed (subject to proof to the contrary) to have arrived at the appropriate address on the second working day after posting.
  - 1.4.3. Communications and discussions by phone shall be logged and shall also be classified as effective means of communications. This log shall constitute an agreed record and presented as the same in arbitration or a Court of Law



### *Public holidays*

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

### *Duration*

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

### *Trust and co-operation*

- 1.7. The Client and The Firm shall work together in a spirit of mutual trust and co-operation. In relation to the Services, either party shall advise the other upon becoming aware of:
  - 1.7.1. a need to vary the Services, the Timetable and/or the fees and/or any other part of the Agreement
  - 1.7.2. any incompatibility in or between any of the Client's requirements in the Brief; or between the Brief, any Client's instruction, the Construction Cost, the Timetable and/or the approved design; or any need to vary any part of them
  - 1.7.3. any information or decisions required from the Client or others in connection with performance of the Services
  - 1.7.4. a need to appoint Consultants or other persons, other than those named in Schedule 4, to design or carry out any part of the works or provide specialist advice or additional inspection services in connection with the Project; and the parties shall agree how to deal with the matter

### *CDM Regulations*

- 1.8. The Client and The Firm shall comply with their respective obligations under the CDM Regulations, as applicable, and in any conflict between the obligations and this Agreement the former shall take precedence

## **2. Obligations and authority of The Firm Duty of care**

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### *Duty of care*

- 2.1. The Firm shall exercise reasonable skill and care in conformity with the normal standards of The Firm's profession in performing the Services and discharging all the obligations under clause 2

### *Duty to inform*

- 2.2. The Firm shall keep the Client informed of progress in the performance of the Service and of any issue that may materially affect the Brief, the Construction Cost, the Timetable, or the quality of the Project
- 2.3. The Firm shall inform the Client upon becoming aware of:
  - 2.3.1. a need to appoint Other Persons, other than those named in the Project Data, to perform work or services in connection with the Project, and/or
  - 2.3.2. any information, decision or action required from the Client or others in connection with performance of the Services

### *Collaboration*

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

### *The Firm's authority*

- 2.5. The Firm shall act on behalf of the Client in the matters set out or necessarily implied in the Agreement or in project procedures agreed with the Client from time to time, but has no authority without the Client's prior approval :
  - 2.5.1. To enter into any contractual or other commitment on behalf of the Client
  - 2.5.2. To terminate the employment of Other Persons appointed by the Client, or
  - 2.5.3. To make or cause to be made any material alteration to or addition to or omission from the Services or the approved design

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

### *The Firm's Representative*



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

### *Photography*

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

### *Publicity*

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

### *Limitation of warranty*

- 2.9. The Firm does not warrant:
- 2.9.1. that the Services will be completed in accordance with the Timetable or the budget cost for construction works
  - 2.9.2. that planning permission and other approvals from third parties will be granted
  - 2.9.3. the performance, work or products of others
  - 2.9.4. the solvency of any other appointed person whether or not such appointment was made on the advice of The Firm

### *Co-operation, etc.*

- 2.10. The Firm in performing the Services shall when reasonably required by any of the persons identified in Schedule 4:
- 2.10.1. co-operate with them as reasonably necessary for the carrying out of their services; and
  - 2.10.2. provide them with information concerning the Services for carrying out their services; and
  - 2.10.3. consider and when requested by them comment on their work so that they may consider making any necessary changes to their work; and
  - 2.10.4. integrate into The Firm's work relevant information provided by them

### *Confidentiality*

- 2.11. The Firm shall not disclose to any other person Confidential Information unless:
- 2.11.1. Disclosure is necessary for the proper performance of the Services, or in order to take professional advice in relation to the Agreement or the Services, or in order to obtain/maintain insurance cover as required by the Agreement
  - 2.11.2. It is in the public domain other than due to wrongful use or disclosure, or
  - 2.11.3. Disclosure is required by law or because of disputes arising out of or in connection with the Agreement

### *Material and its delivery*

- 2.12. All Material, where delivered as documents, drawings or digital models, shall be delivered via The Firm's CDE (Common Data Environment) in electronic format. All links to access this data shall be subject to an expiry period, as stated in the Project Data. The delivery shall be:
- (a) all Review Material shall be accessible without a password
  - (b) all Deliverable Material shall be accessible by a password in accordance with clause 5.14
  - (c) all confidential documents shall be accessible via a password
  - (d) in an agreed file format
- 2.13. All Deliverable Material shall be notified in accordance with clause 1.4 and a demand made in accordance with clause 5.14. On receipt of full and complete payment as per the demand, a password will be issued via the TMD (T-Mark Document) control system enabling access to the Deliverable Material via the CDE. The Firm shall endeavour to issue access within twenty four hours or sooner after receipt of the full payment of a demand
- 2.14. It shall be the responsibility of the Client, Other Persons and any other parties to download and save all Material for their own use prior to the expiry of the link provided to access to the document, as stated in the Project Data.
- 2.15. Subsequent re-issue of a link shall be charged for in accordance with Schedule 3.2 of the Form of Appointment/Memorandum of Agreement



- 2.16. Where the Client requires printed Material or Material delivered in another format, this will be charged in accordance with Schedule 3.2 of the Form of Appointment/Memorandum of Agreement

### **3. Litigations and authority of the Client**

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#### *Client's Representative*

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

#### *Information, decisions, approvals, etc.*

- 3.2. The Client shall supply the initial statement of the Client's requirements and shall advise the relative priorities of the Client's requirements, the Brief, the Construction Cost and the Timetable
- 3.3. The Client shall provide free of charge all the information in the Client's possession, or reasonably obtainable, which is necessary for the proper and timely performance of the Services and the Firm shall be entitled to rely on such information
- 3.4. The Client shall give decisions and approvals and shall take such actions necessary for the proper and timely performance of the Services

#### *Instructions*

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

#### *Applications for consent*

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

#### *Appointment of Other Persons*

- 3.8. Where work or services, other than those to be performed by the Firm, are required, the Client shall appoint and pay Other Persons under separate agreements to perform such work, services or products and shall require them to Collaborate with the Firm. Such Other Persons shall include site inspectors or clerks or works
- The Client shall confirm in writing to the Firm the services to be performed by Other Persons, their disciplines and the expected duration of their employment
  - The Client acknowledges that the Firm does not warrant the competence, performance, work, services, products or solvency of any such Other Persons
  - Where a further consultant is appointed solely by the Client to interface with The Firm or other consultants within the working team without prior written consent of The Firm, the Client shall pay The Firm and the other consultants additional fees based on time exposure in dealing with the further consultant

#### *Responsibilities of others*

- 3.9. The Client, in respect of any work or services in connection with the Project performed or to be performed by any person other than The Firm, shall:
- hold such person responsible for the competence and performance of the services and for visits to the site in connection with the work undertaken by such person
  - require such person to co-operate with The Firm and provide to The Firm all drawings and information reasonably needed for the proper and timely performance of the Services
  - require such person, when requested by The Firm, to consider and comment on work of The Firm in relation to the work of such person so that The Firm may consider making any necessary change to The Firm's work

The Client shall hold the Principal Contractor *and/or* other contractors appointed to undertake construction works, and not The Firm responsible for the management and operational methods necessary for the proper carrying out and completion of the construction works in compliance with the building contract, and for health and safety provisions on the Project



### *Time and cost*

3.10. The Client acknowledges that the Firm does not warrant:

- 3.10.1. That planning permission and other approvals from third parties will be granted at all, or if granted, will be granted in accordance with any anticipated timescale
- 3.10.2. Compliance with the Construction Cost and/or the Timetable which may need to be reviewed for such matters, as but not limited to:
  - (a) Approved variations arising from design development or required by the Client,
  - (b) Delays caused by any Other Person and/or,
  - (c) Any other factors beyond the control of the Firm

### *Legal advice*

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

### *Confidentiality*

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

- 3.12.1. Disclosure is necessary to take professional advice in relation to the Agreement or the Services,
- 3.12.2. It is in the public domain other than due to wrongful use or disclosure, or
- 3.12.3. Disclosure is required by law or because of disputes arising out of or in connection with the Agreement

## **4. Assignment and sub-contracting**

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### *Assignment*

4.1. Neither the Firm nor the Client shall assign the whole or any part of the benefit of the Agreement or any rights arising under it without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed

### *Sub-contracting*

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

### *Specialist services*

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

## **5. Fees and expenses**

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### *Calculation of fees*

5.1. The fees for performance of the Services, including any additional or other services, shall be calculated in accordance with this clause and charged as set out in Schedule 3.

### *Basic Fee*

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

- 5.2.1. Where the Project is for the design and carrying out of construction works, including the specified number of site visits during the construction period:
  - (a) a percentage or percentages applied to the Construction Cost in accordance with clause 5.4, and/or
  - (b) a lump sum or sums in accordance with clause 5.5, and/or
  - (c) time charges in accordance with clause 5.6, and/or



- (d) any combination of these, and/or
- (e) another agreed method

5.2.2. For other professional services:

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

### *Other fees*

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

- 5.3.1. a lump sum or sum in accordance with clauses 5.5.1; and /or
- 5.3.2. time charges in accordance with clause 5.6; and /or
- 5.3.3. another agreed method

### *Percentage fees*

5.4. Where this clause 5.4 applies, the percentage or percentages stated in Schedule 3

- 5.4.1. shall be applied to the Construction Cost or
- 5.4.2. Interim fee calculations shall be based on the specified percentage for each work stage to the Construction Cost
- 5.4.3. The final fee shall be calculated on the ascertained final Construction Cost

### *Lump sums*

5.5. Where this clause 5.5 applies, the Basic Fee shall be calculated by applying:

- 5.5.1. the specified lump sum or lumps sums, or
- 5.5.2. a lump sum or sums for each work state calculated by applying the specified percentages to the Construction Cost for the developed design current at the end of the Stage 4 of the plan of work, or
- 5.5.3. a lump sum for each work stage calculated by applying the relevant specified percentage to the Construction Cost current at the end of the previous stage

### *Time charges*

5.6. Where this clause applies, the time-based fee shall be ascertained by multiplying the time reasonably spent in the performance of the Services by the relevant hourly or daily rate for the relevant personnel set out in Schedule 3. Time 'reasonably spent' shall include the time spent in connection with performance of the Services in travelling from and returning to The Firm's office

### *Revision of lump sums, time charges and other rates*

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

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

### *Fee adjustment*

5.8. The Basic Fee:

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

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

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





### *Additional Fees*

- 5.9. Where the firm for reasons beyond the Firm's reasonable control incurs extra work or loss and expense for which the Firm would not otherwise be remunerated, the Firm shall be entitled to additional fees calculated on a time basis as set out in clause 5.6, unless otherwise agreed. Matters in relation to which the Firm shall be entitled to additional fees include but are not limited to circumstances where:
  - 5.9.1. The Firm is required to vary any item of work commenced or completed pursuant to the Agreement or to provide a new design after the Client has authorized the Firm to develop the approved design
  - 5.9.2. The nature of the Project requires that substantial parts of the design cannot be completed or must be specified provisionally or approximately before construction commences
  - 5.9.3. Performance of the Services is delayed, disrupted or prolonged, and
  - 5.9.4. The cost of any work, installation or equipment for which the Firm performs Services is omitted from or not included in the Construction Cost
  - 5.9.5. This clause 5.9 shall not apply where any adjustment under clause 5.8.1 applies to the same events
  - 5.9.6. The Firm shall inform the Client on becoming aware that this clause will apply. This clause shall not apply where any change or extra work or expenses arises from breach of the Agreement by the Firm

### *Supplementary agreements*

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

### *Tender not accepted*

- 5.11. Where the Firm is instructed by the Client to invite a tender or tenders for work or services in connection with the Project but no tender is made or accepted, the Firm shall be entitled to fees due up to and including Work Stage 5B, applied to the Construction Cost or that part of it relating to the said work or services current at the date of invitation to tender

### *Expenses and Disbursements*

- 5.12. The Client shall reimburse The Firm for specified expenses in the manner stated in Schedule 3.2. Expenses other than those specified and incurred with the prior authorisation of the Client and any disbursements made on the Client's behalf shall be reimbursed at net cost plus any handling charge stated in Schedule 3.

### *Maintain records*

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

### *Payment*

- 5.14. Payments under the Agreement shall become due to The Firm on issue of The Firm's written demand. The date for such payments by the Client shall be on demand. Instalments of fees shall be calculated on the basis of The Firm's estimate of the percentage of completion of the stages or the completion of a stage or other Services or such other method as is specified in Schedule 3. Any engagement fees shall be non-refundable under any circumstances.
- 5.15. Access to Deliverable Material using the TMD (T-Mark Document) control system shall be in accordance with clause 2.13

### *Payment notices*

- 5.16. The Client shall give a written notice to the Firm:
  - 5.16.1. within 5 days of the date of issue of a demand and account specifying the amount the Client proposes to pay and the basis of calculation of that amount, and/or
  - 5.16.2. not later than 5 days before of issue of a demand for payment of any amount due to The Firm, if the Client intends to withhold payment of any part of that amount stating the amount proposed to be withheld and the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it. If no such notices are given,



the amount due shall be the amount stated as due in the demand. The Client shall not delay payment of any undisputed part of an account

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

5.16.4. Payment under the Agreement shall be made as follows:

- (a) Payment shall become due to the Firm on the date of issue of the Firm's demand and statement of account. The final date for payment of any amount due to the Firm shall be 7 days from the issue of the relevant account
- (b) The firm shall issue a demand and statement of account as specified in the schedule of fees, and expenses, setting out any accrued instalments of the fee and other amounts due, less any amounts previously paid and stating the basis of calculation of the amounts due. Instalments of fees shall be calculated on the Firm's reasonable estimate of the percentage of completion of the services or stages or other services or any other specified method. Statements of account shall be issued at periods of not less than one month
- (c) The Firm shall submit the final demand and statement of account for fees and any other amounts due when the Firm reasonably considers the Services have been completed

### *Set-off*

5.17. The Client shall not withhold any amount due to the Firm under the Agreement unless the amount has been agreed with the Firm or has been decided by any tribunal to which the matter is referred as not being due to the Firm

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

### *Payment on suspension or determined*

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

5.18.1. Payment of any part of the fee and other amounts properly due on the expiry date of the notice, and

5.18.2. Payment of any licence fee due under clause 6

5.18.3. Reimbursement of any loss and/or expense properly incurred and necessarily incurred by the Firm by reason of the suspension or the termination, save where the Client gives notice of suspension or termination by reason of the Material or persistent breach of the Agreement by the Firm

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

### *Late payment*

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

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

5.20.2. The Firm may at its discretion assign its debt or invoice for collection to an institution should the credit score rating of the client be affected or where the client has more than once not made a due payment when demanded. The Firm shall notify the client of any such assignment. Any agreement or terms enforced or notified shall be between the client and the institution that the debt or invoice for collection has been assigned to.

### *Recovery of costs*

5.21. The Client or the Firm shall pay to the other party who successfully pursues resists or defends any claim or part of a claim brought by the other:

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

5.21.2. Such costs as may be determined by any tribunal to which the matter is referred



5.21.3. Such costs in relation to any claim or any part of any claim made by the Client which the Client abandons

### *Services not completed*

5.22. Where for any reason The Firm provides only part of the Services specified in Schedule 2,

5.23. The Firm shall be entitled to fees calculated as follows:

5.23.1. for completed Services, as described for those Services in Schedule 3;

5.23.2. for completed stages, as apportioned for those stages in Schedule 3;

5.23.3. for Services or stages not completed, a fee proportionate to that described or apportioned in Schedule 3 based on The Firm's estimate of the percentage of completion.

### *VAT*

5.24. Fees and expenses arising under the Agreement do not include value added tax. The Client shall pay any value added tax at the prevailing rate, where applicable, on the Firm's fees and expenses

## **6. Copyright and use of information**

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### *Copyright*

6.1. The Firm shall own the copyright in the original work produced in the performance of the Services and generally asserts The Firm's moral rights and all other rights to be identified as the author of such work

6.2. No part of any design by the Firm may be registered by the Client without the consent of the Firm in writing

### *Use of information*

6.3. The Client shall have a licence to copy and use and allow Other Persons providing services to the Project to use and copy drawings, documents and bespoke software and all other such work produced by or on behalf of the Firm in performing the Services hereinafter called 'the Material'

The Material may be used for the construction of the Project and for the operation, maintenance, repair, reinstatement, alteration, promotion, leasing of the Project. The Material may not be used for reproduction of the design for any part of any extension of the Project, and/or for any other project except on payment of a licence fee specified in the Agreement or subsequently agreed

The Firm shall not be liable if the Material is modified other than by or with the consent of The Firm, or used for any purpose other than that for which it was prepared, or used for any unauthorised purpose

Provided that:

6.3.1. if it is intended to make any permitted use after the date of the last Service performed under the Agreement;

(a) the Firm, following a request from the client, shall confirm the degree of completion of the Material; and

(b) the Client shall pay to The Firm any specified licence fee or a reasonable licence fee;

6.3.2. If at any time, the Client is in default of payment of any fees or other amounts due, the Firm may suspend further use of the licence on giving 7 days' notice of the intention of doing so. Use of the licence may be resumed on receipt of outstanding amounts

6.3.3. the Client shall obtain or ensure that any third party shall obtain any necessary licence and pay any fees arising for use of the Material

6.3.4. the Client shall obtain or ensure that any third party shall obtain any necessary licence and pay any fees arising for access to any software used to produce any of the Material

### *Patents, etc*

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

## **7. Liabilities and insurance**

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### *Time limit for action or proceedings*



- 7.1. No action or proceedings arising out of or in connection with this Agreement whether in contract or, tort for breach of statutory duty or otherwise shall be commenced after the expiry of the period stated in the Agreement from the date of the last Services performed under the Agreement or, if earlier, the date of practical completion of the construction of the Project or as prescribed by law

### *Limit of liability*

- 7.2. In any such action or proceedings:
  - 7.2.1. The Firm's liability for loss or damage shall not exceed the amount of the Firm's professional indemnity insurance specified in the Agreement, providing the Firm has notified the insurers of the relevant claim or claims as required by the terms of insurance
  - 7.2.2. No employee of the Firm, including any officer or director of the company or a member of a limited liability partnership or any agent of the Firm, shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from performance of the Services

### *Net contribution*

- 7.3. Without prejudice to the provisions of the clause 7.2, the liability of the Firm shall not exceed such sum as is just and equitable for the Firm to pay having regard to the extent of the Firm's responsibility for the loss and/or damage in question and on the assumptions that:
  - 7.3.1. all other consultants and contractors providing work or services for the Project have provided to the Client contractual undertaking on terms no less onerous than those of the Firm under the Agreement
  - 7.3.2. there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause, and
  - 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

### *Professional indemnity insurance*

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

The Firm shall maintain such insurance until at least the expiry of the period stated in the Memorandum of Agreement from the date of the last Services performed under the Agreement or (if earlier) practical completion of the construction of the Project provided such insurance is available at commercially reasonable rates and generally available in the insurance market to The Firm

Such insurance shall be:

- 7.4.1. Limited to the amounts (if any) specified in the Project Data as in the aggregate in any year of insurance, and
- 7.4.2. Subject only to such other limitations, exceptions and exclusions as are commonly included in such policies
- 7.5. The Firm, when reasonably requested by the Client, shall produce for inspection documentary evidence a broker's letter or certificate confirming that such insurance is being maintained
- 7.6. The Firm shall inform the Client if such insurance ceases to be available at commercially reasonable terms or subsequent to the date of the Agreement an aggregate limit applies to any matters other than those specified in the Project Data in order that the Firm and the Client can discuss the best means of protecting their respective positions

### *Supplementary Agreements*

- 7.7. Where it is specified in the Project Data:
  - 7.7.1. That the Firm will be required to enter into a collateral warranty or warranties in favour of funders, purchasers or first tenants and the terms of the warranty together with the names or categories of other parties who will sign such agreements are appended to the Agreement, the Firm shall enter into such agreement or agreements within a reasonable period of being requested to do so by the Client, providing such warranties give no greater benefit to the beneficiaries than is given to the Client under the Agreement and all fees and other amounts properly due to the Firm have been paid
  - 7.7.2. That a Third party Rights Schedule in favour of funders, purchasers or first tenants is applicable and appended to the Agreement, the rights of such third parties shall come into effect on the date of receipt by the Firm of a notice from the Client stating the name of each interest party and the nature of the interest in the Project, and/or



- 7.7.3. That a supplementary agreement is applicable under which the Firm is to provide services to a contractor appointed by the Client to complete the design and construction of the Project, and such agreement is appended to this Agreement, the Firm shall enter into such agreement with the Client and the contractor appointed to complete the design and construction of the project within a reasonable period of being requested to do so by the Client, providing that all fees and other amounts due have been paid

### *Rights of third parties*

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

## **8. Suspension and termination**

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### *Suspension*

- 8.1. The provisions for suspension are:
- 8.1.1. The Client may suspend the performance of any or all of the Services and/or other obligations by giving not less than 7 days' notice to the Firm specifying the Services affected
- 8.1.2. The Firm may suspend performance of the Services and/or the obligations under the Agreement on giving not less than 7 days' notice to the Client of the intention and the grounds for doing so in the event :
- (a) The Client fails to pay any fees or other amounts due by the final date for payment, unless where applicable, the Client has given effective notice under clause 5.16.2 of the intention to withhold payment of any part of the Firm's account, or
  - (b) the Client is in material or persistent breach of the obligations under the Agreement, or
  - (c) the Firm is prevented from or impeded in performing the Services for reasons beyond the Firm's reasonable control
  - (d) of force majeure
  - (e) the Client fails to comply with the requirements under the CDM Regulations.
- 8.1.3. The Firm shall cease performance of the suspended Services and/or other obligations in an orderly and economical manner on the expiry of the notice period after receipt or giving of a notice of suspension
- 8.1.4. If the reason for a notice of suspension arises from a default:
- (a) Which is remedied, the Firm shall resume performance of the Services or other obligations within a reasonable period, or
  - (b) Which is not remedied by the defaulting party, the other party shall have the right to treat performance of the Services and other obligations affected as terminating on giving reasonable written notice
  - (c) Where Services are suspended by the Client and not resumed within 6 months the Firm shall have the right to treat performance of the Services and/or other obligations affected as terminated on giving at least 7 day's further written notice to the Client
- 8.1.5. Any period of suspension arising from a valid notice given under clauses 8.1.1 or 8.1.2 shall be added to the latest Timetable for completion of the relevant Services

### *Termination*

- 8.2. The provisions for termination are:
- 8.2.1. The Client or the Firm may by giving reasonable notice in writing to the other determine performance of the Services and/or other obligations, stating the grounds for doing so and the Services and obligations affected
- 8.2.2. Performance of the Services and/or other obligation may be terminated immediately by notice from either party if:
- (a) the Client or the Firm commits an act of bankruptcy or is subject to a receiving or administration order and/or goes into liquidation, and/or becomes insolvent, and/or makes any arrangement with creditors; or
  - (b) The Firm becomes unable to provide the Services through death or incapacity
- 8.2.3. On termination of performance of the Services and/or other obligations, a copy of the Material not previously provided to the Client shall be delivered on demand to the Client by the Firm, subject to the terms of the licence



under clause 6.3 and payment of any outstanding fees and other amounts due under clause 5.20 plus the Firm's reasonable production charges

## 9. Dispute resolution

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

### *Adjudication*

- 9.2. The provisions for adjudication are:

- 9.2.1. Where a dispute or difference is to be referred to adjudication, the parties may agree who shall act as adjudicator, or the adjudicator shall be a person nominated at the request of either party by the nominator specified in the Project Data
- 9.2.2. For the avoidance of doubt, the Adjudicator may allocate between the parties the costs relating to the adjudication, including the fees and expenses of the adjudicator in accordance with the provisions of clause 5.2

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

### *Arbitration*

- 9.3. The provisions for arbitration are:

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

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

- (a) The client or the Firm may litigate any claim for pecuniary remedy which does not exceed £5000 or such other sum as is provided by order made under section 91 of the Arbitration Act 1996
- (b) In such arbitration the Construction Industry Model Arbitration Rules (CIMAR) current at the date of the reference shall apply, and
- (c) The arbitrator shall not have the power referred to in Section 38(3) of the Arbitration Act 1996

- 9.4. Where the law of England and Wales is the applicable law and Article 10 applies, and either the Client or The Firm requires any dispute or difference to be referred to arbitration, the requiring party shall give notice to the other to such effect and the dispute or difference shall be referred to the arbitration and final decision of a person to be agreed between the parties or, failing agreement within 14 days of the date on which the notice is served, a person appointed by the appointor identified in the Memorandum of Agreement on the application of either the Client or The Firm.

Provided that:

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

## 10. Consumer's right to cancel\*

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



10.4. The notice of cancellation is to be addressed to the Firm, and must be signed and dated by the consumer Client, who should also include their address. The notice of cancellation should state:

“I [[state your name]] hereby give notice to RKITEK that the Agreement with the Firm (RKITEK DESIGN LTD) and signed on our/my behalf by [[state name of client signatory]] is cancelled.”

\*This clause applies where the Project relates to work to the Client’s home or a second home including new home and the Client is a consumer who is acting for purposes outside his/her trade, business or profession and has signed the Agreement in in his/her own name, ie not as a limited company or other legal entity



## 11. Rates – General rates in addition to Schedule 3 of the Form of Appointment

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Administration support	40.00/hr GBP
Document Control	45.00/hr GBP
Librarian services	45.00/hr GBP
CAD Technician	50.00/hr GBP
Detail CAD Technician	55.00/hr GBP
BIM Technician	70.00/hr GBP
Checking & validation	55.00/hr GBP
Architectural Technician	65.00/hr GBP
Junior Architectural Designer	70.00/hr GBP
Engineering Technician	75.00/hr GBP
Engineer	90.00/hr GBP
Associate	90.00/hr GBP
Senior Principal	120.00/hr GBP
Director	150.00/hr GBP
Principal Designer - CDM 2015	100.00/hr GBP
Construction manager	55.00/hr GBP
Project Manager	120.00/hr GBP
Contract Administrator	100.00/hr GBP
Quantity surveyor	90.00/hr GBP
Building surveyor	90.00/hr GBP
Travel Mileage	0.45/mile GBP
Air Travel	cost +2%
Train Travel	cost + 2%
Sea Travel	cost + 2%

The rates are a guideline and form the basis of the pricing structure. The day rates are pro-rata and based on an 8 hour day. Fixed price projects or works are generally based on deliverables as opposed to time and are agreed at the outset.

We reserve the right to vary the rates at any time. We will advise the change of rates where applicable 14 days prior to the change being implemented.

All rates are exclusive of VAT and disbursements

END OF DOCUMENT

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