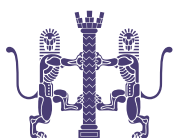


RIAS | The Royal Incorporation
of Architects in Scotland

SCA/2018

Scottish Conditions of Appointment of an Architect

compatible with RIBA Plan of Work 2013



The RIAS represents the
Royal Institute of British Architects
in Scotland

Scottish Conditions of Appointment of an Architect

SCA/2018



Thank you for choosing to use this form of agreement.

As the professional body for Chartered Architects in Scotland, The Royal Incorporation of Architects in Scotland (RIAS) encourages the highest standards of practice for its members, to ensure a high quality of service to clients.

The RIAS recommends the use of a standard form of agreement, such as the Scottish Conditions of Appointment for an Architect (SCA/2018) in the interests of both client and architect. The form helps ensure that the key aspects of the services to be provided and the responsibilities of each party are agreed at the beginning of a project, while allowing the agreement to be tailored to meet the specific requirements of each appointment.

The architectural profession is regulated by the Architects' Registration Board (ARB) and, as a further commitment to consumer protection, the RIAS Code of Professional Conduct is aligned with that of the ARB. Architects are subject to the disciplinary sanction of the Board in relation to complaints of unacceptable professional conduct or serious professional incompetence.

A copy of the written procedure for the handling of such complaints, in accordance with the ARB Code, can be provided to you by the Architect upon request. In the unlikely case of a dispute arising under the contract, you should be aware that details of approved alternative dispute resolution providers can be found through the Trading Standards Institute at www.tradingstandards.uk

Useful contacts:

RIAS
15 Rutland Square
Edinburgh
EH1 2BE
Tel 0131 229 7545
www.rias.org.uk
info@rias.org.uk

ARB
8 Weymouth Street
London
W1N 3FB
Tel 020 7580 5861
www.arb.org.uk

Memorandum of Agreement Under the Scottish Conditions of Appointment of an Architect SCA/2018

between _____ (hereinafter called "the Client")

at _____ (Address)

and _____ (hereinafter called "the Architect")

at _____ (Address)

Whereas:

- (a) The Client intends to proceed with the project (hereinafter called "the Project") as more fully set out or referred to in the Schedule of Project Details annexed and signed as relative hereto (hereinafter called the "Schedule of Project Details");
- (b) the Project relates to the land and/or buildings at a site (hereinafter called "the Site") as more fully set out or referred to in the Schedule of Project Details: and
- (c) the Client wishes to appoint the Architect for the Project and the Architect has agreed to accept such appointment subject to the terms set out in this Memorandum of Agreement (hereinafter called "the Memorandum of Agreement") and in the annexures hereto together with documents referred to therein, to the extent that they are referred to therein, (hereinafter called "the Appointment") and the Client, in addition, has or is about to employ, directly or indirectly, Other Project Team Members to provide works and services in relation to the Project.

Therefore the parties have agreed and do hereby agree that:

- 1 Where terms and expressions, which are used in the Memorandum of Agreement, are defined in the Conditions of Appointment forming part of the Scottish Conditions of Appointment of an Architect SCA/2018, issued by the Royal Incorporation of Architects in Scotland (hereinafter called "the Conditions of Appointment") they shall, in the Memorandum of Agreement, have the meaning ascribed to them in the Conditions of Appointment except where expressly stated otherwise herein or where the context does not so admit.
- 2 The Client hereby appoints the Architect and the Architect hereby accepts appointment as architect for the Project. The Appointment shall be deemed to have commenced with effect from the date upon which the Architect shall have begun to perform the Services or the date of the Appointment whichever is earlier. The Schedule of Project Details shall include, amongst other details, the names of the Other Project Team Members if known.
- 3 The Appointment is made and accepted on, and is constituted by, the terms of the Memorandum of Agreement together with: (1) the Conditions of Appointment; (2) the Schedule of Project Details; and (3) the Schedule of Services (as hereinafter defined); (2) and (3) of which are annexed hereto and all of which are hereby incorporated herein and form part hereof. Other than, and only to the extent that, such Third Party Rights as are expressly granted in writing by the Architect, within this Appointment or in a document expressly incorporated into this Appointment, to particular Third Parties named or described in this Appointment or in the said incorporated document, nothing in this Appointment confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
- 4 The Architect shall provide the Services specified in the Schedule of Services annexed and signed as relative hereto (hereinafter called "the Schedule of Services").
- 5 The Client shall comply with the Client's obligations and payment conditions as set out in the Conditions of Appointment including the employment of the Other Project Team Members and shall pay the fees and expenses set out in the Schedule of Project Details.
- 6 No action or proceedings in connection with the Appointment shall be commenced against the Architect after the expiry of five years from the completion or termination of the Services or (where the Services include services specific to building projects stages 5-7) the date of practical completion of the Works whichever is the earlier.

Memorandum of Agreement Under the Scottish Conditions of Appointment of an Architect SCA/2018

7 Provided always that, notwithstanding any other provisions of the Appointment, the Architect's liability for loss or damage arising in connection with the Appointment shall be limited to the lesser of: (1) such sum as the Architect ought reasonably to pay calculated in accordance with condition 1.9 of the Conditions of Appointment; and (2)

the sum of _____ *In words*
 £ _____ Sterling
In figures

8 Both parties consent to registration hereof for preservation and execution.

9 This agreement shall be governed by and construed in accordance with the law of Scotland and both parties consent to non exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents consisting of this and the preceding page together with the Schedule of Services and the Schedule of Project Details are (under declaration that the name and address of the said Client and that of the said Architect added at the beginning hereof and initialled by the parties and the sum in figures and words added to clause 7 hereof and initialled by the parties were inserted prior to the subscription of this Agreement by the parties) subscribed as follows:-

they are subscribed [for and on behalf of]¹ [by]² the said Client [by]¹
 [_____]³
 at [_____]⁴ on [_____]⁵
 which subscription is witnessed by [_____]⁶
 of [_____]⁷

they are subscribed [for and on behalf of]¹ [by]² the said Architect [by]¹
 [_____]³
 at [_____]⁴ on [_____]⁵
 which subscription is witnessed by [_____]⁶
 of [_____]⁷

Two copies of this form to be signed and witnessed. One copy to the Client. One copy to the Architect.

_____ (Client) _____ (Architect)
 _____ (Witness) _____ (Witness)

Project Ref _____ Date _____

Notes

- | | |
|---|--|
| 1. Delete when subscription by party signing on own behalf | 5. Enter date of signing |
| 2. Delete when subscription on behalf of party | 6. Enter full name of witness including middle names |
| 3. Enter full name of person subscribing including middle names | 7. Enter address of witness |
| 4. Enter location of place of signing | |

Schedule of Project Details

Referred to in the foregoing Memorandum of Agreement between the said Client and the said Architect

1. Project Details

2. Site Details

3. Other Project Team Members *Consultants and Contractors if known*

3.1 Project Lead (if not the architect)

3.7 Other Consultants

3.2 Contract Administrator (if not the architect)

3.3 Principal Designer (if not the Architect)

3.4 Quantity Surveyor

3.8 Site Staff

3.5 Structural Engineer

3.9 Principal Contractor

3.6 Services Engineer

3.10 Specialist Contractors

Two copies to be completed. One copy to the Client. One copy to the Architect.

(Client)

(Architect)

Project Ref _____

Date _____

Schedule of Project Details CONTINUED

4. Schedule of Fees

Basis of Fees: Architects may charge on a lump sum, or time charge, or percentage of construction cost.

Total Construction Cost: As per the Definitions section in the Conditions, calculated at each work stage as set out in Conditions 1.5.2 and

1.5.3. **Services to be Provided:** Stage fees are based on Services identified in the Schedule of Services. Where the roles of Project Lead and/or Contract Administrator are selected, these are included within the stage fees. Fees in respect of the Principal Designer role (if undertaken) are recorded separately in the Additional Architect's Services section.

	Lump Sum	Time Charge			Percentage of Construction Cost	
	£	Average* Rate per Hour £	Estimated Hours	Estimated Sum £	Apportion %	Estimated Sum £
Plan of Work Stages (Schedule of Services parts 1A, 1B and 2)						
0 Strategic Definition						
1 Preparation and Brief						
2 Concept Design						
3 Developed Design						
4 Technical Design						
5 Construction						
6 Handover and Close Out						
7 In-Use / Post-Construction						
SUB-TOTAL						
Additional Architect's Services						
Principal Designer (Schedule of Services 1C)						
Cost Advice (Schedule of Services 3)						
Statutory / Other Parties (Schedule of Services 3)						
Design Skills (Schedule of Services 3)						
Consultancy Services (Schedule of Services 3)						
Building / Sites (Schedule of Services 3)						
Post-Contract Evaluation (Schedule of Services 3)						
Other Additional Services (Schedule of Services 4)						
SUB-TOTAL						
TOTAL						
Estimated Total Fee excl. VAT						
Estimated Total Fee incl. VAT @ _____ %						

* See overleaf

Schedule of Project Details CONTINUED

4. Schedule of Fees *continued*

The following expenses to be charged in addition to the fees (*delete as appropriate*)

Expenses

	£
Printing, reproduction of drawings, documents, etc.	<i>As incurred</i> _____
Accommodation and meals	<i>As incurred</i> _____
Travelling by public transport	<i>As incurred</i> _____
Travelling by car	@ _____ / mile _____
Postage, telephone, facsimile charges	<i>As incurred</i> _____
Models	<i>As incurred</i> _____
Maps	<i>As incurred</i> _____
Special legal advice	<i>As incurred</i> _____
Other	<i>As incurred</i> _____

The Architect may, by prior agreement, make payment for Fees and Services on the Client's behalf. These to be reimbursed as incurred.

Disbursements

	£
Planning Application Fees	_____
Building Control Application Fees	_____
Other	_____

Hourly Rates

Where fees are calculated on a Time Charge basis, or additional fees are accrued in accordance with condition 1.5.7, the following hourly rates shall apply.

<i>Person / Grade</i>	<i>Rate £</i>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Revised Rates

Where rates are to be revised annually in accordance with condition 1.5.4 the revision shall, unless otherwise agreed, be based on the latest Consumer Price Index figure published by the Office for National Statistics at each Anniversary of the date of the Appointment.

Schedule of Project Details CONTINUED

4. Schedule of Fees *continued*

Cashflow

Basis of cashflow

e.g. based on completion of workstages, or percentage progress through workstages, or a periodic (e.g. monthly) drawdown.

Instalments

By reference to the Basis of Cashflow above

Definitions *Where the defined terms are used in the SCA/2018 they are distinguished by an initial capital letter.*

Appointment

The agreement between the Client and the Architect for the Project.

Architect

The party referred to as Architect in the Memorandum of Agreement or Letter of Appointment.

Brief

That information which describes the Project and is necessary for design to commence and proceed. The Brief should be updated as design work proceeds and shall be approved by the Client. The level of information in the Brief, should be appropriate to the stage of the Project and should incorporate the Client's Requirements, Quality objectives and Sustainability objectives. It should also be compatible with the Client's Business Case and the Budget.

Budget

The sum (exclusive of VAT) the Client proposes to spend on the Project including:

- professional fees and expenses
- disbursements
- statutory charges
- the Construction Budget;

but excluding;

- site acquisition costs
- the Client's legal and in-house expenses.

CDM Regulations

The Construction (Design and Management) Regulations 2015 (as currently amended) 'client', 'domestic client', 'designer', 'Principal Designer' and 'Principal Contractor' are all as defined in the CDM Regulations and references here to 'regulations' are to regulations of the CDM Regulations.

Client

The party referred to as Client in the Memorandum of Agreement/ Letter of Appointment.

Client's Business Case

That information which identifies the commercial and financial viability of the Project.

Client's Requirements

The objectives which the Client wishes to achieve in the Project including functional requirements, environmental standards, life span, levels of quality and sustainability in relation to Budget.

Collateral Agreement

An agreement between the Architect and a third party existing in parallel with the agreement between the Architect and the Client. Sometimes known as a collateral warranty or a duty of care agreement.

Construction Budget

The sum, exclusive of VAT, the Client proposes to spend on the construction of the Project.

Contract Administrator

The Architect except where an Other Project Team Member is named as such at 3.2 in the Schedule of Project Details. The duties of the Contract Administrator should be defined under the Contract Documents.

Contract Documents

The documents forming the building contract between the Client and a Contractor, usually comprising conditions of contract, drawings, specifications and bills of quantities or schedules of works.

Contractor(s)

Any person firm or corporation or all of them (including Specialists) appointed directly or indirectly by the Client to carry out any works in connection with the Project.

Consultant(s)

Any person firm or corporation or all of them (including Site Staff) appointed directly or indirectly by the Client to perform professional services in connection with the Project.

Final Construction Issue

That information which is issued to the Contractor for construction purposes. This shall only be issued under formal Contract Administrator's instruction as defined in the Contract Documents.

Project Lead

The Architect except where an Other Project Team Member is named as such at 3.1 in the Schedule of Project Details. The Project Lead shall undertake such duties as are referred to in the Schedule of Services.

Other Project Team Member(s)

Contractors and Consultants (excluding the Architect).

Procurement Method

The method by which the building of the Project is to be achieved, determining:

- the relations between the Client, Consultants and Contractor(s)
- the method of management, and
- the form of construction contract.

Project

As referred to in the Memorandum of Agreement/Letter of Appointment.

Definitions CONTINUED

Objectives

shall include -
Project objectives
Quality objectives
Sustainability objectives

These shall seek to identify the desired and/or mandatory standards to be achieved by the design. These Objectives shall form part of the Brief.

Project outcomes

The measured and evaluated results that are observed after project completion in terms of the performance of the building. These will normally refer to the Brief, the Objectives and the Budget.

Project Timetable

The period of time which the Client wishes to allow for the completion of the Project.

Services

The Services to be provided by the Architect as specified in the Schedule of Services as varied pursuant to this Appointment.

Services Timetable

The Timetable for the completion of the Services showing inter alia any points and/or dates during the carrying out of the Services at which the Architect shall seek the authority of the Client before proceeding further with the Services. Where no timetable is agreed Services are to be provided within a reasonable time in all the circumstances.

Site

As specified in the Memorandum of Agreement/Letter of Appointment.

Site Staff

Staff appointed by the Client, or the Architect on the Client's behalf, to provide inspection of the Works.

Specialist

A person, firm or corporation other than the Consultants, appointed to provide expertise, skill and care, involving design, in the supply or manufacture of goods, materials or components or in the construction of parts of the Project.

Third Party Rights

Such rights to enforce or otherwise invoke undertakings expressly given by the Architect, in the Appointment or in a document expressly incorporated in the Appointment, to specific third parties identified by name or described in the Appointment or the said incorporated document, but only to the extent that such rights are expressly granted and only to the third parties so identified.

Total Construction Cost

The cost as certified by the Architect of all Works including site works executed under the Architect's direction and control, subject to the following.

The Total Construction Cost shall include:

- the cost of all works designed by Consultants and co-ordinated by the Architect irrespective of whether such work is carried out under separate building contracts for which the Architect may not be responsible. The Architect shall be informed of the cost of any such contract;
- the actual or estimated cost of any work executed which is excluded from the contract and which is otherwise designed by the Architect;
- the cost of built-in furniture and equipment. Where the cost of any special equipment is excluded from the Total Construction Cost the Architect may charge additionally for work in connection with such items;
- the cost estimated by the Architect of any material, labour or carriage supplied by a Client who is not the Contractor.

The Total Construction Cost shall exclude:

- the design fees of any Specialists for work on which otherwise Consultants would have been employed. Where such fees are not known the Architect will estimate a reduction from the Total Construction Cost.

Where the Client is the Contractor, a statement of the ascertained gross cost of the works may be used in calculating the Total Construction Cost of the Works. In the absence of such a statement the Architect's own estimate shall be used. In both a statement of the ascertained gross cost and an Architect's estimate there shall be included an allowance for the Contractor's profit and overheads.

Work Stages

Stages into which the process of designing building projects and administering building contracts may be divided (including the headings for those stages), which are used in this Appointment, are as set out in the Schedule of Services.

Works

The works to be carried out by the Contractor as described in the Contract Documents.

Conditions of Appointment

Referred to in foregoing Memorandum of Agreement between the said Client and said Architect.

PART

1

Conditions common to all commissions

1.1 Governing law/interpretation

- 1.1.1 The application of the Appointment shall be governed by the laws of Scotland.

Headings and side notes

- 1.1.2 The headings and side notes to these conditions are for convenience only and do not affect the interpretation of the conditions.
- 1.1.3 Words denoting natural persons include corporations and firms and shall be construed interchangeably in that manner.

1.2 Architect's obligations

Duty of Care

- 1.2.1 The Architect shall in providing the Services exercise reasonable skill and care in conformity with the normal standards of the Architect's profession.

Architect's Authority

- 1.2.2 The Architect shall act on behalf of the Client in the matters set out or necessarily implied in the Appointment.
- 1.2.3 The Architect shall at those points and/or dates referred to in the Services Timetable obtain the authority of the Client before proceeding with the Services.

Services impracticable

- 1.2.4 The Architect shall give reasonable notice in writing to the Client of any circumstances which make it impracticable for the Architect to carry out any of the Services in accordance with the Services Timetable.

No alteration to services

- 1.2.5 Subject to the following the parties may by agreement, express or implied, vary the Services. The Architect shall make no material alteration to or addition to or omission from the Services without the knowledge and consent of the Client except in the case of emergency when the Architect shall inform the Client without delay.

Variations

- 1.2.6 The Architect shall inform the Client on its becoming apparent that there is any incompatibility between any of the Client's Requirements; or between the Client's Requirements, the Budget and the Project Timetable: or any need to vary any part of them.
- 1.2.7 The Architect shall inform the Client on its becoming apparent that the Services and/or fees and/or any other part of the Appointment and/or information or approvals need to be varied. The Architect shall confirm in writing any agreement reached.

Architect as Designer under the CDM Regulations

- 1.2.8 The Architect shall comply with the CDM Regulations including, without limitation: (i) regulation 8 (general requirements); (ii) regulations 9 & 10 (designer's duties) and (iii) where Principal Designer, regulation 11 and, to the extent applicable, regulation 12 (health & Safety planning pre and post construction)

1.3 Client's obligations

Client's representative

- 1.3.1 The Client shall name the person who shall exercise the powers of the Client under the Appointment and through whom all instructions to the Architect shall be given.

Information

- 1.3.2 The Client shall provide to the Architect information reasonably necessary at the outset.
- 1.3.3 The Client shall provide to the Architect such further information as the Architect shall reasonably and necessarily request for the performance of the Services: all such information to be provided free of charge and at such times as shall permit the Architect to comply with the Services Timetable.
- 1.3.4 The Client accepts that the Architect will rely on the accuracy, sufficiency and consistency of the information supplied by the Client.
- 1.3.5 The Client shall advise the Architect of the relative priorities of the Client's Requirements, the Budget and the Project Timetable and shall inform the Architect of any variations to any of them.

Decisions and approvals

- 1.3.6 The Client shall give such decisions and approvals as necessary for the performance of the Services and at such times as to enable the Architect to comply with the Services Timetable.

Architect does not warrant

- 1.3.7 Subject always to the provisions of condition 1.2.1, the Client acknowledges that the Architect does not warrant the performance, work or the products of others nor that the Services will be completed in accordance with the Project Timetable.

Client as client under the CDM Regulations

- 1.3.8 The Client shall comply with the CDM Regulations including, without limitation: (i) regulation 8 (general duties); and (ii) where client, other than a 'domestic client', the client duties set out in Part 2 of the CDM Regulations. Where the Client is a domestic client certain of those duties are to be delegated to other parties in the manner set out in regulation 7.

1.4 Assignment and sub-contracting

Assignment

- 1.4.1 Neither the Architect nor the Client shall assign the whole or any part of the benefit or in any way transfer the obligation of the Appointment without the consent in writing of the other.

Sub-contracting

- 1.4.2 The Architect shall not sub-contract any of the Services without the consent of the Client, which consent shall not be unreasonably withheld. The Architect shall confirm such consent in writing.

1.5 Payment

Payment

- 1.5.1 Payment for the Services shall be calculated, charged and made as set out in the Schedule of Project Details.

Conditions of Appointment CONTINUED

Percentage Fees

- 1.5.2 Where it is stated in the Schedule of Project Details that fees and or expenses are payable on a percentage basis, then, unless any other basis has been agreed between the Architect and the Client and confirmed by the Architect to the Client in writing, the fees and/or expenses shall be based on the Total Construction Cost of the Works. On the issue of the final certificate under the building contract the fees and/or expenses shall be re-calculated on the actual Total Construction Cost.
- 1.5.3 The following bases shall be used for the calculation of percentage fees based on the Total Construction Cost until that cost has been ascertained:
- until tenders are obtained – the cost estimate;
 - after tenders have been obtained – the lowest acceptable tender;
 - after the contract is let – the contract sum.

Revised rates

- 1.5.4 Unless otherwise stated in the Schedule of Project Details, time rates and mileage rates for vehicles shall be revised annually by the Architect.

Fee variation

- 1.5.5 Where any change is made to the Architect's Services, the Procurement Method, the Client's Requirements, the Budget, or the Project Timetable, or where the Architect consents to enter into any Collateral Agreement the form or beneficiary of which had not been agreed by the Architect at the date of the Appointment, the fees specified in the Schedule of Project Details shall be varied.

Vary lump sum

- 1.5.6 Where fees and/or expenses are specified in the Schedule of Project Details to be a lump sum, that lump sum shall be varied by agreement or in accordance with these Conditions of Appointment.

Additional fees

- 1.5.7 Where the Architect is involved in extra work and/or expense for which the Architect is not otherwise remunerated caused by:
- the Client's variations to completed work or services;
 - the examination and/or negotiation of notices;
 - the default, bankruptcy, insolvency or liquidation of a contractor;
 - applications, claims, adjudications and arbitration under a building contract;
 - delay or any other reason beyond the Architect's control.

The Architect shall be entitled to additional fees which, unless otherwise agreed, shall be calculated on a time basis.

- 1.5.8 Where fees and/or expenses are varied under conditions 1.2.7, 1.5.4, 1.5.5 and/or 1.5.6 or where additional fees are payable under condition 1.5.7, the additional or varied fees and/or expenses shall be stated by the Architect in writing.

Services not completed

- 1.5.9 Where for any reason the Architect provides only part of the Services as specified in the Schedule of Services, the Architect shall be entitled to fees calculated as follows:

- for completed Services, as described for those Services in the Schedule of Project Details;
- for completed Work Stages, as apportioned for those Work Stages in the Schedule of Project Details;
- for Services or Work Stages not completed, a fee proportionate to that described or apportioned in the Schedule of Project Details based on the Architect's estimate of the percentage of completion.

All percentage fees for partial services should be based on the architect's current estimate of the total construction cost of the works. Such estimates may be based on an accepted tender or, subject to the following, on the lowest of the unaccepted tenders. Where partial services are provided in respect of works for which the executed cost is not known and no tender has been accepted, percentage fees should be based either on the architect's estimated total construction cost or on the most recent cost limit agreed with the client, whichever is the lower.

Expenses and disbursements

- 1.5.10 The Client shall pay the expenses specified in the Schedule of Project Details. Expenses other than those specified shall only be charged with the prior authorisation of the Client.
- 1.5.11 The Client shall reimburse the Architect as specified in the Schedule of Project Details for any disbursements made on the Client's behalf.

Maintain records

- 1.5.12 The Architect shall maintain records of time spent on Services performed on a time basis, expenses and disbursements and shall make these available to the Client on reasonable request.

Instalments

- 1.5.13 All payments due under the Appointment shall be made by instalments specified in the Schedule of Project Details. Where no such basis is specified, payments shall be made monthly on the basis of the Architect's estimate of percentage of completion of the Services.

Payment

- 1.5.14 Payment of each instalment due in terms of condition 1.5.13 shall become due to the Architect on the date, as stated thereon, of submission of the Architect's account for that instalment to the Client and shall become finally due 28 days thereafter. The Architect's account shall, amongst other things, specify the sum that the Architect considers to be due at the payment due date in respect of the Architect's account for that instalment and the basis upon which that sum is calculated.

No setoff

- 1.5.15 The Client may not withhold or reduce any sum payable to the Architect under the Appointment by reason of claims or alleged claims against the Architect. All rights of setoff which the Client may otherwise exercise in common law are hereby expressly excluded.

Conditions of Appointment CONTINUED

Disputed accounts

- 1.5.16 If any item or part of an item of any account is disputed or subject to question by the Client and such item or part thereof was included in the due sum notified pursuant to condition 1.5.14, the Client shall, not later than 7 days before the final date for payment of that due sum, issue to the Architect a written notice of intention to pay less than that due sum (the "Notice to Pay Less") provided always that such notice can only reduce that due sum relative to the item or part item of that account which is disputed and the payment by the Client of the remainder of that account shall not be withheld on those grounds. The Notice to Pay Less shall specify the sum that the Client then considers is due and the basis on which that sum is calculated.

Interest on outstanding accounts

- 1.5.17 Any sums remaining unpaid at the expiry of twenty-eight days from the date of submission of an account shall bear interest thereafter, such interest to be at the rate of 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.

Payment on suspension or termination

- 1.5.18 On suspension or termination of the Appointment the Architect shall be entitled to, and shall be paid, fees for all Services provided to that time calculated as partial Services under condition 1.5.9 hereof, and to expenses and disbursements reasonably incurred to that time.
- 1.5.19 During any period of suspension the Architect shall be reimbursed by the Client for expenses, disbursements and other costs reasonably incurred as a result of the suspension.
- 1.5.20 On the resumption of a suspended Service within six months, fees paid prior to resumption shall be regarded solely as payments on account of the total fee.
- 1.5.21 Where the Appointment is suspended or terminated by the Client or suspended or terminated by the Architect on account of a breach of the Appointment by the Client, the Architect shall be paid by the Client for all expenses and other costs necessarily incurred as a result of any suspension and any resumption or termination.

VAT

- 1.5.22 Fees, expenses and disbursements arising under the Appointment do not include Value Added Tax. Any Value Added Tax chargeable on the Architect's fees and expenses shall be paid by the Client.

1.6 Suspension, resumption and termination

Suspension

- 1.6.1 The Client may suspend the performance of any or all of the Services by giving reasonable notice in writing to the Architect.
- 1.6.2 In the event of the Client being in default of payment of any fees, expenses and/or disbursements, the Architect may, throughout such default, suspend the performance of any or all of the Services on giving, after such payment becomes finally due, seven days notice in writing to the Client stating the ground or grounds for such suspension.

Resumption

- 1.6.3 If the Architect has not been given instructions to resume any suspended Service within six months from the date of suspension, the Architect shall request in writing such instructions. If written instructions have not been received within twenty-eight days of the date of such request the Architect shall have the right to treat the Appointment as terminated.

Termination

- 1.6.4 The Appointment may be terminated by either party on the expiry of reasonable notice in writing.

Architect's death or incapacity

- 1.6.5 Should the Architect through death or incapacity be unable to provide the Services, the Appointment shall thereby be terminated.

Accrued rights

- 1.6.6 Termination of the Appointment shall be without prejudice to the accrued rights and remedies of either party.

1.7 Copyright

Copyright

- 1.7.1 Copyright in all documents and drawings prepared by the Architect and in any work executed from those documents and drawings shall remain the property of the Architect.

1.8 Dispute resolution

Arbitration

- 1.8.1 Subject to the provisions of condition 1.8.2, any difference or dispute arising out of, or in connection with, the Appointment shall be referred to arbitration by a person to be agreed between the parties or, failing agreement within fourteen days after either party has given the other a written request to concur in the appointment of an arbitrator, a person to be nominated, at the request of either party, by the President, or, where the President is unable to act, the Secretary, for the time being, of the Royal Incorporation of Architects in Scotland ("RIAS"), (such request being made in writing to the RIAS and copied to the other party at the same time and such nomination being made and communicated in writing to both parties within seven days of that request) provided that in a difference or dispute arising out of the conditions relating to copyright the arbitrator shall, unless otherwise agreed, be an architect. Such arbitration will be carried out according to the Scottish Arbitration rules set out in Schedule 1 to the Arbitration (Scotland) Act 2010 provided that where, and to the extent that, the provisions of this condition 1.8.1 modify, or are inconsistent with, any of the 'default rules' (as defined in the Arbitration (Scotland) Act 2010) the provisions of this condition shall prevail. In addition the following 'default rules' are disapplied: 10; 18; 22; 30; 36; 41; 43; 55; and 69.

Adjudication

- 1.8.2 If any dispute or difference between the parties arises out of this Agreement either party may at any time refer such dispute or difference to adjudication and the Scheme as set

Conditions of Appointment CONTINUED

out in the Schedule Part 1 to the Scheme for Construction Contracts (Scotland) Regulations 1998 (as amended by the Scheme for Construction Contracts (Scotland) Amendment Regulations 2011 as further amended at the time the dispute or difference is referred to adjudication) (the "Scheme") shall apply to such adjudication and the referring party shall request the President, or where the President is unable to act, the Secretary, for the time being, of the Royal Incorporation of Architects in Scotland, as the specified nominating body in accordance with paragraph 2(1)(b) of the Scheme (or its equivalent under the Scheme as subsequently amended hereafter), to select a person to act as adjudicator.

- 1.8.3 Periods of time under conditions 1.5.14, 1.5.16, 1.6.2 and 1.8.2, shall be reckoned in accordance with section 116 of the Housing Grants Construction and Regeneration Act 1996.
- 1.8.4 Nothing herein shall prevent the parties agreeing to settle any difference or dispute arising out of the Appointment without recourse to adjudication or arbitration.

Mediation

(The Mediation process is a useful way of resolving disputes by bringing the parties together to find a solution acceptable to both. A solution is not imposed by the mediator. Mediation is normally possible only where both parties agree to engage in the process)

- 1.8.5 Any dispute or difference between the parties arising out of, or in connection with, this Appointment may be referred to a mediation process conducted by a suitably qualified mediator. The mediator shall be selected from a list maintained by the Royal Incorporation of Architects in Scotland. Where both parties agree to the process, the cost of the service shall be shared equally or otherwise as agreed by the parties.

1.9 Net Contribution

Net Contribution

- 1.9.1 The Architect's liability for loss or damage arising in connection with the Appointment shall be limited to the lesser of: (1) the sum set out in clause 7 of the Memorandum of Agreement; and (2) such sums as the Architect ought reasonably to pay, having regard to the extent of his responsibility for the same and on the basis that there are deemed to be no exclusions or limitations of liability nor joint or co-insurance provisions between the Client and any of the Other Project Team Members and that all Other Project Team Members shall be deemed to have provided to the Client contractual undertakings equivalent to the Architect's undertakings hereunder in respect of their works and services for the Project and shall be deemed to have paid to the Client such contributions as may be appropriate having regard to the extent of their responsibility for such loss or damage.

1.10 Consumer Right to Cancel

- 1.10.1 If the Client is a Consumer (as defined in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the "Regulations")) they have

the right to cancel this Agreement without giving any reason by informing the Architect of their decision to cancel this Agreement by a clear statement (the 'cancellation notice') delivered or sent (including by post, fax or electronic mail) to the Architect at any time within the period of 14 days starting from when this Agreement was made (the "Cancellation Period").

- 1.10.2 The cancellation notice is deemed to be served as soon as it is posted or sent to the Architect or in the case of an electronic communication on the day it is sent to the Architect.
- 1.10.3 If the Architect was instructed to perform any services before the Agreement was made or before the end of the Cancellation Period and the instruction or instructions were in writing or other durable medium (as defined in the Regulations), the Architect shall be entitled to any fees and expenses properly due before the Architect receives the cancellation notice.
- 1.10.4 If the Client, as Consumer, wishes to cancel this Agreement they should do so in a durable medium (as defined in the Regulations) such as writing and deliver personally or send (including by electronic mail) the cancellation notice to the Architect. The Client, as Consumer, may, but does not have to, use the detachable cancellation notice as set out on page 16.

PART 2

Conditions specific to Work Stages 0-4

2.1 Architect's obligations

Architect's authority

- 2.1.1 The Architect shall, where specified in the Services Timetable, obtain the authority of the Client before initiating any Work Stage and shall confirm that authority in writing.

Procurement Method

- 2.1.2 The Architect shall advise on the options for the Procurement Method for the Project.

No alteration to design

- 2.1.3 The Architect shall make no material alteration, addition to or omission from the approved design without the knowledge and consent of the Client and shall confirm such consent in writing.

2.2 Client's obligations

CDM Regulations

- 2.2.1 Further to Clause 1.3.8 the Client shall, when required, appoint as soon as reasonably practicable a Principal Designer.

Statutory requirements

- 2.2.2 The Client shall instruct the making of applications for planning permission and approval under building acts, regulations and other statutory requirements and applications for consents by heritable proprietors and all others having an interest in the Project and shall pay any statutory charges and any fees, expenses and disbursements in respect of such applications.

Conditions of Appointment CONTINUED

No warranty of planning permission

- 2.2.3 The Client acknowledges that the Architect does not warrant that planning permission will be granted.

Third Party Interest

- 2.2.4 The Client shall have informed the Architect prior to the date of the Appointment whether any third party will acquire or is likely to acquire an interest in the whole or any part of the Project.

Collateral Agreements or Third Party Rights

- 2.2.5 The Client shall not require the Architect to enter into any Collateral Agreement with, or to grant Third Party Rights to, a third party which imposes greater obligations or liabilities on the Architect than does the Appointment.

Procurement Method

- 2.2.6 The Client shall confirm the Procurement Method for the Project.

2.3 Copyright

- 2.3.1 Notwithstanding the provisions of condition 1.7.1, the Client shall be entitled to reproduce the Architect's design by proceeding to execute the Project provided that:

- the entitlement applies only to the Site or part of the Site to which the design relates, and
- the Architect has completed a scheme design or
- has provided detail design and production information, and
- any fees, expenses and disbursements due to the Architect have been paid.

This entitlement shall also apply to the maintenance repair and/or renewal of the Works.

- 2.3.2 Where the Architect has not completed a scheme design, the Client shall not reproduce the design by proceeding to execute the Project without the consent of the Architect, which consent shall not be unreasonably withheld.
- 2.3.3 Where the Services are limited to making and negotiating planning applications, the Client may not reproduce the Architect's design without the Architect's consent, which consent shall not be unreasonably withheld, and payment of any additional fees.
- 2.3.4 The Architect shall not be liable for the consequences of any use of any information or designs prepared by the Architect except for the purposes for which they were provided.

Confidentiality

- 2.3.5 Neither the Client nor the Architect shall disclose to any other person information identified in writing as confidential unless reasonably necessary for performance of the Services or because of disputes arising out of or in connection with the Appointment or as required by law.

PART 3

Conditions specific to Work Stages 5-6

3.1 Architect's obligations

Visits to the Works

- 3.1.1 The Architect shall in providing the Services specified make such visits to the Works as the Architect at the date of the Appointment reasonably expected to be necessary. The Architect shall confirm such expectation in writing.

Variations to visits to the Works

- 3.1.2 The Architect shall, on its becoming apparent that the expectation of the visits to the Works needs to be varied, inform the Client in writing of his recommendations and any consequential variation in fees.

More frequent visits to the Works

- 3.1.3 The Architect shall, where the Client requires more frequent visits to the Works than that specified by the Architect in condition 3.1.1, inform the Client of any consequential variation in fees. The Architect shall confirm in writing any agreement reached.

Alteration to design

- 3.1.4 Except in an emergency the Architect shall make no material alteration or addition to or omission from the approved design during construction without the knowledge and consent of the Client; the Architect shall confirm such consent in writing. In an emergency the Architect may make such alteration, addition or omission without the knowledge and consent of the Client but shall inform the Client without delay and subsequently confirm in writing.

3.2 Client's obligations

Contractor

- 3.2.1 The Client shall employ Contractors under separate agreements to undertake construction or other works relating to the Project.

Responsibilities of contractor

- 3.2.2 The Client shall hold such Contractors and not the Architect responsible for the Contractor's management and operational methods and for the proper carrying out and completion of the Works and for health and safety provisions on the Site.

CDM Regulations

- 3.2.3 Further to Clause 1.3.8 the Client shall, when required, appoint as soon as reasonably practicable a Principal Contractor.

Products and Materials

- 3.2.4 The Client shall hold the Contractor(s) and not the Architect responsible for the proper installation and incorporation of all products and materials into the Works.

Conditions of Appointment CONTINUED

Collateral Agreements or Third Party Rights

3.2.5 The Client shall, where the Architect consents to enter into a Collateral Agreement with, or to grant Third Party Rights to, a third party in respect of the Project, procure that the Contractor(s) is/are equally bound by reference to its/their contractual obligations to the Client.

Instruction

3.2.6 The Architect shall act as 'contract administrator' except where another Consultant is named as such in the Schedule of Project Details. The Client shall only issue instructions to the Contractor(s) through the contract administrator, and the Client shall not hold the contract administrator responsible for any instructions issued other than through the contract administrator.

3.3 Site Staff

3.3.1 The Architect shall recommend the appointment of Site Staff to the Client if in his opinion such appointments are necessary for the more detailed inspection of the carrying out of that part of the Works designed by the Architect.

3.3.2 The Architect, where appointing and paying such Site Staff on behalf of the Client, shall confirm in writing to the Client the Site Staff to be appointed by the Client, their disciplines, the expected duration of their employment, their fee, and the method of recovery of payments made by the Architect on behalf of the Client. The Client, where appointing and paying such Site Staff direct shall confirm the same details, except for the payment provisions, in writing to the Architect and shall ensure that provisions covering condition 3.3.3 hereof are included in their appointments.

3.3.3 All Site Staff shall be under the direction and control of the Architect.

Responsibilities of Site Staff

3.3.4 The Client shall not hold the Architect responsible for the competence, proper execution and performance of the services provided by the Site Staff.

4 Conditions specific to appointment of Consultants and Specialists

4.1 Consultants

Nomination

4.1.1 The Architect shall, where Project Lead, identify professional services which require the appointment of Consultants. Such Consultants may be nominated at any time by either the Client or the Architect subject to acceptance by each party.

Appointment

4.1.2 The Client shall appoint and pay the nominated Consultants.

4.1.3 The Consultants to be appointed at the date of the Appointment and the services to be provided by them shall be confirmed in writing by the Project Lead to the Client.

Collateral Agreements or Third Party Rights

4.1.4 The Client shall, where the Architect consents to enter into a Collateral Agreement with, or to grant Third Party Rights to, a third party in respect of the Project, procure that all Other Project Team Members are equally bound by reference to their contractual obligations to the Client or their employers.

Project Lead

4.1.5 Except where The Schedule of Project Details indicates a Project Lead other than the Architect, the Client shall appoint and give authority to the Architect as Project Lead in relation to all other Consultants however employed. Where another Consultant is the Project Lead the Architect shall liaise and co-operate with and acknowledge the role of the Project Lead. The Project Lead shall be the medium of communication and instruction between the Client and the other Consultants, co-ordinate and integrate into the overall design the services of the other Consultants, and require reports from the other Consultants.

4.1.6 The Client shall procure that the provisions of condition 4.1.5 above are incorporated into the conditions of appointment of all Consultants however employed and shall, where the Architect is Project Lead, provide a copy of such conditions of appointment to the Architect.

Responsibilities of Consultants

4.1.7 The Client shall hold each of the other Consultants however appointed and not the Architect responsible for the competence and performance of the services to be performed by that Consultant and for the general inspection of the execution of the work designed by that Consultant.

CDM Regulations

4.1.8 The Client shall where Consultants are appointed, procure that the Consultants are obliged to comply with the requirements of the CDM Regulations including, without limitation, those duties set out in part 3 of the CDM Regulations which are relevant to their appointments.

Conditions of Appointment CONTINUED

Responsibilities of Architect where Contract Administrator

4.1.9 Nothing in this Part shall affect any responsibility of the Architect, where Contract Administrator, for issuing instructions under the building contract or for other functions ascribed to the Contract Administrator under the building contract in relation to work designed by a Consultant.

4.2 Specialists

Nomination

4.2.1 A Specialist who is to be employed directly by the Client or indirectly through the Contractor to design any part of the Works where nominated by either the Architect or the Client is subject to acceptance by each party.

Appointment

4.2.2 The Specialists to be appointed at the date of the Appointment and the services to be provided by them shall be those confirmed in writing by the Project Lead to the Client.

Collateral Agreements or Third Party Rights

4.2.3 The Client shall, where the Architect consents to enter into a Collateral Agreement with, or to grant Third Party Rights to, a third party in respect of the Project, procure that all Specialists are equally bound by reference to their contractual obligations to their employers.

Co-ordination and integration

4.2.4 The Client shall give the authority to the Project Lead to co-ordinate and integrate the services of all Specialists into the overall design and the Project Lead shall be responsible for such co-ordination and integration.

Responsibilities of Specialists

4.2.5 The Client shall not hold the Architect responsible for the products and materials supplied by any Specialist, nor for the competence, proper execution and performance of the Services entrusted to any Specialist.

CDM Regulations

4.2.6 The Client shall, where Specialists are appointed, procure that the Specialists are obliged to comply with the requirements of the CDM Regulations including, without limitation, those duties set out in parts 3 & 4 of the CDM Regulations which are relevant to their appointments.

Cancellation Notice

To _____ (the "Architect")

Address _____

I/We* hereby give notice that I/We* wish to cancel the Agreement with the Architect

* Delete as appropriate

Dated _____ Ref. No. _____ (the "Agreement")

Signed _____ (the "Client")

Date _____

Client Name _____

Client Address _____
