

12 GOLDEN RULES

The importance of having a
written form of appointment



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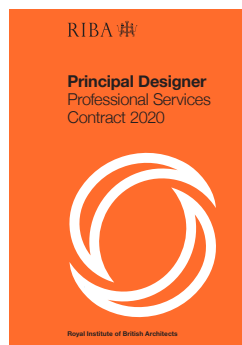
Why do architects need a written form of appointment?

For most practices this is obvious – clear terms are needed to define the parties' obligations and rights, and hence avoid possible confusion and disputes. They protect the architect's interests, limit their liability, and from the client's perspective provide a detailed explanation as to what to expect from their architect, including delineating services that will and will not be included for the fee.

However, despite these common-sense reasons, there is evidence that some architects still operate without any written terms, or with very limited and inadequate ones, and anecdotal evidence shows many architects are reluctant to put 'formal' documents before their clients before any work is commenced. A check undertaken by the RIBA Professional Standards team found that, in 2018, 26% of the professional conduct cases raised related to allegations of insufficient or non-existent terms of appointment, and that 25% of the hearings in these cases resulted in RIBA Members being sanctioned for breaches of the RIBA Code of Professional Conduct.

'The RIBA Professional Services Contracts are more modern, appealing, and easier to use than their predecessors.'

Professor Sarah Lupton, Principal, Lupton Stellakis and chair at Cardiff University.



Ensure you always have a written form of appointment

It is imperative to have a written agreement in place before you start work on a project (as required by both The Architect's Code (ARB) and The RIBA Code of Professional Conduct) otherwise you risk allegations and findings of serious professional misconduct. In the event of a complaint, one of the first questions that the ARB and/or RIBA will ask is whether you have a written form of appointment.



Ensure you select the right contract

Ensuring that you have the right contract for the right client and project is essential. A project on a house which is not the primary residence of the client is a commercial project and requires that you choose the RIBA Standard or Concise form of Professional Services Contract, and not the RIBA Domestic Professional Services Contract. For a 'domestic' client the Consumer Rights Act applies which gives the client greater protection and rights in a court of law.



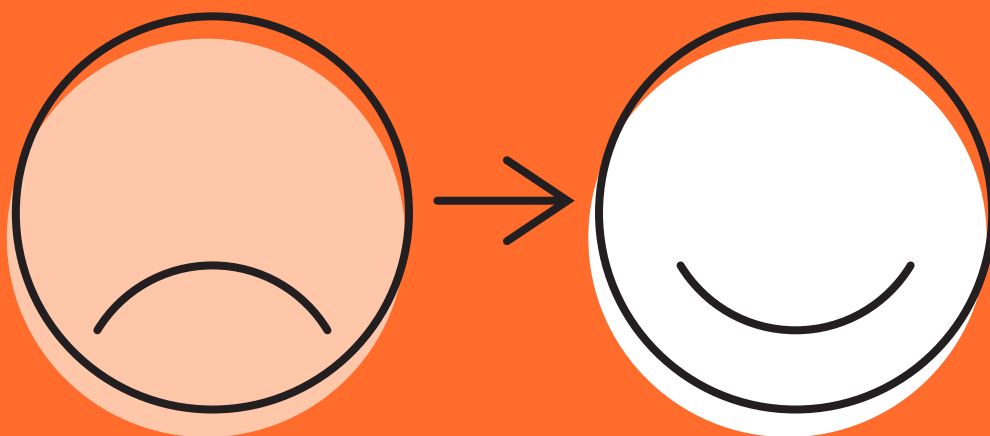
Always clearly explain, negotiate and agree your terms of appointment with your client

All contract terms should be individually explained, negotiated and agreed with the client before you start work, particularly any terms which might be considered unfair or difficult to understand (on payment, liability and dispute resolution) – this is particularly important with consumer clients in order to ensure compliance with consumer protection legislation.



Inform the client of your complaints procedure and the ADR options

Ensure that the client is aware of your internal complaints procedure and understands the alternative dispute resolution options available. If you do encounter problems, always try to talk to the client to resolve the issues first, and consider using mediation, before entering into formal alternative dispute resolution or, as a last resort, litigation.



For commercial clients, use a separate form of appointment for the role of principal designer

If you are going to undertake services of a 'principal designer' for a commercial client, use a separate professional services contract and inform your professional indemnity insurer that you are undertaking the role, confirming that you have the appropriate PI cover.



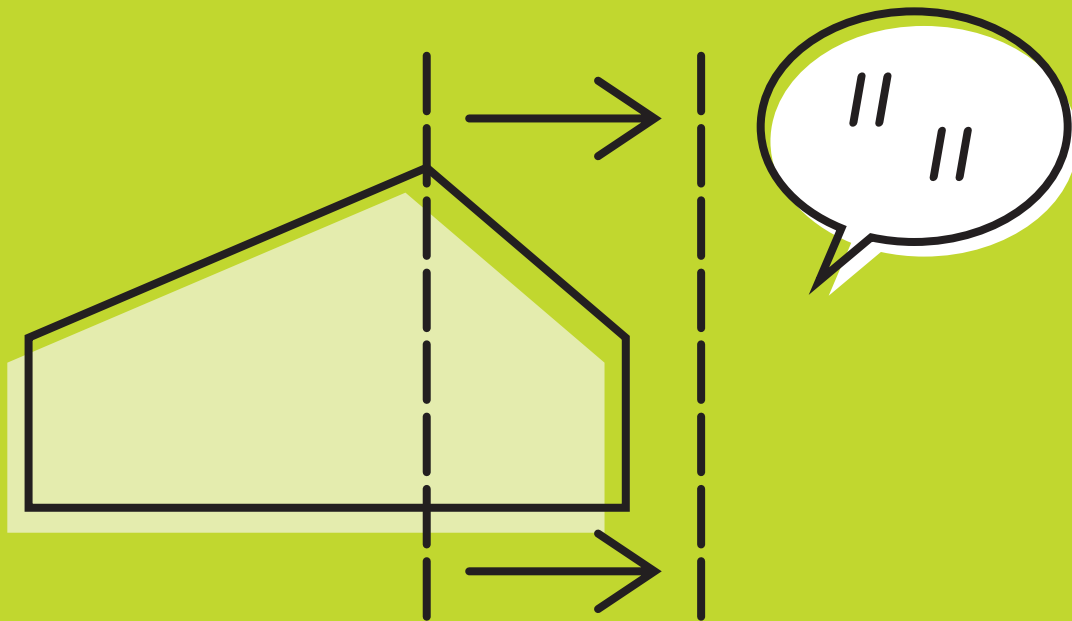
Always check that contract terms do not extend your duties beyond exercising reasonable skill and care

Consult your professional indemnity insurers and seek legal advice on any amendments or bespoke contracts. Look for any conflicting or onerous terms or references, particularly, fitness-for-purpose obligations, which may impose duties beyond your common law obligation to exercise reasonable skill, care and diligence and may not be covered by standard professional indemnity insurance policies.



Keep the client informed

Always keep the client informed – as soon as you become aware – of any material issues or decisions, information or action required that will impact on the brief, cost, programme or quality of the project.



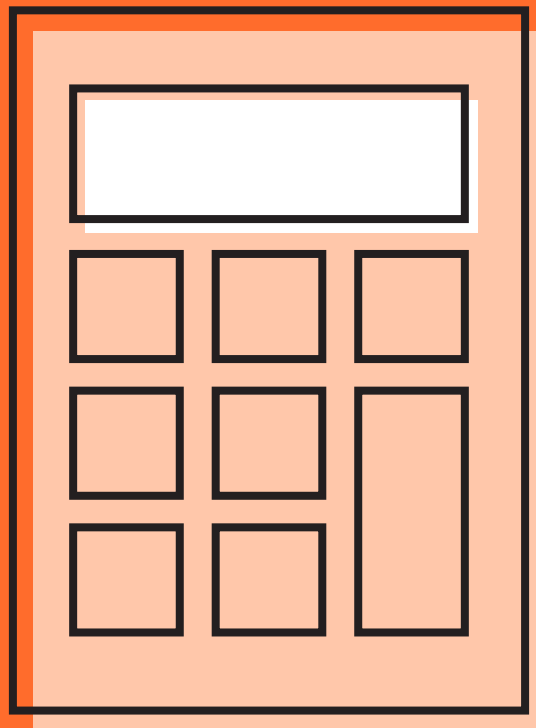
Check the terms and implications of novation

If you agree to novation, or are asked to sign a collateral warranty, it is advisable to seek independent legal advice. Ask your PI insurance provider to approve the wording to ensure that you are not taking on onerous terms.



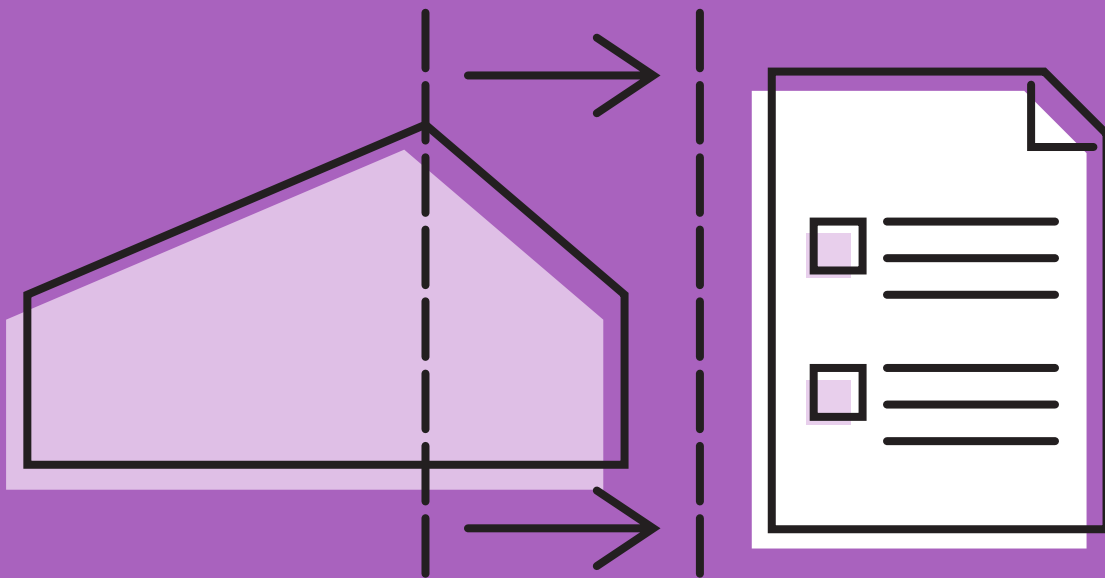
Clearly set out how your fee has been calculated

Make it very clear to the client what is included and not included in your fee, and how the fee has been calculated. Specify the frequency or number of meetings and site visits and state what expenses are included.



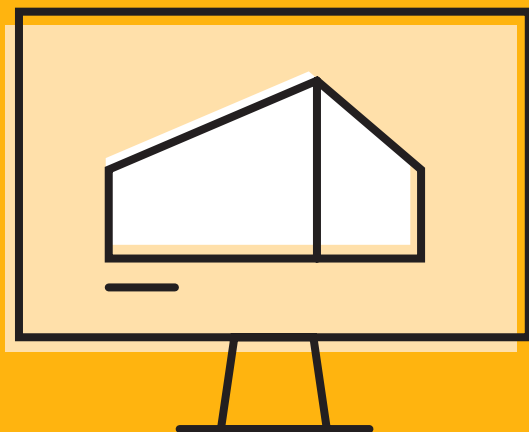
Note any changes in writing

Bring up any adjustments to fees at the point when the scope of the project is changed, keep a record of additional work, reasons for changes and how the project will be affected.



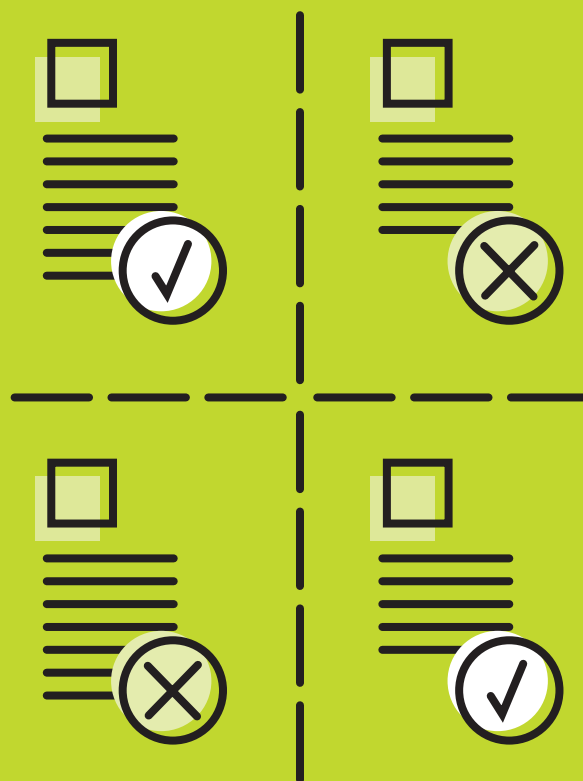
Agree data formats at the outset

Agree the format for the output of all data, drawings and information with the client from the outset to avoid any misunderstandings about the deliverables to be provided. Ensure the design team are working to a common standard that will allow data and information to be shared and transferred easily.



Ensure that the Schedule of Services is accurate

Your schedule of services should accurately reflect the client's requirements and the project brief, state which services are included, which are not, and which are being carried out by others e.g. a cost consultant or structural engineer.



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New suite of RIBA Professional Services Contracts (PSCs)



The new RIBA PSCs are clear, concise and easy to understand and can be used across projects of every scale and complexity. There are currently five contracts in the suite:

RIBA Standard Professional Services Contract 2018: Architectural Services – for large, more complex commercial projects

RIBA Concise Professional Services Contract 2018: Architectural Services – for smaller, less complex commercial projects

RIBA Sub-consultant Professional Services Contract 2018 – where an architect wishes, or is required by the client, to appoint a sub-consultant to carry out part of their services; or where one architect is to be sub-contracted to another architect

RIBA Principal Designer Professional Services Contract 2018 – for commissions procured on any form of building contract and for projects of any value

RIBA Domestic Professional Services Contract 2018: Architectural Services – for all domestic projects (includes principal designer appointment)

Create, draft and finalise contracts in digital format
RIBA Contracts Digital provides you with greater flexibility when you are creating, drafting and finalising your RIBA PSC. RIBA Chartered Members receive a £10 discount on all digital RIBA Contracts purchased.