

Subconsultant
Professional Services
Contract 2020



FOR CONSULTATION PURPOSES ONLY

Guidance Notes

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Guidance Notes

These guidance notes explain the provisions of the RIBA Subconsultant Professional Services Contract 2020 for the appointment of a Subconsultant and provide guidance on what to consider when completing the Contract Details and the Schedule of Services; they do not form part of the Contract.

Summary of the Contract

- The RIBA Subconsultant Professional Services Contract 2020 is divided into four main parts:
 - the Agreement
 - the Contract Details
 - the Contract Conditions
 - Definition of Terms
 - Clauses
 - the Schedule of Services.
- A Contract Checklist is included as an 'aide memoire' for the Subconsultant to confirm with the Architect/Consultant that all of the relevant parts of the Contract have been completed (but does not form part of the Contract).
- The RIBA Subconsultant Professional Services Contract should also include the Head Agreement between the Client and Architect/Consultant together with any Collateral Warranties, etc.
- Additional briefing documents will also form part of the Contract if they are listed in item D of the Contract Details.
- The Contract is between the Architect/Consultant (the Party that wishes to commission the professional services, known as the 'Services') and the Subconsultant (the person or organisation performing the Services). Together they are referred to as the 'Parties' to the Contract.

When to Use this Contract

- The RIBA Subconsultant Professional Services Contract has the same back-to-back terms and limitations as the standard RIBA Professional Services Contracts and is therefore suitable for when an Architect/Consultant wishes, or perhaps is required by the Client, to appoint a Subconsultant to carry out part of the Architect/Consultant's Services, where the Head Agreement is a standard RIBA Professional Services Contract. If the Head Agreement is not a standard RIBA Professional Services Contract, then the consequences of the Architect/Consultant agreeing with the Subconsultant a capped liability, when the Architect/Consultant has not been able to negotiate this capped liability in the Head Agreement, can be severe.

- The Conditions of Contract are derived from the RIBA Concise Professional Services Contract and are compatible with the other RIBA Professional Services Contracts.
- The RIBA Subconsultant Professional Services Contract can be used when one Architect/Consultant is to be subcontracted to another Architect/Consultant.
- The RIBA Subconsultant Professional Services Contract is not suitable for use where the Client appoints subconsultants or specialists directly.
- The RIBA Subconsultant Professional Services Contract is not suitable for the appointment of a Principal Designer as a Subconsultant under the Construction (Design and Management) Regulations 2015. The RIBA recommends that the default choice for the Principal Designer should be the Architect/Consultant, who should be appointed under a separate and distinct Professional Services Contract, such as the *RIBA Principal Designer Professional Services Contract*.
- The RIBA Subconsultant Professional Services Contract is devised as an agreement between the Architect/Consultant and the Subconsultant and is a 'construction contract' to which the Housing Grants, Construction and Regeneration Act 1996 (HGCRA, also known as the Construction Act), as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009, applies.
- The RIBA Subconsultant Professional Services Contract is suitable for commercial work and non-commercial work directly undertaken for a 'consumer client', such as work done to the Client's home.
- The Provision of Services Regulations 2009 define the minimum amount of information which service providers must make available to Clients, including the registered status of service providers (architects or consultants) who will be party to the contract.
- The RIBA Subconsultant Professional Services Contract may be used in conjunction with a subconsultant warranty, which forms a legally binding contract between the Client and the Subconsultant.

Architect/Consultant's Rights and Obligations

- The Architect/Consultant has various obligations under the Contract. The principal ones include:
 - informing the Subconsultant of the Project requirements and of any subsequent changes required and agreeing steps to mitigate the consequences, if any
 - providing the information which is necessary for the proper and timely performance of the Services
 - making decisions and giving approvals as necessary for the performance of the Services
 - paying the Subconsultant for the Services performed.
- The Architect/Consultant also has rights under the Contract. The principal one is the right to suspend or terminate the performance of the Subconsultant's Services.

Subconsultant's Rights and Obligations

- The Subconsultant has various obligations under the Contract. The principal ones include:

- exercising the reasonable skill, care and diligence to be expected of a Subconsultant experienced in the provision of such services for projects of a similar size, nature and complexity to the Project
- performing the Services with due regard to the Project Brief and discharging all the obligations in such a manner that will not cause the Architect/Consultant to be in breach of its obligations under the Head Agreement
- informing the Architect/Consultant in a timely manner of progress in the performance of the Services and, upon becoming aware, of any issue that may materially affect the Project Brief, Project Programme, Construction Cost or quality of the Project, and of any information, decision or action required in mitigation
- collaborating with any Other Client Appointments appointed or otherwise engaged by the Client or Architect/Consultant to perform work or services.

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

- The Subconsultant also has rights under the Contract. The principal ones include:
 - the right to retain copyright in the drawings and documents produced in either paper or digital formats for the purpose of performing the Services unless the Architect/Consultant has had to pass these on to the Client (the Architect/Consultant is given a licence to copy and use the drawings and documents for purposes related to the construction of the Project or its subsequent use or sale)
 - the right to suspend or terminate performance of the Services due to the Architect/Consultant's failure to pay any fees or other amounts due.

The Agreement

- The Agreement is the part of the Contract that is signed by both Parties and records the Architect/Consultant's and the Subcontractor's rights and obligations under the Contract. The Agreement should not be dated until both Parties have duly signed/executed.
- The Parties choose whether to sign the Agreement as a simple contract or as a deed, following the same method of execution as the Head Agreement. The choice determines the limitation period within which a Party can bring a claim for breach of contract, which is stated to be:
 - simple contract: 6 years from the date of Practical Completion or the date of completion of the last Services, whichever is the earlier
 - deed: 12 years from the date of Practical Completion or the date of completion of the last Services, whichever is the earlier.
- The choice of whether the Agreement section of the Contract is to be signed as a 'simple contract' or as a 'deed' also determines the formalities for executing the Contract.

Simple contract:

- can be signed either by individuals or in a representative capacity (e.g. for a company, LLP, etc.)
- when signed by individuals, there is no requirement for the signatures to be witnessed (although in the interests of certainty the Contract does allow for a witness to sign the Agreement section)

- when signed in a representative capacity, the Agreement section needs to be signed by two directors, partners or members, or a director and a company secretary, or a single director and witnessed by a third party.

Deed:

- can be signed either by individuals or in a representative capacity (e.g. for a company, LLP, etc.)
- when signed by individuals, there is a requirement for the signatures to be witnessed (a witness should be aged 18 or over and should not be a Party to the Contract)
- when signed in a representative capacity, the Agreement section needs to be signed by two directors, partners or members, or a director and a company secretary, or a single director and witnessed by a third party.
- In certain instances, the Contract may be deemed to be legally binding even if the Agreement section is not signed. For example, a legally binding contract could exist if the Architect/Consultant has instructed the Subconsultant to commence or undertake work on the basis of the unsigned Contract and the Subconsultant has acted on those instructions.
- The Subconsultant needs to obtain the Architect/Consultant's consent to subcontract performance of the Subconsultant's Services, although consent does not diminish the Subconsultant's liability to the Architect/Consultant, regardless of the fact that the work may be subcontracted.
- The Architect/Consultant should ensure that it has obtained the Client's consent to subcontract the performance of any of the Architect/Consultant's Services to the Subconsultant.

Completing the Contract Details

When completing the Contract Details, where an option APPLIES tick the box to confirm that the section has been adopted. Any amendments made by hand to the Contract should be initialled by both Parties.

The Contract Details provide the specific details of the Project:

- **Items A and B – the Architect/Consultant and the Subconsultant:** Provide details of the Architect/Consultant, the Architect/Consultant's named representative, the Subconsultant and the Subconsultant's primary point of contact. Note that if these details are changed at a later date, it is important that the Parties inform each other and agree in writing.
- **Item C – Site Address:** Provide the address of the site where the Project is to be carried out.
- **Item D – Project Brief:** Provide a description of the Project and a statement of the requirements for the Project for which the subcontract Services are being provided. The target Construction Cost and the key dates for commencement and completion of subcontract works or for the commencement and completion of the building works can be inserted. Include details of any additional briefing documents that will also form part of the Contract. The Project Brief may be updated from time to time, where agreed between the Architect/Consultant and the Subconsultant.
- **Item E – Other Client Appointments:** Give the details of any other consultant appointments (which could be individuals or organisations) or services appointments to be made by the

Client or the Architect/Consultant to undertake work in connection with the Project. For example, appointments may include structural and building services engineers, cost consultants, etc.

• **Items F, G, H and I – Basic Fee, Time Charges, Expenses and Payment:** Specify:

- the basis for determining the calculation of the Basic Fee (excluding VAT), e.g. a specified percentage applied to the Construction Cost, a fixed lump sum, time charges, design cost per square metre (gross or net) or any other agreed method (item F)
- the intended number and/or frequency of meetings and visual site inspections that the Subconsultant is going to attend during the Project (item F)
- the rates for any time charges (item G)
- the arrangements for charging for expenses and disbursements (item H)
- the payment frequency of the fees (item I).

To ensure that the Subconsultant's accounts issued to the Architect/Consultant are effective as Payment Notices as set out in clause 5.12, each invoice issued by the Subconsultant should incorporate the following wording:

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

- **Item J – Professional Indemnity Insurance:** State the amount of professional indemnity insurance to be maintained for the Project, and any specific limitations in respect of claims arising on account of specific risks. The amount of professional indemnity insurance to be maintained for the Project should be reasonable in relation to the risks and should pass the reasonableness test under the Unfair Contract Terms Act 1977. Consideration should be given to the extent and level of cover appropriate in view of the Architect/Consultant's liabilities under the Head Agreement for work carried out by the Subconsultant.
- **Item K – Dispute Resolution:** The Parties may choose which dispute resolution method(s) they will use should a dispute arise. Adjudication is available to either Party to select at any time as a statutory right. Below is a brief description of each method:
 - **Mediation** involves a third party helping the Parties to try to come to an agreement resolving their dispute. If successful, mediation can be less expensive than other methods of dispute resolution and is therefore encouraged by the courts. In mediation the Parties generally pay their own costs.
 - **Adjudication** involves a third party providing an independent decision on the dispute and is available to the Parties if the Contract is a construction contract under the Housing Grants, Construction and Regeneration Act 1996. The decision is binding in law unless and until the dispute is determined by arbitration or litigation following referral by either Party. Adjudication is generally a faster process, but is not usually recommended for complex issues. The Parties pay their own costs unless they have agreed otherwise.

The Adjudicator's costs are allocated at the Adjudicator's discretion, the greater part usually being allocated to the losing Party.

- **Arbitration** a confidential process which is an alternative to litigation and involves a third party (or parties) delivering a final and binding decision. Arbitration can only involve two parties, unless there is an express agreement to the contrary, so it would not normally be appropriate for multiparty disputes.
- **Litigation** is an alternative to arbitration and involves a court delivering a final and binding decision. Litigation is public and decisions may be challenged in higher courts. The greater part of the costs are usually allocated to the losing Party.

If the Parties cannot reach agreement on a person to act as Mediator, Adjudicator or Arbitrator, either Party may apply for a nomination or appointment to be made by the Royal Institute of British Architects.

The Architect/Consultant can refer a complaint to the person named in item B of the Contract Details under the Subconsultant's internal complaints procedure, which will be provided upon request. The Architect/Consultant may also, or alternatively, refer a complaint to the appropriate professional body if the Subconsultant's conduct or competence appears to fall short of the standards in the relevant code(s) of professional conduct.

- **Item L – Information Formats:** If the Subconsultant is producing drawings and documents for the Project using computer aided design (CAD), any other proprietary software or building information modelling (BIM), these will normally be provided to the Architect/Consultant in PDF format only, unless an alternative format has been agreed and set out in item L of the Contract Details.
- **Item M – Supplementary Rights:** Set out the additional documents which should be appended to the agreement, such as Collateral Warranties and Third Party Rights Schedules.

The Contract and its Schedule of Services are designed to be used with such of the following supplementary documents as may be selected in item M of the Contract Details. The RIBA recommends the use of the following:

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

All of the abovementioned documents are available from the CIC at www.cic.org.uk. These and any other forms selected in item M of the Contract Details should be attached as numbered appendices to the Contract.

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

The Schedule of Services

- The Schedule of Services is used to define the Services to be performed by the Subconsultant and maps the Services to the stages in the RIBA Plan of Work.

- As this form of subcontract can relate to any number of roles and disciplines, the specific services and tasks should be listed in the Schedule of Services for each stage. The Services cover Stages 0 to 6. Services required as part of any ongoing (long-term) Stage 7 activities are not listed as these services will be commissioned as a separate professional services or operating contract. Performance of the Services must be in accordance with the normal standards of the Subconsultant's profession.
- The Services should be compatible with the Architect/Consultant's obligations under the Head Agreement and accurately reflect the Architect/Consultant's requirements and the Services that the Subconsultant has agreed to provide, particularly where the Subconsultant is to perform restricted services, such as only specifying specialist work.

Contract Conditions

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

The RIBA Subconsultant Professional Services Contract 2020 is endorsed by the following organisations:



RIAS

Royal Incorporation of
Architects in Scotland

RSAW

Royal Society of Architects
in Wales



Royal Society of
Ulster Architects



CIAT

Chartered Institute of
Architectural Technologists

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Whilst RIBA has taken every effort to ensure the accuracy and quality of information and guidance within this Contract, RIBA makes no representations, warranties or guarantees, whether express or implied, that the content of the Contract is accurate, complete or up-to-date.

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Subconsultant
Professional Services
Contract 2020





Contract Checklist

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

	YES
Has the Project Brief and statement of requirements been agreed?	<input type="checkbox"/>
Has the target Construction Cost been agreed/advised?	<input type="checkbox"/>
Has the target Project Programme been agreed?	<input type="checkbox"/>
Have any Other Client Appointments been agreed?	<input type="checkbox"/>
Have the fees and expenses and payment frequency been agreed?	<input type="checkbox"/>
Has the amount of professional indemnity insurance that is to be allowed for the Project been agreed, with due consideration to the Architect/Consultant's liabilities under the Head Agreement in respect of work to be carried out by the Subconsultant, and has this been arranged?	<input type="checkbox"/>
Has the Subconsultant explained its internal complaints procedure to the Architect/Consultant and has a dispute resolution process been agreed in case something goes wrong?	<input type="checkbox"/>
Has the Schedule of Services been completed and agreed?	<input type="checkbox"/>
Have the details of the Head Agreement and Collateral Warranties been included?	<input type="checkbox"/>
Have all the Contract Details been completed?	<input type="checkbox"/>



Agreement

This Agreement is between:

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

[Redacted text box]

AND

the Subconsultant (refer to item B of the Contract Details for full information)

[Redacted text box]

who agree as follows:

- The Subconsultant shall undertake the Services set out in the Schedule of Services and shall perform the Subconsultant's obligations in accordance with the terms of the Contract.
- The Architect/Consultant shall pay the Subconsultant the fees and expenses set out in the Contract Details for the Services and shall perform the Architect/Consultant's obligations in accordance with the terms of the Contract.
- The Contract is the RIBA Subconsultant Professional Services Contract 2020.

Signed/Executed as a:

simple contract

deed

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

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

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

Name:

[Redacted text box]

Signature:

[Redacted text box]

Architect/Consultant's signature witnessed by:

Name:

[Redacted text box]

Address:

[Redacted text box]

[Redacted text box]

[Redacted text box]

Signature:

[Redacted text box]



OR

Architect/Consultant **is** a registered company/LLP

Company registration number:

First signatory (Director/Company Secretary/Partner/Member):

Name:

Signature:

Architect/Consultant's signature witnessed by:

Name:

Address:

Signature:

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

Name:

Signature:

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

Subconsultant **is not** a registered company/LLP

Name:

Signature:

Subconsultant's signature witnessed by:

Name:

Address:

Signature:

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OR

Subconsultant **is** a registered company/LLP

Company registration
number:

VAT registration
number:

First signatory (Director/Company Secretary/Partner/Member):

Name:

Signature:

Subconsultant's signature witnessed by:

Name:

Address:

Signature:

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

Name:

Signature:

This Agreement is dated and delivered on:

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Contract Details

A. The Architect/Consultant

Name:

Address:

Registered address
(if different):

Telephone number:

Email address:

Named representative (*insert the name of a representative with authority to act on behalf of the Architect/Consultant for all purposes under the Contract*):



B. The Subconsultant

Name:

[Redacted text box]

Address:

[Redacted text box with dotted lines]

Registered address
(if different):

[Redacted text box with dotted lines]

Telephone number:

[Redacted text box]

Email address:

[Redacted text box]

Point of contact (*insert the name of a primary point of contact with authority to act on behalf of the Subconsultant for all purposes under the Contract*):

[Redacted text box]

The name of the person that the Architect/Consultant should contact if it wishes to invoke the Subconsultant's internal complaints procedure:

[Redacted text box]

C. Site Address

[Redacted text box with dotted lines]

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D. Project Brief

Project description and statement of requirements:

Area for project description and statement of requirements, overlaid with a large diagonal watermark reading "FOR CONSULTATION PURPOSES ONLY".

Additional briefing documents provided (include reference numbers and dates):

Document	Reference number	Date

Continue on a separate sheet if necessary.

Construction Cost

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

£

Project Programme

Key project dates, e.g. commencement/completion of subcontract works or commencement/completion of building works (insert as appropriate):

Item	Target date

Continue on a separate sheet if necessary.

Other services:

Area for detailing other services with horizontal dotted lines.

Continue on a separate sheet if necessary.

VAT

VAT applies or does not apply to the Basic Fee (please specify):

- VAT applies
- VAT does not apply

Meetings

The Subconsultant shall attend meetings and site inspections either (please specify):

- as required under the Head Agreement
- OR
- as set out below

The Subconsultant shall attend the following meetings during the Project:

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

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

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

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

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

by the addition of % to the Basic Fee

other (*please specify*)

.....

.....

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

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

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

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

I. Payment

Payment Notices for instalments of fees, time charges and expenses shall be issued and paid:

on a monthly basis

at the end of each stage

in accordance with the agreed drawdown schedule dated ref:

other (*please specify*)

J. Professional Indemnity Insurance

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

£

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

pollution or contamination, with an aggregate limit of
 annually OR per project

£

asbestos, with an aggregate limit of
 annually OR per project

£

cladding or fire-related issues,² with an aggregate limit of
 annually OR per project

£

other^{2,3} (please specify)

with an aggregate limit of

£

annually OR per project

K. Dispute Resolution

Mediation

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

Adjudication

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

² It is important to ensure that this wording reflects the wording of any restrictions in the Subconsultant's professional indemnity insurance policy.

³ Specify other material exclusions or restrictions under the Subconsultant's professional indemnity insurance that are relevant to the Project.

Final Dispute Resolution Process

The Parties may select either arbitration or litigation. If the Parties do not make a selection then litigation shall be the final dispute resolution process.

Arbitration

The Parties select arbitration for final dispute resolution.

 Applies

OR

Litigation

The Parties select court proceedings for final dispute resolution.

 Applies

If the Parties cannot reach agreement on a person to act as Mediator, Adjudicator or Arbitrator, either Party may apply for a nomination or appointment to be made by the Royal Institute of British Architects.

L. Information Formats

Drawings and documents produced by the Subconsultant using computer aided design (CAD), any other proprietary software or building information modelling (BIM) in connection with the Services shall be provided in the following format:

Drawings and documents produced by the Subconsultant shall be provided to the Architect/Consultant in PDF format only.

OR

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

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

OR

Information produced by the Subconsultant shall be provided to the Architect/Consultant in accordance with the agreed BIM protocol dated ref:

M. Supplementary Rights

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

Collateral Warranty in favour of the Client

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

OR

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

- Collateral Warranty in favour of any first purchaser of a non-residential freehold interest in the Project up to a maximum number of such warranties
 - on the terms of the CIC Collateral Warranty: Consultant – Purchaser/Tenant (2018)
 - OR
 - on the terms attached hereto as Appendix provided such terms are substantially no more onerous than the above
- Collateral Warranty in favour of any first purchaser of a non-residential leasehold interest in the Project up to a maximum number of such warranties
 - on the terms of the CIC Collateral Warranty: Consultant – Purchaser/Tenant (2018)
 - OR
 - on the terms attached hereto as Appendix provided such terms are substantially no more onerous than the above
- Collateral Warranty in favour of any financier of the Project
 - on the terms of the CIC Collateral Warranty: Consultant – Funder (2018)
 - OR
 - on the terms attached hereto as Appendix provided such terms are substantially no more onerous than the above
- other (*please specify*)

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As an alternative to Collateral Warranties, if requested by the Architect/Consultant then third party rights are granted in favour of those parties indicated below:

- Third party rights pursuant to the Contracts (Rights of Third Parties) Act 1999 are granted in favour of:
 - (1) on the terms attached hereto as Appendix
 - (2) on the terms attached hereto as Appendix
 - (3) on the terms attached hereto as Appendix

N. Head Agreement

The Architect/Consultant shall either (*please specify*):

- attach a copy of the Head Agreement (or redacted version of the Head Agreement) to the Contract, attached hereto as Appendix
- OR
- make available a copy of the Head Agreement (or redacted version of the Head Agreement) to the Subconsultant upon request

Contract Conditions

Definition of Terms

Architect⁴/Consultant: the person or organisation appointed by the Client under the Head Agreement.

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

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

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

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

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

Construction Cost: the Client's target cost for the building works as specified in the Project Brief, as set out in item D of the Contract Details (being the Client's initial budget), and subsequently the latest estimate approved by the Client or, where applicable, the actual cost of constructing the Project upon agreement or determination of the final account for the Project. The Construction Cost includes the cost of any equipment and/or materials provided or to be provided by the Client to the Contractor for installation as part of the Project, and any direct works carried out by or on behalf of the Client. The Construction Cost excludes VAT, professional fees, the cost of resolution of any dispute, the Client's legal and in-house expenses and any loss and/or expense payments made to the Contractor and is not affected by any liquidated damages deducted by the Client.

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

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

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

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

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

⁴ 'Architect' is a legally protected title in the UK, which can only be used by people registered under the Architects Act 1997 with the Architects Registration Board (ARB).



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

Practical Completion: when the works are certified as having achieved 'Practical Completion' under the terms of the Building Contract.

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

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

Project Programme: the Client's initial programme for the Project, as specified in item D of the Contract Details and including any revisions made by the Architect/Consultant and approved by the Client.

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

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

Subconsultant: the person or organisation that the Architect/Consultant appoints to perform the Services.

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

FOR CONSULTATION PURPOSES ONLY

Clauses

1. General Interpretation

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

2. Architect/Consultant's Responsibilities

- 2.1 The Architect/Consultant shall:
- 2.1.1 inform the Subconsultant of the Project Brief and the Services required and, as soon as reasonably practicable, of any subsequent changes required and agree steps to mitigate the consequences of such changes
 - 2.1.2 provide, free of charge, information in the Architect/Consultant's possession, or which is reasonably obtainable, and which the Subconsultant reasonably advises is necessary for the proper and timely performance of the Services, and the Subconsultant shall be entitled to rely on such information
 - 2.1.3 make decisions and give approvals as necessary for the proper and timely performance of the Services
 - 2.1.4 appoint or arrange for the Client to appoint or otherwise engage any Other Client Appointments required to perform work or services under separate agreements and require them to collaborate with the Subconsultant. The Architect/Consultant shall confirm in writing to the Subconsultant the work or services to be performed by any Other Client Appointments.
- 2.2 The Architect/Consultant may issue reasonable instructions to the Subconsultant. The Architect/Consultant's named representative, as indicated in item A of the Contract Details, shall have full authority to act on behalf of the Architect/Consultant for all purposes in connection with the matters set out in the Contract.

- 2.3** The Architect/Consultant acknowledges that the Subconsultant does not warrant:
- 2.3.1** compliance with the Project Programme and Construction Cost, which may need to be reviewed for, but not limited to:
 - (a) variations instructed by the Architect/Consultant
 - (b) fluctuations in market prices
 - (c) delays caused by any Other Client Appointments, the Contractor or any other factor that is not the responsibility of the Subconsultant under the Contract
 - (d) the discovery at any time of previously unknown factors which were not reasonably foreseeable at the date of the Contract
 - 2.3.2** the competence, performance, work, services, products or solvency of any Other Client Appointments or the Contractor.
- 2.4** The Architect/Consultant shall not disclose Confidential Information unless:
- 2.4.1** disclosure is necessary to take professional advice in relation to the Contract or the Services
 - 2.4.2** it is already in the public domain other than due to wrongful use or disclosure by the Architect/Consultant
 - 2.4.3** disclosure is required by law or because of disputes arising out of or in connection with the Contract.

3. Subconsultant's Responsibilities

- 3.1** In the performance of the Services and discharging all the obligations under the Contract, the Subconsultant will exercise the reasonable skill, care and diligence to be expected of a Subconsultant experienced in the provision of such services for projects of a similar size, nature and complexity to the Project and discharging all the obligations under the Contract in such a manner that shall not cause the Architect/Consultant to be in breach of its obligations under the Head Agreement, as referred to in item N of the Contract Details, or any Collateral Warranties or Third Party Rights Schedules referred to in item M of the Contract Details and of which the Subconsultant has been made aware. Notwithstanding anything that may appear elsewhere to the contrary, whether under this Contract or otherwise, the Subconsultant's duties and obligations shall be deemed to be subject to the exercise of such reasonable skill, care and diligence and nothing contained in this Agreement or elsewhere shall be construed as imposing on the Subconsultant any greater duty than the exercise of reasonable skill, care and diligence.
- 3.2** The Subconsultant shall:
- 3.2.1** perform the Services with due regard to the Project Brief
 - 3.2.2** inform the Architect/Consultant of progress in the performance of the Services and, upon becoming aware, of any issue that may materially affect the Project Brief, Project Programme, Construction Cost or quality of the Project, and any information, decision or action required in mitigation
 - 3.2.3** act on behalf of the Architect/Consultant in the matters set out in the Contract or in relation to any project procedures agreed with the Architect/Consultant from time to time, subject to the Architect/Consultant's prior written approval
 - 3.2.4** collaborate with any Other Client Appointments named in the Contract Details or any other parties who might reasonably be expected to perform work or services and, where appropriate, coordinate relevant information received from such persons with the Subconsultant's design, but the Subconsultant shall not be responsible for the content of the information received

3.2.5 make no material alteration to the Services or an approved design without the prior written consent of the Architect/Consultant, except in an emergency, whereupon the Subconsultant shall confirm such actions to the Architect/Consultant without delay.

3.3 The Subconsultant shall not disclose Confidential Information unless:

3.3.1 disclosure is necessary for the proper performance of the Services, or in order to take professional advice in relation to the Contract or the Services, or in order to obtain/maintain insurance cover as required by the Contract

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

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

4. Assignment, Subcontracting and Supplementary Rights

4.1 Neither the Architect/Consultant nor the Subconsultant shall at any time assign the benefit of the Contract or any rights arising under it without the prior written consent of the other. Such consent shall not be unreasonably withheld or delayed.

4.2 The Subconsultant shall not subcontract performance of any part of the Services without the prior consent of the Architect/Consultant, and such consent shall not be unreasonably withheld or delayed. Any such subcontracting shall not relieve the Subconsultant of responsibility for carrying out and completing the Services in accordance with the Contract. Such consent shall not be required for agency or self-employed staff.

4.3 In the event that any of the Services are further subcontracted or assigned by the Subconsultant to a sub-subconsultant or assignee (as the case may be), and if so requested by the Architect/Consultant, the sub-subconsultant or assignee shall enter into Collateral Warranties in favour of the Architect/Consultant and in favour of the Client on terms to be agreed or, in the absence of such agreement, in the form of a CIC Collateral Warranty: Sub-consultant – Client (2018) (as consequentially amended to reflect the contractual arrangement).

4.4 If the Architect/Consultant enters into one or more Collateral Warranties or grants any third party rights to any person or persons having an interest in the Project and the work included within the scope of such Collateral Warranties or third party rights is wholly or partially carried out by the Subconsultant pursuant to the Contract, then the Subconsultant will, on demand by the Architect/Consultant, enter into Collateral Warranties or third party rights agreements in favour of the same parties in respect of Services under the Contract in the form indicated in item M of the Contract Details. On demand by the Architect/Consultant, the Subconsultant shall further enter into a Collateral Warranty in favour of the Client in respect of its work on the Project in the form indicated in item M of the Contract Details.

4.5 Except where indicated in item M of the Contract Details, there is no intention to grant rights to third parties pursuant to the Contracts (Rights of Third Parties) Act 1999, other than to lawful assignees.

5. Fees and Expenses

5.1 The fees for performance of the Services and/or any additional services shall be calculated in accordance with this clause and as specified in the Contract Details.

5.2 The Basic Fee for performance of the Services shall be as specified in item F of the Contract Details and may be any or a combination of:

- 5.2.1 the specified percentage or percentages applied to the Construction Cost. Until the actual cost of the building work is known, the percentages are applied to the latest approved estimate of the cost of the building work or the Building Contract sum. The total fee shall be adjusted based on the final Construction Cost on completion of the Services. The cost shall exclude VAT, fees and any claims made by or against the Contractor
- 5.2.2 the specified lump sum or sums
- 5.2.3 the time charges ascertained by multiplying the time reasonably spent in the performance of the Services by the specified hourly or daily rate for the relevant personnel as set out in item G of the Contract Details. Time 'reasonably spent' includes the time spent in connection with performance of the Services in travelling from and returning to the Subconsultant's office
- 5.2.4 any other agreed method.
- 5.3 Lump sums and rates for time charges, mileage and printing shall be revised every 12 months in accordance with changes in the Consumer Prices Index. Each 12-month period commences on the anniversary of the date of the Contract.
- 5.4 The Basic Fee shall be adjusted:
- 5.4.1 including due allowance for any loss and/or expense, if material changes are made to the Project Brief and/or the latest approved estimate of the cost of the building work and/or the Project Programme save to the extent that any changes arise from a breach of the Contract by the Subconsultant and/or the Services are varied by agreement
- 5.4.2 where percentage fees in accordance with clause 5.2.1 apply, to compensate the Subconsultant for any reduction of the Construction Cost arising solely from deflationary market conditions not prevailing at the date of the Contract
- 5.4.3 if the Architect/Consultant instructs a reduction in the Project Brief during the performance of the Services, or there is a reduction in the Construction Cost due to deflationary market conditions, the figure to which the percentage Basic Fee shall be applied, up to the date of the instruction or reduction, shall be the current professionally prepared estimate of the Construction Cost or the lowest acceptable tender (whichever is later) immediately prior to the instruction or reduction
- 5.5 Subject to clause 5.6, if the Subconsultant is involved in extra work or incurs extra expense for reasons beyond the Subconsultant's reasonable control, additional fees shall be calculated on a time basis in accordance with clause 5.2.3 at the rate(s) set out in item G of the Contract Details where:
- 5.5.1 the cost of any work, installation or equipment, in connection with which the Subconsultant performs Services, is not included in the Construction Cost
- 5.5.2 the Subconsultant is required to vary any Service already commenced or completed or to provide a new design after the Architect/Consultant has authorised development of an approved design
- 5.5.3 the nature of the Project reasonably requires that substantial parts of the design are not completed or that they are specified provisionally or approximately before construction commences
- 5.5.4 performance of the Services is delayed, disrupted or prolonged.
- 5.6 The Subconsultant shall inform the Architect/Consultant on becoming aware that clause 5.5 shall apply and no additional fees are to be incurred without the agreement of the Architect/Consultant. Clause 5.5 shall not apply to the extent that any change or extra work or expense arises from a breach of the Contract by the Subconsultant.
- 5.7 The Architect/Consultant shall reimburse the Subconsultant for expenses and disbursements in the manner specified in item H of the Contract Details.

- 5.8 The Subconsultant shall maintain records of time spent on Services performed on a time basis and for any expenses and disbursements to be reimbursed at net cost. The Subconsultant shall make such records available to the Architect/Consultant on reasonable request.
- 5.9 Where a tender or tenders for work or services are invited in connection with the Project but no tender is submitted or accepted, the Subconsultant shall be entitled to fees due up to and including the receipt of tenders based on the construction work or that part of it relating to the Services current at the date of tender.

Payment Notices

- 5.10 The Subconsultant shall issue Payment Notices at the intervals specified in item I of the Contract Details.
- 5.11 In the event of non-payment of any amount properly due to the Subconsultant under the Contract, the Subconsultant is entitled to interest on the unpaid amounts under the provisions of clause 5.22. The Subconsultant may:
- 5.11.1 suspend use of the copyright licence under the provisions of clause 6
 - 5.11.2 suspend or terminate performance of the Services and other obligations under the provisions of clause 9
 - 5.11.3 commence dispute resolution procedures and/or debt recovery procedures.
- 5.12 Each Payment Notice shall comprise the Subconsultant's account, setting out any accrued instalments of the fee and other amounts due, less any amounts previously paid, and stating the basis of calculation of the amount specified, which shall be the Notified Sum. The payment due date shall be the date of the Subconsultant's Payment Notice. Instalments of fees shall be calculated on the Subconsultant's reasonable estimate of the percentage of completion of the Services or stages or other services or any other specified method.
- 5.13 The Architect/Consultant shall pay the Notified Sum within 14 days of the date of issue of the relevant Payment Notice (which shall be the Final Date for Payment) unless:
- 5.13.1 the Subconsultant has become insolvent (as defined in the Housing Grants, Construction and Regeneration Act 1996) at any time between the last date on which the Architect/Consultant could have issued the notice under clause 5.16 and the Final Date for Payment
 - 5.13.2 the Architect/Consultant has issued a notice under clause 5.16.
- 5.14 The Architect/Consultant shall not delay payment of any undisputed part of the Notified Sum.
- 5.15 The Subconsultant shall submit the final Payment Notice for fees and any other amounts due when the Subconsultant reasonably considers the Services have been completed.

Notice of Intention to Pay Less

- 5.16 If the Architect/Consultant intends to pay less than the Notified Sum, the Architect/Consultant shall give a written notice to the Subconsultant, not later than 5 days before the Final Date for Payment, specifying:
- 5.16.1 the amount that the Architect/Consultant considers to be due on the date the notice is served
 - 5.16.2 the basis on which that sum is calculated
 - 5.16.3 the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it.
- 5.17 The Architect/Consultant shall, on or before the Final Date for Payment, make payment to the Subconsultant of the amount, if any, specified in the written notice.

- 5.18** If no such notice is given, the amount due and payable shall be the Notified Sum stated as due in the Subconsultant's account. The Architect/Consultant shall not delay payment of any undisputed part of the account.
- 5.19** If the Architect/Consultant issues such a notice and the matter is referred to an Adjudicator who decides that an additional sum, greater than the amount stated in the notice of intention to pay less, is due, the Architect/Consultant shall pay that sum within 7 days of the date of the decision or the date which, in the absence of the notice, would have been the Final Date for Payment, whichever is the later.
- 5.20** The Architect/Consultant shall not withhold any amount due to the Subconsultant under the Contract unless the amount has been agreed with the Subconsultant or has been decided by any tribunal to which the matter is referred as not being due to the Subconsultant. All rights of set-off at common law or in equity, which the Architect/Consultant would otherwise be entitled to exercise, are expressly excluded.
- 5.21** If the performance of any or all of the Services and/or obligations is suspended or terminated, the Subconsultant shall be entitled to:
- 5.21.1** payment of any part of the fee and other amounts properly due to the date of the last instalment and a fair and reasonable amount up to the date of suspension or termination to reflect any work undertaken but not completed at the time of suspension or termination and payment of any licence fee due under clause 6
 - 5.21.2** reimbursement of any loss and/or damages caused to the Subconsultant due to the suspension or the termination, except where the Subconsultant is in material or persistent breach of the obligations under the Contract.
- 5.22** In the event that any amounts are not paid when properly due, the Subconsultant shall be entitled to simple interest on such amounts until the date that payment is received at 8% per year over the dealing rate of the Bank of England, current at the date that payment becomes overdue, together with such costs as are reasonably incurred by the Subconsultant (including costs of time spent by principals, employees and advisers) in obtaining payment of any sums due under the Contract. Any entitlement to interest at the specified rate shall also apply to any amounts that are awarded in adjudication, arbitration or legal proceedings.
- 5.23** The Architect/Consultant or the Subconsultant shall pay to the other Party who successfully pursues, resists or defends any claim or part of a claim brought by the other:
- 5.23.1** such costs as are reasonably incurred (including costs of time spent by principals, employees and advisers) where the matter is resolved by negotiation or mediation
 - 5.23.2** such costs as may be determined by any dispute resolution body to which the matter is referred.
- 5.24** In addition to the fees and expenses, the Architect/Consultant shall pay any VAT chargeable on the Subconsultant's fees and expenses.

6. Copyright and Licence

- 6.1** Subject to clause 6.3, the Subconsultant shall own all intellectual property rights, including the copyright (unless the Architect/Consultant has had to pass copyright to the Client) in the drawings and documents produced in performing the Services, and this clause generally asserts the Subconsultant's moral right to be identified as the author of such work.
- 6.2** No part of any design by the Subconsultant may be registered under the Registered Designs Regulations 2001 by the Architect/Consultant without the written consent of the Subconsultant.

- 6.3 To the extent that fees and other amounts properly due are paid, the Architect/Consultant shall have a licence to copy and use all drawings and documents provided by the Subconsultant in either paper or digital formats only for purposes related to construction of the Project or its subsequent use or sale. They may not be used for reproduction of the design for any part of any extension of the Project or any other project.
- 6.4 Copying or use of the drawings and documents which have been provided in either paper or digital formats by any Other Client Appointments providing services to the Project shall be deemed to be permitted under a sub-licence granted by the Architect/Consultant, whether such drawings and documents were issued by the Architect/Consultant or on the Architect/Consultant's behalf.
- 6.5 The Subconsultant shall be liable to the Architect/Consultant in respect of any reasonably foreseeable and fully mitigated expenses, losses or damages directly suffered by the Architect/Consultant as a result of the work of the Subconsultant being in breach of copyright or any other intellectual rights of any third party.
- 6.6 The Subconsultant shall not be liable for any use of the drawings and documents which have been provided in either paper or digital formats other than for the purpose for which they were prepared and provided by the Subconsultant.
- 6.7 Notwithstanding the above clauses, should the Head Agreement impose obligations on the Architect/Consultant in relation to the copyright in any of the Subconsultant's work produced or to be produced and/or a licence to use such documents, the Subconsultant hereby agrees that it shall give such rights and undertake such obligations in relation to its work to enable the Architect/Consultant to fully comply with the provisions in the Head Agreement.

7. Subconsultant's Liability

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

- 7.3.3 all the persons referred to in this clause are deemed to have paid to the Architect/Consultant such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for that loss and/or damage.
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8. Professional Indemnity Insurance

- 8.1 The Subconsultant shall maintain, until the expiry of the period specified in clause 7.1, professional indemnity insurance with a limit of indemnity not less than the amount or amounts specified in item J of the Contract Details, provided such insurance continues to be offered on commercially reasonable terms to the Subconsultant at the time when the insurance is taken out or renewed. The Subconsultant, when reasonably requested by the Architect/Consultant, shall produce for inspection a broker's letter or certificate confirming that such insurance has been obtained and/or is being maintained.
- 8.2 The Subconsultant shall inform the Architect/Consultant as soon as practicable upon becoming aware that such insurance ceases to be available on commercially reasonable terms or, subsequent to the date of the Contract, any restrictions are attached to the policy or an aggregate limit applies to any matters other than those specified in the Contract Details in order that the Subconsultant and the Architect/Consultant can discuss the best means of protecting their respective positions.
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9. Suspension or Termination

- 9.1 The Architect/Consultant may suspend or terminate performance of any or all of the Services and other obligations under the Contract by giving the Subconsultant at least 7 days' written notice and stating the reason for doing so.
- 9.2 The Subconsultant may suspend or terminate performance of any or all of the Services and other obligations under the Contract by giving the Architect/Consultant at least 7 days' written notice and stating the grounds on which it intends to do so. Such grounds are limited to:
- 9.2.1 the Architect/Consultant's failure to pay any fees or other amounts due by the Final Date for Payment unless, where applicable, the Architect/Consultant has given effective notice under clause 5.16 of the intention to pay less than the amount stated in the Subconsultant's Payment Notice
 - 9.2.2 the Architect/Consultant is in material or persistent breach of its obligations under the Contract
 - 9.2.3 the Subconsultant is prevented from or impeded in performing the Services for reasons beyond the Subconsultant's control
 - 9.2.4 force majeure
 - 9.2.5 any other reasonable grounds for suspension or termination of the Contract.
- 9.3 In the event of suspension or termination, the Subconsultant shall cease performance of the Services and/or other obligations under the Contract in an orderly and economical manner on the expiry of the notice period after receipt or issue of a notice of suspension or termination.
- 9.4 If the reason for a notice of suspension arises from a default:
- 9.4.1 which is remedied within the notice period, the Subconsultant shall resume performance of the Services and other obligations under the Contract within a reasonable period
 - 9.4.2 which is not remedied within the notice period by the defaulting Party, the Contract may be terminated by the non-defaulting Party giving at least 7 days' further written notice.

- 9.5 Where Services are suspended by either Party after serving notice under clause 9.1 or clause 9.2 and not resumed within 6 months, the Subconsultant has the right to treat performance of the Services as ended on giving at least 7 days' further written notice to the Architect/Consultant.
- 9.6 The direct or indirect effect of any period of suspension arising from a valid notice given under clause 9.1 or clause 9.2 shall be taken into account for the purposes of assessing compliance by the Subconsultant with the Project Programme.
- 9.7 Performance of the Services and/or other obligations may be terminated immediately by notice from either Party if:
- 9.7.1 the other Party becomes bankrupt or is subject to a receiving or administration order, and/or goes into liquidation, and/or becomes insolvent (as defined in the Housing Grants, Construction and Regeneration Act 1996), and/or makes any arrangements with creditors
 - 9.7.2 the other Party becomes unable to perform its obligations through death or incapacity.
- 9.8 If the Services to be performed under the Head Agreement are terminated for any reason whatsoever the performance of all Services under this Agreement shall immediately terminate.
- 9.9 On termination of performance of the Services and/or other obligations under the Contract, a copy of any drawings and documents produced pursuant to the Services and not previously provided by the Subconsultant to the Architect/Consultant shall be delivered to the Architect/Consultant by the Subconsultant, subject to the terms of the licence under clause 6.3 and payment of any outstanding fees and other amounts due plus the reasonable expenses of the Subconsultant.

10. Dispute Resolution

Mediation

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

Adjudication

- 10.2 Either Party may give notice at any time of its intention to refer a dispute or difference to an Adjudicator.
- 10.3 Referral of the dispute to an Adjudicator shall be made within 7 days of the issue of the notice.
- 10.4 If the Parties cannot reach agreement on a person to act as Adjudicator, either Party may apply for a nomination or appointment to be made by the Royal Institute of British Architects.
- 10.5 The adjudication rules shall be as stated in item K of the Contract Details.
- 10.6 The dispute may be referred by either Party to the final resolution process, as set out in item K of the Contract Details.

Arbitration

- 10.7 Where it is stated in item K of the Contract Details that arbitration applies as an alternative to litigation:

- 10.7.1** without prejudice to any right of adjudication, where in item K of the Contract Details an arbitration agreement is made and either Party requires a dispute or difference (except in connection with the enforcement of any decision of an Adjudicator) to be referred to arbitration then that Party shall serve on the other Party a notice of arbitration to that effect and the dispute or difference shall be referred to a person to be agreed between the Parties. If the Parties cannot reach agreement on a person to act as Arbitrator within 14 days of the date on which the notice is served, either Party may apply for a nomination or appointment to be made by the Royal Institute of British Architects
- 10.7.2** the Architect/Consultant or the Subconsultant may refer to litigation any claim for a financial remedy which does not exceed the financial limit provided by order made under section 91 of the Arbitration Act 1996
- 10.7.3** in such arbitration the Construction Industry Model Arbitration Rules (CIMAR) current at the date of the referral shall apply
- 10.7.4** the Arbitrator shall not have the power referred to in section 38(3) of the Arbitration Act 1996.

Litigation

- 10.8** Where it is stated in item K of the Contract Details that litigation applies, either Party may start court proceedings to settle a dispute.
- 10.9** Notwithstanding clauses 10.1 to 10.8 above, the Architect/Consultant may require any dispute under this Contract to be joined with and determined in accordance with any existing or proposed dispute resolution process under the Head Agreement if the Architect/Consultant, acting reasonably, is of the view that the dispute under this Contract touches and concerns the subject matter of the existing or proposed Head Agreement dispute.

11. Information Formats

- 11.1** Where produced using CAD, BIM or other proprietary software, drawings and documents shall be provided to the Architect/Consultant in PDF format only, unless an alternative format has been agreed and set out in item L of the Contract Details.
- 11.2** Without prejudice to the Subconsultant's obligations under the Contract, the Subconsultant does not warrant, expressly or impliedly, the integrity of any electronic data delivered in accordance with the provisions of item L of the Contract Details.
- 11.3** The Subconsultant shall have no liability to the Architect/Consultant in connection with any corruption or any unintended amendment, modification or alteration of the drawings and documents in digital format which occurs after they have been issued by the Subconsultant.

Schedule of Services

The specific services that the Subconsultant will carry out at each stage of the Project are listed below. The Services will be undertaken in accordance with the stages defined in the RIBA Plan of Work, provided that clause 3.1 and clause 3.2 of the Contract Conditions shall always apply.

Stage 0 – Strategic Definition

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

Continue on a separate sheet if necessary.

Stage 1 – Preparation and Briefing

Continue on a separate sheet if necessary.



Stage 2 – Concept Design

Continue on a separate sheet if necessary.

Stage 3 – Spatial Coordination

Continue on a separate sheet if necessary.

Stage 4 – Technical Design

Continue on a separate sheet if necessary.

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Stage 5 – Manufacturing and Construction

Continue on a separate sheet if necessary.

Stage 6 – Handover

Continue on a separate sheet if necessary.

Stage 7 – Use

Services required as part of any ongoing (long-term) Stage 7 – Use activities are not listed. It is anticipated that such services will be commissioned as a separate professional services or operating contract.

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Other Services

Continue on a separate sheet if necessary.

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