

## COMPANY C

Your ref:

Saltash Town Council

The Guildhall  
12 Lower Fore Street  
Saltash  
Cornwall  
PL12 6JX

29 October 2021

**Re: Saltash Library, Callington Road, Saltash, Cornwall, PL12 6DX**

It was a pleasure to speak with you earlier this week. I write to confirm that I would be very pleased to provide Architectural/Building Surveying services for your proposed survey and project work at the above property. I outline my understanding of your requirements and provide an indication of our fees below.

Saltash Library was designed by modernist architect Royston Summers and constructed in the early 1960s. As part of Cornwall's devolution programme in 2019 the library was safeguarded by transferring to Saltash Town Council. Now Grade 2 listed since early 2021, the building is in need of refurbishment.

This fee proposal is in two parts:-

1. Condition/Maintenance Survey
2. Project Work

### **1. Condition/Maintenance Survey**

To: Carry out Condition/Maintenance Survey of the building, excluding external areas; preparation of report and budget costings.

Fee: £3,000+VAT

Note: This excludes the hire of any access equipment necessary to inspect high-level areas if required. We can arrange this access, but invoices will be addressed to The Council.

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### 2. Project Work

I enclose a document headed '*Building Surveyor Services; Construction*', which explains the various stages and processes which will be carried out on your behalf. In summary, our work will include the following:

3. Taking a detailed brief from you.
4. Giving general advice in respect of the works, further consultants, budget costs and other preparatory work.
5. Organising for any relevant tests to be carried out, i.e. Asbestos Survey.
6. Dealing with any relevant statutory consents, including Planning Permission.
7. Preparation of specifications and all necessary drawings.
8. Obtaining Building Regulations Approval.
9. Preparation of tender documentation and carrying out tender procedure.
10. Analysis of tenders and reporting.
11. Preparation of contract documentation.
12. Contract administration, valuing works in progress and issuing Certificates of Payment and agreeing final account.
13. Routine visits to site and organising the final handover of the project.

Services will be charged as a scale fee calculated on the total construction costs. For your project we will be delighted to offer our services at a rate of 15% of the total construction costs. NB: This percentage fee relates to a contract value of >£100K. Should the extent of work be lower than this we reserve the right to amend the fee structure for this element of work.

If the work is not fully executed, or you only wish for some of the stages to be carried out on your behalf, then the fee will be split on a proportional basis as per the following table.

The first column relates to the document headed "*Building Surveyor Services; Construction*", the second column relates to the percentage apportioned to that stage with the third column being an accumulative percentage of the total scale fee.

Ref.	Stage	Proportion of fees %	Cumulative fees as % total
1.0	Preparation	10%	10%
2.0	Design (Outline; incl. Planning)	25%	35%
3.0	Design (Detailed; incl. Building Regulations)	15%	50%
4.0	Pre-construction (incl. tender)	20%	70%
5.0 & 6.0	Construction & Use	30%	100%

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At the Preparation Stage we would usually bill in the first instance based upon an hourly rate, until a budget cost or construction cost has been agreed, at which time the fees would be adjusted.

We usually issue invoices monthly or upon achievement of a particular stage, according to the size and duration of the project.

Our fee proposal does not include for any other consultant involvement, e.g. Structural Engineer or Mechanical and Electrical Designers or Party Wall Surveying but at this stage I do not think that they will be required although I have yet to visit the property. We will obtain quotations from all external consultants for your acceptance before commencement, if required.

We may need to obtain a measured survey of your property and we would normally employ specialist land surveyors to do this on the basis that they can do it quicker and more economically.

Incidental expenses and disbursements will be charged at costs as identified in the attached information sheet. All costs including incidental expenses and disbursements will be subject to VAT at the standard rate.

The 2015 Construction (Design and Management) Regulations require a Principal Designer to be appointed for the project. The most rational way of incorporating these additional responsibilities, is for \_\_\_\_\_ to undertake the role for the duration of our design duties.

We understand that you will require our services throughout the duration of project until Practical Completion which will include a Health and Safety File.

We will provide this service at an hourly rate of £110.00 per hour (plus VAT and expenses). We would be pleased to cap this at £1,500+VAT

We will write to you separately regarding additional options that you may wish to consider to assist with your CDM client duties.

Unless expressed otherwise in writing, this agreement for services includes your permission to use visual images and outline details of the project for a case study on \_\_\_\_\_ web site or within news items reviewing the work of the practice. Confidentiality of client details will be retained in all such communications.

\_\_\_\_\_ are regulated by the RICS and follow their guidance and compliance regulations, we have a complaints handling procedure which is available on request. A copy of our Terms and Conditions are enclosed for your information.

Please let us know if you need any assistance from us, such as facilities to help with mobility, vision or hearing, or information in a different format. Please note that all correspondence and documentation will be circulated electronically so please ensure we have your email address. If you would prefer printed documents, then please let us know.

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It is also necessary for us to have written confirmation of instructions, therefore we would be grateful if you would sign, date and return the copy of this letter as confirmation of your instructions.

I trust that this quote is acceptable to you but if you have any queries then please do not hesitate to contact me. I look forward to hearing from you in due course.

Yours sincerely

Signed: \_\_\_\_\_

Name: \_\_\_\_\_  
*(Please print)*

Date: \_\_\_\_\_

P210683



## BUILDING SURVEYOR SERVICES; CONSTRUCTION

### CORE SERVICES

#### Generally

- Attend Client, Design, Project, Site and other meetings as provided under this Appointment.
- Issue instructions, on behalf of the Client, to the Professional Team and Contractor in accordance with the terms of their Appointments/the Building Contract.
- Agree Project reporting and recording procedures with the Client, the Professional Team and the Contractor. Implement agreed procedures.
- Monitor the performance of the Professional Team and the Contractor. Report to the Client. Advise the Client of any decisions required and obtain authorisation.

#### 1.0 Preparation

- 1.1 Liaise with the Client and the Professional Team to determine the Client's initial requirements and to develop the Client's Brief. Establish review, approval, variation and reporting procedures. Prepare recommendations for the Client's approval.
- 1.2 Liaise with the Professional Team and advise the Client on structural, building, measured and other surveys and site investigations including condition reports, soil reports etc.
- 1.3 Visit the Site and carry out initial inspections. Advise the Client on areas of concern
- 1.4 Advise the Client on demolition, strip-out, site investigation and enabling works contracts required before the Building Contract
- 1.5 Advise the Client on specialist services, including consultants, contractors, sub-contractors and suppliers required in connection with the Project
- 1.6 Liaise with the Professional Team and advise the Client of its obligations under the CDM Regulations.
- 1.7 Comply with the CDM Regulations insofar as they relate to this Appointment
- 1.8 Advise the Client on the selection, the terms of appointment and fee structures for the Professional Team.
- 1.9 Advise the Client on the Professional Team's professional indemnity insurance cover.
- 1.10 Liaise with the Professional Team and advise the Client on statutory or other approvals required and fees due in respect of the Project.
- 1.11 Advise on the cost of the Project. Advise on the cost of alternative design and construction options.
- 1.12 Advise on the Programme for the design and construction of the Project.
- 1.13 Prepare an initial appraisal for the Project including advice and recommendations on the technical feasibility of the works required, their

approximate costs, their design and construction programme and any statutory or other approvals required.

#### 2.0 Outline Design

- 2.1 Liaise with the Professional Team and prepare outline proposal(s) for the Project including advice and recommendations on the technical feasibility of the works required, the quality standards required, their approximate costs, their design and construction programme and any statutory or other approvals required. Prepare recommendations for the Client's approval.
- 2.2 Establish the roles and responsibilities of the Client, the Professional Team, the Contractor and specialist/design sub-contractors.
- 2.3 Prepare and submit planning applications. Conduct negotiations on behalf of the Client.

#### 3.0 Detailed Design

- 3.1 Liaise with the Professional Team and prepare detailed design proposal(s) for the Project including advice and recommendations on the technical feasibility of the works required, the quality standards required, their approximate costs, their design and construction programme and any statutory or other approvals required. Prepare recommendations for the Client's approval.
- 3.2 Confirm the scope of the Building Contract to the Client and advise on additional works required by third parties.
- 3.3 Liaise with the Professional Team and identify any long delivery building components and systems. Prepare recommendations for the Client's approval.
- 3.4 Liaise with the Professional Team and identify any specialist/proprietary building components and systems. Prepare recommendations for the Client's approval.
- 3.5 Prepare and submit building regulations and other statutory applications.

#### 4.0 Pre-Construction

- 4.1 Advise on tendering and contractual procurement options. Prepare recommendations for the Client's approval
- 4.2 Advise on suitable tenderers for the Building Contract. Prepare recommendations for the Client's approval.
- 4.3 Prepare, or obtain from the Client/Professional Team, tender drawings and specifications. Monitor and report to the Client the procurement process.

4.4	Liaise with the Client and the Professional Team and prepare, or obtain from the Client/Professional Team, the tender documentation.	5.7	Agree the cost of instructions, excluding loss and expense claims, issued under the Building Contract.
4.5	Attend pre- and post-tender interviews (when applicable).	5.8	Obtain authorisation from the Client for additional costs where the Consultant's limit of authority is exceeded.
4.6	Liaise with the Professional Team and advise on errors, omissions, exclusions, qualifications and inconsistencies between the tender documents and the tenders received. Prepare recommendations for the Client's approval.	5.9	Undertake regular Site inspections. Obtain progress and quality reports from site staff representing the Client, the Professional Team and the Contractor.
4.7	Advise on the tenderers' design and construction programmes and method statements.	5.10	Liaise with the Client, the Professional Team and the Contractor and prepare and maintain a handover plan, or similar management tool, identifying the roles and responsibilities of the Client, the Professional Team and the Contractor. Establish review, approval, variation and reporting procedures. Prepare recommendations for the Client's approval.
4.8	Liaise with the Professional Team and prepare, or obtain from the Professional Team, cost and design studies to assess alternative Contractor's proposals. Prepare recommendations for the Client's approval.	5.11	Advise on the rights and obligations of the parties to the Building Contract.
4.9	Liaise with the Professional Team and prepare a tender report. Prepare recommendations for the Client's approval.		
4.10	Conduct negotiations with tenderers. Prepare documentation to confirm adjustments to the tender sums. Prepare recommendations for the Client's approval.	<b>6.0</b>	<b>Use</b>
4.11	Liaise with the Client and the Professional Team and advise on methods of progressing design and/or construction works prior to the execution of the Building Contract.	6.1	Liaise with the Client, the Professional Team and the Contractor and prepare and maintain a defects administration plan, or similar management tool, to identify the roles and responsibilities of the Client, the Professional Team and the Contractor. Establish review, approval, variation and reporting procedures. Prepare recommendations for the Client's approval.
4.12	Obtain confirmation that required insurances are in place prior to commencement of works on the Site.	6.2	Facilitate agreement to the final account or similar financial statement from the parties to the Building Contract. For the purposes of this clause the final account or similar financial statement excludes the assessment of loss and expense claims.
4.13	Prepare, or obtain from the Client and the Professional Team, contract drawings and specifications. Liaise with the Client's legal advisers, prepare the contract documents and deliver to the Client and the Contractor for completion.	6.3	Advise on the recovery of liquidated and ascertained damages
<b>5.0</b>	<b>Construction</b>	<b>7.0</b>	<b>SUPPLEMENTARY SERVICES</b>
5.1	Prepare, or obtain from the Client/Professional Team /Contractor /sub-contractor(s)/supplier(s), production information required to execute the Project.	7.1	Provide building and measured surveys. (Append RICS Building Surveyor Services – Building and Measured Surveys Services)
5.2	Agree approvals required from the Professional Team under the Building Contract. Administer the Building Contract.	7.2	Provide feasibility services. (Append RICS Building Surveyor Services – Feasibility Services)
5.3	Convene and chair regular site meetings with the Client, the Professional Team, the Contractor and, where appropriate, sub-contractor(s) or supplier(s). Take minutes of the matters discussed and issue copies of minutes to the Client, the Professional Team, the Contractor and such other persons attending the meeting.	7.3	Liaise with the Client's legal advisers and the Professional Team and advise the Client on matters concerning ownership of the Site including title matters, boundaries, rights to light, rights of way, restrictive covenants, sale and purchase agreements to lease, funding agreements etc. Liaise with the Client's legal advisers.
5.4	Liaise with the Client and the Professional Team and conduct negotiations with the Contractor. Prepare documentation to confirm the agreements reached.	7.4	Provide specialist services in connection with conservation works including historical and/or archaeological research and specialist recording. Carry out exceptional negotiations with statutory and nonstatutory bodies.
5.5	Visit the Site periodically and assess the progress of the Project for interim payment purposes. Liaise with the Professional Team and prepare recommendations for interim payments to the Contractor.	7.5	Provide specialist services in connection with asbestos works including the appointment of specialist survey consultants and removal treatment contractors. Carry out exceptional negotiations with statutory and nonstatutory bodies.
5.6	Advise, or obtain advice from the Professional Team, on the cost and programme effect of variations prior to the issue of instructions under the Building Contract.	7.6	Provide specialist advice on Building Regulations.
		7.7	Provide Fire Reinstatement valuations.

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### DISBURSEMENTS

#### BREAKDOWN OF EXPENSES AS CHARGED

<b>Mileage:</b>	Charged at 45p per mile
<b>Parking/Ferry:</b>	Charged at cost
<b>Photocopies:</b>	A4 black and white copies charged at 15p per copy A3 black and white copies charged at 30p per copy  A4 colour copies charged at 25p per copy A3 colour copies charged at 35p per copy
<b>Photograph prints:</b>	These will be charged at colour copy rates
<b>CD of photographs:</b>	£1.50 per CD
<b>Memory stick:</b>	£5.00 per memory stick
<b>Lever Arch Files:</b>	£2.48 per file
<b>Drawing prints:</b>	A1 sheets charged at £4.00 each A2 sheets charged at £3.00 each A3 sheets charged at £2.00 each A4 sheets charged at £1.00 each
<b>Postage:</b>	Anything costing over £1.00 will be charged
<b>Endoscope:</b>	£25.00 per hour
<b>Promap:</b>	Charged at cost
<b>Contract Documents:</b>	Charged at cost
<b>Equipment Hire:</b>	Specialist equipment will be hired as necessary, costs will be discussed with you prior to carrying out our works.

*Please note that VAT will be added to the above, where applicable.*

## Terms and Conditions of Business

The following outlines the basis of provision of professional services as described in the Appointment Agreement (**Services**) to you (**Client**).

### 1. Basis of Contract

4.1. These terms and conditions (**Conditions**) together with the Appointment Agreement for the Services (**Appointment Agreement**) will form the basis of the contract between and the Client (**Contract**) and constitute the entire agreement between the parties. They will apply to all matters unless and to the extent that informs the Client in writing that different provisions apply. reserves the right to change or supplement these terms by notice in writing to the Client at any time. If the Client does not contact within 14 working days of such notice the Client will be deemed to have accepted the new terms and they shall apply to the Contract.

4.2. The Contract between and the Client will begin when the Client signs and returns Appointment Agreement to or when starts work on the Client's matter (if sooner).

4.3. These Conditions apply to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are applied by trade, custom, practice or course of dealing. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of which is not set out in the Contract.

### 2. Client – Your Commitment

2.1 The Client shall:

- a. co-operate with in all matters relating to the Services;
- b. provide , its agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by including suitable access to the property being surveyed;
- c. provide with such information and materials as may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- d. promptly convey to any decision or information held by it which is necessary for the proper performance by of the Services;
- e. give all instructions, including those to vary, add to or suspend Services to in writing, or, if given orally, confirm them in writing within 7 days;
- f. inform if they are using a representative and if so notify of their contact details; and
- g. promptly inform in writing if the Client's representative has ceased for any reason to act and provide details to of the identity of the new representative.

2.2 Any formal notice shall be deemed to have been duly given if mailed by registered post to the Client or the representative at the address specified in the Appointment Agreement.

### 3. Conditions - Obligations

3.1. will represent the Client, and perform all Services with due skill, care and diligence but:

- a. shall not, without the consent or authority of the Client, give to the main, or any other contractor, supplier, or person, any instruction if the necessary effect of which would be to materially vary any building works (**Works**), or increase the cost of, or time taken to complete the Works;
- b. will promptly inform the Client in writing of the likely effect of anything relating to the Services which believes would materially vary the Services, increase the cost of, or time taken to complete the Services;
- c. where, during the course of Works, is to make periodic visits to the Client's site to monitor the contractor's workmanship and progress, to check use of materials, the Works' conformity to specification and to report generally on the progress and quality of any Works, shall not be required to make exhaustive or continuous inspections;
- d. where frequent or constant inspection is necessary or required, a resident surveyor, clerk of works or resident engineer must be appointed by the Client to supervise the day-to-day administration of the project; and
- e. shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services. shall notify the Client in any such event.

3.2. normal working hours are between 9.00a.m.-5.30 p.m. Monday-Friday (excluding public holidays) during which time a messaging service will be available. will endeavour to return Client calls on the same day.

### THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 4

#### 4. Limitation of Liability

4.1. The liability of shall be limited to such sum as it would be just and equitable for to pay having regard to the extent of the responsibility of RTP for the direct loss and damage suffered, on the basis that:

- a. all other consultants, the contractor and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those applying in the case of this Contract; and
- b. they shall be deemed to have paid to the Client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage

but in no event shall this amount exceed the value of the Contract.

4.2. shall under no circumstances whatsoever be liable to the Client for any indirect loss, including without limitation, damages for loss of profit, loss of production, loss of contracts or for any financial loss or for any special or consequential loss or damages however caused.

4.3. No liability shall attach to in respect of Services, except such liability as ought to be covered by the Professional Indemnity Insurance (PII). The extent of such liability shall be limited to £5 million.

4.4. duties are owed only to the Client named in the Appointment Agreement, and disclaims any liability to any other person. If another person specifically requests the right to rely upon advice, will consider it, but reserves the right to decline any such request. The Client agrees that in any matter they will not be acting for another person unless has agreed this in writing in advance.

4.5. The Client shall be responsible for obtaining and satisfying themselves of the adequacy of any warranties from other specialists and consultants and makes no warranty in relation to the suitability of these warranties and accepts no liability in this regard. The Client, not , shall satisfy themselves as to the Professional Indemnity Insurance of other specialists and consultants and accepts no responsibility or liability in this regard. For the avoidance of doubt shall not be liable for any work carried out by third party contractors, consultants or specialists.

4.6. shall be responsible for the direction and integration of specialist services or contractor's Works, only where has consented in writing in advance, that such items will form part of the Services.

4.7. If performance of any of its obligations under the Contract is prevented by any act or omission of the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- a. shall without limiting its other rights or remedies, have the right to suspend the performance of the Services until the Client remedies the Client Default, and the right to rely on the Client Default to relieve it from performance of any of its obligations to the extent that the Client Default prevents or delays performance of any of its obligations;
- b. shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from failure or delay to perform any of its obligations; and
- c. the Client shall reimburse on written demand for any costs or losses sustained or incurred by arising directly or indirectly from the Client Default.

4.8. Nothing in these Conditions shall limit or exclude liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

4.9. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.



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## 5. - Fees

- 5.1. The Appointment Agreement outlines the agreed fee structure and ..... current standard rates, which ..... reserves the right to amend from time to time. All fees, expenses, and some disbursements are subject to VAT at the standard rate prevailing at the time when the Services are provided. Invoices shall be calculated by reference to ..... agreed hourly rates, agreed Service stage payments or lump sums, or a fair proportion of agreed Service stages or lump sums at ..... sole discretion, unless otherwise agreed. Where not previously agreed, ..... fees will be on a time incurred basis at ..... standard hourly rate and will depend on the size and nature of the work and shall include, without limitation, a combination of time taken, attending and advising the Client and others, dealing with associated tasks, travelling, administrative disbursements etc. (together the **Specified Fees**).
- 5.2. .... will explain, and obtain approval from the Client where appropriate in respect of any significant disbursements, e.g. planning/search fees and expert reports. .... is not obliged to make such payments unless previously agreed in advance with the Client. .... will normally ask the Client to provide ..... with the funds to pay disbursements before .... incurs them. If RTP does not request such funds to be paid on account of disbursements, the Client will still be responsible for paying them.
- 5.3. .... will be entitled to submit a fee invoice:
- monthly, or at the conclusion of agreed Service stages (as set out in the Appointment Agreement), whichever is more frequent;
  - at the suspension or termination of ..... Services;
  - when work proves to be abortive, in respect of that work; and
  - at conclusion of ..... Services.
- 5.4. The Client shall pay ..... for the performance of the Services, the Specified Fees, in such instalments as are set out in the Appointment Agreement.
- 5.5. Unless otherwise agreed by ..... in writing, the Specified Fees are not contingent upon completion of any project and all fees and charges will be chargeable whether or not the Client's project is completed.
- 5.6. On written demand by the Client ..... will provide time sheets, where the Specified Fees are based on time charges and original receipts, or other appropriate evidence of expenses or disbursements.
- 5.7. Where the Specified Fees are equal to a percentage of total construction costs, that total shall include:
- adjustments to the construction costs consequent upon variations and fluctuations;
  - expenditure of provisional, prime cost sums, or contingencies as set out in any construction contracts; and
  - value of materials, labour or services provided by the Client free of charge.
- 5.8. .... shall notify the Client in writing as soon as it becomes reasonably apparent to that any Services additional to the subject of the Appointment Agreement will be required.
- 5.9. Where ..... is involved in the provision of additional Services because of changes in the scope or in the programme of the Works; and/or changes to the Client's instructions in relation to the Services, and/or the commencement of adjudication, arbitration or litigation, the Client shall pay ..... additional fees calculated (unless otherwise agreed) on a time incurred basis at the rates set out in the Appointment Agreement. If for any reason the Client's instruction does not reach conclusion, ..... reserves the right to charge for Services completed and expenses incurred up to the point of conclusion.
- 5.10. Specified Fees do not include, and ..... shall be entitled to reimbursement of, expenditure comprising:
- fees, disbursements and other charges of any main or other contractor, supplier, clerk of works, other surveyor, professional or consultant engaged with the prior written consent of the Client, whether directly or as agent for the Client, and whether or not working under the direction or supervision of .....;
  - reasonable cost of producing documents, drawings maps and other presentations;
  - reasonable hotel and travel expenses, including car travel mileage;
  - unit (not standing) charges for communications (telephone, telex, facsimile, post etc);
  - fees and advertising costs in connection with applications, local Government consents; and

- f. any other fees or expenses which the Client has authorised ..... in writing to incur.

- 5.11. Where monies for Specified Fees are held on behalf of the Client for Services pursuant to this Appointment Agreement, ..... will notify to the Client, in writing, details of the name of the bank account, address, and whether or not such account is interest bearing.

## 6. Payment Terms

- 6.1. All Specified Fees under the Contract are exclusive of Value Added Tax (VAT) at the prevailing standard rate when the Services are provided, which if due, shall be paid concurrently. The 'due date for payment' shall be 7 (seven) days after the date of submission of the invoice. .... will confirm on each invoice the basis on which the stated amount is calculated.
- 6.2. The 'final date for payment' shall be 7 (seven) days after the due date for payment, and payment shall be made in full in cleared funds to a bank account nominated in writing by ..... no later than the final date for payment. Time for payment shall be of the essence of the Contract.
- 6.3. The Client must, not later than 5 (five) days after the due date for payment, give written notice stating the amount which the Client proposes to pay and the basis on which that amount is calculated. Where no such notice is given the amount to be paid is that stated in the invoice.
- 6.4. Where the Client intends to withhold payment of any amount either stated in invoice, or in a written notice given by the Client under clause 6.3 above, the Client must give written notice to ..... not later than 5 (five) days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.
- 6.5. If the matter is referred to adjudication under clause 15 and the adjudicator decides that the Client should pay more than the amount the Client has specified in the notice served on ..... under clause 6.3, then this amount shall be payable not later than 7 (seven) days from the date of the decision, or the date which apart from the notice would have been the final date for payment, whichever is the latter.
- 6.6. Save as set out in clause 6.3 above, the Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set off or counterclaim against ..... in order to justify withholding payment of any such amount in whole or in part. .... may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by ..... to the Client.
- 6.7. Any amounts due to ..... under the Contract which remain unpaid by the Client after the final date for payment shall become a debt and bear interest at a rate of 3% (three per cent) above the Bank of England base rate. Interest is calculated from the day after the "final date for payment" or from the date 7 (seven) days after publication of an adjudication settlement, whichever is earlier. Interest will cease to accrue once payment has been received in full but not necessarily cleared. Debt recovery costs will also be charged in accordance with ..... current schedule of debt recovery costs as amended from time to time which is available to the Client upon request.
- 6.8. In the event that the Client is in default over payments of amounts due at the final date for payment, and no notice of intention to withhold payment from such amount has been given under clause 6.3 above, ..... may suspend performance of any or all of the Services. This right is subject to ..... first giving the Client at least 7 (seven) days' written notice of such intention and stating the grounds for suspension. The right to suspend performance shall cease when the Client makes payment of the amount due. Where ..... exercises its right under this clause to suspend Services, the Client shall be liable to pay to ..... a reasonable amount in respect of costs and expenses reasonably incurred by ..... as a result of the exercise of this right.
- 6.9. Any such period of suspension shall be disregarded for the purpose of any contractual time limits previously agreed between ..... and the Client for the completion of the Services. Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly. Such suspension shall not be treated as a suspension under clause 8 below.

## 7. Professional Indemnity Insurance (PII)

..... is required to comply with the regulations of the Royal Institution of Chartered Surveyors (RICS) in respect of the maintenance of Professional Indemnity Insurance. .... will use reasonable endeavours to take out and maintain such PII above RICS limits, as defined by reference to an amount and for a period in the Appointment Agreement. Such insurance shall be with an insurer who is listed for this purpose by the RICS.

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## 8. Suspension and Termination of Services

- 8.1. The Client may suspend performance by of all or any of the Services by giving at least 7 (seven) days' notice to . The Client may terminate the appointment of under the Contract by giving at least 7 (seven) days' written notice to |
- 8.2. If the Services have been suspended for a period of more than 12 (twelve) months, either party may terminate the Contract by giving written notice to the other to such effect.
- 8.3. Where the Services have been suspended by the Client and the Appointment Agreement has not been terminated, the Client may, by giving reasonable notice to , require | to resume the performance of the Services.
- 8.4. If the Client materially breaches their obligations under the Contract and (if such a breach is remediable) fails to remedy that breach within 28 (twenty eight) days of serving a notice on the Client specifying the breach and requiring its remedy, may at its sole discretion suspend the Services provided under the Contract and/or terminate the Contract upon giving written notice to the Client to such effect.
- 8.5. If the Client being an individual commits an act of bankruptcy or is deemed unable to pay its debts or has no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or the Client (being a partnership) has any partner to which the foregoing apply and/or makes any arrangements with its creditors or the Client being a company, or has a receiving or administrative order made against it, and/or goes into liquidation, becomes insolvent or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986, then the other party may suspend performance of the Services, or may terminate the Contract by giving written notice to the other. These rights are in addition to any other rights granted to under the Contract.

## 9. Consequences of Suspension and Termination

If performance of the Services has been suspended under clauses 4, 6 or 8 above, or if the Contract has been terminated pursuant to the provisions of clause 8 above:

- a. the Client shall pay | any instalments of the Specified Fees due to up to the date of suspension or termination, together with a fair and reasonable proportion of the next following instalment commensurate with the Services performed by
- b. unless the Contract has been terminated by the Client because of a material breach by , the Client shall pay within 14 (fourteen) days of written demand the consequential costs necessarily incurred by as a result of the suspension or termination;
- c. the Client must return to any of its materials or equipment which has not been fully paid for. If the Client fails to do so, may enter the Client's premises and take possession of them and the Client hereby licenses to enter onto any premises where such materials or equipment are stored for this purpose. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose; and
- d. the accrued rights, remedies or obligations and liabilities of the parties as at expiry or termination shall not be affected by expiry or termination of the Contract, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## 10. Complaints

In the event that the Client has a complaint in respect of the performance of Services under the Contract, without prejudice to any other remedy available under the Contract, he or she shall be entitled to follow the complaints handling procedure maintained by written copies of which are available from | upon request.

## 11. Copyright

Unless otherwise agreed in writing, | shall retain the copyright and other intellectual property rights in and ownership of, all specifications or other documents, drawings, maps, photographic and other records, models and presentation materials prepared by pursuant to the Contract. may also publish or join in publishing any description or illustration of the Works with the prior consent of the Client.

## 12. and Legal Advice

- 12.1. may provide general advice on which form of contract is suitable for a particular project, but cannot advise as to whether the Housing Grants Construction and Regeneration Act 1996 (HGCR Act 1996) will or will not apply or advise on any other legal issues. The Client should therefore take its own legal advice direct on such issues at its own costs.
- 12.2. shall be under no liability in relation to the need to obtain legal advice and the Client agrees that no liability will attach to for any loss and damage howsoever suffered by the Client arising out of, under, or in connection with the application, or non-application of the HGCR Act 1996 as amended from time to time or any other legal issues.

## 13. Assignment

The Client may assign or transfer all (but not part) of this Contract with the prior written consent of , which shall not be unreasonably withheld. may also assign or transfer all or part of this Agreement but only with the prior written consent of the Client, which shall not be unreasonably withheld.

## 14. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## 15. Disputes

- 15.1. If a dispute arises out of the Contract, the Client and shall attempt to reach a settlement in good faith. The Client should attempt to resolve a dispute via ; internal complaints procedure referred to in clause 10 above in the first instance, particularly for disputes involving amounts under £50,000.
- 15.2. If the dispute is not resolved in accordance with clause 15.1 above, either the Client, or may at any time give notice to the other that the Client or wishes to refer the dispute to an adjudicator. The person who is to act as the adjudicator shall be agreed between the Client and within 2 (two) days of such notice having been given or, failing agreement at the end of that period, be a person appointed by the Construction Industry Council within 5 (five) days of such notice having been received. The referring party shall refer the dispute in writing to the adjudicator within 7 (seven) days of such notice having been given.
- 15.3. The adjudication shall be conducted in accordance with the Construction Industry Council Model Adjudication Procedures current at the time of entering into the Contract. Clause 32 of the Construction Industry Council Model Adjudication Procedures shall be amended to add: 'No party shall be entitled to raise any right of set-off, counterclaim and/or abatement in connection with any enforcement proceedings'.
- 15.4. The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The adjudicator shall reach a decision:
- a. within 28 (twenty-eight) days of the referral of the dispute to the adjudicator; or
- b. within 42 (forty-two) days of the referral of the dispute to the adjudicator if the referring party so consents; or
- c. in a period exceeding 28 (twenty-eight) days from the referral of the dispute to the adjudicator as the Client and may agree after such referral.
- 15.5. The adjudicator shall not be liable for anything he or she does or omits to do in discharge or purported discharge of his or her functions as adjudicator unless the act or omission is in bad faith. Any employee or agent of the adjudicator shall be similarly protected from liability.
- 15.6. The decision of the adjudicator shall, subject to the provisions of the clauses 15.7 and 15.8 below, be binding until the dispute is finally determined by arbitration, legal proceedings or by agreement between the parties which may be part of internal complaints procedure.
- 15.7. The adjudicator shall be permitted to correct his decision so as to remove a clerical or typographical error arising by accident or omission.
- 15.8. The Client and may agree to accept the decision of the adjudicator as finally determining the dispute. If the Client or is dissatisfied with the decision of the adjudicator, then:
- a. the dispute may be determined by agreement between the parties; or
- b. the dispute may be referred at the instance of either of the parties to be determined by an arbitrator in accordance with clause 16 below.
- 15.9. The Client agrees not to commence any proceedings in litigation or arbitration against arising out of, under, or in connection with, any adjudication award until the award has been finally determined by legal proceedings by arbitration or by agreement between the parties, and/or until the work subject to the project in connection with which | is appointed shall be completed, whichever is the latter, and irrespective of whether the project is completed by the original contractor, or any subsequent contractor, or by the Client.
- 15.10. It is hereby agreed that if the Client and agree to accept the decision of the adjudicator as finally determining the dispute in accordance with clause 15.6 above:
- a. non-payment of any award without cause will constitute a separate breach of the Contract and any award may be enforced as a judgment;
- b. the provisions of the Local Democracy, Economic Development and Construction Act 2009 have been incorporated into contracts effected by simple exchange of letters and may be incorporated by reference in telephone conversations to the use by the parties or a standard form of building contract.

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15.11. The adjudicator shall have the power to allocate his fees and expenses as between the parties as he or she sees fit.

## 16. Arbitration

16.1. Any dispute under the Contract, including those for more than £50,000 and/or those where adjudication would not apply, must be referred to arbitration as opposed to litigation at the instance of either of the parties to be determined by the arbitrator.

16.2. The person who is to act as an arbitrator shall be agreed between the parties within 14 (fourteen) days (or any agreed extension of this period) of the one giving written notice of his or her wish to refer the decision to an arbitrator or, failing agreement at the end of that period, shall be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators at the instance of either party.

16.3. The arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules current at the time of entering into this Agreement.

16.4. Subject to clause 16.5 the award of the arbitrator shall be final and binding on the parties.

16.5. The parties hereby agree by entering into the Contracts that pursuant to section 45 (2) (a) and section 69 (2) (a) of the Arbitration Act 1996 that either party may (upon notice to the other party and to the arbitrator):

- a. apply to the courts to determine any questions of law arising in the course of the reference, and
- b. appeal to the courts on any question of law arising out of an award made in an arbitration under the Contract.

## 17. Force Majeure

17.1. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

17.2. shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

17.3. If the Force Majeure Event prevents from providing any of the Services for more than 3 (three) months, shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately without liability to the Client, by giving written notice to the Client.

## 18. Notices

18.1. Any notice to be given under this Agreement shall be in writing and delivered by hand or sent by recorded delivery post to the party at the address shown in the Agreement, or to such an address as the other party may have specified from time to time by written notice to the other. Such notice shall be deemed to have been received on the day of delivery if delivered by hand and otherwise on the next working day.

18.2. Where under this Agreement an act is required to be completed within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a public holiday, including without limitation, Christmas day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday, that day shall be excluded.

## 19. Severability

If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 20. No partnership and Third Parties

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party as the agent of another party for any purpose. Unless otherwise agreed between the parties in writing no party shall have authority to act as agent for, or to bind, the other party in any way. A person who is not a party to the Contract shall not have any rights under or in connection with it.

## 21. Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.