

N A T A L I A   B A R B O U R

*Interior Design*

# **General Terms of Appointment**

## **Natalia Barbour Interior Design**

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## Conditions of Appointment for Interior Design Services

### Definitions

Where defined terms are used in these Conditions of Appointment together with the Brief and all applicable schedules (such documents to be collectively defined as the "Agreement") they are distinguished by an initial capital letter. The following definitions apply to all documents comprising this Agreement and are in addition to those set out elsewhere in this Agreement.

**Brief** means the latest statement of requirements for the Project issued or approved by the Client including any information or drawings prepared by or on behalf of the Designer and approved by the Client. The Brief shall include any information or drawings prepared by or on behalf of the Designer and approved by the Client during the development of the Brief.

**Building Works** means any construction, repair or maintenance works designed and/or specified by the Designer and agreed with the Client in connection with the Project, including but not limited to bespoke designs for special staircases, fire surrounds, wall panelling, joinery fittings, bathrooms, kitchens, utility rooms, selection and specification of electrical and light fittings, appliances and sanitaryware.

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

**Confidential Information** means all information relating to the Client's and the Designer's business and/or personal affairs which either party directly or indirectly receives or acquires from the other party or any representative of the other party either in writing, by electronic mail or verbally.

**Contract Administrator** means the person appointed to administer a contract for the Building Works, including co-ordinating the work of consultants, issuing any instructions to the contractor and reporting to the Client as appropriate.

**Decorations** means decoration of walls, ceilings and floors, including but not limited to specialist decorations, wall finishes and floor designed and/or specified by the Designer and agreed with the Client.

**FF&E** means furniture, fittings and equipment, including but not limited to loose furniture, curtains, carpets, fixtures, materials etc designed and/or specified by the Designer and agreed with the Client.

**Lead Consultant** means the person appointed by the Client with authority for reviewing the progress of design work, co-ordinating the services of other consultants or specialists, advising on options for procurement, managing change control procedures and reporting to the Client as appropriate.

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

**Project** is defined in the Project Data.

**Project Cost** means the total cost of the construction of the Building Works, Decorations together with the retail price of the supply, delivery and installation of any FF&E as determined by:

- a) initially a fair and reasonable amount estimated by the Designer;
- b) subsequently when available the latest professionally prepared estimate or the lowest acceptable tender(s)/quotation(s) as applicable;
- c) subsequently when available, the final cost.

The Project Cost shall include (without limitation):

- a) any contingency or design reserve cost allowance;
- b) the cost as if new of any equipment and/or materials provided or to be provided by the Client to a contractor for installation during construction of the Project;
- c) any direct works carried out by or on behalf of the Client;
- d) reasonable provision for contractor's profit and overheads;

but the Project Cost excludes:

- a) value added tax;
- b) fees;
- c) the costs of resolution of any dispute;
- d) the Client's legal and in-house expenses;
- e) any loss and/or expense payments paid to a contractor;
- f) any adjustment for liquidated damages deducted by the Client.

**Project Data** means the matters set out in the 'Project Data' schedule, which may be varied by agreement.

**Services** means the services to be performed by the Designer specified in the 'Services schedule', which may be varied by agreement.

**Timetable** means the programme for performance of the Services as specified in the Project Data, or where no such programme is specified, a fair and reasonable period; or subsequently, the latest programme approved by the Client.

**Completion** means the acceptance by Client that all Services under the Agreement have been completed by way of acceptance of a Certificate of Completion.

## **1 General**

### **Interpretation**

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

### **Applicable law**

- 1.2 This Agreement is subject to the law of England unless otherwise agreed and specified in the Project Data and subject to clause 9.3 the parties submit to the exclusive jurisdiction of the courts of the specified jurisdiction.

### **Communications**

- 1.3 Any notice or other document required under this Agreement shall be in writing and given or served by any effective means to the address of the recipient specified in this Agreement or such other address, including a postal address or fax number, notified to the other party.

Communications between the Client and the Designer that are not such notices or documents may be sent to any other address, including an email address, notified by the other party as an appropriate address for specific communications. Communications take effect on receipt, but are of no effect unless and until confirmed by the sender or the other party in writing or by electronic mail.

Communications sent by special delivery or recorded delivery shall be deemed (subject to proof to the contrary) to have arrived at the appropriate address on the second working day after posting.

### **Public holidays**

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

### **Duration**

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

### **Completion Certificate**

- 1.6 The Designer will submit a Certificate of Completion at such time as the Services under this Agreement are completed. Client will confirm acceptance by signing and returning the Certificate of Completion within 7 days or notify of the reason for non acceptance within 7 days. No response will be considered acceptance.

## **2 Obligations and Authority of the Designer**

### **Duty of Care**

#### 2.1 The Designer

2.1.1 when performing the Services under the Services schedule, shall exercise reasonable skill, care and diligence in accordance with the normal standards of the Designer's profession in performing the Services and discharging all the obligations under this clause 2;

2.1.2 when performing Services under Parts 3 and 4 of the Services schedule, shall do so in accordance with the terms of Annex A and/or Annex B of that schedule.

### **Duty to inform**

2.2 The Designer shall keep the Client informed of progress in the performance of the Services and of any issue that may materially affect the Brief, the Project Cost, the Timetable or the quality of the Project.

2.3 The Designer shall inform the Client upon becoming aware of:

2.3.1 a need to appoint Other Persons, other than those named in the Project Data, to perform work or services in connection with the Project; and/or

2.3.2 any information, decision or action required from the Client or others in connection with performance of the Services.

### **Limitation of liability**

2.4 The Designer does not warrant:

2.4.1 that planning permission and other approvals from third parties will be granted at all or, if granted, will be granted in accordance with any anticipated timescale or cost;

2.4.2 compliance with the Project Cost and/or the Timetable, which may need to be reviewed for such matters as, but not limited to:

approved variations arising from design development or requested by the Client; delays caused by any Other Person; and/or any other factors beyond the control of the Designer; and /or force majeure

2.4.3 the competence, performance, work, services, products or solvency of Other Persons appointed by the Client

2.4.4 the accuracy of any survey made by the Designer unless the survey is specially commissioned and paid for by the Client as part of the Services.

### **Collaboration**

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

### **Designer's authority**

- 2.6 The Designer shall act on behalf of the Client in the matters set out or necessarily implied in this Agreement or in project procedures agreed with the Client from time to time, but has no authority, without the Client's prior approval:

2.6.1 to make or cause to be made any material alteration to or addition to or omission from the Services or the approved design;

2.6.2 to enter into any contractual or other commitment on behalf of the Client; or 2.6.3 to terminate the employment of Other Persons appointed by the Client.

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

### **Designer's representative**

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

### **Estimates**

- 2.8 When the Designer is undertaking the Building Works or Decorations and/or supplying FF&E as principal, any cost or time estimates prepared by the Designer shall not be construed as offers unless submitted as tenders in accordance with Parts 3 and 4 of the Services schedule.

### **Photography and publicity**

- 2.9 The Designer shall have the right to take and publish photographs of the Project, and the Client shall give reasonable access to the Project for this purpose for 2 years after practical completion of the Project.

The Designer shall obtain the consent of the Client, which consent shall not be unreasonably withheld or delayed, before publication of any other information about the Project, unless reasonably necessary for performance of the Services.

### **Confidentiality**

- 2.10 The Designer shall not disclose Confidential Information unless:

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

2.10.2 it is in the public domain other than due to wrongful use or disclosure; or

2.10.3 disclosure is required by law or because of disputes arising out of or in connection with this Agreement.

### **3 Obligations and authority of the Client**

#### **Client's Representative**

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

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

3.2 The Client shall provide, free of charge, all the information in the Client's possession, or reasonably obtainable, which is necessary for the proper, safe, and timely performance of the Services and the Designer shall be entitled to rely on such information.

3.3 The Client shall give decisions and approvals promptly and shall take such actions necessary for the proper and timely performance of the Services.

3.4 The Client shall supply the Brief and shall advise the relative priorities of the Brief with regard to the Project Cost and the Timetable.

#### **Instructions**

3.5 The Client (or the Lead Consultant, or other Consultant designated by the Client) may issue instructions to the Designer, subject to the Designer's right of reasonable objection.

3.6 Where the Designer, as Lead Consultant or Contract Administrator, has responsibility to direct and/or co-ordinate the work or services of or give instructions to Other Persons, such instructions shall be issued only through the Designer.

If the Client or anyone acting on behalf of the Client, issues instructions to any Other Persons the Designer shall not be responsible for the consequences of such instructions.

#### **Applications for consent**

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

#### **Appointment of Other Persons**

3.8 Where work or services, other than those to be performed by the Designer, are required, the Client shall appoint and pay Other Persons under separate agreements to perform such work or services, shall hold such Other Persons responsible for the competence and



performance of their work or services, and shall require them to Collaborate with the Designer.

The Client shall confirm in writing to the Designer the services to be performed by Other Persons, their disciplines and the expected duration of their employment.

- 3.9 Except where the Designer is performing Services under Part 3 of the Services schedule, the Client shall appoint one or more contractors under separate agreements to undertake Building Works and/or Decorations. The Client shall hold such contractor or contractors, and not the Designer, responsible for the management and operational methods necessary for the proper carrying out and completion of the Building Works and/or Decorations in compliance with the building contract or contracts.
- 3.10 Except where the Designer is performing Services under Part 4 of the Services schedule, the Client shall hold the supplier(s) of FF&E and not the Designer responsible for the quality and utility of their goods.

#### **Legal advice**

- 3.11 The Client shall procure such legal advice at his/her own cost in respect of:
- 3.11.1 the resolution of any dispute between the Client and any other parties in connection with the Project and provide such information and evidence as required;
- 3.11.2 advice to the Designer reasonably required for services in connection with such dispute, and/or the performance of any Other Person.

#### **Confidentiality**

- 3.12 The Client shall not disclose Confidential Information unless:
- 3.12.1 disclosure is necessary for the proper performance of the Services, or in order to take professional advice in relation to this Agreement or the Services, or in order to obtain/maintain insurance cover as required by this Agreement;
- 3.12.2 it is in the public domain other than due to wrongful use or disclosure; or
- 3.12.3 disclosure is required by law or because of disputes arising out of or in connection with this Agreement.

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

### **Assignment**

- 4.1 Neither the Designer nor the Client shall at any time assign the benefit of this Agreement or any rights arising under it without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

### **Sub-contracting**

- 4.2 With the consent of the Client, which consent shall not be unreasonably withheld or delayed, the Designer may appoint a sub-consultant or sub-consultants to perform part of the Services under Parts 1 and 2 of the Services schedule. Any such sub-contracting shall not relieve the Designer of responsibility for carrying out and completing the Services in accordance with this Agreement. Such consent shall not be required in respect of agency or self-employed staff.

### **Specialist services**

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

The Designer shall Collaborate with such Other Persons.

## **5 Fees and payment**

### **Part A: Calculation of fees**

#### **Basic Fee**

- 5.1 The Basic Fee for performance of the Services under Parts 1 and 2 of the Services schedule, including the specified number of site visits during the construction stage, shall be:
- 5.1.1 a percentage or percentages applied to the Project Cost in accordance with clause 5.2;
  - 5.1.2 a lump sum or sums in accordance with clause 5.4;
  - 5.1.3 time charges in accordance with clause 5.5;
  - 5.1.4 any combination of these; and/or
  - 5.1.5 another agreed method.

#### **Percentage fees**

- 5.2 Where it is stated in the schedule of Fees and Expenses that this clause 5.2 applies, the Basic Fee shall be calculated by applying:
- 5.2.1 the specified percentage or percentages applied to the final Project Cost; or
  - 5.2.2 the relevant specified percentage for each work stage to the Project Cost current at the end of the previous stage.

### **Lump sums**

5.3 Where it is stated in the schedule of Fees and Expenses that this clause 5.3 applies, the Basic Fee shall be the specified lump sum or lump sums.

### **Time charges**

5.4 Where it is stated in the schedule of Fees and Expenses that this clause 5.4 applies, the time-based fee shall be ascertained by multiplying the time reasonably spent in the performance of the Services, calculated to the nearest half hour, by the specified hourly or daily rate for the relevant personnel. Time 'reasonably spent' includes the time spent in connection with performance of the Services and in travelling from and returning to the Designer's office.

### **Revision of lump sums and other rates**

5.5 Every 12 months, lump sums complying with clause 5.3, less any amounts previously claimed, and rates for time charges complying with clause 5.4, shall be revised in accordance with changes in the Average Earnings Index and rates for mileage and printing shall be revised in accordance with changes in the Consumer Prices Index.

Each 12-month period shall commence on the anniversary of the Effective Date of this Agreement specified in the Project Data.

### **Fee adjustment**

5.6 The Basic Fee:

5.6.1 shall be adjusted including due allowance for any loss and/or expense if:

- a) material changes are made to the Brief and/or the Project Cost and/or
- b) the Timetable; and/or
- c) the Services are varied by agreement.

5.6.2 shall, if the Project Cost is reduced during performance of the Services, including any reduction arising solely from deflationary market conditions not prevailing at the Effective Date, be calculated on the basis of the Project Cost current prior to the date of any consequent reduction or the lowest acceptable tender (whichever is applicable).

### **Additional fees**

5.7 Where the Designer for reasons beyond the Designer's control incurs extra work or loss and expense for which the Designer would not otherwise be remunerated the Designer shall be entitled to additional fees calculated on a time basis as set out in clause 5.5 unless otherwise agreed. Matters in relation to which the Designer shall be entitled to additional fees include but are not limited to circumstances where:

- 5.7.1 the Designer is required to vary any item of design work commenced or completed pursuant to this Agreement or to provide a new design after the Client has authorised the Designer to develop an approved design;
- 5.7.2 the nature of the Project requires that substantial parts of the design cannot be completed or must be specified provisionally or approximately before construction commences;
- 5.7.3 performance of the Services under any part of the Services schedule is delayed, disrupted or prolonged;
- 5.7.4 the cost of any work, installation or equipment, for which the Designer performs design Services, is omitted from or not included in the Project Cost;
- 5.7.5 the Designer performs Services in connection with any work, installation or equipment, which are not executed under the direction of or by the Designer.
- 5.7.6 loss of profit arising from deletion of scope or services from the agreed specification / brief

This clause 5.7 shall not apply where any adjustment under clause 5.6.1 applies to the same events.

The Designer shall inform the Client on becoming aware that this clause 5.7 will apply. This clause 5.7 shall not apply where any change or extra work or expense arises from a breach of this Agreement by the Designer.

#### **Other fees**

- 5.8 For performance of Other Services specified in Parts 1 and 2 of the Services schedule, but not included in the Basic Fee, the fee for each service shall be:
  - 5.8.1 a lump sum or sums in accordance with clause 5.3; and/or
  - 5.8.2 time charges in accordance with clause 5.4; and/or
  - 5.8.3 another agreed method.

#### **Tender not accepted**

- 5.9 Where the Designer is instructed by the Client to invite a tender or tenders for work or services in connection with the Project but no tender is made or accepted, the Designer shall be entitled to fees due based on the Project Cost or that part of it relating to the said work or services current at the date of invitation to tender.

#### **Supplementary agreements**

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

### **Incomplete Services**

5.11 Where for any reason the Designer provides only part of the specified Services, fees shall be calculated as described in the schedule of Fees and Expenses for completed work stages and, for the balance of work carried out, the fees shall be on the basis of the Designer's estimate of the percentage of completion.

### **Expenses and disbursements**

5.12 The Client shall reimburse the Designer for expenses in the manner specified in the schedule of Fees and Expenses.

Expenses in connection with Services under Parts 3 and/or 4 of the Services schedule shall be deemed to be included in the tender or tenders for such Services.

### **Maintain records**

5.13 The Designer shall maintain records of time spent on Services performed on a time basis for the purpose of verifying charges under clause 5.6 and shall in addition maintain records of any expenses and disbursements to be reimbursed at net cost. The Designer shall make such records available to the Client on reasonable request.

## **Part B: Payment**

### **Payments to the Designer**

5.14 The Designer shall issue separate accounts for amounts due, calculated on the basis of the Designer's reasonable estimate of the percentage of completion of the Services specified in the Services schedule for:

5.14.1 fees due under Parts 1 and/or 2 of the Services schedule together with any expenses; and/or

5.14.2 other amounts due under Part 3 of the Services schedule for the Building Works; and/or

5.14.3 other amounts due under Part 4 of the Services schedule for FF&E.

5.15 Payment shall become due to the Designer on the date of issue of the Designer's account. The final date for payment of any amount due to the Designer shall be 14 days from the issue of the relevant account.

The Designer shall issue accounts at intervals of not less than one month or as otherwise agreed, setting out any accrued installments of the fee or other amounts due, less any amounts previously paid, and stating the basis of calculation of the amounts due.

The Designer shall submit the final account for fees or other amounts due under any part of the Services schedule when the Designer reasonably considers the relevant Services to have been completed.

### **Project Bank Account**

5.16 Where it is stated in the Project Data that the Designer is to maintain a Project Bank Account to hold funds provided by the Client, such account shall be an interest-bearing account separate from any personal or business account of the Designer. Written notification shall be given to the bank or other institution that:

5.16.1 the money is held on behalf of the Client; and

5.16.2 there is no entitlement to combine the account with any other account or to exercise any right of set-off or to counterclaim against it.

Money may only be withdrawn from the account to make a payment to or on behalf of the Client, or on the Client's specific instructions. Any interest accruing to the account shall be paid to the Client. The Designer shall provide a statement of account at monthly intervals or on reasonable request from the Client.

In the event of non-payment of any amount properly due to the Designer under this Agreement, the Designer is entitled to interest on the unpaid amounts under the provisions of clause 5.21, may suspend use of the license under the provisions of clause 6, may suspend or terminate performance of the Services and other obligations under the provisions of clause 8, or may commence dispute resolution procedures and/or debt recovery procedures

### **Payments to others**

5.17 Payment for goods or services procured by the Designer as agent under Parts 3 and/or 4 of the Services schedule shall be made:

5.17.1 by the Client on receipt of certification by the Designer of an invoice in accordance with the terms of the contract for such supply; or

5.17.2 by the Designer from funds held in the Project Bank Account where applicable.

### **Payment notices**

5.18 The Client shall give a written notice to the Designer:

5.18.1 within 5 days of the date of issue of an account specifying the amount that the Client proposes to pay and the basis of calculation of that amount; and

5.18.2 not later than 5 days before the final date for payment of any amount due to the Designer if the Client intends to withhold payment of any part of that amount stating the amount proposed to be withheld and the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it.

if no such notices are given, the amount due shall be the amount stated as due in the account. The Client shall not delay payment of any undisputed part of the account.

**Set-off**

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

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

**Late payment**

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

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

**Recovery of costs**

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

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

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

**Payment on suspension or termination**

5.22 If the Designer or the Client suspends performance of any or all of the Services or terminates performance of the Services and/or other obligations, the Designer shall issue an account or accounts on the expiry date of the notice or as soon as reasonably practicable and the Designer shall be entitled to:

5.22.1 payment of any part of the fee and other amounts properly due on the expiry date of the notice; and

5.22.2 reimbursement of any loss and/or damage cause to the Designer by reason of the suspension or the termination, save where the Client gives notice of suspension or termination by reason of the material or persistent breach of the Agreement by the Designer; and

5.22.3 payment of any license fee due under clause 6.

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

#### **VAT**

5.24 In addition to the fees, expenses and other amounts due, the Client shall pay any chargeable value added tax.

## **6 Intellectual property: use of information**

### **Intellectual property**

6.1 The Designer shall own all intellectual property rights including without limitation copyright in the drawings and all other work and materials produced in the performance of the Services, and generally asserts the Designer's moral rights and all other rights to be identified as the author of such work and materials.

6.2 No part of any design by the Designer may be registered or used by the Client without a written assignment of rights by the Designer.

### **Use of information**

6.3 The Client shall have a licence to copy and use and allow Other Persons providing services to the Project to copy and use drawings, documents, bespoke software and all other such work produced by or on behalf of the Designer in performing the Services, hereinafter called the 'Material', but only for purposes related to the Project on the Site or on that part of the Site to which the design relates, and only with the express prior written consent of the Designer. Such license shall automatically expire upon acceptance of the Certificate of Completion.

Such purposes shall include its operation, maintenance, repair, reinstatement, alteration, extending, promotion, leasing and/or sale but shall exclude the reproduction of the Designer's design for any part of any extension of the Project and/or for any other project, unless with prior express written permission and/or a license fee in respect of any identified part of the Designer's design is specified in this Agreement as stated in the schedule of Fees and Expenses or subsequently agreed.

The Designer shall not be liable if the Material is modified other than by or with the consent of the Designer or used for any purpose other than the purposes for which it was prepared.

Provided that:

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

the Designer, following a request from the Client, shall confirm the degree of completion of the Material; and



the Client shall pay to the Designer any specified license fee or a reasonable license fee.

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

6.3.3 the Client obtains or ensures that any third party obtains any necessary license and pays any fees arising for access to any software used to produce any of the Material.

#### **Patents etc**

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

## **7 Liabilities and insurance**

#### **Time limit for action or proceedings**

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

#### **Limit of liability**

7.2 In any such action or proceedings:

7.2.1 The Designer's liability for loss or damage shall not exceed the amount of the Designer's professional indemnity insurance specified in the Project Data, providing the Designer has notified the insurers of the relevant claim or claims as required by the terms of such insurance. The Designer shall not in any event be liable for any indirect or consequential loss or expense incurred as a result of any alleged breach by the Designer.

7.2.2 No employee of the Designer, including any officer or director of a company or a member of a limited liability partnership or any agent of the Designer, shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from performance of the Services.

#### **Net contribution**

7.3 Without prejudice to the provisions of clause 7.2, the liability of the Designer shall not exceed such sum as it is just and equitable for the Designer to pay having regard to the

extent of the Designer's responsibility for the loss and/or damage in question and on the assumptions that:

7.3.1 all other consultants and contractors providing work or services for the Project have provided to the Client contractual undertakings on terms no less onerous than those of the Designer under this Agreement;

7.3.2 there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other person referred to in this clause; and

7.3.3 all the persons referred to in this clause have paid to the Client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for that loss and/or damage.

### **Professional indemnity insurance**

7.4 The Designer, in respect of the Services under Parts 1 and/or 2 of the Services schedule, shall maintain until at least the expiry of the period specified in clause 7.1 professional indemnity insurance with a limit of indemnity of not less than the amount or amounts specified in the Project Data provided such insurance continues to be offered on commercially reasonable terms to the Designer at the time when the insurance is taken out or renewed.

Such insurance shall be subject only to such other limitations, exceptions and exclusions as are commonly included in such policies.

7.5 The Designer, when reasonably requested by the Client, shall produce for inspection a broker's letter or certificate confirming that such insurance is being maintained.

7.6 The Designer shall inform the Client if such insurance ceases to be available at commercially reasonable terms or subsequent to the date of this Agreement an aggregate limit applies to any matters other than those specified in the Project Data in order that the Designer and Client can discuss the best means of protecting their respective positions.

### **Third party agreements**

7.7 Where it is specified in the Project Data:

7.7.1 that the Designer will be required to enter into a collateral warranty or warranties in favour of funders, purchasers or first tenants and the terms of the warranty together with the names or categories of other parties who will sign such agreements are appended to this Agreement, the Designer shall enter into such agreement or agreements within a reasonable period of being requested to do so by the Client, providing that such warranties give no greater benefit to the beneficiaries than is given to the Client under this Agreement and all fees and other amounts properly due to the Designer have been paid;

7.7.2 that a Third Party Rights Schedule in favour of funders, purchasers or first tenants is applicable and appended to this Agreement the rights of such third parties shall

come into effect on the date of receipt by the Designer of a notice from the Client stating the name of each interested party and the nature of the interest in the Project; and/or

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

### **Rights of third parties**

7.8 Except for the rights conferred by clauses 7.2.2 and 7.7.2, nothing in this Agreement shall confer or is intended to confer any right to enforce any of its terms on any person who is not a party to it other than lawful assignees.

## **8 Suspension and determination**

### **Suspension**

8.1 The provisions for suspension are:

8.1.1 The Client may suspend the performance of any or all of the Services and/or other obligations by giving not less than 7 days' notice in writing to the Designer specifying the Services affected.

8.1.2 The Designer may suspend performance of the Services and/or other obligations by giving not less than 7 days' notice to the Client of the intention and stating the reasons for doing so in the event:

unless,

where applicable, the Client has given effective notice under clause 5.19.2 of the intention to withhold payment of any part of a Designer's account;

or

that the Client is in material or persistent breach of the obligations under this Agreement; or

that the Designer is prevented from or impeded in performing the Services for reasons beyond the Designer's reasonable control;

or

force majeure.

- 8.1.3 The Designer shall cease performance of the suspended Services and/or other obligations in an orderly and economical manner on the expiry of the notice period after receipt or giving of a notice of suspension.
- 8.1.4 If the reason for a notice of suspension arises from a default: which is remedied, the Designer shall resume performance of the Services or other obligations within a reasonable period; or which is not remedied by the defaulting party, the other party shall have the right to treat performance of the Services or other obligations affected as terminated on giving reasonable written notice.
- 8.1.5 Where Services are suspended by the Client and not resumed within 6 months the Designer shall have the right to treat performance of the Services and/or other obligations affected as terminated on giving at least 7 days' further written notice to the Client.
- 8.1.6 Any period of suspension arising from a valid notice given under clause 8.1.1 or clause 8.1.2 shall be added to the latest Timetable for completion of the relevant Services.

## **Termination**

8.2 The provisions for termination are:

- 8.2.1 The Client or the Designer may by giving reasonable notice to the other terminate performance of the Services and/or other obligations stating the reasons for doing so and the Services and obligations affected.
- 8.2.2 Performance of the Services and/or other obligations may be terminated immediately by notice from either party if:
- the other party commits an act of bankruptcy or is subject to a receiving or administration order, and/or goes into liquidation, and/or becomes insolvent, and/or makes any arrangements with creditors; or the Designer becomes unable to perform the Services through death or incapacity.
- 8.2.3 On termination of performance of the Services and/or other obligations, a copy of the Material not previously provided to the Client, shall be delivered on demand to the Client by the Designer, subject to the terms of the licence under clause 6.3 and payment of any outstanding fees and other amounts due under clause 5.23 plus the Designer's reasonable copying charges;
- 8.2.4 The Client shall allow the Designer access to the Site to collect all equipment and items belonging to the Designer.

## **9 Dispute resolution**

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

### **Adjudication**

- 9.2 The provisions for adjudication are:

9.2.1 Where a dispute or difference is to be referred to adjudication, the parties may agree who shall act as adjudicator or the adjudicator shall be a person nominated at the request of either party by the nominator specified in the Project Data.

9.2.2 For the avoidance of doubt, the adjudicator may allocate between the parties the costs relating to the adjudication, including the fees and expenses of the adjudicator, in accordance with the provisions of clause 5.22.

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

### **Arbitration**

- 9.3 The provisions for arbitration are:

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

9.3.2 the Client or the Designer may litigate any claim for a pecuniary remedy which does not exceed £5,000 or such other sum as is provided by order made under Section 91 of the Arbitration Act 1996;

9.3.3 in such arbitration The Construction Industry Model Arbitration Rules (CIMAR) current at the date of the reference shall apply, and

9.3.4 the arbitrator shall not have the power referred to in Section 38(3) of the Arbitration Act 1996.