

# 1

## ACE Agreement 1: Design

for the appointment of a Consultant to design permanent Works *where the Client appointing the Consultant intends to employ a Contractor to construct or install such permanent Works*

2009 Edition, Second Revision



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agreements

[www.aceagreements.co.uk](http://www.aceagreements.co.uk)

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ACE represents the business interests of the consultancy and engineering industry in the UK. We are the leading business association in this field, counting around 800 firms – large and small, operating across many different disciplines – as our members.

There are two key strands to ACE's work. First, through powerful representation and dialogue with government, major clients, the media and other key stakeholders, we promote the critical contribution that consultants and engineers make to the nation's development infrastructure.

Second, through direct contact, publications, events, our website, our sector and regional networks, we provide a cohesive approach and direction for our members and the wider industry. ACE listens to its members, understands the issues affecting them and their clients and takes the lead in representing their interests to decision makers and opinion formers in government, client organisations and the media.

ACE Agreements are the industry standard contract documents for consultancy appointments. To further promote best practice and better ways of working in the industry, ACE also publishes a range of briefing notes and policy statements for both clients and consultants. Full details can be found on the ACE website at [www.acenet.co.uk](http://www.acenet.co.uk).

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### Acknowledgements

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## ACE Agreement 1: Design

for the appointment of a Consultant to design permanent Works *where the Client appointing the Consultant intends to employ a Contractor to construct or install such permanent Works*

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**agreements**

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**ACE Agreement 1: Design**  
**Part A: The Memorandum of Agreement**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

BETWEEN

("the Client")

whose address is

and

**Price & Myers LLP** ("the Consultant")

whose address is

**30 Newman Street**  
**London W1T 1LT**

NOW THIS AGREEMENT provides as follows:

- A1. The Client hereby appoints the Consultant to provide the Services (as defined in this Agreement) and the Consultant accepts such appointment subject to and in accordance with the terms of this Agreement.
- A2. The following documents and their annexes, if any, shall together constitute this Agreement between the Client and the Consultant:
  - Part A: *The Memorandum of Agreement;*
  - Part B: *The Particulars of Agreement;*
  - Part C: *The Brief provided by the Client;*
  - Part D: *The Programme for the Services;*
  - Part E: *The Schedule of Fees;*
  - Part F: *The Terms of Contract;*
  - Part G: *The Schedule of Services.*
- A3. This Agreement shall be governed by and construed in all respects in accordance with the laws of England and each party hereby submits to the non-exclusive jurisdiction of the English courts.
- A4. Save in respect of the benefits or rights conferred on the Consultant's Personnel pursuant to clause F7.7 of Part F: *The Terms of Contract* nothing in this Agreement confers or purports to confer on any third party any benefit or right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

**For execution of this Agreement under hand**

Signed by or on behalf of the Client:

Signature \_\_\_\_\_

Signed by or on behalf of the Consultant:

Signature \_\_\_\_\_



NOW THIS AGREEMENT provides as follows:

- A1. The Client hereby appoints the Consultant to provide the Services (as defined in this Agreement) and the Consultant accepts such appointment subject to and in accordance with the terms of this Agreement.
- A2. The following documents and their annexes, if any, shall together constitute this Agreement between the Client and the Consultant:
  - Part A: *The Memorandum of Agreement;*
  - Part B: *The Particulars of Agreement;*
  - Part C: *The Brief provided by the Client;*
  - Part D: *The Programme for the Services;*
  - Part E: *The Schedule of Fees;*
  - Part F: *The Terms of Contract;*
  - Part G: *The Schedule of Services.*
- A3. This Agreement shall be governed by and construed in all respects in accordance with the laws of England and each party hereby submits to the non-exclusive jurisdiction of the English courts.
- A4. Save in respect of the benefits or rights conferred on the Consultant's Personnel pursuant to clause F7.7 of Part F: *The Terms of Contract* nothing in this Agreement confers or purports to confer on any third party any benefit or right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

**For execution of this Agreement under hand**

Signed by or on behalf of the Client:

Signature     *Ran P.*    

Signed by or on behalf of the Consultant:

Signature     *Robert John Helger*

## Part B: The Particulars of Agreement

- B1 The Client is proposing to  
**Construct a new basement extension beneath the rear of the existing house and the single-storey annex structure (which is to be reverted to a garage).** ("the Project")  
at  
**26 Christchurch Hill, London NW3 1LG** ("the Site").
- B2 The Services to be performed under this Agreement are those described in G2 and G3 of Part G: *The Schedule of Services* and if so agreed at the date hereof the Consultant will arrange for the services described in G4 of Part G: *The Schedule of Services* to be carried out by others.
- B3 For the purposes of this Agreement "the Works" shall have the same meaning as "the Project".
- B4 The date for completion of the Services is intended to be
- B5 The Client has appointed or proposes to appoint **Erica Jong Architects** as Lead Consultant.
- B6 The Client has appointed or proposes to appoint the following as "Other Consultants" (to be led by the Lead Consultant) to provide professional services in respect of other aspects of the Project **and** the Works:
- |            |    |                  |
|------------|----|------------------|
| _____      | as | _____            |
| _____      | as | _____            |
| _____      | as | _____            |
| _____      | as | _____            |
| [and _____ | as | Project Manager] |
- B7 The Consultant's Principal Representative shall be **Peter Dash**
- B8 The Consultant's Delegated Representative shall be **Eddy Battman**
- B9 The limit for additional cost that the Consultant can incur on behalf of the Client on any one occasion in connection with the execution of the Project or the construction of the Works without the Client's approval in writing shall be  
**£ 0.00 (zero pounds)**
- B10 The Client's Principal Representative shall be
- B11 The Client's Delegated Representative shall be
- B12 **The sum referred to in clause F7.1 of Part F: *The Terms of Contract* as being the total liability of the Consultant shall not exceed in aggregate the lesser of:**  
(i) the sum of £ 1,000,000( one million pounds ) , or  
(ii) a multiple of ten times the total of the fees payable to the Consultant by the Client.  
If no amount is inserted in paragraph (i) paragraph (ii) only shall apply.
- B13 Notwithstanding anything to the contrary in this Agreement and without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount the Consultant is not responsible under this Agreement or otherwise for advising as to the actual or possible presence of pollution and

contamination or as to the risks of such matters having occurred, being present or occurring in the future and the liability of the Consultant whether in contract, in tort, in negligence, for breach of statutory duty or otherwise for any claim or claims arising out of or in connection with pollution and contamination is excluded.

- B14 Notwithstanding anything to the contrary in this Agreement and without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount the Consultant is not responsible under this Agreement or otherwise for advising on matters that wholly, partly, directly or indirectly arise out of or result from asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos or product or waste that contains asbestos) and the liability of the Consultant whether in contract, in tort, in negligence, for breach of statutory duty or otherwise for any claim or claims arising out of or in connection with asbestos or any product or waste that contains asbestos is excluded.
- B15 Notwithstanding anything to the contrary in this Agreement and without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount the Consultant is not responsible under this Agreement or otherwise for designing or advising on or otherwise taking measures to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling preventing suppressing or in any way relating to an act of terrorism and the liability of the Consultant whether in contract, in tort, in negligence, for breach of statutory duty or otherwise for any claim or claims arising out of or in connection with such matters is excluded.
- B16 Where as part of the Services the Consultant is to make periodic visits to the site, such visits shall be made **monthly**. [the number of such periodic visits included in the fee is **nine** visits.
- B17 The period of the Consultant's liability is from the effective date hereof to **six** years after the completion of the Services or the termination of the Services if earlier.
- B18 Warranties for the benefit of third parties **are not** to be provided (as referred to in clause F10.1 of Part F: *The Terms of Contract*). Payments for any such warranties are set out in clause E9.1 of Part E: *The Schedule of Fees*.



## **Part C: The Brief provided by the Client**

C1 The Brief is described in a separate document referenced  
**Heritage, Planning and Design and Access Statement**  
and dated **07/01/2014**

## **Part D: The Programme for the Services**

D1 The programme referred to in clause F2.5 of Part F: *The Terms of Contract* is as follows:

**To be confirmed.**

## **Part E: The Schedule of Fees**

*Note: delete the sections that do not apply with the exception of section E5 which must be completed in all cases in order to calculate any additional payment arising from the circumstances set out in clause F5.11 of Part F: The Terms of Contract.*

### **Section E2 - Payment of fees on a lump sum basis**

E2.1 Where payment of fees for the Services is to be on a lump sum basis, the fee shall be a lump sum of **£ 63,000 (sixty-three thousand pounds)**

payable as follows:

| Amount |        | Date or end of stage payable |
|--------|--------|------------------------------|
| £      | 6,500  | Preparation of BIA           |
| £      | 15,000 | RIBA Stage 3                 |
| £      | 22,500 | RIBA Stage 4                 |
| £      | 18,000 | RIBA Stage 5                 |
| £      | 1,000  | RIBA Stage 6                 |
| £      |        |                              |
| £      |        |                              |

and within any such stage the lump sum fee shall be paid by equal **monthly** instalments from the commencement of the relevant stage.

### Section E5 - Payment of fees for additional work or disruption

E5.1 Where payment for additional work **or** disruption is to be made on a time basis under clause F5.11 of Part F: *The Terms of Contract* the following rates shall be used:

| Office-based staff |             | Consultant's Site Staff |             |            |              |
|--------------------|-------------|-------------------------|-------------|------------|--------------|
| Grade              | Hourly rate | Grade                   | Hourly rate | Daily rate | Monthly rate |
| Partner            | 150         |                         |             |            |              |
| Associate          | 110         |                         |             |            |              |
| Engineer           | 50-80       |                         |             |            |              |
| Technician         | 90          |                         |             |            |              |
|                    |             |                         |             |            |              |
|                    |             |                         |             |            |              |
|                    |             |                         |             |            |              |
|                    |             |                         |             |            |              |

E5.2 Such time-based fees shall be paid by **monthly** instalments from the date the Consultant undertakes such additional work **or** suffers such disruption.

E5.3 Such time-based fees shall be calculated by multiplying the hourly, daily or monthly rates applicable to the persons concerned by the number of hours, days or months (as the case may be) spent by such persons undertaking such additional work **or** suffering such disruption, including time spent in travelling in connection with such work.

### Section E7 - Payment of expenses

E7.1 Expenses incurred in performing the Services shall be paid:  
at cost

E7.2 Invoices for the recovery of expenses shall be submitted **monthly** and the amount invoiced shall be the total of all expenses incurred during the interval in question.

### Section E8 - Rate of interest

E8.1 Interest shall be calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and

at the relevant reference rate plus the statutory rate of interest.

**Section E9 - Collateral warranties**

E9.1 If collateral warranties are to be provided by the Consultant (as indicated in clause B18 of Part B: *The Particulars of Agreement*), each collateral warranty shall be charged to the Client at **£ 0.00 (zero pounds)**

## Part F: The Terms of Contract

Headings are explanatory and do not form part of the Terms of Contract.

### F1 DEFINITIONS and INTERPRETATION

F1.1 The following definitions shall apply throughout this Agreement:

|  |   |
|--|---|
| <b>Brief</b>                                     | A description provided by the Client of the requirements for the Works (which may also include information on the Project), details of which are set out in Part C: <i>The Brief provided by the Client</i> .   |
| <b>Client</b>                                    | As identified in Part A: <i>The Memorandum of Agreement</i> .   |
| <b>Client's Delegated Representative</b>         | The person designated by the Client under clause F3.5 and identified in Part B: <i>The Particulars of Agreement</i> or that person's replacement notified in accordance with clause F3.5.   |
| <b>Client's Principal Representative</b>         | The person designated by the Client under clause F3.5 and identified in Part B: <i>The Particulars of Agreement</i> or that person's replacement notified in accordance with clause F3.5.   |
| <b>Consultant</b>                                | As identified in Part A: <i>The Memorandum of Agreement</i> .   |
| <b>Consultant's Delegated Representative</b>     | The person designated by the Consultant under clause F2.4 and identified in Part B: <i>The Particulars of Agreement</i> or that person's replacement appointed in accordance with clause F2.4.  |
| <b>Consultant's Intellectual Property Rights</b> | Any and all intellectual and industrial property rights, including (without limitation) patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, moral rights or know-how, howsoever arising, whether or not registered and any other similar protected rights in any country and any applications for the registration or protection of such rights and all extensions thereof throughout the world, created, developed, embodied in or in connection with any drawing or other document and information prepared by or on behalf of the Consultant in the performance of the Services for delivery to the Client. |
| <b>Consultant's Personnel</b>                    | Any employee or member of the Consultant including any officer or director of a company or a member of a limited liability partnership or self-employed or agency personnel working for the Consultant.   |
| <b>Consultant's Principal Representative</b>     | The person designated by the Consultant under clause F2.4 and identified in Part B: <i>The Particulars of Agreement</i> or that person's replacement appointed in accordance with clause F2.4.  |
| <b>Contractor</b>                                | A contractor appointed by the Client to manage the execution of and/or to execute or procure the execution of all or part of the Project and/or the Works and to co-ordinate and supervise or to procure the co-ordination and supervision of such execution.   |
| <b>Insolvency</b>                                | Either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, entering into a voluntary arrangement or having a receiver, an administrative receiver or an   |

administrator appointed in respect of the whole or any part of its assets.

|                           |  |
|---------------------------|--|
| <b>Lead Consultant</b>    | The Consultant if the Consultant is so identified in Part B: <i>The Particulars of Agreement</i> but if the Consultant is not so identified the person or firm identified as Lead Consultant in Part B: <i>The Particulars of Agreement</i> .  |
| <b>Notice</b>             | A notice given in accordance with clause F13.1.  |
| <b>Other Consultants</b>  | Persons or firms (other than the Consultant and the Lead Consultant if the Consultant is not so appointed) appointed or to be appointed by the Client to perform professional services in relation to the Works.   |
| <b>Project</b>            | As described in Part B: <i>The Particulars of Agreement</i> .  |
| <b>Services</b>           | As described in Part B: <i>The Particulars of Agreement</i> .  |
| <b>Site</b>               | As described in Part B: <i>The Particulars of Agreement</i> .  |
| <b>Site Staff</b>         | Any person or persons appointed under clause F4 including any staff of the Consultant employed on Site or in premises outside the Consultant's offices on work in connection with the Project and/or the Works on a full time or part time basis.  |
| <b>Sub-Contractor</b>     | A person or firm appointed by or on behalf of a Contractor to execute part of the Project and/or the Works or to manufacture or supply material for incorporation therein.   |
| <b>Total Project Cost</b> | <p>The total cost to the Client of the Project including:</p> <ul style="list-style-type: none"><li>(i) the total amounts paid or payable to the Contractor(s) or any Sub-Contractor(s) responsible for managing and/or executing the Project and all its constituent parts including attendance and profit and the cost of preliminary and general items and any associated builders' works;</li><li>(ii) the amounts of any liquidated damages or similar payments paid or payable by the Contractor(s) or any Sub-Contractor(s) responsible for managing and/or executing the Project;</li><li>(iii) the total cost to the Client under arrangements made by the Client, the Lead Consultant if the Consultant is not so appointed and any Other Consultants of any work in connection with the provision removal or diversion of any utilities systems associated with the Project that is carried out other than by the Contractor(s) or any Sub-Contractor(s);</li><li>(iv) the fair value of all labour materials goods plant (including the use of plant) and machinery provided by the Client for the Project;</li><li>(v) the cost of any investigations or tests in respect of the Project, whether carried out on the Site or elsewhere.</li></ul> <p>The Total Project Cost shall not include: administration expenses incurred by the Client; costs incurred by the Client under this Agreement, the agreement with the Lead Consultant if the Consultant is not so appointed or agreements with any Other Consultants; interest on capital during construction and the cost of raising monies required for carrying</p> |

out the construction of the Project; the cost of land and wayleaves.

**Total Works Cost**

The total cost to the Client of the Works including:

- (i) the total amounts paid or payable to the Contractor(s) or any Sub-Contractor(s) responsible for managing and/or executing the Works and all its constituent parts including attendance and profit and the cost of the preliminary and general items and associated builders works in the proportion that the Total Works Cost bears to the Total Project Cost;
- (ii) the amounts of any liquidated damages or similar payments paid or payable by the Contractor(s) or any Sub-Contractor(s) responsible for managing and/or executing the Works;
- (iii) a proportion of the total cost to the Client under arrangements made by the Client, the Lead Consultant if the Consultant is not so appointed and any Other Consultants of any work in connection with the provision removal or diversion of any utilities systems associated with the Works that is carried out other than by the Contractor(s) or any Sub-Contractor(s). The said proportion shall be the proportion that the Total Works Cost bears to the Total Project Cost;
- (iv) the fair value of all labour materials goods plant (including the use of plant) and machinery provided by the Client for the Works;
- (v) the cost of any investigations or tests in respect of the Works, whether carried out on the Site or elsewhere.

The Total Works Cost shall not include: administration expenses incurred by the Client; costs incurred by the Client under this Agreement or the agreement with the Lead Consultant if the Consultant is not so appointed or the agreements with any Other Consultants; interest on capital during construction and the cost of raising monies required for carrying out the construction of the Works; the cost of land and wayleaves.

**Works**

As described in Part B: *The Particulars of Agreement*.

F1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

**F2 OBLIGATIONS OF THE CONSULTANT TO THE CLIENT**

***Skill and care***

F2.1 The Consultant shall exercise reasonable skill, care and diligence in the performance of the Services.

***Specialist sub-consultants***

F2.2 The Consultant may recommend to the Client that the performance of part of the Services be sub-let to a specialist sub-consultant. The Client shall not unreasonably withhold consent to such recommendation and the Consultant shall integrate such subconsultant's services into the Services. The Consultant shall be responsible for the performance and the payment of any sub-consultant.

***Design by contractors or sub-contractors***

F2.3 The Consultant may recommend to the Client that the detailed design of any part of the Works should be carried out by a Contractor or Sub-Contractor and the Client shall not unreasonably withhold consent to such



recommendation. The Consultant shall examine such detailed design in accordance with the provisions if any relating thereto in Part G: *The Schedule of Services* and integrate it into the Services. The Consultant shall not be responsible for such detailed design or liable for defects in or omissions from it.

### ***The Consultant's Representatives***

F2.4 The Consultant shall designate a Consultant's Principal Representative who shall be deemed to have full authority to give and receive Notices on behalf of the Consultant under this Agreement. The Consultant shall also designate a Consultant's Delegated Representative who shall be responsible for the day to day supervision and administration of the Services on behalf of the Consultant and who shall be deemed to have full authority to make decisions on behalf of the Consultant under this Agreement. The Consultant's Delegated Representative shall not have authority to give and receive Notices under this Agreement unless the Consultant's Delegated Representative is also designated as the Consultant's Principal Representative. Neither the Consultant's Principal Representative nor the Consultant's Delegated Representative shall be replaced without the consent of the Client, which consent shall not unreasonably be delayed or withheld.

### ***Timeliness***

F2.5 All requests to the Client by the Consultant for information, assistance, or decisions shall be made in a timely fashion. Subject always to conditions beyond the Consultant's reasonable control (including acts or omissions of the Client, any Lead Consultant if the Consultant is not so appointed, any Other Consultants or third parties), the Consultant shall use reasonable endeavours to perform the Services in accordance with the programme set out in Part D: *The Programme for the Services* or with any programme agreed with the Consultant from time to time.

### ***Limit of the Consultant's authority***

F2.6 The Consultant shall not without the further approval of the Client alter the Consultant's design to any material extent once the design has been approved by the Client. Save in the event of any emergency, the Consultant shall not without the approval in writing of the Client issue instructions to any Contractor the effect of which would be to alter any design already approved by the Client or to incur additional cost in connection with the execution of the Project or the construction of the Works to the Client on any one occasion beyond the limits therefor set out in clause B9 of Part B: *The Particulars of Agreement*.

### ***The Consultant's discretion***

F2.7 If in the performance of the Services the Consultant has a discretion exercisable as between the Client and a Contractor or Sub-Contractor the Consultant shall exercise that discretion fairly.

## **F3 OBLIGATIONS OF THE CLIENT TO THE CONSULTANT**

### ***Payment***

F3.1 The Client shall pay the Consultant in accordance with the terms set out in clause F5.

### ***Information needed by the Consultant***

F3.2 The Client shall supply to the Consultant, without charge and in such time so as not to delay or disrupt the performance by the Consultant of the Services, all necessary and relevant data and information (including details of the services to be performed by any Lead Consultant if the Consultant is not so appointed and any Other Consultants) in the possession of the Client, the Client's agents, servants, any Lead Consultant if the Consultant is not so appointed, any Other Consultants or any Contractors.

### ***Assistance***

F3.3 The Client shall give, and shall procure that the Client's agents, servants, any Lead Consultant if the Consultant is not so appointed, any Other Consultants and any Contractors, give such assistance as shall reasonably be required by the Consultant in the performance of the Services.

### ***Decisions***

F3.4 The Client shall give the Client's decisions, instructions, consents or approvals on or to all matters properly referred to the Client by the Consultant in such reasonable time so as not to delay or disrupt the performance of the Services by the Consultant.

### ***The Client's Representatives***

F3.5 The Client shall designate a Client's Principal Representative who shall be deemed to have full authority to give and receive Notices on behalf of the Client under this Agreement. The Client shall also designate a Client's Delegated Representative who shall be responsible for the discharge of the Client's obligations under this Agreement and who shall be deemed to have full authority to make decisions on behalf of the Client under this Agreement. The Client's Delegated Representative shall not have authority to give and receive Notices under this Agreement unless the Client's Delegated Representative is also designated as the Client's Principal Representative. The Client shall notify the Consultant immediately if the Client's Principal Representative or the Client's Delegated Representative is replaced.

### ***Responsibility of Contractors***

F3.6 The Client shall require that any Contractor executes and/or manages the execution of the Project and/or the Works in accordance with the terms of the contract between the Client and any such Contractor.

### ***The Consultant acting as agent for the Client***

F3.7 If applicable The Consultant shall obtain the prior agreement of the Client to act as agent for the Client in arranging for the performance by others on behalf of the Client of any of the services specified in G4 of Part G: *The Schedule of Services*. The Client shall pay direct to such person or persons their fees and expenses for performing such services.

## **F4 SITE STAFF**

### ***Provision of Site Staff***

F4.1 If in the opinion of the Consultant the execution of the Works warrants full time or part time Site Staff to be deployed at any stage the Client shall not unreasonably withhold consent to the employment and/or deployment of such reasonably qualified technical and clerical Site Staff as the Consultant shall advise. The Client and the Consultant shall discuss, agree and confirm in writing in advance of such deployment the number and levels of staff to be deployed to Site, the duration of such deployments, the frequency of occasional visits, the duties to be performed by Site Staff and whether such Site Staff shall be employed by the Consultant or by the Client.

### ***Site Staff employed by the Client***

F4.2 The Client shall procure that the contracts of employment of Site Staff employed by the Client empower the Consultant to issue instructions to such staff in relation to the Works and shall stipulate that staff so employed shall in no circumstances take or act upon instructions in connection with the Works other than those given by the Consultant.

### ***Responsibility of Site Staff***

F4.3 The Consultant shall not be responsible for any failure on the part of any Site Staff employed other than by the Consultant to comply with any instructions given by the Consultant.

### ***Facilities and arrangements for Site Staff***

F4.4 The Client shall be responsible for the cost and provision of such local office accommodation, furniture, telephones and facsimile apparatus and other office equipment, protective clothing and transport on Site as shall reasonably be required for the use of Site Staff and for the reasonable running costs of such

accommodation and other facilities, including those of stationery, telephone and facsimile charges, and postage.

## **F5 PAYMENT**

### ***Payment of fees***

F5.1 The Client shall pay to the Consultant fees for the performance of the Services in accordance with these Terms and Part E: *The Schedule of Fees*. If not set out in Part E: *The Schedule of Fees*, the fees (and other sums payable under this Agreement) shall be paid in equal instalments at intervals of not less than one month, starting one month after the Consultant begins performing the Services

### ***Payment of expenses***

F5.2 Unless included in the fees, the Client shall pay the Consultant's expenses incurred in performing the Services in accordance with Part E: *The Schedule of Fees*. Unless otherwise agreed, expenses shall comprise those payments reasonably and properly made by the Consultant for:

- (i) printing, reproduction and purchase of documents, maps, records and photographs;
- (ii) courier charges;
- (iii) travelling, hotel expenses and subsistence payments;
- (iv) any other expenses for which repayment is authorised.

### ***Payment for Site Staff***

F5.3 In addition to any other payment to be made under this Agreement, the Client shall pay the Consultant for all Site Staff employed by the Consultant. Unless otherwise agreed, payment for Site Staff shall be on a time basis and at the rates and in the instalments set out in Part E: *The Schedule of Fees*.

### ***Reimbursement of local authority charges***

F5.4 Notwithstanding anything to the contrary contained in this Agreement, the Client shall reimburse the Consultant for any fees, costs or charges paid by the Consultant to local or other authorities for seeking and obtaining statutory permissions.

### ***Invoicing***

F5.5 The Consultant shall send an invoice to the Client for each instalment of the fees and other sums payable under this Agreement. Each invoice shall specify:

- (i) the sum that the Consultant considers will become due on the payment due date under Clause F5.6, and
- (ii) the basis on which that sum is calculated.

### ***Due Date***

F5.6 Payment shall be due on the date the Client receives the Consultant's invoice.

### ***Payment Notice***

F5.7 The Consultant's invoice under clause F5.5 shall be the payment notice for the purposes of Section 110 A(1) of the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009

### ***Final Date for Payment***

F5.8 The final date for payment shall be 28 days after the payment due date.

### ***Payment***

F5.9 On or before the final date for payment, the Client shall pay to the Consultant either

- (i) the sum stated as due in the Consultant's invoice issued under clause F5.5 ("the Notified Sum") or
- (ii) the sum that the Client considers to be due as specified in any Pay Less Notice under clause F5.10.

**Pay Less Notice**

F5.10 Not later than seven days before the final date for payment, the Client may give the Consultant a Notice that it intends to pay less than the Notified Sum (a "Pay Less Notice"). Any Pay Less Notice shall specify:

- (i) the sum that the Client considers to be due on the date the Notice is served; and
- (ii) the basis on which that sum is calculated

**Payment for variation and/or disruption of the Consultant's work**

F5.11 If the Consultant has to carry out additional work and/or suffers disruption in the performance of the Services because:

- (i) the Project or the Works or the Brief is or are varied by the Client; or
- (ii) of any delay by the Client in fulfilling any of the Client's obligations or in taking any other step necessary for the execution of the Project or the Works; or
- (iii) the Consultant is delayed by others (or by events that were not reasonably foreseeable); or
- (iv) the Project or the Works are damaged or destroyed; or
- (v) of other reasons beyond the control of the Consultant

the Client shall make an additional payment to the Consultant in respect of the additional work carried out and additional resources employed (unless and to the extent that the additional work has been occasioned by the failure of the Consultant to exercise reasonable skill, care and diligence) and/or the disruption suffered. The additional payment shall be calculated (unless otherwise agreed) on a time basis as set out in Part E: *The Schedule of Fees* with payment by instalments in accordance with Part E: *The Schedule of Fees* save that such instalments shall start at the next instalment date so provided. The Consultant shall advise the Client when the Consultant becomes aware that any such additional work is required or disruption shall be suffered and shall if so requested by the Client give an initial estimate for the additional payment likely to be incurred. Where payment for such additional work or disruption is to be in the form of lump sums, these lump sums and the intervals at which instalments shall be paid and the amounts of each instalment should be agreed prior to the additional work being commenced. For the avoidance of doubt it is hereby agreed that if the Consultant carries out any work that subsequently becomes redundant the Client shall (unless otherwise agreed) pay the Consultant an additional payment therefor on a time basis as set out in Part E: *The Schedule of Fees*.

**Payment on termination or suspension other than for breach by the Consultant or on Insolvency**

F5.12 In the event of any termination or suspension by the Client or the Consultant in accordance with clause F9 (other than suspension under clause F9.10, termination by the Client following breach of this Agreement by the Consultant or in the event of the Insolvency of either party), the Client shall pay the Consultant any instalments of the fees due but unpaid under clause F5, a fair and reasonable proportion of the next following instalment commensurate with the Services performed to the date of such termination or suspension and any outstanding expenses together with a sum for loss and costs of disruption (calculated on the basis of the loss to the Consultant and costs to which the Consultant is committed in respect of planned future work on the Services).

**Payment on termination for breach by the Consultant or on Insolvency**

F5.13 In the event of any termination in accordance with clause F9 by the Client following breach of this Agreement by the Consultant or in the event of the Insolvency of either party the Client shall pay the Consultant a fair and reasonable amount on account of the fees due under clause F5 commensurate with the Services performed to the date of termination and any outstanding expenses.

#### **Further payments**

F5.14 Further payments due to the Consultant in accordance with clauses F5.3, F5.4, F5.11, F5.12 and/or F5.13 shall be invoiced with the next account to be presented by the Consultant.

#### **VAT**

F5.15 All sums due under this Agreement are exclusive of Value Added Tax, the amount of which shall be paid by the Client to the Consultant at the rate and in the manner prescribed by law.

#### **Payment of Interest**

F5.16 Interest shall be added to all sums remaining unpaid after the final date for payment as set out in clause E8.1 of Part E: *The Schedule of Fees*.

### **F6 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

#### ***The Consultant's Intellectual Property Rights***

F6.1 The Consultant's Intellectual Property Rights shall, as the case may be, vest in or remain vested in the Consultant but the Client shall have a licence to use the Consultant's Intellectual Property Rights for any purpose related to the Project. Such licence shall enable the Client to use the Consultant's Intellectual Property Rights for the extension of the Project but such use shall not include a licence to reproduce the designs contained therein for any extension of the Project. In the event of the Client being in default of payment of any fees or other amounts due under this Agreement the Consultant may revoke the licence granted herein by giving seven days Notice. Save as above, the Client shall not make copies of any of the Consultant's drawings or other documents or information, nor shall the Client use any of the Consultant's Intellectual Property Rights in connection with any other projects or works without the prior written approval of the Consultant. The Consultant shall not be liable for the use by any person of any of the Consultant's Intellectual Property Rights for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

#### ***Publication and confidentiality***

F6.2 The Consultant shall not, without the written consent of the Client, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Project. Neither party shall disclose to any other person any private or confidential information unless so authorised by the other party save in the proper course of that party's duties or to either party's professional advisers or insurers or as required or permitted by law.

### **F7 LIMITATIONS AND EXCLUSIONS OF LIABILITY**

#### ***Total limitation of liability***

F7.1 Notwithstanding anything to the contrary contained in this Agreement and without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount, the total liability of the Consultant under or in connection with this Agreement whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall not exceed the sum set out or the amount referred to, as the case may be, in clause B12 of Part B: *The Particulars of Agreement*.

#### ***Liability for pollution and contamination***

F7.2 The liability of the Consultant in respect of pollution and contamination is limited or excluded, as the case may

be, in accordance with clause B13 of Part B: *The Particulars of Agreement*.

***Liability for matters involving asbestos***

F7.3 The liability of the Consultant in respect of asbestos is limited or excluded, as the case may be, in accordance with clause B14 of Part B: *The Particulars of Agreement*.

***Liability for acts of terrorism***

F7.4 The liability of the Consultant in respect of terrorism is limited or excluded, as the case may be, in accordance with clause B15 of Part B: *The Particulars of Agreement*.

***Net contribution***

F7.5 Further and notwithstanding anything to the contrary contained in this Agreement and without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount, the liability of the Consultant, if any, for any loss or damage ('the loss or damage') in respect of any claim or claims shall not exceed such sum as it would be just and equitable for the Consultant to pay having regard to the extent of the Consultant's responsibility for the loss or damage and on the assumptions that:

- (i) all other consultants and advisers, contractors and sub-contractors involved in the Project shall have provided contractual undertakings to the Client on terms no less onerous than those set out in clause F2.1 in respect of the carrying out of their obligations in connection with the Project.
- (ii) there are no exclusions of or limitations of liability nor joint insurance or coinsurance provisions between the Client and any other party referred to in clause F7.5 and that any such other party who is responsible to any extent for the loss or damage is contractually liable to the Client for the loss or damage; and
- (iii) all the parties referred to in clause F7.5 have paid to the Client such proportion of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss or damage.

***Liability for death or personal injury***

F7.6 If the Client is an individual, no exclusion or limitation of liability in this Agreement shall affect any liability of the Consultant for death or personal injury suffered by the Client.

***Liability of employees***

F7.7 Save in respect of death or personal injury the Client shall only look to the Consultant (and not to any of the Consultant's Personnel) for redress if the Client considers that there has been a breach of this Agreement. The Client agrees not to pursue any claims in contract, in tort or statute (including negligence) against any of the Consultant's Personnel as a result of carrying out the Consultant's obligations under or in connection with this Agreement at any time and whether or not any of the Consultant's Personnel is named expressly in this Agreement.

***Limitation of time within which to bring claims***

F7.8 No action or proceedings under or in respect of this Agreement whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of the period of liability stated in clause B17 of Part B: *The Particulars of Agreement* or such earlier date as may be prescribed by law.

**F8 INSURANCES**

***Public liability and professional indemnity insurances***

F8.1 The Consultant shall maintain public liability and professional indemnity insurances in the amounts and for the length of time sufficient to cover the Consultant's liabilities under this Agreement provided always in either

case that such insurances are available at commercially reasonable rates and subject to all exceptions, exclusions and limitations to the scope of cover that are commonly included in such insurances at the time the insurances are taken out or renewed as the case may be. The Consultant shall immediately inform the Client if such professional indemnity insurance ceases to be available on the terms required by this clause at commercially reasonable rates in order that the Client and the Consultant can discuss means of best protecting their respective positions in the absence of such professional indemnity insurance.

### ***Evidence of insurance***

F8.2 As and when reasonably requested to do so by the Client, the Consultant shall produce for inspection broker's certificates to show that the insurance cover required by clause F8.1 is being maintained.

## **F9 COMMENCEMENT, SUSPENSION AND TERMINATION**

### ***Duration of the Appointment***

F9.1 Notwithstanding the date stated in Part A: *The Memorandum of Agreement* the effective date of the appointment of the Consultant shall be the date upon which Part A: *The Memorandum of Agreement* was executed by the parties or the date when the Consultant first commenced performance of the Services, whichever is the earlier. Unless terminated, the appointment of the Consultant shall be concluded when the Consultant had performed the Services required under this Agreement.

### ***Suspension by the Client***

F9.2 The Client may at any time by Notice require the Consultant to suspend the performance of all or any part of the Services. On Notice of suspension of all or any part of the Services the Consultant shall cease such suspended Services in an orderly and economical manner compatible with a possible order to restart. If the suspension of the performance of all or any part of the Services exceeds nine months in aggregate the Consultant may by giving four weeks Notice treat the Works or the Project or that part of the Works or that part of the Project as having been abandoned and the appointment of the Consultant in respect of all or any part of the Services affected shall be automatically terminated.

### ***Suspension by the Consultant***

F9.3 Upon the occurrence of any circumstance beyond the control of the Consultant that is such as to prevent or significantly impede the performance by the Consultant of the Services under this Agreement, the Consultant may without prejudice to any other remedy and upon not less than four weeks Notice suspend for a period of up to twenty-six weeks the performance of the Services under this Agreement in respect of all or such parts of the Works as are affected. At the expiry of the said period of suspension the Consultant may if the Consultant is still prevented from performing such Services for reasons beyond the Consultant's control terminate the appointment of the Consultant forthwith by a further Notice in respect of all or any part of the Services affected.

### ***Termination by the Client at any time***

F9.4 The Client may terminate the appointment of the Consultant at any time by four weeks Notice in respect of all or any part of the Services.

### ***Termination by the Client following a breach by the Consultant***

F9.5 In the event of a breach of this Agreement by the Consultant the Client may give two weeks Notice of the Client's intention to terminate the appointment of the Consultant setting out the acts or omissions of the Consultant relied upon as evidence of such breach. If the Consultant does not, to the reasonable satisfaction of the Client, take expeditious steps to repair the breach during the notice period the Client may forthwith on the expiry of the notice period terminate the appointment of the Consultant by a further Notice.

### ***Termination by the Consultant in certain circumstances***

F9.6 If circumstances arise for which the Consultant is not responsible and which the Consultant considers make it irresponsible for the Consultant to perform all or any part of the Services the Consultant shall be entitled to terminate the appointment of the Consultant by two weeks Notice in respect of all or such part of the Services.

***Termination by the Consultant following a breach by the Client***

F9.7 In the event of a breach of this Agreement by the Client the Consultant may give two weeks Notice of the Consultant's intention to terminate the appointment of the Consultant setting out the acts or omissions of the Client relied upon as evidence of such breach. If the Client does not, to the reasonable satisfaction of the Consultant, take expeditious steps to repair the breach during the notice period the Consultant may forthwith on the expiry of the notice period terminate the appointment of the Consultant by a further Notice. Notwithstanding the foregoing, in the event of the failure of the Client to make any payment properly due to the Consultant in accordance with the provisions of clause F5 by the final date for payment the Consultant may, upon not less than two weeks' Notice, terminate the appointment of the Consultant.

***Termination following Insolvency***

F9.8 The appointment of the Consultant may be terminated forthwith in the event of the Insolvency of either party. Notice of termination shall be given to the party that is insolvent by the other party.

***Accrued rights***

F9.9 Termination of the appointment of the Consultant under this Agreement shall not prejudice or affect the accrued rights or claims of either party to this Agreement.

***Suspension for Non-Payment***

F9.10(i) If the Client does not pay to the Consultant the Notified Sum or the sum specified as due in a Pay Less Notice in full by the final date for payment, the Consultant may (without prejudice to any other right or remedy) suspend the performance of any or all its obligations under this Agreement by giving not less than seven days' Notice to the Client of its intention to do so and stating the ground or grounds on which it intends to suspend performance.

(ii) Where the Consultant exercises its right of suspension under clause F9.10 (i):

- (a) the Client shall pay to the Consultant a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant as a result of the exercise of that right, and
- (b) any period during which performance is suspended in pursuance of or in consequence of the exercise of that right shall be disregarded in computing (for the purpose of any contractual time limits) the time taken by the Consultant or by a third party to complete any work directly or indirectly affected by the exercise of that right (and where a contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly).

(iii) The right of suspension in Clause F9.10 (i) shall cease when the Client pays the Notified Sum or the sum specified as due in a Pay Less Notice.

**F10 COLLATERAL WARRANTIES**

***Provision of collateral warranties***

F10.1 Where the Consultant has agreed to provide collateral warranties to third parties as specified in clause B18 of Part B: *The Particulars of Agreement*, the Consultant shall enter into such collateral warranties in the Construction Industry Council's relevant standard form or such other form agreed with the Consultant, provided that such form shall not give any greater benefit to those to whom they are issued in quantum, duration or otherwise than is given to the Client under the terms of this Agreement. It shall be a condition of the provision of such collateral warranties that all fees due to the Consultant at the date of execution of the



collateral warranty have been paid.

#### **F11 ASSIGNMENT**

##### ***Assignment by the Consultant or the Client***

F11.1 Neither the Consultant nor the Client shall, without the written consent of the other, assign or transfer any benefit under this Agreement save that the Client may assign the benefit of this Agreement at any time up to twelve weeks after the Services have been completed without the consent of the Consultant and provided that all fees properly due to the Consultant up to the date of such assignment have been paid.

#### **F12 DISPUTES AND DIFFERENCES**

##### ***Mediation***

F12.1 The parties shall attempt in good faith to settle any dispute by mediation.

##### ***Adjudication***

F12.2 Where this Agreement is a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996 either party may refer any dispute arising under this Agreement to adjudication in accordance with the Construction Industry Council Model Adjudication Procedure current at the time of the referral of the dispute. The adjudicator shall be appointed at the request of either party by the Association for Consultancy and Engineering. The statement of case to be sent by the referring party to the adjudicator in accordance with that Procedure shall not exceed eight single-sided sheets of A4-sized paper excluding any attachments.

#### **F13 NOTICES**

##### ***Service of Notices***

F13.1 Any Notice to be given under this Agreement shall be in writing and given by sending the same by fax or by first class letter to the Client's Principal Representative on behalf of the Client or the Consultant's Principal Representative on behalf of the Consultant at the appropriate address as shown in Part A: *The Memorandum of Agreement*. Notices shall take effect when they have been received by the Client or the Consultant as the case may be. For the avoidance of doubt, any notice sent by e-mail shall not be an effective Notice under the terms of this Agreement.





**ace**  
**agreements**

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