

## Conditions of Appointment

These Conditions are to be read in conjunction with the Letter of Appointment to which they are attached. Please take the time to read both documents carefully; together they form an Agreement and a legally binding contract to be entered into between you and Prime Building Consultants Limited.

These Conditions are also available in large print format upon request.

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### 1 Definitions

- 1.1. **Client, the Client, You, Your** – the person or persons who has or have appointed Prime Building Consultants Limited to perform the Services.
- 1.2. **Architect, the Architect, Us, We, Our** – Prime Building Consultants Limited.
- 1.3. **Agreement** – the contract of agreement between the Client (you) and Prime Building Consultants Limited (us) for the Project comprising your signed and returned copy of the Letter of Appointment incorporating your agreement to be bound by these Conditions of Appointment.
- 1.4. **Brief** – the latest statement of requirements for the Project issued and approved by the Client and may take the form of:
  - 1.4.1 an initial statement of need as summarised in the Letter of Appointment;
  - 1.4.2 a Design Brief developed from the initial statement of need during the early Work Stages; and/or
  - 1.4.3 any subsequent agreed development into a Project Brief.
- 1.5. **Building Contract** – the contract agreed between the Client and the Contractor for the construction of the Project.
- 1.6. **CDM Regulations** – the Construction (Design and Management) Regulations 2015; and any subsequent revisions or amendments.
- 1.7. **Confidential Information** – all information relating to the Client's and Prime Building Consultants Limited's business and affairs, which has been totally or partially acquired from the other party or any representative of the other party either in writing or verbally.
- 1.8. **Construction Cost** – the Client's target cost for constructing the Project as specified in the Letter of Appointment or where no such amount is specified a fair and reasonable amount; or subsequently:
  - 1.9.1 the latest professionally prepared estimate approved by the Client; or where applicable
  - 1.9.2 the actual cost of constructing the Project upon agreement or determination of a final account for the Project; and includes without limitation
  - 1.9.3 the cost as if new of any equipment and/or materials provided by the Client to a contractor for installation during construction of the project;
  - 1.9.4 any direct works carried out by or on behalf of the Client; and
  - 1.9.5 provision for Contractor's profit and overheads; and excludes:

- 1.9.6 Value Added Tax;
- 1.9.7 Fees;
- 1.9.8 the costs of resolution of any dispute;
- 1.9.9 the Client's legal and in-house expenses;
- 1.9.10 any loss and/or expense payments paid to a contractor; nor
- 1.9.11 any adjustments for any liquidated damages deducted by the Client.
- 1.9. **Consultant** – a person, company or firm appointed or to be appointed by the Client to perform professional services in connection with the Project.
- 1.10. **Consumer** – a natural person acting for purposes outside his or her trade, business or profession.
- 1.11. **Contract Administration** - the act of impartially administering the Building Contract.
- 1.12. **Contractor** – a person, company or firm appointed or to be appointed by the Client to undertake construction work in connection with the Project.
- 1.13. **Domestic Client** – a person who has work done to their own home or the home of a family member (which they live in or will live in) that does not relate to a trade or business, whether for profit or not. Local authorities, housing associations, charities, landlords and other businesses may own domestic property but they are not domestic clients.
- 1.14. **Fee, Fees** – the fees payable to Prime Building Consultants Limited pursuant to this Agreement.
- 1.15. **Letter of Appointment** - the letter to which these Conditions of Appointment are attached. This letter clearly states Prime Building Consultants Limited's understanding of the Client's requirements and a definition of the Services required; it also defines the Fee for performing the Services.
- 1.16. **Others, Other Persons** – any person, company or firm, other than Prime Building Consultants Limited or any sub-consultant of Prime Building Consultants Limited, including but not limited to consultants, contractors, sub-contractors, specialists, statutory bodies or statutory undertakers, approving or adopting authorities, who have performed or who will perform work or services in connection with the Project.
- 1.17. **Other Services** - Services not listed in the Letter of Appointment that can be undertaken by Prime Building Consultants Limited and require a separate fee, such as Employer's Agent or energy assessments.
- 1.18. **Personnel, Employee** – any principal or employee of Prime Building Consultants Limited.
- 1.19. **Principal Contractor** – required to be appointed in writing under CDM 2015 to plan, manage and coordinate the construction work if more than one contractor is involved in the construction of the Project.
- 1.20. **Principal Designer** – required to be appointed in writing under CDM 2015 to plan, manage and coordinate the planning and design work.
- 1.21. **Project, the Project** – the Client's requirements as defined in the Letter of Appointment.

- 1.22. **Services, the Services** – the architectural services to be performed by Prime Building Consultants Limited as specified in the Letter of Appointment, which may be varied by mutual agreement.
- 1.23. **Stage Outputs** – the results of the previous Work Stage and as defined in the Letter of Appointment. Stage Outputs can include either one or a combination of the following:
- 1.21.1 a written and sometimes illustrated Stage Report that summarises design work completed and/or research gathered to date; and/or
  - 1.21.2 drawings in either digital or hard copy format for your comments and approval; and/or
  - 1.21.3 any other documentation as expressly identified in the Letter of Appointment.
- 1.24. **Stage Payments** – payment for a previously completed Work Stage. Until such payment has been received Prime Building Consultants Limited cannot commence with the next Work Stage.
- 1.25. **Sub-consultant** – a person, company or firm appointed by Prime Building Consultants Limited, with your prior consent, to perform professional services in connection with the Project.
- 1.26. **Sub-contractor** – a person, company or firm appointed by the Contractor to undertake work or a specific task in connection with the Project.
- 1.27. **Timetable, Timescale** – the period of time which the Client wishes to allow for completion of the Project.
- 1.28. **Works** – the construction operations carried out by a Contractor and/or sub-contractors.
- 1.29. **Work Stage** – actions or tasks undertaken in performance of the Services as defined in the Letter of Appointment and often relating to the RIBA Plan of Work.

## **2 General Interpretations**

- 2.1 The headings and notes to these Conditions are for convenience only and shall not affect the interpretation of this Agreement.
- 2.2 In the event of any conflict between these Conditions and any additional information appended to them these Conditions shall prevail.
- 2.3 Both parties agree that if any provision of this Agreement is held by any arbitrator, court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions of this Agreement and the remainder of any affected provision or provisions.
- 2.4 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 includes Saturdays and Sundays but excludes any day that is a public holiday.
- 2.5 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.

## **3 Applicable Law**

- 3.1 This Agreement is subject to the law and both parties submit to the exclusive jurisdiction of the courts of England and Wales.

## **4 Communications**

- 4.1 Communications between the Client and the Architect, including any notice or other document required under the Agreement, shall be in writing and given or served by any effective means. Communications that are not in writing shall be of no effect unless and until confirmed in writing by the sender or the recipient.
- 4.2 Communications shall take effect when received at the address of the recipient as referred to in the Letter of Appointment or as otherwise agreed in writing.
- 4.3 Communications sent by recorded or registered first-class post shall be presumed to have arrived at the address to which they are posted on the second working day after posting.
- 4.4 No amendment or variation to this Agreement will be binding on either party unless it has been mutually agreed in writing.
- 4.5 The Client shall provide the Architect with an address, telephone number and/or email address for communications to be sent and these may not be changed without prior notification to the Architect.
- 4.6 The Letter of Appointment shall state the name of the Director overseeing the Project and the main point or points of contact for the Client's reference.
- 4.7 If the personnel who form the Client's main point or points of contact change, for whatever reason, the Architect will endeavour to notify the Client at the earliest opportunity.

## **5 CDM Regulations**

- 5.1 The Client and the Architect shall comply with their respective obligations under the CDM Regulations.
- 5.2 If the Architect is appointed in writing as the Principal Designer, or if no other person or persons are appointed as Principal Designer, additional fees will be payable by the Client to the Architect for providing this additional service.
- 5.3 The Client acknowledges that where the Architect has not been previously appointed, and has inherited the Project from Others, additional fees will be payable by the Client to the Architect for auditing and, if necessary, revising the inherited scheme and Health and Safety information to comply with the duties imposed by CDM 2015.
- 5.4 If the Architect is employed as the Contractor's Architect for a Design & Build project, the duties of the Principal Contractor and Principal Designer will be the responsibility of the Contractor employing the Architect.

## **6 Architect's Obligations and Authority**

- 6.1 Individual architects are registered with the Architects Registration Board and are subject to the Architects Code of Conduct and Practice. You can refer a complaint to the Board if our conduct falls short of the standards prescribed by the Code.

### **Duty of care**

- 6.2 The Architect shall exercise reasonable skill, care and diligence in accordance with the normal standards of the architect's profession in discharging the Services.

### **Architect's authority**

- 6.3 The Architect shall act on the Client's behalf, as the Client's Agent, in matters set out or implied in this Agreement.
- 6.4 The Architect has no authority to enter in to any contractual or other commitment on the Client's behalf, nor to terminate the employment of Other Persons appointed by the Client.

### **Architect's Representative**

- 6.5 The Architect's Representative shall have the full authority to act on the behalf of the Architect in matters relating to the performance of the Services, but not to vary the terms of this Agreement.
- 6.6 The Architect's Representative shall be supervised by the Architect and does not remove the Architect's obligations under this Agreement.

### **Progress reports**

- 6.7 The Architect shall endeavour to keep the Client informed of progress in discharging the Services and of any issue or issues that may materially affect the timescale for delivery, the cost or the quality of the Project.
- 6.8 The Architect shall inform the Client upon becoming aware of the need to appoint Other Persons to design or carry out any part of the Project or to provide specialist advice in connection with the Project.
- 6.9 The Architect shall inform the Client of any information, decision or action required by the Client or Others in connection with the performance of the Services.

### **Co-operating with Others**

- 6.10 The Architect shall co-operate with any Other Persons appointed by the Client to work on the Project and the Architect shall co-ordinate and integrate information received into the Architect's work and shall pass any relevant information onto them.

### **Changes to Services and/or the design**

- 6.11 The Architect shall perform the Services with due regard to the Client's requirements.
- 6.12 The Architect shall make no material alteration to the Services or the approved design without the Client's prior consent, except in an emergency.

### **Contract administration**

- 6.13 If the Client appoints the Architect to act as the Contract Administrator of a Building Contract, the Architect shall exercise impartiality and independent judgement when dealing between the Client and the Contractor.

### **Visits to Site**

- 6.14 If applicable, any visits to the construction Site and/or the Works shall be as detailed in the Letter of Appointment; any visits that do not form part of this Agreement will be charged at the applicable hourly rate for the personnel involved along with associated charges for travelling between the Site and the Architect's office.

### **Confidentiality**

- 6.15 The Architect shall not disclose any of the Client's personal details or confidential information pertaining to the Project without first seeking authorisation from the Client, unless:
- 6.15.1 such 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 or maintain insurance cover as required by this Agreement;
  - 6.15.2 it is in the public domain other than due to wrongful use or disclosure; or
  - 6.15.3 disclosure is required by law because of disputes arising out of or in connection with this Agreement.

## **7. Client's Obligations and Authority**

### **Information, decisions, approvals and instructions**

- 7.1 The Client shall provide to the Architect, free of charge, the information in the Client's possession, or which is reasonably obtainable, and which is necessary for the proper and timely performance of the Services and the Architect shall be entitled to rely on such information.
- 7.2 The Client shall advise the Architect of the Project requirements and any subsequent changes required.
- 7.3 The Client shall give timely decisions, approvals and take actions necessary for the performance of the Services.
- 7.4 The Client shall issue reasonable instructions to the Architect.
- 7.5 The Client shall not deal with the Contractor or any sub-contractors directly or interfere with the Architect's duties or actions under the Building Contract unless expressly agreed prior to the Works commencing on site.

### **Client's Representative**

- 7.6 It is important that the Architect receives clear and non-conflicting instructions; therefore the Architect reserves the right to request the Client to appoint a Client Representative, such an appointment is not to be unreasonably delayed or withheld, and that person will then have the authority to instruct the Architect in matters pertaining to the Project.
- 7.7 The Client's Representative shall have the full authority to act on the behalf of the Client in matters pertaining to this Agreement, but not to vary the terms of this Agreement.
- 7.8 Where the Client either wishes or agrees to use a Representative to issue instructions that person's authority must be confirmed in writing to the Architect before the Representative issues such instructions.

### **Statutory and other consents required**

- 7.9 The Client shall instruct the making of applications for consents relevant to the Project under planning legislation, building acts, relevant regulations or statutory requirements and by third parties having an interest in the Project. The Client shall pay any required charges, Fees, expenses and disbursements.

### **Separate agreements and the payment of others**

- 7.10 The Client acknowledges that the Architect does not warrant the competence, performance, work, services, products or solvency of any Other Persons.

- 7.11 The Client shall appoint and pay any Other Persons required to perform works or services under separate agreements.
- 7.12 The Client shall hold the Contractor or sub-contractor and not the Architect responsible for the proper execution of the Works.

**Time and costs**

- 7.13 The Client acknowledges that the Architect does not warrant compliance with any programme and/or target cost for the building work which may need to be reviewed for:
- 7.13.1 variations requested by the Client;
- 7.13.2 variations in market prices;
- 7.13.3 delays caused by any factor(s) beyond the Architect's control; or
- 7.13.4 the discovery at any time of previously unknown conditions.

**Legal advice**

- 7.14 The Client shall procure such legal advice and provide such information and evidence as necessary to assist the Architect in the performance of the Services, and as required for the resolution of any dispute arising between the Client and any other parties affected by the Project.

**Confidentiality**

- 7.15 The Client shall not disclose to Others any confidential information, unless:
- 7.15.1 such disclosure is necessary to take professional advice in relation to this Agreement or the Services;
- 7.15.2 it is in the public domain other than due to wrongful use or disclosure; or
- 7.15.3 disclosure is required by law because of disputes arising out of or in connection with this Agreement.

**8. Assignment and Sub-contracting**

**Assignment**

- 8.1 Neither the Client nor the Architect may assign or transfer all or any part of this Agreement without the prior written consent of the other.

**Sub-contracting**

- 8.2 The Architect shall not sub-contract performance of any part of the Services without the Client's prior consent, such consent not to be unreasonably delayed or withheld.

**Specialist services**

- 8.3 If during the performance of the Services it is the Architect's opinion that it would be of benefit to the Client, the Architect may recommend that the Client appoints Other Persons with appropriate knowledge and experience to perform part of the Services. If the Client consents to such an appointment, such consent not to be unreasonably delayed or withheld, the Client agrees that the provisions in clauses 7.10, 7.11, 12.2 (namely 12.2.3) and 12.6 apply.

## 9. Payments

### Calculation of the Basic Fee

- 9.1 The fee for our performance of the Services shall be as stated in the Letter of Appointment and is calculated and charged based upon either one or a combination of the following methods:
- 9.1.1 the specified percentage applied to the final cost of the building work; or
  - 9.1.2 the separate percentages specified for each Work Stage applied to the approved cost of the building work at the end of the previous Work Stage; or
  - 9.1.3 the specified lump sum or sums; or
  - 9.1.4 time charges ascertained by multiplying the time reasonably spent in the performance of the Services by the specified hourly rate for the relevant personnel. Time 'reasonably spent' includes the time spent in connection with performance of the Services travelling to and from the Architect's office; or
  - 9.1.5 any combination of these; and/or
  - 9.1.6 any other agreed method.

### Revision of Fees and other rates

- 9.2 The Architect's fee shall be adjusted, including due allowance for any loss and/or expense, if material changes are made to the Brief and/or the latest approved estimate of the cost of the building work and/or the programme and/or the Services are varied by mutual agreement.
- 9.3 The Architect's fee shall not be adjusted for any reduction of the cost of the building works arising solely from deflationary market conditions not prevailing at the date of this Agreement. The fee shall continue to be based on the approved cost of the building works current prior to the date of such reduction.
- 9.4 Lump sums, rates for time charges, mileage and printing shall be reviewed every 12 months in accordance with changes in the Consumer Price Index. Each 12 month period commences on the anniversary of the date on which the Architect commenced the performance of the Services.

### Additional Fees

- 9.5 If the Architect is involved in extra work or incurs extra expense for reasons beyond the Architect's reasonable control, additional fees shall apply and in such instances, work will be priced on a time charge basis as per clause 9.1.4; reasons for entitlement to additional fees include but are not limited to:
- 9.5.1 the cost of any work, installation or equipment, for which the Architect performs Services, is not included in the cost for the building work; and/or
  - 9.5.2 the Architect is required to vary any item of work commenced or completed or to provide a new design after the Client has authorised development of an approved design; and/or
  - 9.5.3 performance of the Services is delayed, disrupted or prolonged.
- 9.6 The Architect shall inform the Client on becoming aware that any of the circumstance in clause 9.5 will apply.



9.7 Clause 9.5 will not apply where any change or extra work or expense arises from a breach of this Agreement by the Architect.

**Incomplete Services**

9.8 Where for any reason the Architect provides only part of the Services defined in the Letter of Appointment, the Architect shall be entitled to Fees calculated as follows:

9.8.1 for completed individual Services: Fees calculated as described for those Services in the Letter of Appointment;

9.8.2 for completed Work Stages: Fees as apportioned for those Work Stages as defined by the Letter of Appointment;

9.8.3 for Services or Work Stages not completed: a Fee proportionate to that described or apportioned in the Letter of Appointment based on the Architect's reasonable estimate of the percentage of completion.

**Expenses and disbursements**

9.9 Time charges, as described in clause 9.1.4, are based upon the following hourly rates for the relevant personnel:

Director	£125/hour +VAT
Associate/Architect	£95/hour + VAT
Architectural Technologist/Senior Technician	£75/hour + VAT
Architectural Assistant	£50/hour + VAT

9.10 Expenses and disbursements made on your behalf will be charged at net cost plus a handling charge of 10%. If the payment of a disbursement incurs the cost of VAT you will be notified prior to payment being made.

9.11 Travel by car, where applicable, will be charged at 65p per mile.

9.12 Congestion charges, parking charges, tolls and public transport will be charged as used and receipts retained for the Architect's records.

9.13 Plotting, printing and copying rates for hard copy prints are as follows:

	Black & White Printouts/Copies:	Colour Printouts/Copies:
A0	£4.50 each	P.O.A
A1	£3.00 each	P.O.A
A2	£2.50 each	P.O.A
A3	£0.50 each	£1.00 each
A4	£0.25 each	£0.50 each

9.14 Scan to Disc

Any information provided on CD-ROM will be charged at £25.00 (additional discs provided at £5.00 per copy).

### **Records**

- 9.15 The Architect shall maintain records of time spent on Services performed on a time charge basis and any expenses and disbursements to be reimbursed at net cost, and shall make such records available to the Client on reasonable request.

### **Payment**

- 9.16 The Architect shall issue accounts at intervals of not less than one month or as specified in the Letter of Appointment setting out any accrued instalments of the Basic Fee and any additional fees, expenses, disbursements or VAT, less any amounts previously paid and stating the basis of calculation of the amounts due.
- 9.17 All payments due to the Architect shall be paid within fourteen (14) days from their date of issue unless expressly agreed otherwise.
- 9.18 Payments due can be settled with cash or cheques, but preferably by using the Bank Automated Credit System (BACS). Bank details will be noted on the relevant account.

### **Payment notices**

- 9.19 The Client shall inform the Architect in writing, on or before the date when payment is due, if the Client intends to withhold payment of any part of the amount due stating the amount proposed to be withheld and the reason or reasons for doing so. If no notice is given the amount due shall be the amount stated as due in the account.

### **Late payment**

- 9.20 In the event of late payment, the Architect shall be entitled to simple interest on such amounts until the date that payment is received at 8% over the dealing rate of the Bank of England Rate current at the date that payment becomes overdue, together with any costs reasonably incurred, including costs of time spent by principals, employees and advisors, in obtaining payment of any sums due under this Agreement.
- 9.21 For commercial debts, interest and any compensation due will be charged in accordance with Late Payment of Commercial Debts (Interest) Act 1998, as amended by the Late Payment of Commercial Debts Regulations 2013.

### **Recovery of costs**

- 9.22 The Client or the Architect shall pay to the other party who successfully pursues, resists or defends any claim or part of a claim brought by the other:
- 9.22.1 such costs reasonably incurred (including costs of time spent by principals, employees and advisors) where the matter is resolved by negotiation or mediation; or
- 9.22.2 such costs as may be determined by any tribunal to which the matter is referred.

### **Payment on suspension or termination**

- 9.23 If performance of any or all of the Services and/or other obligations is suspended or ended, the Architect shall be entitled to:
- 9.23.1 payment of any part of the fee and other amounts properly due; together with
- 9.23.2 reimbursement of any loss and/or expense properly and necessarily incurred by reason of the suspension or the termination, except where the Architect is in material or persistent breach of the Architect's obligations under this Agreement.

### **Value Added Tax (VAT)**

- 9.24 In addition to the fees and expenses, the Client shall pay any Value Added Tax chargeable on the Architect's fees and expenses.
- 9.25 Value Added Tax will be charged at the prevailing rate at the time of issuing an account.

## **10. Copyright Licence**

### **Copyright and registration**

- 10.1 The Architect shall own the copyright in the drawings and documents produced in performing the Services and generally asserts the Architect's moral rights to be identified as the author of such work under the Copyright, Design and Patents Act 1988.
- 10.2 No part of any design by the Architect may be registered under the Registered Designs Regulations 2001 by the Client without the Architect's prior written consent.

### **Use of information**

- 10.3 Subject to payment of Fees and any other amounts properly due, the Client shall have a licence to copy and use, and allow Other Persons providing services to the Project to copy and use, the drawings and documents only for purposes related to the construction of the Project or its subsequent use or sale, but may not be used for reproduction of the design for any part of an extension of the Project or any other project.
- 10.4 The Architect shall not be liable for any use of the drawings and documents other than for the purpose for which they were prepared.
- 10.5 The Architect shall issue drawings to the Client in PDF or BIMx file formats and/or hard copies only. Hard copy quantities will be limited to the numbers stated in the Letter of Appointment, additional copies can be provided at extra cost as detailed in clause 9.13.
- 10.6 The Architect reserves the right to retain the CAD and/or BIM digital files and does not warrant releasing the following file formats DWG, DWT, DXF, DWF, PLN, PLA, TPL, GSM, GDL, IFC, SKP or any variants thereof.

## **11. Marketing and Promotion**

### **Photography and publication of information**

- 11.1 The Architect reserves the right to photograph the Project during construction and for a period of up to two years after completion for marketing purposes, and to have the right to publish photographs and a description of the Project, but shall require the Client's consent, not to be unreasonably delayed or withheld, before publication of any other information about the Project, unless reasonably necessary for performance of the Services.

### **Site signboards**

- 11.2 The Client shall allow the Architect to display standard-sized RIBA professional signboards at the Site in appropriate locations for the duration of the Works.

## **12. Liabilities and Insurance**

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

- 12.1 No action or proceedings whatsoever for any breach of this Agreement or arising out of or in connection with this Agreement whether in contract, tort, statutory duty or otherwise shall be commenced after the expiry of six (6) years from the date of the last Services performed under this Agreement or, if earlier, practical completion of construction of the Project or such earlier date as prescribed by law.

**Limit of responsibility**

- 12.2 The Architect does not warrant:
- 12.2.1 that the Project will be completed in accordance with the Timetable or within any budget for the Project (including the Construction Cost);
  - 12.2.2 that any approvals, consents or permissions relating to the Project (whether statutory or otherwise), such as planning permission, will be granted; nor
  - 12.2.3 the solvency, services, performance, work or products of parties other than the Architect whether or not such parties were appointed on the advice of the Architect.

**Limit of liability**

- 12.3 Notwithstanding anything to the contrary in this Agreement, the liability of the Architect under or in connection with this Agreement whether in contract or in tort (*delict*), in negligence, for breach of the statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed in aggregate the level of professional indemnity insurance specified in the Letter of Appointment. If no amount is specified, the liability of the Architect shall not exceed in aggregate a multiple of ten times the total of the fees payable to the Architect by the Client.
- 12.4 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 Architect under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim shall not exceed the amount, if any, recoverable by the Architect by way of indemnity against the claim in question under professional indemnity insurance taken out by the Architect and in force at the time that the claims or (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question. The limitation shall not apply if no such amount is recoverable due to the Architect having been in breach of his obligations under Clause 12.7 or the terms of any insurance maintained in accordance therewith or having failed to report any such claim or circumstances to the Insurers in question timeously.
- 12.5 No employee or Agent of Prime Building Consultants Limited shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from performance of the Services.
- 12.6 The Architect's obligation in relation to the performance of the Services shall be limited to the exercise of the level of skill and care provided in clause 6.2 and he shall only be liable if and to the extent that it has failed to exercise such skill and care.
- 12.7 The Architect shall not be responsible for or have any duty or liability in connection with the supervision of any contractor or sub-contractor, nor shall the Architect have any responsibility, duty or liability as a result of in connection with the performance of any contractor or sub-contractor or any contractor or sub-contractor's standard of workmanship.

**Net contribution**

- 12.8 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 Architect, 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 Architect to pay having regard to the extent of the Architect's responsibility for the loss or damage and on the assumptions that:

- 12.8.1 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 this Agreement in respect of the carrying out of their obligations in connection with the Project; and
- 12.8.2 there are no exclusions of or limitation of liability nor joint insurance or co-insurance provisions between the Client and any other party to the Project 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
- 12.8.3 all the parties referred to in 12.8.1 above, 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.

#### **Economic Loss Exclusion**

- 12.9 Neither party shall under any circumstances whatsoever be liable to the other for any direct or indirect loss of profit, loss of business or anticipated saving or special, indirect or consequential damage suffered by the other Party that arises under or in connection with the Agreement.

#### **Professional indemnity insurance**

- 12.10 The Architect shall maintain until at least the expiry of the period specified in condition 12.1 professional indemnity insurance with a limit of indemnity not less than the amount or amounts specified in the Letter of Appointment, provided such insurance continues to be offered on commercially reasonable terms at the time when the insurance is taken out or renewed.
  - 12.10.1 The Architect shall, when reasonably requested by the Client, produce for inspection a broker's letter or certificate confirming that such insurance has been obtained and/or is being maintained.

#### **Rights of third parties**

- 12.11 Nothing in this Agreement confers 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.

#### **Collateral warranties**

- 12.12 If the Architect consents to enter into any third party agreement, such as a Collateral Warranty, the form or beneficiary of which had not been agreed by the Architect at the date of the Agreement, the Architect shall be entitled to payment of the Architect's reasonable costs of assuming such additional liability, including but not limited to legal advice and obtaining any additional professional indemnity insurance required.

### **13. Complaints**

- 13.1 Prime Building Consultants Limited aims to provide its Clients with a professional standard of service throughout the duration of the Project. If the Client feels that their expectations have not been met the Client should forward their concerns in writing to the Director named in the Letter of Appointment at the time the issue first becomes apparent.
- 13.2 Prime Building Consultants Ltd operates a Complaints Handling Policy. A copy of this is available upon request.

13.3 Prime Building Consultants Limited shall endeavour to address the complaint and resolve it immediately if possible, but an acknowledgement of receipt of the Client's complaint will be issued to the Client within ten (10) working days.

13.4 Prime Building Consultants Limited shall issue a response addressing the issue or issues raised in the initial letter of complaint within thirty (30) working days from its receipt.

## **14. Suspension and Termination**

14.1 The Client may suspend or end performance of the Services and other obligations by giving at least seven (7) days' written notice that also states the reason or reasons for doing so.

14.2 The Architect may suspend or end performance of the Services and other obligations by giving at least seven (7) days' written notice that also states the reason or reasons for doing so. These reasons include, but are not limited to, any acts or omissions that mean the Client is:

14.2.1 in default of payment of any Fees or other amounts properly due under this Agreement; or

14.2.2 fails to comply with the Client's obligations under the CDM regulations.

14.3 If the reason for a notice of suspension arises from a default:

14.3.1 which is remedied, the Architect shall resume performance of the Services and other obligations within a reasonable period; or

14.3.2 which is not remedied by the defaulting party, the Agreement will end by giving at least seven (7) days' further written notice.

14.4 Where Services are suspended by the Client and not resumed within 3 months, the Architect shall have the right to treat performance of the Services affected as ended on giving at least seven (7) days' further written notice to the Client.

14.5 If performance of the Services has been suspended or terminated under clause 14.1 or 14.2 the Architect shall be entitled to be paid for all outstanding fees for the Services performed, whether wholly or partially completed, and all expenses and other disbursements incurred and VAT properly due.

14.6 If this Agreement has been suspended or terminated under circumstances described in clauses 14.1 or 14.2 and any fees or other amounts properly due have been paid to the Architect, as described in clause 14.5, the Architect shall give the Client copies of any PDF files, hard copy drawings and/or supporting documentation prepared by the Architect or on the Architect's behalf and in the Architect's possession to minimise disturbance to the Project.

14.7 Termination of this Agreement, however it should arise, shall not affect the rights and remedies of either party in relation to any default of the other prior to such termination.

14.8 If circumstances arise for which the Architect is not responsible and which we consider would make it irresponsible for us to perform all or any part of the Services, the Architect shall be entitled to determine our appointment by fourteen (14) days' notice in respect of all or such part of the Services.

## **15. Dispute Resolution**

15.1 In the event of any dispute or difference arising under the Agreement, the parties may:

15.1.1 attempt to settle the matter by negotiation; or

15.1.2 mediation using a third party mediator nominated by the RIBA mediation service; or

15.1.3 adjudication using an adjudicator nominated from the RIBA list of Adjudicators; or

15.1.4 arbitration using an arbitrator appointed by the RIBA President from the President's list of Arbitrators; or

15.1.5 start court proceedings to settle the dispute at any time

15.2 If appointed, a Mediator, Adjudicator or Arbitrator may allocate between the parties the costs relating to the mediation, adjudication or arbitration, including the fees and expenses in accordance with the provisions of clause 9.22.

**16. Consumer's Right to Cancel**

16.1 In accordance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, a consumer has the right to cancel this Agreement for any reason by delivering or sending (including by electronic mail) a cancellation notice to the Architect at any time within the period of fourteen (14) days starting from the date when this Agreement was made.

16.2 This notice of cancellation is deemed to be served as soon as it is posted or sent to the Architect or in the case of an electronic communication on the day it is sent to the Architect.

16.3 If the Architect was instructed to perform the Services before the Agreement was made or before the end of the fourteen (14) day period and the instruction or instructions were confirmed in writing, the Architect shall be entitled to any fees and expenses properly due before the Architect receives the notice of cancellation.

16.4 The notice of cancellation is to be addressed to the Architect and state:

The Client (please insert your name) \_\_\_\_\_  
hereby gives notice that the Agreement with Prime Building Consultants Limited and signed  
by (please print your name) \_\_\_\_\_  
on (please print the date you signed the Agreement) \_\_\_\_\_ is  
cancelled.

Client signature(s): \_\_\_\_\_

Please print your address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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