

**Concise Conditions of
Appointment for an
Architect
2010
(2012 revision)**

Incorporating Amendment 1, September 2011

This and the following eight pages (numbered 2–10) are the Concise Conditions of Appointment for an Architect 2010 (2012 revision) referred to in the Agreement relating to

The Project, namely:

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between

The Client, namely:

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Initials

and

The Architect, namely:

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Initials

RIBA Agreements 2010, 2012 revision are produced in association with:



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The components of a Concise Agreement 2010, 2012 revision are the Conditions of Appointment, Schedules of Services and Fees and Expenses, any appendices and a Letter of Appointment.

A list of the principal changes from the 2010 Conditions can be found on the reverse of the pack cover sheet and is also available online at www.ribabookshops.com/agreements

The Concise Conditions of Appointment are applicable for a Client who is acting for business or commercial purposes or is a Public Authority. The Concise Conditions may also be used for a Client who is a consumer ie 'a natural person acting for purposes outside his trade, business or profession, but the agreement will be subject to the *Unfair Terms in Consumer Contracts Regulations 1999*, which require the terms of the Agreement, these Conditions, the schedule of services, any appendices and the Letter of Appointment to be individually negotiated. See *Concise Agreement, 2012 revision: Notes*.

Individual architects are required to be registered with the Architects Registration Board, are subject to its Code and to the disciplinary sanction of the Board in relation to complaints of unacceptable professional conduct or serious professional incompetence.

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When downloaded from the website – www.ribabookshops.com/agreements – Conditions of Appointment will include the project details – name of project, client and architect or consultant – in the identification box and as a footer on each page inserted by the purchaser online.

An agreement in electronic format will comprise the Conditions together with the core and/or other components that are also available online in Rich Text Format (RTF) as required. These components, eg schedules and notes and model letters, can be customised using most commonly used word-processing software, such as MS Word, to meet project requirements or modified to match the house style of the practice.

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1 Definitions and general interpretation

1.1 **Collaborate** means to co-operate with and to provide to or receive from Other Persons, as and when requested, information necessary for performing work or services and, where the Architect considers itself competent to do so, to comment on such information.

Construction Acts means the *Housing Grants Construction & Regeneration Act 1996* and the *Local Democracy Economic Development and Construction Act 2009*.

Letter of Appointment means the Letter of Appointment to which these Conditions are annexed.

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

Project is defined in the Letter of Appointment.

Services means the services to be performed by the Architect specified in the Schedule of Services, which may be varied by agreement.

1.2 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.

1.3 The provisions of this Agreement continue to bind the Client and the Architect as long as necessary to give effect to their respective rights and obligations.

1.4 This Agreement is subject to the law and the parties submit to the exclusive jurisdiction of the courts of England and Wales or Northern Ireland or Scotland as specified in the Letter of Appointment.

2 Architect's Services

2.1 The Architect shall exercise reasonable skill, care and diligence in accordance with the normal standards of the Architect's profession in performing the Services and discharging all the obligations under this clause 2.

2.2 The Architect shall:

2.2.1 perform the Services with due regard to the Client's requirements;

2.2.2 advise on progress in the performance of the Services, of any information, decision or action required or of any issue that may materially affect the delivery, the cost or quality of the project;

2.2.3 (a) act on behalf of the Client in the matters set out or implied in this Agreement;
(b) if acting as contract administrator of a building contract exercise impartial and independent judgement when dealing between the Client and the contractor;

2.2.4 collaborate with any Other Persons and, as applicable, shall integrate relevant information received from such persons into the Architect's work;

2.2.5 make no material alteration to the Services or the approved design without the consent of the Client, except in an emergency.

2.3 The Architect shall have the right to publish photographs of the Project, and the Client shall give reasonable access to the Project for this purpose for two years after practical completion of the construction works.

3 Client's responsibilities

- 3.1 The Client:
- 3.1.1 shall advise the Architect of the requirements and of any subsequent changes required;
 - 3.1.2 shall provide, 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;
 - 3.1.3 shall give decisions and approvals necessary for the performance of the Services;
 - 3.1.4 may issue reasonable instructions to the Architect.
- 3.2 The Client shall:
- 3.2.1 appoint or otherwise engage any Other Persons required to perform work or services under separate agreements and shall require them to collaborate with the Architect;
 - 3.2.2 hold the contractor or contractors and not the Architect responsible for the proper carrying out and completion of construction works;
 - 3.2.3 not deal with the contractor or contractors directly or interfere with the Architect's duties or actions under the building contract.
- 3.3 The Client acknowledges that the Architect does not warrant:
- 3.3.1 that planning permission and other approvals from third parties will be granted at all or, if granted, will be granted in accordance with any anticipated time-scale;
 - 3.3.2 compliance with any programme and/or any target cost for building work, which may need to be reviewed for, but not limited to:
 - (a) variations requested by the Client;
 - (b) variation in market prices;
 - (c) delays caused by any Other Persons or any other factor beyond the control of the Architect;
 - (c) the discovery at any time of previously unknown conditions.
 - 3.3.3 the competence, performance, work, services, products or solvency of any Other Persons.

4 Assignment^[1]

- 4.1 Neither the Architect nor the Client shall at any time assign the benefit of this Agreement or any rights arising under it without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.
- 4.2 The Architect shall not sub-contract performance of any part of the Services without the prior consent of the Client, which consent shall not be unreasonably withheld or delayed.

5 Fees and expenses

- 5.1 The fees for performance of the Services and/or any additional services shall be calculated in accordance with this clause 5 and as specified in the Fees and Expenses Schedule, 2012 revision or in the Letter of Appointment.
- 5.2 The Basic Fee for performance of the Services shall be:
- 5.2.1 the specified percentage applied to the actual cost of the building work; or

[1] Assignment in Scotland.

- 5.2.2 the separate percentages specified for each work stage applied to the approved cost of the building work at the end of the previous stage; or
- 5.2.3 the specified fixed lump sum or sums; or
- 5.2.4 time charges ascertained by multiplying the time reasonably spent in the performance of the Services by the specified hourly or daily rate for the relevant personnel. Time 'reasonably spent' includes the time spent in connection with performance of the Services in travelling from and returning to the Architect's office; or
- 5.2.5 any combination of these; and/or
- 5.2.6 any other agreed method.

Where a percentage fee applies and until the actual cost of the building work is known, the percentages are applied to the current approved estimate of cost of the building works or the contract sum. The cost shall exclude VAT, fees and any claims made by or against the contractor or contractors.

- 5.3 Lump sums, rates for time charges, mileage and printing shall be revised 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 performance of the Services.
- 5.4 The Basic Fee shall be adjusted:
 - 5.4.1 including due allowance for any loss and/or expense, if material changes are made to the Brief and/or the latest approved estimate of the cost of the building work and/or the programme save to the extent that any changes arise from a breach of this Agreement by the Architect, and/or the Services are varied by agreement;
 - 5.4.2 where percentage fees in accordance with clauses 5.2.1 or 5.2.2 apply, to compensate for any reduction of the Construction Cost arising solely from deflationary market conditions not prevailing at the date of this Agreement.
- 5.5 If the Architect is involved in extra work or incurs extra expense for reasons beyond the Architect's reasonable control, additional fees shall be calculated on a time basis in accordance with clause 5.2.4 where:
 - 5.5.1 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
 - 5.5.2 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
 - 5.5.3 performance of the Services is delayed, disrupted or prolonged.

The Architect shall inform the Client on becoming aware that this clause 5.5 will apply. This clause 5.5 shall not apply to the extent that any change or extra work or expense arises from a breach of this Agreement by the Architect.
- 5.6 The Client shall reimburse the Architect for expenses in the manner specified in the Letter of Appointment.
- 5.7 The Architect shall maintain records of time spent on Services performed on a time basis and for any expenses and disbursements to be reimbursed at net cost. The Architect shall make such records available to the Client on reasonable request.

Payment notices

5.8^[2] The Architect shall issue payment notices at the intervals specified in the Letter of Appointment.

Each notice shall comprise the Architect's account setting out any accrued instalments of the fee and other amounts due, less any amounts previously paid and stating the basis of calculation of the amount specified, which shall be 'the notified sum'. The payment due date shall be the date of the Architect's Payment Notice. Instalments of fees shall be calculated on the Architect's reasonable estimate of the percentage of completion of the Services or stages or other services or any other specified method.

The Client shall pay the notified sum within 14 days of the date of issue of the relevant Notice (which shall be the 'final date for payment') unless:

- (a) The Architect has become insolvent (as defined in the Construction Acts at any time between the last date on which the Client could have issued the Notice under 5.9 and the final date for payment);
- (b) The Client issues a notice under 5.9.

Otherwise the amount due and payable shall be the notified sum. The Client shall not delay payment of any undisputed part of the notified sum.

The Architect shall submit the final account for fees and any other amounts due when the Architect reasonably considers the Services have been completed.

Notice of intention to pay less

5.9 If the Client intends to pay less than the notified sum the Client shall give a written notice to the Architect not later than five days before the final date for payment specifying the amount that the Client considers to be due on the date the Notice is served, the basis on which that sum is calculated and, if any sum is intended to be withheld, the ground for doing so or, if there is more than one ground, each ground and the amount attributable to it. The Client shall on or before the final date for payment make payment to the Architect of the amount if any specified in the written Notice.

If no such Notice is given the amount due and payable shall be the notified sum stated as due in the Architect's account. The Client shall not delay payment of any undisputed part of the account. If the Client issues such a Notice and the matter is referred to an Adjudicator who decides that an additional sum greater than the amount stated in the notice of intention to pay less is due, the Client shall pay that sum within seven days of the date of the decision or the date which apart from the Notice would have been the final date for payment.

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

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

5.11 If performance of any or all of the Services and/or obligations is suspended or ended, the Architect shall be entitled:

5.11.1 to payment of any part of the fee and other amounts properly due to the date of the last instalment and a fair and reasonable amount up to the date of termination or suspension, payment of any licence fee due under clause 6; together with

5.11.2 reimbursement of any loss and/or damages caused to the Architect by reason of the suspension or the termination, except where the Architect is in material or persistent breach of the obligations under the Agreement.

[2] In the event of non-payment of any amount properly due to the Architect under this Agreement, the Architect is entitled to interest on the unpaid amounts under the provisions of clause 5.12, may suspend use of the licence under the provisions of clause 6, may suspend or terminate performance of the Services and other obligations under the provisions of clause 8, or may commence dispute resolution procedures and/or debt recovery procedures.

- 5.12 In the event that any amounts are not paid when properly due, the Architect shall be entitled to simple interest on such amounts until the date that payment is received at 8% per year over the dealing rate of the Bank of England Rate current at the date that payment becomes overdue, together with such costs reasonably incurred by the Architect (including costs of time spent by principals, employees and advisors) in obtaining payment of any sums due under this Agreement.
- 5.13 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:
- 5.13.1 such costs reasonably incurred (including costs of time spent by principals, employees and advisors) where the matter is resolved by negotiation or mediation; or
- 5.13.2 such costs as may be determined by any tribunal to which the matter is referred.
- 5.14 In addition to the fees and expenses, the Client shall pay any Value Added Tax chargeable on the Architect's fees and expenses.

6 Copyright licence

- 6.1 The Architect shall own all intellectual property rights including 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.

No part of any design by the Architect may be registered^[3] by the Client without the written consent of the Architect.

Providing that all fees and/or other amounts properly due are paid, the Client shall have a licence to copy and use the drawings and documents only for purposes related to construction of the Project or its subsequent use or sale but may not be used for reproduction of the design for any part of any extension of the Project or any other project.

Copying or use of the drawings and documents by an Other Person providing services to the Project shall be deemed to be permitted under a sub-licence granted by the Client, whether such drawings and documents were issued by the Client or on the Client's behalf.

The Architect shall not be liable for any use of the drawings and documents other than for the purpose for which they were prepared.

7 Liability and insurance

Architect's liability

- 7.1 No action or proceedings arising from the failure of the Architect to keep to this Agreement shall be commenced after the expiry of six 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.
- 7.2 In any such action or proceedings:
- 7.2.1 the Architect's liability for loss or damage shall not exceed the amount of the Architect's professional indemnity insurance available specified in the Letter of Appointment, providing the Architect has notified the insurers of the relevant claim or claims as required by the terms of such insurance.
- 7.2.2 No employee of the Architect or any agent of the Architect shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from performance of the Services.

[3] Under the *Registered Designs Regulations 2001*.

- 7.3 Without prejudice to the provisions of clause 7.2.1, the liability of the Architect shall not exceed such sum as it is just and equitable for the Architect to pay having regard to the extent of the Architect's responsibility for the loss and/or damage in question and on the assumptions that:
- 7.3.1 all other consultants, contractors and other persons providing work or services for the Project have provided to the Client contractual undertakings on terms no less onerous than those of the Architect under this Agreement;
 - 7.3.2 there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other person referred to in this condition; and
 - 7.3.3 all the persons referred to in this clause have paid to the Client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for that loss and/or damage.
- 7.4 The Architect shall maintain until at least the expiry of the period specified in clause 7.1 professional indemnity insurance with a limit of indemnity not less than the amount or amounts specified in the Letter of Appointment, provided such insurance continues to be offered on commercially reasonable terms to the Architect at the time when the insurance is taken out or renewed.
- The Architect, when reasonably requested by the Client, shall produce for inspection a broker's letter or certificate confirming that such insurance has been obtained and/or is being maintained.
- 7.5 Except for the rights conferred by clause 7.2, 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.

8 Suspension or termination

- 8.1 The Client may suspend or end performance of any or all of the Services and other obligations by giving at least seven days' written notice and stating the reason for doing so.
- The Architect may suspend or end performance of any or all of the Services and other obligations by giving at least seven days' written notice and stating the ground or grounds on which it is intended to do so. Such ground or grounds include, but are not limited to the Client's failure to pay any fees or other amounts due by the final date for payment, unless, where applicable, the Client has given effective notice under clause 5.9 of the intention to pay less than the amount stated in an Architect's account.
- If the reason for a notice of suspension arises from a default:
- 8.1.1 which is remedied, the Architect shall resume performance of the Services and other obligations within a reasonable period; or
 - 8.1.2 which is not remedied by the defaulting party the Agreement will end by giving at least seven days' further written notice.
- Where Services are suspended by either party and not resumed within three months, the Architect has the right to treat performance of the Services affected as ended on giving at least seven days' further written notice to the Client.

9 Dispute resolution^[4]

9.1 In the event of any dispute or difference arising under the Agreement, the parties may attempt to settle the matter by negotiation or mediation or as specified in the Letter of Appointment.

Adjudication

9.2 Either party may give notice at any time of the intention to refer a dispute or difference to an adjudicator:

9.2.1 Referral of the dispute to such adjudicator shall be made within seven days of such notice.

9.2.2 The appointment of the adjudicator shall be made in accordance with the procedures identified in the Project Data.

9.2.3 The parties may agree who shall act as adjudicator or, the adjudicator shall be a person nominated at the request of either party by the nominator specified in the Letter of Appointment.

9.2.4 The adjudicator may allocate between the parties the costs relating to the adjudication, including the fees and expenses of the adjudicator, in accordance with the provisions of clause 5.13.

9.3 The provisions for arbitration are:

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

9.3.2 Where the law of England and Wales or Northern Ireland is the applicable law:

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

(b) in such arbitration the Construction Industry Model Arbitration Rules (CIMAR) current at the date of the reference shall apply;

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

9.3.3 Where the law of Scotland is the applicable law such arbitration shall be conducted in accordance with the provisions of the *Arbitration (Scotland) Act 2010*.^[5]

[4] The Architect is expected to operate in-house procedures to promptly handle complaints and disputes relating to specific project or performance matters.

[5] The parties will need to consider whether any of the default rules in the *Arbitration (Scotland) Act* are to be modified or identified as not applicable.

10 Consumer's right to cancel:^[6]

- 10.1 The consumer Client has the right to cancel this Agreement for any reason by delivering or sending (including by email) a cancellation notice to the Architect at any time within the period of seven days starting from the date when this Agreement was made.
- 10.2 The 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.
- 10.3 If the Architect was instructed to perform any services before the Agreement was signed by the Client or before the end of the seven 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.
- 10.4 The notice is to be addressed to the Architect and state:

The Client <name> hereby gives notice that the RIBA Concise Agreement, 2012 revision with the Architect <insert name> and signed [on our behalf] by <name of person(s) who [will sign] [signed]> on <date of signing> is cancelled.

Client signature(s):

<address>

<date>

[6] This condition applies where the Project relates to work to the Client's home or a second home including a new home and the Client is a consumer who is acting for purposes outside his trade, business or profession and has signed this Agreement in his/her own name, ie not as a limited company or other legal entity.