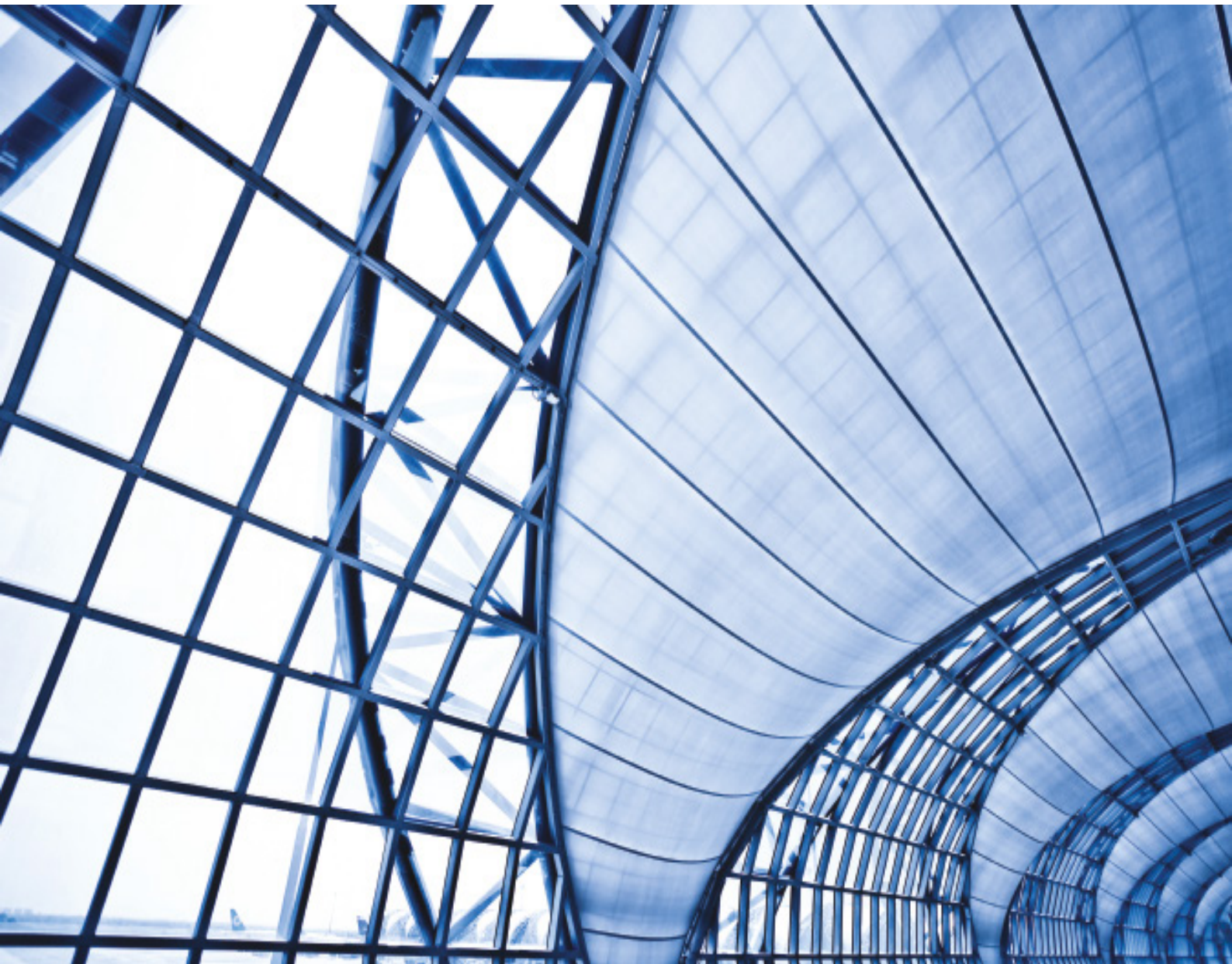




England and Wales

# **RICS Short Form of Consultant's Appointment for Designated Services**

2018 edition



Draft

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Draft

# RICS Short Form of Consultant's Appointment for Designated Services



This RICS Short Form of Consultant's Appointment for Designated Services is designed to be used where a consultant is engaged to carry out the specialist Services referred to in the schedule to this Appointment. Please look carefully at the marginal notes within the Appointment, which assist its completion.

This Appointment is suitable for projects in England and Wales only.

Draft

**Notes**

Insert name and address.

Insert name and address.

Describe Project and state location of site.

Choose and insert details of the agreed fee and delete as appropriate. If a lump sum fee is agreed, it is recommended that the schedule of rates for Additional Services is completed to allow for any adjustment.

Insert any other agreed fee calculation.

Set out any disbursements and expenses that the Client agrees to reimburse, e.g. photocopying, travel, etc.

**APPOINTMENT PARTICULARS**

**THIS APPOINTMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

The **Client:** \_\_\_\_\_  
of \_\_\_\_\_  
\_\_\_\_\_

The **Consultant:** \_\_\_\_\_  
of \_\_\_\_\_  
\_\_\_\_\_

The **Project:** \_\_\_\_\_  
at \_\_\_\_\_  
\_\_\_\_\_

**Basic Services:** The Consultant, subject to the Conditions of this Appointment, performs the services relating to the Project that are identified by reference in the Schedule.

**Fee:** The total amount of the Consultant's Fee for the Basic Services is £ \_\_\_\_\_, which fee is exclusive of VAT.

**OR**

The Consultant's Fee for the Basic Services is charged on an hourly/daily basis calculated in accordance with the following rates, which are exclusive of VAT:

Role/position	Hourly rate (£)	Daily rate (£)

**OR**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Reimbursable Expenses:** The Consultant is entitled to charge the Client for the following disbursements and expenses in the next VAT invoice after they are incurred, provided they are incurred in performing the Services and the Consultant provides satisfactory evidence of them:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Notes**

Insert rates for any additional fee.

Choose and insert details of the appropriate instalment schedule and delete as appropriate.

Set out names and roles. Insert: 'Not appropriate' if other consultants are not being engaged by the Client.

Insert amount of agreed maximum liability (see Clause 9 of the Conditions).

Insert amount of agreed level of PII cover and delete as appropriate (see Clause 10 of the Conditions).

**Payment for Additional Services:** The Consultant is entitled to be paid an additional fee at the following rates (which are exclusive of VAT) for any Additional Services performed under this Appointment:

Role/position	Hourly rate (£)	Daily rate (£)

**Payment Terms:** The Client pays the Fee by instalments and the Consultant invoices the Client on the dates or on completion of the activities or work stages set out below:

Instalment date/activity/work stage/key date	Proportion of Fee for the Basic Services (amount or percentage)

If the dates, work stages or activities are not set out, the Fee is payable in instalments at intervals of not less than one month, the first instalment being one month from the date the Consultant first commences performance of the Basic Services.

**Client Team:** Those who the Consultant regularly liaises and consults as necessary:

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**Limitation of liability:** The maximum aggregate liability of the Consultant is \_\_\_\_\_ pounds (£ \_\_\_\_\_).

**Professional indemnity insurance:** The Consultant maintains professional indemnity insurance in the sum of \_\_\_\_\_ pounds (£ \_\_\_\_\_) for each claim or series of claims arising from the same originating cause/ in the aggregate.

## Notes

### Signature by or on behalf of the Client

Use where the Client is a limited company, partnership, limited partnership or limited liability partnership. The signatory should print his/her name in the space in square brackets, sign where indicated and state his/her position, e.g. director, partner, etc. by deleting the inappropriate wording in brackets.

Use where the Client is an individual.

### Signature by or on behalf of the Consultant

Use where the Consultant is a limited company, partnership, limited partnership or limited liability partnership. The signatory should print his/her name in the space in square brackets, sign where indicated and state his/her position, e.g. director, partner, etc. by deleting the inappropriate wording in brackets.

Use where the Consultant is an individual.

**Signed by or on behalf of the parties.**

**SIGNED** by [ \_\_\_\_\_ ] \_\_\_\_\_  
(Director/Secretary/Partner/Member)  
for and on behalf of the **CLIENT**

**SIGNED** by the **CLIENT** \_\_\_\_\_

**SIGNED** by [ \_\_\_\_\_ ] \_\_\_\_\_  
(Director/Secretary/Partner/Member)  
for and on behalf of the **CONSULTANT**

**SIGNED** by the **CONSULTANT** \_\_\_\_\_



## CONDITIONS

### 1 Appointment

The Client appoints the Consultant to provide the Services (which include the Basic Services and any Additional Services as described in Clause 5) and the Consultant accepts such Appointment upon and subject to these Conditions (the '**Appointment**'). The Appointment takes effect on the date when the Consultant first commenced performance of the Services, irrespective of the date of this Appointment.

### 2 Standard of care

The Consultant, when performing the Services, exercises the reasonable skill and care to be expected of an appropriately qualified professional consultant of the same discipline as the Consultant holding itself out as having the competence and resources to perform the Services.

### 3 Statutory Requirements

When performing the Services, the Consultant complies with the requirements of all statutes and legislation relevant to the Project.

### 4 Fee

As consideration for the performance of the Basic Services, the Client pays the Consultant the Fee and the Reimbursable Expenses set out in the Appointment Particulars. The Fee is adjusted if the performance of the Basic Services is materially delayed and/or disrupted for any cause outside the Consultant's reasonable control. The parties agree the adjustment to the Fee and the timing of its payment. If not agreed, such adjustment is based on the rates set out for the Basic Services and, if no rates are set out, on the rates set out for the Additional Services. The Fee is then the Fee as adjusted.

### 5 Additional Services

If at any time the Client requires the Consultant to perform any services that are not identified as Basic Services in the services listed in the Schedule ('**Additional Services**'), the Client pays the Consultant for such Additional Services at the rates set out in the Appointment Particulars unless otherwise agreed. If the Client requires any Additional Services, the Consultant informs the Client of the likely additional fee to be charged. Unless otherwise agreed, the additional fee is payable after performance of the relevant Additional Service.

### 6 Payment of remuneration and Reimbursable Expenses

- 6.1 The Consultant submits to the Client a VAT invoice in respect of the Fee, any additional fee payable for Additional Services and the Reimbursable Expenses on each instalment date or on completion of each activity or work stage set out in the Appointment Particulars. All invoices are accompanied by such supporting documents, records and receipts reasonably necessary for checking each invoice. The invoices and supporting documents, records and receipts (if any) specify the sum that the Consultant considers to be due to it on the payment due date under this Clause and the basis on which that sum is calculated. The payment due date is the date the Client receives the relevant invoice (the '**due date**').
- 6.2 Not later than 5 days after the due date, the Client gives notice in writing to the Consultant of the sum that the Client considers to be or have been due at the due date in respect of the payment and the basis on which that sum is calculated.

## 7 Final date for payment

- 7.1 The Client, subject to any pay less notice (referred to in Clause 7.2), pays the Consultant the sum referred to in the Client's payment notice under Clause 6.2 (or, if the Client has not given notice under Clause 6.2, the sum stated in the invoice referred to in Clause 6.1) (the '**notified sum**') on or before the final date for payment of the invoice. The final date for payment is 14 days after the due date.
- 7.2 If the Client intends to pay less than the notified sum, it gives the Consultant notice of that intention not later than 7 days before the final date for payment by specifying the amount the Client considers to be due to the Consultant at the date the notice is given and the basis on which that sum is calculated (the '**pay less notice**'). Where a pay less notice is given, the payment to be made on or before the final date for payment is not less than the amount stated as due in the pay less notice.
- 7.3 In relation to the requirements for the giving of notices under Clauses 6 and 7, it is immaterial that the amount then considered to be due may be zero.

## 8 Default, interest and suspension

If the Client fails to pay the notified sum (or, where a pay less notice is issued in accordance with and where necessary under Clause 7.2, the amount specified in that notice) by the final date for payment:

- a) the Client pays the Consultant simple interest on the unpaid amount for the period from the final date for payment until the date of actual payment, calculated on a daily basis at the rate of 4% above the base rate set from time to time by the Bank of England's Monetary Policy Committee (or any successor to it);
- b) where such failure continues for 7 days after the Consultant has given the Client notice in writing of its intention to suspend performance of any or all of the Services and the ground or grounds on which it intends to suspend performance, the Consultant may suspend such performance until such amount is paid; and/or
- c) the Consultant may by notice in writing to the Client suspend the copyright licence under Clause 11 until such amount is paid.

## 9 Limitations of liability

- 9.1 Except for liability for death or personal injury, the maximum aggregate liability of the Consultant to the Client under or in connection with this Appointment (whether in contract or tort (including negligence) or for breach of statutory duty) is limited to the amount specified in the Appointment Particulars. If no such amount is specified, such liability is limited to the amount of the Consultant's professional indemnity insurance specified in Clause 10.1.
- 9.2 Without prejudice to the above limitation or any other exclusion or limitation of liability available to the Consultant, the Consultant's liability for loss or damage suffered by the Client in the event of any breach of this Appointment is limited to the proportion of such loss or damage that it would be just and equitable to require the Consultant to pay having regard to the extent of responsibility of the Consultant for the same and on the assumptions that:
- a) all members of the Client Team have provided contractual undertakings to the Client on terms no less onerous than those set out in this Appointment in respect of the carrying out of their obligations in connection with the Project;
  - b) there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Client and any such persons; and
  - c) all such persons have paid to the Client such sums as it is just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage.
- 9.3 No action or proceedings for any breach of this Appointment may be commenced against the Consultant after the expiry of 6 years from completion of the Services.

## 10 Insurance

- 10.1 The Consultant maintains professional indemnity insurance in the sum specified in the Appointment Particulars, subject to such insurance being available in the insurance market on commercially reasonable terms and rates.
- 10.2 The Consultant produces written evidence that this insurance is being maintained whenever reasonably requested to do so by the Client.

## 11 Copyright

- 11.1 Copyright in all documents prepared by the Consultant for the purposes of the Project remains the property of the Consultant. Subject to Clause 8(c), the Consultant grants to the Client a royalty-free, irrevocable, non-exclusive licence to use and reproduce the documents for any purpose relating to the Project including the construction, completion, maintenance, operation, letting, sale, reinstatement, mortgaging, refurbishment and repair of the Project (but not for any extension of the Project without the Consultant's written consent).
- 11.2 The Consultant is not liable for any use of the documents for any purpose other than that for which they were originally prepared.

## 12 Suspension of the Services

- 12.1 The Client may at any time give at least 7 days' notice in writing to the Consultant requiring it to suspend all or part of the Services.
- 12.2 The Consultant resumes performance of the Services that have been suspended as soon as reasonably practicable after it receives written notice to do so from the Client.
- 12.3 If the suspension continues for more than 3 months, either party may give notice in writing to the other terminating the Consultant's engagement under this Appointment.

## 13 Termination of engagement

- 13.1 The Client may terminate the Consultant's engagement under this Appointment at any time by giving the Consultant 14 days' prior notice in writing.
- 13.2 If a party is in material breach of its obligations under this Appointment and fails to remedy such breach within 7 days after the other party gives it written notice to do so, the party that gave such notice may immediately thereafter terminate the Consultant's engagement under this Appointment by giving written notice to that effect to the party in breach.
- 13.3 If a party becomes insolvent (that is, is deemed unable to pay its debts under Sections 123 or 268 of the *Insolvency Act* 1986), the other party may immediately terminate the Consultant's engagement under this Appointment by giving written notice to the Insolvent party.

## 14 Payment upon suspension or termination

- 14.1 Upon any suspension or termination, the Client pays the Consultant in accordance with Clauses 6 and 7 (without prejudice to any rights the Client has in respect of any breach by the Consultant of its obligations under this Appointment):
- a) that part of the Fee, the Additional Services Fee (if any) and any other sums that have accrued due up to the date of suspension or termination (as the case may be) and a fair and reasonable proportion of the next instalment of the Fee and any additional fee payable for Additional Services commensurate with the Services performed, less any amounts previously paid to the Consultant; and
  - b) (save where such suspension or termination is due to the Consultant being in breach) all reasonable costs, disbursements and expenses reasonably incurred by the Consultant (including any costs incurred in suspending and/or resuming performance of any or all of the Services) as a direct result of such suspension or termination.
- 14.2 Upon payment of the amount due under Clause 14.1, the Consultant hands over to the Client the documents prepared by the Consultant, subject to the terms of the copyright licence under Clause 11 and payment of the Consultant's reasonable copying charges.
- 14.3 Termination of the Consultant's engagement under this Appointment does not affect the accrued rights and remedies of the parties.

## 15 Assignment and subcontracting

- 15.1 The Consultant does not assign or subcontract any of its rights or obligations under this Appointment without the prior consent in writing of the Client (which consent is not to be unreasonably withheld or delayed).
- 15.2 The benefit of this Appointment may be assigned by the Client by way of an absolute legal assignment to any person providing finance or re-finance to the Client in connection with the Project or to any person (A1) acquiring the Client's interest in the Project and by A1 to another person (A2) acquiring A1's interest in the Project. No further or other assignment is permitted and, in particular, A2 is not entitled to assign this Appointment.

## 16 Disputes

- 16.1 Notwithstanding any other provision of this Appointment, either party may at any time refer any dispute under it to adjudication under Part 1 of the *Scheme for Construction Contracts (England and Wales) Regulations 1998* (as amended).
- 16.2 The Adjudicator's decision is binding until the dispute or difference is finally determined by litigation. The Client and the Consultant attempt to agree the identity of the Adjudicator. If the parties fail to reach such agreement within 2 days after one party notifies the other that it wishes to agree the identity of the Adjudicator, the Adjudicator is appointed by the President or Vice-President for the time being of RICS. Any dispute or difference in connection with the enforcement of a decision of the Adjudicator is referred to the Courts.

## 17 General

- 17.1 This Appointment supersedes any previous agreements or arrangements between the parties in respect of the Project.
- 17.2 Nothing in this Appointment confers or purports to confer any right under the *Contracts (Rights of Third Parties) Act 1999* to enforce any of its terms on any person who is not a party to it. Only the Client (and the Client's permitted assignees) and the Consultant can take action to enforce the terms of this Appointment.
- 17.3 Any reference to a statute or statutory provision is construed as a reference to that statute or provision as amended, consolidated, supplemented or re-enacted (with or without modifications) from time to time.
- 17.4 Where any Clause requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period includes Christmas Day, Good Friday or a day which, under the *Banking and Financial Dealings Act 1971*, is a bank holiday in England and Wales, that day is excluded.

## 18 Notices

- 18.1 Any notice under this Appointment is deemed to be given if it is in writing and delivered by hand or sent by pre-paid, recorded or special delivery post to the Client or the Consultant (as the case may be) at the address set out for each party in this Appointment or any other address notified by one party to the other in accordance with this Clause.
- 18.2 Any notice sent by hand is deemed received upon actual receipt by the party to whom it is addressed.
- 18.3 Any notice sent by a postal method described in Clause 18.1 is deemed received 48 hours after it was posted.

## 19 Governing law and jurisdiction

This Appointment is governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

## Notes

Tick as appropriate to indicate which type(s) of Services are to be performed by the Consultant. Those Services that have been ticked should be attached to this Appointment.

Within the attached Services, a tick should be placed in the box next to those particular services that are to be Basic Services.

If other, please specify.

## Schedule

### Services

The Basic Services to be performed by the Consultant are those indicated in the attached schedule(s), as identified below:

- RICS REINSTATEMENT COST ASSESSMENT SERVICES
  - RICS TECHNICAL DUE DILIGENCE SERVICES
  - RICS DILAPIDATIONS SERVICES
  - RICS LENDER'S INDEPENDENT MONITORING SERVICES
  - RICS CORPORATE RESTRUCTURING AND RECOVERY SERVICES
  - RICS EXPERT WITNESS AND SINGLE JOINT EXPERT WITNESS SERVICES
  - RICS BUILDING SURVEYOR SERVICES
    - ASSET MANAGEMENT
    - INSURANCE
    - MISCELLANEOUS
  - OTHER
- 
- 
-



## Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the valuation, development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to markets and effecting positive change in the built and natural environments.

### Americas

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