



**Landscape
Consultant's
Appointment**

**LANDSCAPE CONSULTANT'S
CONDITIONS OF APPOINTMENT**
June 2018

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Words and phrases that appear with capitalised initial letters in these Conditions or the Memorandum of Agreement shall have the meaning stated or referred to in the LI Landscape Consultant's Appointment Definitions document current for this version of the Conditions at the time of signing the Memorandum.

1 The Landscape Consultant's Authority and Obligations

Duty of Care

- 1.1 The Landscape Consultant has exercised and shall continue to exercise reasonable skill, care and diligence in performing the Services expressly set out in this Agreement.

Code of Standards of Conduct and Practice for Landscape Professionals

- 1.2 Members of the Landscape Institute are required to conduct themselves in accordance with the current edition, at the time of signing of this Agreement, of the Institute's Code of Standards of Conduct and Practice for Landscape Professionals.

Landscape Consultant's Authority

- 1.3 The Landscape Consultant shall act on behalf of the Client in the matters set out or implied in this Agreement but has no authority without the Client's approval.

The Landscape Consultant's Representative

- 1.4 The Landscape Consultant's representative shall have full authority to act on behalf of the Landscape Consultant for all purposes in connection with the performance of the Services set out in this Agreement.

Duty to Inform and Collaborate

- 1.5 The Landscape Consultant shall inform the Client of the progress of Services set out in this Agreement and advise the Client as soon as reasonably practical of any issue that may materially affect the Programme, brief, cost or quality of the Project covered by this Agreement.
- 1.6 The Landscape Consultant shall inform the Client of any decision, action or information required by the Client in connection with the performance of the required Services set out in this Agreement.
- 1.7 The Landscape Consultant will advise the Client of the requirement to appoint others including, but not limited to, consultants, contractors, statutory undertakers or approving authorities to provide Services in connection with the Project set out in this Agreement. The Landscape Consultant shall collaborate with all appointed persons in

connection with the Project and shall integrate information received into the Landscape Consultant's work.

Duty to Comply with Statutory Requirements

- 1.8 The Landscape Consultant shall comply with all statutory requirements.

Confidentiality and Publicity

- 1.9 The Landscape Consultant shall not disclose any confidential information relating to the Client's business or affairs which has been received verbally or in writing from the Client or their representative unless consent is obtained from the Client or disclosure is required by law or because of a dispute arising from this Agreement.
- 1.10 The Landscape Consultant shall obtain the Client's consent before publication of information about the project for marketing or publicity purposes, which the Client should not unreasonably withhold or delay.

2 The Client's Authority and Obligations

Client's Representative

- 2.1 The Client shall nominate a representative who shall have full authority to act on behalf of the Client for all matters set out in this Agreement but not to vary the terms of the Agreement.

Provision of Information, Decisions and Instructions

- 2.2 The Client shall confirm to the Landscape Consultant in writing the requirements to be incorporated as part of the Brief, the timescale for Services set out in this Agreement, the Programme and the budget for the construction works where applicable.
- 2.3 The Client shall provide, as soon as reasonably practical, all information in the Client's possession, or reasonably obtainable, required to enable the Landscape Consultant to undertake the Services set out in this Agreement and in accordance with the Programme. This information shall be provided free of charge and the Landscape Consultant shall be entitled to rely on it.
- 2.4 The Client shall give decisions or take necessary action to enable the Landscape Consultant to undertake the Services set out in this Agreement and in accordance with the Programme.
- 2.5 Where the Landscape Consultant is appointed as a lead or co-ordinating consultant the Client may issue instructions only through the Landscape Consultant to other persons in connection with the Project covered by this Agreement. The Landscape Consultant shall not be held responsible for instructions issued otherwise.

Appointment of Others

- 2.6 The Client shall confirm in writing to the Landscape Consultant the Services that are to be performed by Others on the Project including their roles and authority.
- 2.7 Where Others, as set out in Clause 2.6, are required to provide Services in connection with the Project set out in this Agreement the Client shall appoint and pay them under separate agreements and shall require them to collaborate with the Landscape Consultant.
- 2.8 The Landscape Consultant shall not be held liable for the work, performance, competence, products or solvency of Others appointed by the Client under Clause 2.7.
- 2.9 Where a Contractor is appointed by the Client the Landscape Consultant shall not be held responsible for the management, operational methods, performance, completion of the construction works and compliance with the construction contract.

Confidentiality and Publicity

- 2.10 The Client shall not disclose any confidential information relating to the Landscape Consultant's business or affairs which has been received verbally or in writing from the Landscape Consultant or their representative unless consent is obtained from the Landscape Consultant or disclosure is required by law or because of a dispute arising from this Agreement.

Duty to Comply with Statutory Requirements

- 2.11 The Client shall comply with all statutory requirements.

3 Assignment and Sub-Contracting

Assignment (Assignment in Scotland)

- 3.1 Neither the Client nor the Landscape Consultant shall assign the benefits or any rights under this Agreement in whole or in part without prior written agreement of the other party whose consent shall not unreasonably be withheld or delayed.

Sub-Contracting

- 3.2 The Landscape Consultant may, with the agreement of the Client whose consent shall not be unreasonably withheld or delayed, appoint sub-consultants to perform part of the Services set out in this Agreement. In this instance the Landscape Consultant will still be responsible for the carrying out and completion of the Services in accordance with this Agreement.

4 Fees and Expenses

Calculation of Fees

- 4.1 The fees for the performance of the Landscape Consultant's Services under this Agreement and for any additional Services required shall be calculated in accordance with Clause 4 and set out in the Schedule of Fees and Expenses, including the method of payment.

Percentage Fees

- 4.2 Where this clause applies fees shall be calculated by applying:
- 4.2.1 the specified percentage to the final Construction Cost; or
 - 4.2.2 the relevant specified percentage for each work stage to the Construction Cost at the end of the previous stage.

Time Charges

- 4.3 Where this clause applies all time reasonably expended by relevant personnel on the performance of the Services required under this Agreement, including travel time, shall be charged at hourly or daily rates as set out in the Schedule of Fees and Expenses.
- 4.4 Rates shall be revised at 12 monthly intervals following the date of this Agreement, where applicable, in accordance with changes in the Average Earnings Index.
- 4.5 The Landscape Consultant shall maintain records of Services performed on a time basis to verify any charges under this clause. The Landscape Consultant shall make these records available to the Client on request within a reasonable time frame.

Lump Sum Fees

- 4.6 Where this clause applies the fee shall be calculated on the basis of a total sum of money for the defined Services and payable in stages as set out in the Schedule of Fees and Expenses.
- 4.7 Lump sums shall be revised at 12 monthly intervals after the date of this Agreement, less any amount previously claimed, where applicable, and in accordance with changes in the Average Earnings Index.

Other Fees

- 4.8 Fees may be calculated by another agreed method and as set out in the Schedule of Fees and Expenses.

Additional Fees or Fee Adjustments

- 4.9 Fees for adjustment to, or addition to, the scope of Services as set out in this Agreement for reasons beyond the Landscape Consultant's control shall be charged on a time basis in accordance with Clause 4.3.
- 4.10 The Landscape Consultant shall inform the Client on becoming aware that Clause 4.9 will apply. Clause 4.9 shall not apply where additional or adjusted work is required as a result of the Landscape Consultant's breach of this Agreement.

Expenses and Disbursements

- 4.11 The Client shall reimburse the Landscape Consultant for agreed expenses and disbursements as set out in the Schedule of Fees and Expenses.

5 Payment

Payment Notices

- 5.1 The Landscape Consultant shall issue payment notices to the Client or the Client's Representative on the last day of each month unless otherwise specified in the Schedule of Fees and Expenses.
- 5.2 Each notice issued in accordance with Clause 5.1 shall set out the sum the Landscape Consultant considers to be due, less any amounts previously paid, and state the basis of the calculation.
- 5.3 The sum set out in the payment notice shall be the 'notified sum' and the payment due date shall be the date of the Landscape Consultant's payment notice.

Payment of Notified Sum

- 5.4 The Client shall pay the notified sum within 14 days of the date of issue of the payment notice, which shall be the final date for payment, unless:
- a) the Landscape Consultant becomes insolvent; or
 - b) the Client issues a notice under Clauses 5.6 - 5.8.
- 5.5 The Client shall not delay payment of any undisputed part of the notified sum.

Pay Less Notice

- 5.6 If the Client intends to pay less than the amount specified in the payment notice or the final account the Client or the Client's Representative shall issue a written notice to the Landscape Consultant not later than 5 days before the final date for payment.
- 5.7 The pay less notice shall set out the sum that the Client considers to be due to the Landscape Consultant on the date the notice is served, the basis on which that sum

has been calculated and, if any sum is intended to be withheld, the grounds for doing so.

- 5.8 The Client shall on or before the final date for payment make payment to the Landscape Consultant of the amount, if any, specified in the written notice.

Final Account

- 5.9 When the Landscape Consultant reasonably considers that the Services have been completed the Landscape Consultant shall submit the final account for fees and any other amounts due. The final date for payment of the final account shall be 30 days from its date of issue. The Client shall pay the sum on the final account, or the sum on a subsequent pay less notice issued under Clauses 5.6 - 5.7, on or before the final date for payment of the final account.

Late Payment

- 5.10 If the Client does not pay the agreed amounts when properly due the Landscape Consultant can apply interest on the full payment due in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 at a daily rate of 8% per year above the Bank of England base rate until payment is received.

6 Copyright and Entitlement

Copyright

- 6.1 Copyright in all original material prepared by the Landscape Consultant in the undertaking of the Services set out in this Agreement shall remain the property of the Landscape Consultant unless otherwise agreed in writing. The Landscape Consultant has the right to be identified as the author of the material.
- 6.2 Under The Registered Designs Regulations 2001 the Client may not register any part of the design by the Landscape Consultant without the written consent of the Landscape Consultant.

Entitlement

- 6.3 The Client shall have a licence to copy and use documents and drawings prepared by the Landscape Consultant in performing the Services under this Agreement. This entitlement applies to the construction, operation, maintenance, management, repair, promotion, leasing or sale of the Project provided that all fees due to the Landscape Consultant have been paid.
- 6.4 Entitlement to copy and use documents and drawings prepared by the Landscape Consultant relates only to that site or part of the site for which the design was prepared and does not permit the reproduction of the design to extend the project or for any other project except on payment of an agreed licence fee.

7 Liability and Insurance

Professional Indemnity Insurance

- 7.1 The Landscape Consultant shall maintain professional indemnity insurance with a limit of indemnity not less than as stated and for the period specified in the Memorandum of Agreement. A Broker's letter confirming the insurance cover shall be supplied by the Landscape Consultant for inspection by the Client if requested.

Supplementary Agreements

- 7.2 The Landscape Consultant will enter collateral warranty agreements where requested in favour of the first funder, first purchaser and first tenant as set out in the Memorandum of Agreement provided that such warranties give no greater benefit to the beneficiaries than is given to the Client.
- 7.3 The Landscape Consultant shall enter into novation agreements where requested to provide Services to a contractor appointed by the Client to complete the design and construction of the Project as set out in the Memorandum of Agreement and appended to this Agreement providing that all due fees and other amounts have been paid.
- 7.4 Other than the rights conferred on a third party by Clause 3.1 (assignment, or assignation in Scotland) and Clause 7.2 (collateral warranties) 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.

Limit of Liability

- 7.5 No action in contract or in tort (delict in Scotland) arising out of this Agreement for a breach of statutory duty shall be commenced after the expiry of the period specified in the Memorandum of Agreement from the date of the last Services performed under this Agreement or the date of practical completion of construction of the Project, if before, or an earlier date if prescribed by law.
- 7.6 The Landscape Consultant's liability for loss or damage shall not exceed the amount of the Landscape Consultant's professional indemnity insurance specified in the Memorandum of Agreement, provided the Landscape Consultant has notified the insurers of the relevant claims as required by the terms of the insurance.
- 7.7 No employee of the Landscape Consultant shall be personally liable to the Client for any negligence, default or other liability arising from the performance of the Services.

8 Suspension or Termination

Suspension of Obligations

- 8.1 The Client may suspend the performance of the Services in whole or in part by giving not less than 7 days notice in writing to the Landscape Consultant of the Services affected.

8.2 The Landscape Consultant may suspend performance of the Services set out in this Agreement by giving not less than 7 days notice in writing to the Client of the intention to suspend and the reasons for doing so in the event:

8.2.1 that the Client fails to pay fees due unless an effective notice to pay less has been issued under Clauses 5.6 - 5.7;

8.2.2 that the Client is in breach of the obligations set out in Clause 2 of this Agreement;

8.2.3 of force majeure or reasons beyond the Landscape Consultant's control that make it impossible or impractical for the Landscape Consultant to provide the agreed Services set out in this Agreement.

8.3 The Landscape Consultant shall make every endeavour to cease performance of the Services in an orderly manner after expiration of the period set out in the notice to suspend.

Resumption of Services

8.4 If Services are suspended due to a default which is subsequently remedied then the Landscape Consultant shall resume the Services within 1 month from the date of remedy of the default.

8.5 If the default is not remedied within 1 month of notification then the other party shall have the right to treat the performance of the Services as terminated and give 7 days written notice.

8.6 The Landscape Consultant shall be entitled to reasonable costs incurred as a result of exercising their right to suspend the works in accordance with Clause 8.2.

8.7 Where Services are suspended by the Client following the notice in accordance with Clause 8.1 and are not resumed within 6 months the Landscape Consultant may treat the Agreement as terminated and give 7 days written notice to the Client.

Termination

8.8 Either the Client or the Landscape Consultant may terminate the performance of the Services by:

8.8.1 giving reasonable notice in writing stating the reasons for doing so and the Services affected;

8.8.2 giving notice immediately if the other party is declared bankrupt, becomes bankrupt, enters into receivership, liquidation or administration;

8.8.3 giving notice immediately if the Landscape Consultant is unable to perform the Services due to death or incapacity of a sole practitioner.

8.9 On termination of the performance of the Services the Landscape Consultant will provide any outstanding information relating to the Project as set out in this Agreement on demand of the Client subject to payment of all outstanding fees due.

9 Dispute Resolution

Mediation

9.1 Any difference or dispute arising from a written appointment under this Agreement may be settled by the Client and the Landscape Consultant through negotiation or mediation if suitable.

Adjudication

9.2 In the event of a dispute arising under this Agreement either party may give written notice at any time to the other of their intention to refer the dispute to adjudication.

9.3 An adjudicator shall be appointed by agreement between the parties within 2 working days of receipt of notice under Clause 9.2 or, failing agreement, within 7 days of the notice by the Construction Industry Council Adjudicator Nominating Body. The adjudicator shall conduct the adjudication in such manner as they consider fit, having regard to the Construction Industry Council's Model Adjudication Procedure, and subject to the following matters:

9.3.1 within 7 working days of notice under Clause 9.2 the parties shall agree and provide to the adjudicator a joint statement of undisputed facts (so as to reduce the area of dispute to a minimum);

9.3.2 the adjudicator shall act impartially and shall reach a decision within 28 days of referral of the dispute to them or such longer period as the parties may agree;

9.3.3 the parties shall accept the adjudicator's decision as binding upon them until such time as the dispute is finally resolved in accordance with a ruling under Clause 9.1 or by agreement; alternatively the parties may agree to accept the decision of the adjudicator as finally determining the dispute;

9.3.4 the adjudicator may allocate between the parties the costs relating to adjudication, including the fees and expenses of the adjudicator.

10 Governing Laws

10.1 This Agreement is subject to the law of England and Wales or Northern Ireland or Scotland as specified in the Memorandum of Agreement and the parties shall submit to the exclusive jurisdiction of the specified country of jurisdiction.

Landscape Institute, Charles Darwin House 2, 107 Gray's Inn Road, London, WC1X 8TZ
www.landscapeinstitute.org