



Landscape Consultant's Appointment

LCA GUIDANCE NOTE 1
June 2018

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1 Introduction

- 1.1 The June 2018 edition of the Landscape Institute's Landscape Consultant's Appointment supersedes the 2013 and all previous editions.
- 1.2 The June 2018 edition revisions include:
- the addition of documents for the appointment of a CDM Principal Designer in accordance with the Construction (Design and Management) Regulations 2015 (CDM 2015);
 - revisions to the S1 Services, S7 Services and the Landscape Consultant Conditions documents to reflect CDM 2015 rather than CDM 2007;
 - revisions of S7 Services and Fees documents (maintenance contract services) to exclude significant design;
 - updates of the Definitions document and this Guidance Note; and
 - minor updates to all the other LCA documents including the two 2014 Information Notes.
- 1.3 The CDM Principal Designer suite of documents is specifically for the appointment of an LI member/practice as Principle Designer under the CDM Regulations 2015. The Regulations require the Client to appoint in writing a designer who is in control of the pre-construction phase of the project as Principal Designer to undertake the Principal Designer's duties defined in the Regulations. This would normally be the lead designer (but not necessarily). The documents can be used when the Landscape Consultant is also to be the CDM Principal Designer, or when an LI member who is not the Landscape Consultant for the project is to be appointed as the CDM Principal Designer. Even when the CDM Principal Designer is also the Landscape Consultant it is desirable to have separate appointment documents to ensure the specific appointment requirements in the Regulations are satisfied, to enable the possibility of appointment to the different roles at different times, and to enable clearly defined scopes of work and associated fees for the two distinct roles.
- 1.4 The CDM Regulations apply to all construction work, including the maintenance of construction work, and apply to all stages of projects. For landscape industry guidance (agreed with HSE) on the application of the Regulations to landscape works see JCLI Practice Note No 8 Rev 2 item 3 and No 9 Rev 2 item 3 (available free from the JCLI web pages on the LI website).

2 Aims

- 2.1 The principal aims of the appointment document are to:
- enable the Consultant and the Client to achieve a clear understanding of the services required by the Client;
 - define the conditions concerning the provision of those services; and
 - set out the payment provisions relating to those services.

3 Contents

- 3.1 Under the Institute's Code of Standards of Conduct and Practice for Landscape Professionals members must not undertake professional work unless the terms of the contract have been recorded in writing as to:
- the scope of the work;
 - the allocation of responsibilities;
 - any limitation of responsibilities;
 - the fee or method of calculating it;
 - any provisions for termination; and
 - any special provisions for dispute resolution.
- 3.2 The Landscape Consultant's Appointment comprises two suites of documents, one for the appointment of a Landscape Consultant and the other for the appointment of a CDM Principal Designer. Each suite includes the Memorandum of Agreement (signed by the parties), the Conditions of Appointment, the Scope(s) of Services to be provided by the Landscape Consultant or CDM Principal Designer and the Fees and Expenses agreed for those services. Together these and any other attached documents form the contract between the parties.
- 3.3 The scopes of services reflect the range of services offered by Landscape Consultants. They are intended to be revised by the consultant to reflect the specific requirements of a particular project; for example, S1 should be amended to reflect the services required for the chosen procurement route, including whether the landscape consultant will be the contract administrator or not.
- 3.4 The Landscape Consultant's Appointment comprises the following elements:
- 01 Landscape Consultant's Memorandum of Agreement
 - 02 Landscape Consultant's Conditions of Appointment
 - 03 Landscape Consultant's Scopes of Services
 - S1: Landscape Design & Administrative / Post Contract Services
 - S2: Masterplanning Services
 - S3: Landscape and Visual Impact Assessment Services
 - S4: Landscape Planning Services
 - S5: Landscape Management Plan Services
 - S6: Stakeholder Engagement Service
 - S7: Landscape Maintenance Contract Preparation and Administration Services
 - S8: Other Services
 - 04 Landscape Consultant's Schedules of Fees and Expenses associated with each of the above Scopes of Services.

- 05 CDM Principal Designer's Memorandum of Agreement
 - 06 CDM Principal Designer's Conditions of Appointment
 - 07 CDM Principal Designer's Scope of Services
 - 08 CDM Principal Designer's Schedule of Fees and Expenses
- 3.5 Scopes S1, the CDM Principal Designer's Scope of Services and the associated Fees documents relate to construction projects and align with the RIBA Plan of Work 2013 stages.
- 3.6 A 'Definitions' document is also provided and is referenced in the Conditions of Appointment for both the Landscape Consultant and CDM Principal Designer.

4 Use

- 4.1 The Landscape Institute has made these documents available online and free of charge to its members.
- 4.2 The documents are in a combination of editable and non-editable formats.

All four elements 01 to 04 of the Landscape Consultant's Appointment are required to provide a fully enforceable contract for the appointment of a Landscape Consultant.

01 *Landscape Consultant's Memorandum of Agreement (PDF with editable sections)*

This is the legal agreement between the Landscape Consultant and the Client and is non-editable except for details of the project, the parties to the agreement, the documents that comprise the agreement and the signature sections.

02 *Landscape Consultant's Conditions of Appointment (PDF non-editable format)*

These conditions will always apply for each appointment of a landscape consultant and are not editable by the user. The Landscape Institute will update as required. Any amendments to the Conditions that are required for a project should be stated on an Amendment document attached to the Conditions and referenced in the Memorandum.

03 *Landscape Consultant's Scopes of Services (Word documents fully editable)*

The Scopes of Services are intended to be flexible and can be used as a checklist for guidance as the Landscape Institute recognises that Landscape Consultants may have alternative ways of expressing their services to clients.

The documents are fully editable and sections that are not applicable must be amended or deleted as appropriate for the particular project. Where additional services are to be provided these should be added at the appropriate section.

The document can be personalised by inserting the Landscape Consultant's practice logo.

The Landscape Institute can not be held responsible for the final contents of the Scope of Services issued by the Landscape Consultant.

If the Landscape Institute's Scopes of Services are not used the Landscape Consultant must ensure that the scope of their services is set out appropriately and clearly stated as forming part of the agreement.

04 *Landscape Consultant's Schedules of Fees and Expenses (Word documents fully editable)*

The Schedules of Fees and Expenses are intended to be used in conjunction with the Scopes of Services. They are fully editable and any amendments in numbering or content made to the Scopes of Services should be reflected in the associated Schedules of Fees and Expenses.

The schedules allow for alternative methods of charging fees and expenses and also include a time charge schedule for different grades of staff.

The Landscape Institute can not be held responsible for the final contents of the Schedule of Fees and Expenses issued by the Landscape Consultant.

If the Landscape Institute's Schedules of Fees and Expenses are not used the Landscape Consultant must ensure that the fees and expenses for their services are set out appropriately and clearly stated as forming part of the agreement.

All four elements 05 to 08 are required to provide a fully enforceable contract for the appointment of a CDM Principal Designer.

05 *CDM Principal Designer's Memorandum of Agreement (PDF with editable sections)*

This is the legal agreement between the CDM Principal Designer and the Client and is non-editable except for details of the project, the parties to the agreement, the documents that comprise the agreement and the signature sections.

06 *CDM Principal Designer's Conditions of Appointment (PDF non-editable format)*

These conditions will always apply for each appointment of a CDM Principal Designer and are not editable by the user. The Landscape Institute will update as required. The note concerning amendments under 02 above is applicable.

07 *CDM Principal Designer's Scope of Services (Word document fully editable)*

This Scope of Service is in the same format as the S1 Scope of Services and the notes under 03 above are applicable. When editing the document for a particular project care should be taken to ensure that the proposed service includes the duties of the CDM Principle Designer as stated in CDM 2015

08 *CDM Principal Designer's Schedules of Fees and Expenses (Word documents fully editable)*

This Schedules of Fees and Expenses is in the same format as the S1 Schedules of Fees and Expenses and the notes under 04 above are applicable.

4.3 The Landscape Consultant's Appointment is not appropriate for domestic clients without amendment. For further details see Landscape Consultant's Appointment Information Note 2 (June 2018).

5 Use in Scotland

5.1 If the project is governed by Scots Law the following should be undertaken for the Agreement to be compliant:

- the Scots signing schedule in the Memorandum of Agreement must be signed, completed fully and a line should be drawn through the provisions for England, Wales and Northern Ireland;

- the 'Day/Date' and 'Month and Year' options at the top of the Memorandum of Agreement should not be completed; Scots contracts are dated by when the parties signed them, not by one mutually agreed date;
- all documents forming part of the whole agreement should be identified at the top of the first page: "*This is the referred to in the foregoing Memorandum of Agreement between [Client] and [Contractor]*";
- the parties that sign the Memorandum of Agreement should sign the last page of each document; this is not essential unless the Memorandum of Agreement states that they are "*annexed and signed as relative hereto*".

6 Fee Calculation

6.1 The Landscape Institute's 'Engaging a Landscape Consultant – Guidance for Clients on Fees' published 2002 has been withdrawn. The document provided detailed guidance on alternative methods for charging fees, expenses and disbursements. For further details see Landscape Consultants Appointment Information Note 1 (June 2018).

6.2 Landscape Professionals are required by the Institute's Code of Standards of Conduct and Practice for Landscape Professionals to agree their terms in writing including the fee and method of calculation. The Landscape Consultant's Appointment recommends using one of the three most common methods of fee calculation adopted by other construction industry design professionals. These are:-

01 *Percentage Fees*

Fees expressed as a percentage of the total construction cost. Before fees can be calculated both the client and consultant must establish the services to be provided, the approximate construction budget and the nature of the work. Fees are calculated by applying:-

- the specified percentage to the final Construction Cost; or
- the relevant specified percentage for each work stage to the Construction Cost at the end of the previous stage.

02 *Time Charges*

Calculated by charging all time reasonably expended by relevant personnel on the performance of the services required for the project, including travel time, at previously agreed hourly or daily rates. Rates can be revised at agreed intervals in accordance with changes in the Average Earnings Index. This method of charging fees is most appropriate for use where the scope of work cannot reasonably be foreseen or where services cannot be related to the amount of construction costs.

03 *Lump Sum Fees*

Fees calculated on the basis of a total sum of money for a clearly defined package of services and payable in agreed stages. The parameters of services must be clearly set out including - time, project size and cost - where applicable, so that if these are varied more than an agreed amount, the lump sum itself may be varied. Lump sums can also be revised at agreed intervals in accordance with changes in the Average Earnings Index.

04 *Other Methods of Calculating Fees*

Fees may be calculated by another method agreed with the client but the method of calculation and payment stages must be set out clearly in the final written agreement with the client.

6.4 Methods of calculating and charging expenses and disbursements are varied and include:-

- at cost;
- at market rates;
- rolled-up;
- converted to a percentage;
- lump sum.

6.5 The Landscape Consultant's Appointment includes Schedules of Fees and Expenses associated with each Scope of Service which enables the Consultant to set out the chosen method of calculating and charging fees and expenses and the stages of payment. This is reinforced by the Conditions of Appointment, Clause 4 Fees and Expenses, to which both parties agree.

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