CDM PRINCIPAL DESIGNER’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 CDM Principal Designer’s Authority and Obligations

Duty of Care

1.1 The CDM Principal Designer 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.

CDM Principal Designer’s Authority

1.3 The CDM Principal Designer 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 CDM Principal Designer’s Representative

1.4 The CDM Principal Designer’s representative shall have full authority to act on behalf of the CDM Principal Designer for all purposes in connection with the performance of the Services set out in this Agreement.

Duty to Inform and Collaborate

1.5 The CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer will advise the Client of the requirement to appoint others to provide Services in connection with the Project set out in this Agreement. The CDM Principal Designer shall collaborate with all appointed persons in connection with the Project and shall integrate information received into the CDM Principal Designer’s work.
Duty to Comply with Statutory Requirements

1.8 The CDM Principal Designer shall comply with all statutory requirements.

Confidentiality and Publicity

1.9 The CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer shall be entitled to rely on it.

2.4 The Client shall give decisions or take necessary action to enable the CDM Principal Designer to undertake the Services set out in this Agreement and in accordance with the Programme.

Appointment of Others

2.5 The Client shall confirm in writing to the CDM Principal Designer the Services that are to be performed by Others on the Project including their roles and authority.

2.6 Where Others, as set out in Clause 2.5, 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 CDM Principal Designer.

2.7 The CDM Principal Designer shall not be held liable for the work, performance, competence, products or solvency of Others appointed by the Client under Clause 2.6.

2.8 Where a Contractor is appointed by the Client the CDM Principal Designer 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

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

Duty to Comply with Statutory Requirements

2.10 The Client shall comply with all statutory requirements.

3 Assignment and Sub-Contracting

Assignment (Assignation in Scotland)

3.1 Neither the Client nor the CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer’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 CDM Principal Designer shall maintain records of Services performed on a time basis to verify any charges under this clause. The CDM Principal Designer 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 CDM Principal Designer’s control shall be charged on a time basis in accordance with Clause 4.3.

4.10 The CDM Principal Designer 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 CDM Principal Designer’s breach of this Agreement.
Expenses and Disbursements

4.11 The Client shall reimburse the CDM Principal Designer for agreed expenses and disbursements as set out in the Schedule of Fees and Expenses.

5 Payment

Payment Notices

5.1 The CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer’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 CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer of the amount, if any, specified in the written notice.

Final Account

5.9 When the CDM Principal Designer reasonably considers that the Services have been completed the CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer in the undertaking of the Services set out in this Agreement shall remain the property of the CDM Principal Designer unless otherwise agreed in writing. The CDM Principal Designer has the right to be identified as the author of the material.

**Entitlement**

6.2 The Client shall have a licence to copy and use documents and drawings prepared by the CDM Principal Designer 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 CDM Principal Designer have been paid.

6.3 Entitlement to copy and use documents prepared by the CDM Principal Designer relates only to that site or part of the site for which the documents were prepared.

7 **Liability and Insurance**

**Professional Indemnity Insurance**

7.1 The CDM Principal Designer 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 CDM Principal Designer for inspection by the Client if requested.

**Supplementary Agreements**

7.2 The CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer’s liability for loss or damage shall not exceed the amount of the CDM Principal Designer’s professional indemnity insurance specified in the Memorandum of Agreement, provided the CDM Principal Designer has notified the insurers of the relevant claims as required by the terms of the insurance.

7.7 No employee of the CDM Principal Designer 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 CDM Principal Designer of the Services affected.

8.2 The CDM Principal Designer 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 majeur or reasons beyond the CDM Principal Designer’s control that make it impossible or impractical for the CDM Principal Designer to provide the agreed Services set out in this Agreement.
8.3 The CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer may treat the Agreement as terminated and give 7 days written notice to the Client.

Termination

8.8 Either the Client or the CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer 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 CDM Principal Designer through negotiation or mediation if suitable.
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.