

## Conditions of Appointment for Perpetua In Perpetuum Ltd. (Company No. 8931431)

### 1 Definitions and Interpretation

1.1 **Letter of Appointment** means the letter of appointment to which these Conditions are annexed.

**Company** refers to Perpetua In Perpetuum Limited including but not limited to any principals, employees and advisors associated with said companies.

**Other Persons** means any person, company or firm, other than the Company or any sub-consultant of the Company, including but not limited to consultants, contractors, sub-contractors specialists, 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 Company specified in the schedule of Services annexed to the Letter of Appointment, 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 are without prejudice to the respective rights and obligations of the parties and continue in force as long as necessary to give effect to such 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 Company's Services

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

2.2 The Company 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 and 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 appointed by the Client and, as applicable, shall coordinate and integrate information received into the Company's work and shall pass relevant information to them;

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 Company shall have the right to publish photographs of the Project, and the Client shall give reasonable access to the Project for this purpose for 2 years after practical completion of the construction works.

### **3 Client's Responsibilities**

- 3.1 The Client;
- 3.1.1 shall advise the Company 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 Company 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 Company.
- 3.2 The Client acknowledges that the Company does not warrant;
- 3.2.1 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;
  - 3.2.2 compliance with any programme and/or target cost for the building work which may need to be reviewed for;
    - (a) variations requested by the Client;
    - (b) variation in market prices;
    - (c) delays caused by any factor beyond the control of the Company;
    - (d) the discovery at any time of previously unknown conditions;
  - 3.2.3 the competence, performance, work, services, products or solvency of any Other Persons.
- 3.3 The Client shall;
- 3.3.1 appoint and pay any Other Persons required to perform work or services under separate agreements;
  - 3.3.2 hold the contractor or contractors and not the Company responsible for the proper carrying out and completion of construction works;
  - 3.3.3 not deal with the contractor or contractors directly or interfere with the Company's duties or actions under the building contract.

### **4 Assignment**

- 4.1 Neither the Company 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 Company 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 condition 5 and as specified 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 final cost of the building work; or
  - 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 specifies 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 Company's office; or
  - 5.2.5 any combination of these; and/or
  - 5.2.6 any other agreed method.

Where a percentage fee applies, the percentages are applied to the current approved estimate of the 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 Company commenced performance of the Services.
- 5.4 The Basic Fee;
- 5.4.1 shall be adjusted, 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 and/or the Services are varied by agreement;
  - 5.4.2 shall not be adjusted for any reduction of the cost of the building works arising solely from deflationary market conditions not prevailing at the date of the Agreement. The Basic Fee shall continue to be based on the approved cost of the building works current prior to the date of such reduction.
- 5.5 If the Company is involved in extra work or incurs extra expense for reasons beyond the Company's reasonable control, additional fees shall be calculated on a time basis in accordance with condition 5.2.4 where;
- 5.5.1 the cost of any work, installation or equipment, for which the Company performs Services, is not included in the cost for the building work; and/or
  - 5.5.2 the Company 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 Company shall inform the Client on becoming aware that this condition 5.5 will apply. This condition 5.5 shall not apply were any change or extra work or expense arises from a breach of this Agreement by the Company.

5.6 The Client shall reimburse the Company for expenses in the manner specified in the Letter of Appointment.

5.7 The Company 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 Company shall make such records available to the Client on reasonable request.

5.8 The Company shall issue accounts at intervals of not less than one month or as specified in the Letter of Appointment setting out any accrued installments of the Basic Fee and any additional fees, expenses, disbursements or VAT, less any amounts previously paid and stating the basis of calculation of the amounts due.

Payment shall become due to the Company on the date of issue of the Company's account. The final date for payment of any amount due to the Company shall be 14 days from the issue of the relevant account.

5.9 The Client shall inform the Company in writing, on or before the date when payment is due, if the Client intends to withhold payment of any part of that amount stating the amount proposed to be withheld and the reason or reasons for doing so. If no notice is given the amount due shall be the amount stated as due in the account.

5.10 If performance of any or all of the Services and/or other obligations is suspended or ended, the Company shall be entitled;

5.10.1 to payment of any part of the fee and other amounts properly due; together with;

5.10.2 reimbursement of any loss and/or expense properly and necessarily incurred by the Company by reason of the suspension or the termination, except where the Company is in material or persistent breach of the obligations of the Agreement.

5.11 In the event that any amounts are not paid when properly due, the payee shall be entitled to simple interest on such amounts until the date that payment is received at 8% 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 payee (including costs of time spent by principals, employees and advisors) in obtaining payment of any sums due under this Agreement.

5.12 The Client or the Company shall pay to the other party who successfully pursues, resists or defends any claim or part of a claim brought by the other;

5.12.1 such costs reasonably incurred (including costs of time spent by principals, employees and advisors) where the matter is resolved by negotiation or mediation; or

5.12.2 such costs as may be determined by any tribunal to which the matter is referred.

5.13 In addition to fees and expenses, the Client shall pay any Value Added Tax chargeable on the Company's fees and expenses.

## **6 Copyright Licence**

- 6.1 The Company shall own the copyright in the drawings and documents produced in performing the Services and generally asserts the Company's moral rights to be identified as the author of such work.

Providing that all fees and/or other amounts properly due are paid, the Client shall have a licence to copy and use and allow Other Persons providing services to the Project to copy and use hardcopies (excluding AutoCAD format files) of 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. The Company shall not be liable for any the of the drawings and documents other than for the purpose for which they were prepared.

No part of any design by the Company may be registered by the Client without the written consent of the Company.

## **7 Liability and Insurance**

- 7.1 No action or proceedings arising from the failure of the Company 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 Company's liability for loss or damage shall not exceed the amount of the Company's professional indemnity insurance specified in the Letter of Appointment providing the Company 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 Company or any agent of the Company shall be personally liable to the Client for any negligence, default or any other liability whatsoever arising from performance of the Services.

- 7.3 The Company shall maintain until at least the expiry of the period specified in condition 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 Company at the time when the insurance is taken out or renewed.

The Company, 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.

- 7.4 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 the Services and other obligations by giving at least 7 days 'written notice and stating the reason for doing so.

The Company may suspend or end performance of the Services and other obligations by giving at least 7 days' notice and stating the reason for doing so. Such reasons include, but are not limited to, the Client's failure to pay any fees or other amounts due by date when payment is due.

If the reason for a notice of suspension arises from a default;

- 8.1.1 which is remedied, the Company 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 7 days' further written notice.

Where Services are suspended by the Client and not resumed within 3 months, the Company has the right to treat performance of the Services affected as ended on giving at least 7 days' further written notice to the Client.

## **9 Dispute Resolution**

- 9.1 In the event of any dispute or difference arising under the Agreement, the parties may;
  - 9.1.1 attempt to settle the matter by negotiation or mediation; or
  - 9.1.2 start court proceedings to settle the dispute at any time; or
  - 9.1.3 have disputes decided within 21 days by an adjudicator appointed under the Adjudication Scheme for Consumer Contracts.
- 9.2 If appointed, 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 condition 5.12.

## **10 Consumer's Right to Cancel**

- 10.1 The consumer Client has the right to cancel this Agreement for any reason by delivering or sending (including by electronic mail) a cancellation notice to the Company at any time within the period of 7 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 Company or in the case of electronic communication on the day it is sent to the Company.
- 10.3 If the Company was instructed to perform any services before the Agreement was made or before the end of the 7 day period and the instruction or instructions were confirmed in writing, the Company shall be entitled to any fees and expenses properly due before the Company receives the notice of cancellation.
- 10.4 The notice of cancellation is to be addressed to the Company and state;

The Client <name> hereby gives notice that the Agreement with the Company <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>

## **Fees and Expenses Schedule**

	<i>Person/grade</i>	<i>Rate</i>
<b>Time charges</b>	Principal	£80.00 per hour
	Associate Partner	£75.00 per hour
	Senior Project Runner	£70.00 per hour
	Project Runner	£65.00 per hour
	PassivHaus Designer	£65.00 per hour
	Senior Technician	£62.00 per hour
	Technician	£53.00 per hour
	Assistant	£45.00 per hour
	Admin	£50.00 per hour

### **Expenses and Disbursements**

Expenses and disbursements made on behalf of the Client,  
will be charged at net cost plus a handling charge of

10%

Where applicable, travel will be charged at

0.40p per mile

### **Printing/Plotting** Rates for hardcopy prints:

	A4	A3	A2	A1	A0
Black & white	0.35p	0.70p	£1.50p	£2.50p	£4.50p
Colour	£1.80p	£5.00p	£10.00p	£15.00p	£20.00p

**Scan to disk** £25.00 (additional disks provided at £5.00 per copy)

Accounts issued at the end of each Work Stage