

## CONDITIONS OF ENGAGEMENT

### THE ENGAGEMENT

1. This document sets out the Conditions of Engagement under which The D&M Planning Partnership (“the Practice”) will conduct its business with the Client. The specific extent of the Practice services and the fee structure that will apply to a particular commission are set out in the letter of appointment and/or other written note to that commission. The Conditions on the letter of appointment and/or other written note shall be collectively referred to as “the Engagement”. No liability whatsoever will attach to the Practice in respect of the performance of services other than the specific services for which the Practice has been so engaged. The expression “the Practice” includes for the avoidance of doubt, the Partners and employees from time to time of The D&M Planning Partnership.
2. To the extent permitted by law, any liability on the part of the Practice is hereby excluded whether arising under contract negligence tort generally or otherwise for any loss, injury or damage sustained by the Client as a result directly or indirectly of any act or omission of the Practice in the provision of the services.
3. Without prejudice to paragraph 2 above, any liability of the Practice to the Client shall not in any circumstance exceed the limit of indemnity or sum insured under the Practices professional indemnity insurance in the insurance year in which the Client’s claim or circumstance is first notified to the insurers.
4. All work undertaken by the Practice, and the level of the said fee structure is on the basis that a full written disclosure has been made by the Client of all information and documentation which may affect such work and the Practice shall not be liable unless such a disclosure has been made prior to its engagement.

### PAYMENT FOR SERVICES RENDERED

5. Within 21 days of the date of the invoice rendered, the Client shall pay all fees due and shall reimburse any expenses and any disbursements due including value added tax.
6. Specified fees do **not** include:
  - i) The preparation of photographic and other records, models and presentation materials unless expressly agreed at engagement.
  - ii) Fees, other charges and disbursements of sub-contractors, specialists or consultants engaged, with prior consent of the Client, whether directly or as agreed by the Client and whether or not working under the direction or supervision of the Practice.
  - iii) The reasonable cost of producing or reproducing documents, drawings, maps, photographs and other records including the costs incurred from local authorities or other sources in finding necessary and relevant documents for the performance of the services engaged.
  - iv) Reasonable hotel and travel expenses including mileage allowance, where the right is reserved by the Practice to pass on any costs incurred to the Client should they be necessary for the performance of the services engaged.

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- v) Communication charges, such as messengers, couriers, special postal items and the like, should their use be required within the Conditions of Engagement.
  - vi) Local Government fees and costs including statutory fees. As a general practice, in any event, the Client will be requested to pay any statutory fees directly to local authorities at the time of submission of planning applications, appeals or similar.
7. The Practice shall retain the right to charge interest, on any invoice overdue by more than 21 days at a rate of 3% above the Prevailing Bank Rate in force from time to time (before as well as after any judgement for the same) or any other Base Rate nominated in writing to the Client by the Practice from time to time.

### COPYRIGHT

8. Unless otherwise agreed in writing, the Practice shall retain copyright and ownership of all files, specifications, manuals, reports, documents, drawings, maps, photographic and other records, models and presentation materials prepared by the Practice. The Client, or any other persons, may not reproduce any of the foregoing without the consent of the Practice and payment of any additional fees that may be specified by the Practice.

### TERMINATION OF SERVICES

9. The Practice is entitled to suspend performance of the services retained upon serving written notice to that effect on the Client. The Client can also terminate the engagement by serving written notice on the Practice. If the performance of services has been so suspended, the Practice shall be entitled to send an invoice to the Client in respect of all outstanding fees for the services performed up to that time, to include all expenses and other disbursements incurred and value added tax.
10. If the Client is declared bankrupt or has a receiving order made against them, or has made any arrangement with creditors, or if distress or execution is levied or threatened upon any of the Client's property, or any judgement against the Client remains unsatisfied for more than 14 days, or for non-payment of any invoices presented for more than 21 days, the Practice may suspend performance of its services or may terminate any agreement upon serving written notice on the Client to that effect. These provisions shall also apply where the Client is a limited company and enters into liquidation, whether compulsory or voluntary (other than a voluntary and solvent liquidation for the purposes of amalgamation or reconstruction) or has a receiver or administrator appointed in respect of any of its assets.

### GENERAL

11. The Engagement cancels and replaces all previous agreements or arrangements (if any) between the Practice and the Client and constitutes the whole agreement.
12. The Engagement shall be binding upon and endure to the benefits of the Practice and the Client and their respective successors and assigns except that the Client shall not assign its rights thereunder without the prior written consent of the Practice. In the event of any conflict between the Conditions and any other document binding upon the Practice and the Client, the provisions of the Conditions shall prevail.
13. The invalidity of any of the foregoing paragraphs shall not affect the validity of the remainder and shall be severed therefrom. The paragraph headings herein are for convenience only and do not effect the construction or meaning of the Conditions.

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### **SUPPLEMENTAL CONDITIONS OF ENGAGEMENT**

1. This short note is intended to give a broad idea of the fees which may become payable in respect of our advice.
2. Planning and related work is difficult to quantify in terms of the time it will take. Occasionally a case takes an unforeseen course. Sometimes unexpected results occur which considerably shorten the work involved. More often, at planning application stage, the strength of opposition – unknown at the start – will decide what corrective measures and lobbying may be necessary at a late stage in the process.
3. Similarly, in planning appeals, there is no way initially of ascertaining the weight of opposition, if any, to the proposal from interested persons or, indeed, from the Planning Authority. In both cases the research and other work required to counter that opposition and promote the case varies considerably and often cannot be predicted.
4. Most commissions are based on an hourly time charge. Current rates range between £45 - £160 per hour depending on the complexity of the job, its urgency and other related matters and therefore the seniority of the staff deployed to deal with it. All commissions are overseen by the nominated Partner in charge.
5. Fees quoted are exclusive of VAT, printing, statutory fees and other disbursements. The Partners or employees of The D&M Planning Partnership deployed at any given time, either alone or jointly to a commission shall be decided upon at the absolute discretion of the Partners.
6. The covering letter to the commission may suggest a budget figure for a certain stage of the work involved, but it is emphasised that this is mentioned only as a guide. The final sum may be less. It may be more, in which case we will advise the Client in advance, unless it is in the Client's best interest that the specific task be completed, i.e. to meet appeal deadlines etc.
7. Depending on the nature of the Commission, it is our practice to send accounts on an interim or bi-monthly basis.

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## **DIRECT ACCESS TO THE PLANNING & ENVIRONMENT BAR ASSOCIATION**

1. Since 1993 members of certain professional bodies, including The Royal Town Planning Institute, have been given Direct Access to the Planning and Environment Bar Association (PEBA). The D&M Planning Partnership can, therefore, instruct Barristers direct, without the need to engage instructing solicitors.
2. Thus, where there is a need to engage the services of a Barrister, for example to represent the Client at a Public Inquiry, to give an Opinion or to assist in the drafting of certain documents, the Practice can instruct the Barrister direct on behalf of the Client.
3. In accordance with Bar Rules, this Practice then becomes liable for the Barristers fees. It is normal procedure, therefore, to secure an advance from the Client to set against those fees.
4. The principle advantage of Direct Access is that we establish a direct line of communication with Counsel and can relay all professional opinions, documentation and procedural issues at first hand, without an intermediary, thus ensuring expediency and clarity of case. In addition, Direct Access usually results in a cost saving to the Client as it avoids the need for a duplication of roles.
5. In effect, in Direct Access cases we perform a similar function to a solicitor: i.e. arranging fees and conferences with Counsel, collating all necessary papers in order to brief Counsel, attending and keeping notes at the Conferences and taking notes subsequently at the Inquiry, in addition to giving evidence. Recording the proceedings at Inquiry is important, since these notes may be needed later should the matter need to go to the Courts. Therefore, at Inquiries, two people from this Practice will usually need to be present – one to give evidence, the other to record proceedings.
6. In some circumstances, however, particularly where there are complex legal or procedural issues to consider, this Practice may recommend the use of appropriate solicitors to instruct Bar Members on behalf of Clients.