



**MODEL CERTIFICATES AND OTHER FORMS
for use with
JCLI LANDSCAPE WORKS CONTRACT 2012 (JCLI LWC)
and
JCLI LANDSCAPE WORKS CONTRACT WITH
CONTRACTOR'S DESIGN 2012 (JCLI LWCD)**

June 2012

1 INTRODUCTION

This document includes model forms with guidance notes to assist Landscape Architects/Contract Administrators in producing the documents the Landscape Architect/Contract Administrator is required to produce by the Conditions of Contract on their own forms. In the interests of standardisation Landscape Architects/Contract Administrators should use the basic layout and format of the model forms.

The 2012 editions of the JCLI Contracts change the procedures associated with payment of the Contractor considerably and therefore result in revisions to previous guidance and payment certificates as well as additional forms. These changes result from the Local Democracy, Economic Development and Construction Act 2009 (LDEDCA), the Construction part of which came into force on 1 October 2011 and amends the Construction part of the Housing Grants Construction and Regeneration Act 1996 (HGCRA). See also JCLI Practice Note No 8 Revision 1: June 2012

The periods of days stated in JCLI LWC and LWCD and below include weekends (but exclude public holidays).

2 GUIDANCE NOTES ON MODEL FORMS

A General

- A1 "Contract dated": in some situations it will be more appropriate to use "Letter of Acceptance dated"
- A2 Distribution: modify list as appropriate for particular project or even for particular document.
- A3 Add information as necessary, e.g. Employer's project reference number...
- A4 If appropriate, revise "we" to "I"
- A5 In order for the sums to work easily on all forms and in accordance with standard practice, any contingency sum should be omitted on the first instruction.
- A6 Use either "Landscape Architect" or "Contract Administrator" as appropriate

B Landscape Architect's/Contract Administrator's Instruction

- B1 Add "Approximate" before "Value of previous instructions", "Value of this instruction" and "Adjusted Total" if exact values are not known (particularly where a quantity surveyor is involved).

C Interim Payment Certificate

- C1 This certificate should be used for Interim Certificates issued under clauses 4.3 and 4.4. The amended HGCR requires certificates to state the basis of the calculation of the amount due.
- C2 Due dates for payments are at 4 weekly intervals from commencement until practical completion as stated in clause 4.3. The due date for the first payment after practical completion is 7 days after the date of practical completion and thereafter every 3 months until the end of the rectification period in accordance with clause 4.4. The Interim Certificates before practical completion and the one just after practical completion have to be issued within 5 days of the due date. Thereafter Interim Certificates must be issued on the due date for payment. A certificate must be issued even if the amount due is £0. Any certificate issued late will be invalid (unless agreed otherwise by the Contractor and Employer). The final date for payment is 14 days after the due date.

- C3 **If the Employer wishes to deduct anything from the amount certified** (eg liquidated damages or contra-charges, ie items which are not appropriate to deduct on certificates) a payless notice must be issued by the Landscape Architect / Contract Administrator at least 5 days before the final date for payment in accordance with clause 4.5.4. The amount due on the payless notice must be the amount due at the date of the notice rather than at the due date. The need to revalue the work done at the date of the payless notice can be avoided if the certificate and payless notice are both issued on the due date for payment, but the payless notice must not be issued before the certificate. A payless notice could actually be a 'paymore' notice. (see section D below).
- C4 If any certificate is not issued on time the Contractor can issue a notice under clause 4.5.2 stating how much was due at the due date calculated in the same way as clause 4.3.1 and 4.3.2 or 4.4.1 and 4.4.2 as appropriate. The Contractor's notice can be issued at any time after the certificate should have been issued. The final date for payment is extended by the number of days between the end of the 5 day period during which the certificate should have been issued and the date of the Contractor's notice. Hence, unless the 14 day period between the due date and the final date for payment has been revised in the particular project contract, payment of the Contractor's notice is due 9 days after the date of the notice, but a payless notice can be issued within 4 days of the Contractor's notice. (see section E below). If an interim certificate is not issued on time, issuing certificates for payment cannot recommence until a Contractor's notice is issued by the Contractor unless the Contractor and Employer agree otherwise.
- C5 Delete the references to clause 4.4 if the certificate is before practical completion, or delete the references to clause 4.3 if the certificate is after practical completion.
- C6 The second item "Value of materials ..." is only applicable prior to practical completion and should be deleted for certificates issued under clause 4.4. For other items insert £0 if appropriate rather than deleting the item.
- C7 "This is not a Tax Invoice" should always be included.

D Payless Notice (Type 1)

- D1 Payless notices are issued by the Landscape Architect/Contract Administrator on behalf of the Employer, only if the Employer wishes to deduct something from the amount due on a payment certificate or on a Contractor's notice, or to reduce the amount the Contractor claims on a Contractor's notice. The amended HGCR requires payless notices to state the basis of the calculation of the amount due at the date of the notice. See also C3 and C4 above.

- D2 Delete the red statement on the model notice.
- D3 **Payless Notice (Type 1) is a payless notice against an Interim Certificate or Final Certificate to deduct items which are not deducted on certificates, eg. liquidated damages or contra-charges. Only include such deductions on a payless notice after receiving written authorisation from the Employer for each individual deduction with the reason for each individual deduction.**
- D4 **Do not deduct anything which will subsequently be deducted on certificates on this type of payless notice otherwise the Contractor will subsequently receive the deducted amount on payment of the next certificate.**
- D5 Payless notices are for the amount due at the date of the notice and this means that (except for (most) certificates after practical completion) there will be a difference between the Valuation for the payless notice (at the date of the notice) and the Valuation on the certificate (at the due date). **To avoid revaluing for the payless notice issue both the payless notice and the certificate on the due date for payment** (but the notice must not be issued before the certificate). Issuing the certificate and notice together is also more likely to avoid the situation where the Employer receives invoices from the Contractor for both the certified amount and the payless notice amount. When issuing the documents advise the Contractor which to invoice and the Employer which to pay (see D6 below).
- D6 **Note that the amount on the payless notice is paid by the Employer instead of the amount certified on the certificate which the payless notice is issued against. Advise the Employer accordingly in order to avoid overpayment.**
- D7 Modify the % associated with retention and delete two of the clause references 4.3.1, 4.4.1 and 4.8.1 as appropriate to whether the notice is issued against an Interim Certificate issued before or after practical completion or against the Final Certificate.
- D8 "This is not a Tax Invoice" should always be included.

E Payless Notice (Type 2)

- E1 D1, D2 and D7 all apply to a Payless Notice (Type 2) as well as a Payless Notice (Type 1). See also C3 and C4 above.
- E2 **Payless Notice (Type 2) is a payless notice against a Contractor's notice issued to reduce the amount on the Contractor's notice.** A Contractor's notice is issued by the Contractor when the Landscape Architect/Contract Administrator fails to issue a payment certificate on

time, see C4 above. The payless notice must be issued within 4 days of the date of the Contractor's notice (ie not less than 5 days before the revised final date for payment), see C4 above.

- E3 Do not deduct items which are not deducted on certificates, eg. liquidated damages or contra-charges, on this type of payless notice otherwise the Contractor will subsequently receive the deducted amount on the next certificate.** However see E4 below.
- E4 A payless notice against a Contractor's notice issued because the Final Certificate was not issued on time must include any appropriate deductions for liquidated damages and contra-charges as well as any valuation correction because this is the last opportunity to recover them under the contract and there will be no subsequent certificate. Otherwise the Employer will have to recover them as a debt.
- E5 Payless notices are for the amount due at the date of the notice and this means that (except for (most) certificates after practical completion) there will be a difference between the Valuation for the payless notice (at the date of the notice) and the Valuation on the Contractor's Notice (at the due date). Additionally, the later the Contractor issues the notice the less worthwhile it is for a payless notice to be issued because the Valuation for the payless notice will be increasing as the period between the due date and the date of the payless notice increases (except for the certificates after practical completion).
- E6 In the case of a payless notice to reduce a Contractor's notice issued because the Final Certificate was not issued on time, modify the add and deduct items on the model payless notice in order to ensure that the right amount is paid to the Contractor (or Employer). See H3 below. Additionally, in this situation if the amount due is from the Contractor to the Employer modify the written statement concerning the amount due at the bottom of the notice.
- E7 Note that the amount on the payless notice is paid by the Employer instead of the amount notified on the Contractor's notice which the payless notice is issued against. Advise the Employer accordingly in order to avoid overpayment.**
- E8 The second item "Value of materials ..." is only applicable prior to practical completion and should be deleted for notices after practical completion. For other items insert £0 if appropriate rather than deleting the item.
- E9 "This is not a Tax Invoice" should always be included.

F Certificate of Practical Completion

- F1 The second phrase ("subject to Schedule ... dated ...") and last phrase ("subject to the Rectification Period.... Schedule") should be deleted unless the procedure to list incomplete work as described in Guidance Note 26 in JCLI LWC is applied (28 in JCLI LWCD). Even if an agreed Schedule of Incomplete Work is attached, the last phrase may not be relevant.
- F2 If the Employer takes early possession of part of the works under clause 2.12 in JCLI LWC (clause 2.13 in JCLI LWCD) a "Certificate of Practical Completion of Part of the Works" should be issued. The model "Certificate of Practical Completion" can be used by:
- revising the title
 - adding "Serial No" (top right hand side as on other forms)
 - revising the first sentence to "under the terms of the above Contract we certify that practical completion of (*description of the part of the works*) ... was achieved on *xx month xxxx*, subject to"
- F3 The certificate assumes that the Contractor has supplied the information required for the health and safety file if applicable (see clause 2.10) and in the case of JCLI LWCD has also supplied the information required relating to the Contractor's Designed Portion. If this is not the case then practical completion has not been achieved and practical completion should not be certified until this information has been received.

G Certificate of Making Good

- G1 Where there is early possession of part of the works under clause 2.12 of JCLI LWC (clause 2.13 in JCLI LWCD), there will be a Certificate of Making Good for each part.
- G2 This certificate must be issued before the Final Certificate can be issued.
- G3 Delete the listed alternative clauses which do not apply. Clause 2.10A or 2.10B apply for JCLI LWC and 2.11A or 2.11B for JCLI LWCD depending on whether option A or B was selected in the Contract Particulars.
- G4 Where the rectification period has been extended for particular items of incomplete work on the schedule attached to the Practical Completion Certificate then the Certificate of Making Good and the Final Certificate can not be issued until after the end of the latest period.

H Final Certificate

- H1 If the Employer wishes to deduct liquidated damages from the Final Certificate he must advise the Contractor prior to or on the date of issue of the certificate under clause 2.8.3 in JCLI LWC (clause 2.9.3 in JCLI LWCD). This requirement will be satisfied by issuing a Payless Notice (Type 1) on the same date as issuing the Final Certificate (but the notice must not be issued before the certificate). However, it is preferable if the Employer advises the Contractor separately before the certificate is issued that he intends to deduct liquidated damages from the final certificate, as well as a payless notice being issued.
- H2 The due date for the Final Certificate is 28 days after the later of either, the date the necessary documentation to compute the Final Certificate is received from the Contractor or, the date stated in the Certificate of Making Good. The Final Certificate has to be issued within 5 days of the due date. A certificate must be issued even if the amount due is £0. A certificate issued late will be invalid (unless agreed otherwise by the Contractor and Employer). The final date for payment is 14 days after the due date.
- H3 Clause 4.8 does not state how the Final Certificate should be calculated, unlike clauses 4.3 and 4.4 for Interim Certificates. This enables any adjustments to be made to ensure that the certificate is for exactly the right amount due to the Contractor or Employer by modifying the items on the model certificate. However, the amended HGCRA requires certificates to state the basis of the calculation of the amount due.
- H4 If the payer wishes to deduct anything from the amount certified a payless notice must be issued by the payer (ie by the Landscape Architect / Contract Administrator if the payer is the Employer) at least 5 days before the final date for payment (see clause 4.8.3). See section D above. The revaluation problem identified in C3 above is unlikely to be an issue with a Payless Notice (Type 1) against the Final Certificate.
- H5 If the certificate is not issued on time the Contractor can issue a notice stating how much is due at any time after the certificate should have been issued (see clause 4.8.4). Payment of the Contractor's notice is due 9 days after the date of the notice but a payless notice can be issued within 4 days of the Contractor's notice, see C4 above. Such a payless notice can include any type of deduction or correction because there will be no subsequent certificates. See section E above.
- H6 If the Contractor owes the Employer (ie the Total is negative) revise the final sentence of the model certificate accordingly.
- H7 Delete the red statement on the model certificate.
- H8 "This is not a Tax Invoice" should always be included.

Care has been taken in preparing this document but it should not be treated as a definitive legal interpretation or commentary. Users are reminded that the effect in law of the provisions of the JCLI Landscape Works Contract 2012 Edition and the LCLI Landscape Works Contract with Contractor's Design 2012 Edition is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.

This document is issued by the **JCLI Contracts Forum** comprising:

Association of Professional Landscapers
British Association of Landscape Industries
Institute of Chartered Foresters
Landscape Institute
Society of Garden Designers



Published for the JCLI Contracts Forum by the Landscape Institute
Charles Darwin House 12 Roger Street London WC1N 2JU

Available to download free from the Landscape Institute website
www.landscapeinstitute.org

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COMPANY LETTERHEAD

**LANDSCAPE ARCHITECT'S/CONTRACT ADMINISTRATOR'S
INSTRUCTION**

Project:
Works: Landscape
situated at:

Serial No:

Reference:

Employer:
address:

Issue date:

Contractor:
address:

Contract dated:

Sheet: of

Under the terms of the above Contract, we issue the following instructions:

Item No		£ omit	£ add
for information only			

Signed: _____ Landscape Architect/Contract Administrator

Distribution:	Amount of Contract Sum	£
Employer ()	Value of previous instructions	£ _____
Contractor ()		£
Quantity Surveyor ()	Value of this instruction	£ _____
Project Manager ()	Adjusted Total	£
CDM Co-ordinator ()		
File ()		

COMPANY LETTERHEAD

INTERIM PAYMENT CERTIFICATE

Project:
Works: Landscape
situated at:

Serial No:

Reference:

Issue Date:

Employer:
address:

Contract Dated:

Valuation Dated:

Contractor:
address:

Final Date for Payment:

Value of work executed at due date	£	
Value of materials and goods on site at due date	£	
Less X% retention	£	_____
Total Valuation as clause 4.3.1 / 4.4.1	£	
Less amounts previously certified	£	
Less amounts on Contractor's notices, as varied by payless notices against Contractor's notices, if issued	£	
Less differences in Valuations as clause 4.3.2.3 / 4.4.2.3	£	_____
Total deductions as clause 4.3.2 / 4.4.2	£	
TOTAL	£	

We certify that under the terms of the above Contract the amount for payment by the Employer to the Contractor on this certificate is **xxxx thousand xxxx hundred and xxxx pounds and xxxx pence** (exclusive of VAT).

Signed _____ Landscape Architect/Contract Administrator

This is not a Tax Invoice

Distribution: Employer (), Contractor (), Quantity Surveyor (), Project Manager (), CDM Co-ordinator (), File ()

COMPANY LETTERHEAD

PAYLESS NOTICE (Type 1)

Project:
Works: Landscape
Situated at:

Serial No:

Reference:

Employer:
address:

Issue Date:

Contractor:
address:

Contract Dated:

Final Date for Payment:

This notice is only for use when issuing a payless notice against an Interim Certificate or the Final Certificate. It should only be used for the deduction of liquidated damages or similar items that are not deducted on certificates. Before using this notice read the guidance in section D of the Model Forms document.

Under the terms of the above Contract, we issue this payless notice against Interim / Final Certificate No XX.

95% / 97.5% / 100% of value of work executed at date of this notice in accordance with clause 4.3.1 / 4.4.1 / 4.8.1	£	
Less Valuation on Certificate No XX	£	
Difference between Valuations	£	_____
Plus amount certified on Certificate No XX	£	
Less liquidated damages at £xx per week for the period xx month xxxx to xx month xxxx	£	_____
TOTAL AMOUNT DUE	£	
INSTEAD OF THE AMOUNT CERTIFIED on Certificate No XX		

We give notice that under the terms of the above Contract the amount for payment by the Employer to the Contractor on this payless notice **instead of the amount certified on Certificate No XX is xxxx thousand xxxx hundred and xxxx pounds and xxxx pence** (exclusive of VAT).

Signed _____ Landscape Architect/Contract Administrator

This is not a Tax Invoice

Distribution: Employer (), Contractor (), Quantity Surveyor (), Project Manager (), CDM Co-ordinator (), File ()

COMPANY LETTERHEAD

PAYLESS NOTICE (Type 2)

Project:
Works: Landscape
Situated at:

Serial No:

Reference:

Employer:
address:

Issue Date:

Contractor:
address:

Contract Dated:

Final Date for Payment:

This notice is only for use to reduce a Contractor's notice issued when an Interim or Final Certificate has not been issued on time. It should not include deductions for Liquidated Damages or contra-charges which do not appear on certificates (unless it is against a Contractor's notice issued due to failure to issue the Final Certificate on time). Before using this notice read the guidance in section E of the Model Forms document

Under the terms of the above Contract, we issue this payless notice against Contractor's Notice dated xx month xxxx

Value of work executed at date of this notice	£	
Value of materials and goods on site at date of this notice	£	
Less X% retention	£	
Total Valuation as clause 4.3.1 / 4.4.1 / 4.8.1	£	_____
Less amounts previously certified	£	
Less amounts on previous Contractor's notices, as varied by payless notices against Contractor's notices, if issued	£	
Less differences in Valuations as clause 4.3.2.3 / 4.4.2.3	£	_____
Total deductions as clause 4.3.2 / 4.4.2 / 4.8.1	£	_____

**TOTAL AMOUNT DUE INSTEAD OF THE AMOUNT ON £
CONTRACTOR'S NOTICE DATED xx/xx/xxxx**

We give notice that under the terms of the above Contract the amount for payment by the Employer to the Contractor on this payless notice **instead of the amount on Contractor's notice dated xx/xx/xxxx is xxxx thousand xxxx hundred and xxxx pounds and xxxx pence** (exclusive of VAT).

Signed _____ Landscape Architect/Contract Administrator

This is not a Tax Invoice

Distribution: Employer (), Contractor (), Quantity Surveyor (), Project Manager (), CDM Co-ordinator (), File ()

COMPANY LETTERHEAD

CERTIFICATE OF PRACTICAL COMPLETION

Project:
Works: Landscape
Situated at:

Reference:

Employer:
address:

Issue Date:

Contractor:
address:

Contract Dated:

Under the terms of the above Contract, we certify that in our opinion practical completion was achieved on *xx month xxxx*,

subject to the completion of the works on the attached agreed Schedule of Incomplete Work dated *xx month xxxx*.

The Rectification Period will expire on *xx month xxxx*,

subject to the Rectification Period expiry date being extended as stated on the attached agreed Schedule of Incomplete Work dated *xx month xxxx*.

Signed

Landscape Architect/Contract Administrator

Distribution: Employer (), Contractor (), Quantity Surveyor (), Project Manager (),
CDM Co-ordinator (), File ()

COMPANY LETTERHEAD

CERTIFICATE OF MAKING GOOD

Project:
Works: Landscape
Situated at:

Serial No:

Reference:

Employer:
address:

Issue Date:

Contractor:
address:

Contract Dated:

Under the terms of the above Contract, we certify that the Contractor's obligations under clause 2.10A/2.10B/2.11A/2.11B of the Conditions were discharged by xx month xxxx.

Signed: _____ Landscape Architect/Contract Administrator

Distribution: Employer (), Contractor (), Quantity Surveyor (), Project Manager (), CDM Co-ordinator (), File ()

COMPANY LETTERHEAD

FINAL CERTIFICATE

Project:
Works: Landscape
situated at:

Serial No:

Reference:

Issue Date:

Employer:
address:

Contract Dated:

Contractor:
address:

Final Account Dated:

Final Date for Payment:

Before using this certificate read the guidance in section H of the Model Forms document

Value of work executed	£	_____
Less amounts previously certified	£	
Less amounts on Contractor's notices as varied, by payless notices against Contractor's notices, if issued	£	
Less differences in Valuations as clauses 4.3.2.3 and 4.4.2.3	£	_____
	Total deductions	£ _____
	TOTAL	£ _____

We certify that under the terms of the above Contract the amount for payment by the Employer to the Contractor on this certificate is **xxxx thousand xxx hundred and xxx pounds and xxx pence** (exclusive of VAT).

Signed _____ Landscape Architect/Contract Administrator

This is not a Tax Invoice

Distribution: Employer (), Contractor (), Quantity Surveyor (), Project Manager ()
CDM Co-ordinator (), File ()