

JCLI Scottish
Landscape Maintenance Works
Agreement April 2015
(JCLI SLMWA 2015-04)

for use with the

JCLI Landscape Maintenance Works
Contract 2012
(JCLI LMWC 2012)



JCLI Scottish Landscape Maintenance Works Agreement (JCLI SLMWA)

This document has been drafted for use in conjunction with the JCLI Landscape Maintenance Works Contract 2012 ("the JCLI Contract"), in order that the JCLI Contract can be used in a manner consistent with Scottish law. To that end, the Recitals, Articles, Contract Particulars and Attestation provisions have been replaced and a number of amendments to the JCLI Contract Conditions have been set out in the Appendix. This document includes amendments for the CDM Regulations 2015.

While footnote numbering in this document is generally consistent with the JCLI Contract, a number of comments in the footnotes to this document have been amended to reflect Scottish practice and so please refer to these footnotes rather than those in the JCLI Contract.

Please note that this document does not replace the JCLI Contract. Instead, the JCLI Contract is treated as a Contract Document, and should therefore be initialled and annexed to this document in the same manner as parties would normally do with, for example, the Specification and contract drawings. Also, the Articles, Recitals, Contract Particulars etc of the JCLI Contract itself should be left uncompleted: that information should be included in the relevant part of this Scottish agreement. Similarly parties should sign this Scottish agreement rather than the JCLI Contract. **JCLI Amendment 1 (April 2015) for JCLI LMWC should not be included with the annexed JCLI Contract.**

Further information on execution and other points relevant to this Scottish agreement are set out at the end of this document.

For updates and further guidance on using and administering this agreement see: the guidance at the back of this document; any Amendments and/or Corrections documents for JCLI LMWC 2012; 'JCLI Practice Note No 9, Revision 1'; 'Model Certificates and other Forms for use with JCLI LMWC 2012' which are also applicable to this agreement; and the 'Differences' documents, all of which are available free from www.landscapeinstitute.org

This Standard Form of Contract is issued by the **JCLI Contracts Forum** comprising:

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



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This amended contract is based on the JCT Minor Building Works Contract 2011 Edition and JCT MW 2011 Amendment 1 (March 2015)

Contents

Pg

2 Articles of Agreement

3 Recitals

5 Articles

8 Contract Particulars

12 Execution

14 Appendix: the Scottish Revisions to JCLI LMWC 2012

23 Guidance specific to the Scottish Revisions

for information only

Articles of Agreement

Between **The Employer**

.....

..... (Company No.)¹

of/whose registered office is at

.....

.....

And **The Contractor**

.....

..... (Company No.)¹

of/whose registered office is at

.....

.....

for information only

¹ Where the Employer or Contractor is not a company incorporated under the Companies Acts delete the references to Company number and registered office.

Articles of Agreement

Recitals

Whereas

First the Employer wishes to have landscape maintenance work carried out at: ²
.....
.....
.....
..... ("the Works")
under the direction of the Landscape Architect/Contract Administrator referred to in Article 3;

Second the Employer has had the following documents prepared which show and describe the work to be done:

- the Agreement consisting of the Recitals, the Articles and the Contract Particulars along with the Appendix
- the Conditions and Schedules of the JCLI Landscape Maintenance Works Contract (JCLI LMWC 2012)
- the drawings numbered/listed in ("the Contract Drawings") ^{3 4}
- a Specification ("the Contract Specification") ³
- Work Schedules ³
- a Schedule of Rates ³
- a List of Items of Maintenance Work ³
- a Schedule of Liquidated Damages ("the Schedule of Liquidated Damages") ³

which for identification have been signed or initialled by or on behalf of each Party and those documents (collectively "the Contract Documents") are annexed to this Agreement;⁵

Third the Contractor has supplied the Employer with a copy of the priced Contract Specification or Work Schedules or provided a Schedule of Rates;³

² State location of intended works.
³ Delete as appropriate.
⁴ State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.
⁵ Where a Contract Document has been priced by the Contractor it is that version of the document that should be annexed.

Articles of Agreement

Recitals

- Fourth** for the purposes of the Construction (Design and Management) Regulations 2015 ("the CDM Regulations") the status of the project that comprises or includes the Works is stated in the Contract Particulars;
- Fifth** where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;
- Sixth** the Supplemental Provisions identified in the Contract Particulars apply;
- Seventh** for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009, the specified person referred to in the Construction part of the Act is the Landscape Architect/Contract Administrator;

for information only

Articles of Agreement

Articles

Now it is hereby agreed as follows

Article 1 Contractor's obligations

The Contractor shall carry out and complete the Works in accordance with these Articles of Agreement and the Appendix hereto ("the Appendix") including the Contract Documents as defined in the Second Recital, all of which Contract Documents are hereby incorporated in and form part of this Agreement. The Conditions and Schedules of the JCLI Landscape Maintenance Works Contract 2012 (JCLI LMWC 2012) shall be amended in accordance with the provisions of the Appendix.

Article 2 Contract Sum ⁶

The Employer will pay the Contractor at the times and in the manner specified in the Conditions:

A the VAT-exclusive sum of
.....
.....
.....
.....
.....
.....(£.....)
("the Contract Sum")
divided

B a VAT-exclusive sum calculated in accordance with the priced Specification, Work Schedules or Schedule of Rates ³
or such other sum as shall become payable under this Contract.

Article 3 Landscape Architect/Contract Administrator

For the purposes of this Contract the Landscape Architect/Contract Administrator ⁷ is
.....

⁶ See the Guidance Notes in the JCLI Contract and JCLI Practice Note No 9 Revision 1 for guidance on the options in Article 2 and the alternative ways of completing Article 2A.

⁷ Where the person named in Article 3 is a Chartered Landscape Architect (i.e. a Chartered Member of the Landscape Institute) delete "Contract Administrator": in all other cases delete "Landscape Architect". Where "Landscape Architect" is deleted here the expression "Landscape Architect" shall be deemed to have been deleted throughout this Contract; where "Contract Administrator" is deleted here the expression "Contract Administrator" shall be deemed to have been deleted throughout.

Articles of Agreement

Articles

of

.....

or, if he ceases to be the Landscape Architect/Contract Administrator, such other person as the Employer shall nominate for that purpose (such nomination to be made within 14 days of the cessation), provided that no replacement Landscape Architect/Contract Administrator appointed for this Contract shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Contract to do so.

Article 4 **Principal Designer**

If the CDM Regulations apply to the project and there will be more than one contractor working on the project at any time as defined in those regulations, the Principal Designer for the purposes of the CDM Regulations is the Landscape Architect/Contract Administrator

(or)⁸

of

.....

or such replacement as the Employer at any time appoints to fulfil that role.

Article 5 **Principal Contractor**

If the CDM Regulations apply to the project and there will be more than one contractor working on the project at any time as defined in those regulations, the Principal Contractor for the purposes of the CDM Regulations is the Contractor

(or)⁸

of

.....

or such replacement as the Employer at any time appoints to fulfil that role.

⁸ Insert the name of the Principal Designer in Article 4 if the Landscape Architect/Contract Administrator is not to fulfil that role and that of the Principal Contractor in Article 5 if that is to be a person other than the Contractor.
Articles 4 and 5 are not applicable if the project that comprises or includes the Works does not include any "construction work" (as defined in the CDM Regulations 2015) or if there will only be one contractor working on the project at any time, unless circumstances change (eg the addition of "construction work" which requires a sub-contractor) – see the Contract Particulars (Fourth Recital).
Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the Contractor's sub-contractors as separate contractors.

Articles of Agreement

Articles

Article 6 Adjudication

If any dispute or difference arises under this Contract either Party may refer it to adjudication in accordance with clause 7.2.⁹

Article 7 Arbitration

Where Article 7 applies,¹⁰ then, subject to Article 6 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract, shall be referred to arbitration in accordance with Schedule 1 to the Conditions and the Arbitration (Scotland) Act 2010.¹¹ The exceptions to this Article 7 are:

- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
- any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

Article 8 Legal Proceedings⁹

Subject to Article 6 and (where it applies) to Article 7, the Scottish courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

Article 9 Limitation Period^{11A}

The Contractor's liability under this Agreement shall expire at the date specified in the Contract Particulars save in respect of proceedings which have been commenced prior to such date in respect of this Agreement.

⁹ As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Guidance Notes in the JCLI Contract.

¹⁰ If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that the arbitration provisions of Article 7 and Schedule 1 to the Conditions apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of a jurisdiction other than Scotland the appropriate amendment should be made to Article 8 (see also clause 1.7).

¹¹ See the "Guidance specific to the Scottish Revisions" set out at the back of this agreement and the Guidance Notes in the JCLI Contract.

^{11A} See the "Guidance specific to the Scottish Revisions" set out at the back of this agreement.

Articles of Agreement

Contract Particulars

Note: An asterisk indicates text that is to be deleted as appropriate*

Clause etc.	Subject	
Article 2	Contract Sum ⁶	<ul style="list-style-type: none"> * Option A applies and B will be deleted, or * Option B applies and Option A will be deleted
Fourth Recital	CDM Regulations ¹²	<ul style="list-style-type: none"> * The CDM Regulations do not apply and Articles 4 and 5 and clause 3.9 are not applicable (unless circumstances change) or * The CDM Regulations apply, only one contractor (as defined in those regulations) is required, clause 3.9 applies and Articles 4 and 5 are not applicable (unless circumstances change) or * The CDM Regulations apply, more than one contractor (as defined in those regulations) is required, Articles 4 and 5 and clause 3.9 apply and the project * is/is not notifiable
Fifth Recital	Framework Agreement (if applicable) <i>(State date, title and parties.)</i>
Sixth Recital and Schedule 5 to the Conditions	Supplemental Provisions <i>(Where neither entry against an item below is deleted, the relevant paragraph applies.)</i>	
	Collaborative working	* Paragraph 1 applies/ does not apply
	Health and safety	* Paragraph 2 applies/ does not apply

¹² Under the CDM Regulations 2015 a project is notifiable if the construction work on a construction site is scheduled either to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or to exceed 500 person days.
 For the purposes of assessing whether only one or more than one contractor is required, the regulations count the Contractor's sub-contractors as separate contractors.

Articles of Agreement

Contract Particulars

Clause etc.	Subject	
Sixth Recital and Schedule 5 to the Conditions (continued)	Cost savings and value improvements	* Paragraph 3 applies/ does not apply
	Sustainable development and environmental considerations	* Paragraph 4 applies/ does not apply
	Performance Indicators and monitoring	* Paragraph 5 applies/ does not apply
	Notification and negotiation of disputes	* Paragraph 6 applies/ does not apply
	Where paragraph 6 applies, the respective nominees of the Parties are	Employer's nominee Contractor's nominee or such replacement as each Party may notify to the other from time to time
Article 7	Arbitration <i>(If neither entry is deleted, Article 7 and Schedule 1 to the Conditions do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and Schedule 1 to the Conditions apply.)</i> ¹³	Article 7 and Schedule 1 to the Conditions (<i>Arbitration</i>) * apply/do not apply
Article 9	Limitation Period <i>(If neither entry is deleted, the period is six years after the end of the Contract Period.)</i>	* six / twelve years after the end of the Contract Period
2.2	Commencement Date
2.2	End Date or Duration	* End Date20.....
		* Duration

¹³ On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Guidance Notes in the JCLI Contract. See also footnote 10.

Articles of Agreement

Contract Particulars

Clause etc.	Subject	
3.5	Period to comply with written notice <i>(The period is five Business Days if no other period is stated.)</i>
4.2.1	Periodic payment intervals <i>(The period is monthly if not stated otherwise.)</i> months
4.7	Liquidated damages	* applicable in accordance with the Schedule of Liquidated Damages not applicable *
4.8	Bonus <i>(If not stated otherwise the bonus is five per cent provided there have been no Failure Events in the account period and for each Failure Event in the account period the bonus is reduced by one per cent and if there are five or more Failure Events in the account period no bonus shall be payable.)</i>	* Bonus % No. of Failure Events * not applicable
4.9	Inflation: Price Index <i>(Retail Price Index unless a different index is stated.)</i>	*
4.10 and Schedule 2 to the Conditions (paragraph 12)	Percentage addition for Fluctuations Option per cent
5.3.2	Contractor's insurance: injury to persons or property - insurance cover <i>(for any one occurrence or series of occurrences arising out of one event.)</i>	£.....
6.4.3	Termination by Employer <i>(three or more times in any three month period if not stated otherwise)</i> or more times in any period
6.8.2	Termination by Contractor <i>(If not stated otherwise, one month.)</i>	suspension period:

Articles of Agreement

Contract Particulars

Clause etc.	Subject	
6.10	Termination by either Party <i>(If not stated otherwise, one month.)</i>	suspension period:
7.2	Adjudication ¹⁵	The Adjudicator is
7.2	Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) ¹⁶ <i>(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)</i>	<ul style="list-style-type: none"> * The Royal Incorporation of Architects in Scotland * The Royal Institution of Chartered Surveyors in Scotland * constructionadjudicators.com ¹⁷ * Association of Independent Construction Adjudicators ¹⁸ * Chartered Institute of Arbitrators (Scottish Branch)
Schedule 1 to the Conditions (paragraph 2.2)	Arbitration ¹⁹ – appointor of Arbitrator (and of any replacement) ²⁰ <i>(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Incorporation of Architects in Scotland)</i>	President or a Vice-President: <ul style="list-style-type: none"> * The Royal Incorporation of Architects in Scotland * The Royal Institution of Chartered Surveyors in Scotland * Chartered Institute of Arbitrators (Scottish Branch)

¹⁴ not used.

¹⁵ The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement for use in Scotland (Adj/Scot) and the Adjudication Agreement (Named Adjudicator) for use in Scotland (Adj/N/Scot) have been prepared by the SBCC for use when appointing an Adjudicator.

¹⁶ Delete all but one of the nominating bodies asterisked.

¹⁷ constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

¹⁸ Association of Independent Construction Adjudicators acts as an agent of and is controlled by the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.

¹⁹ This only applies where the Contract Particulars state (against the reference to Article 7) that Article 7 and Schedule 1 to the Conditions (*Arbitration*) apply.

²⁰ Delete all but one of the bodies asterisked.

Articles of Agreement

Execution (continued)

<i>Clause etc.</i>	<i>Subject</i>
Schedule 2 to the Conditions (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2,2)	Base Date 20.....

Notes on Execution: see page 23

IN WITNESS WHEREOF these presents consisting of this and the preceding ten pages together with the Appendix hereto are subscribed as follows:

EXECUTED by or for and on behalf of the **CONTRACTOR**

at (Place)

on (Date)

Signature Signature

Print Name Print Name

Position Position
(see notes A, B, C and D on Page 23) (see notes A, B, C and D on Page 23)

If second signatory is a witness: Witness address

for information only

Articles of Agreement

Contract Particulars and Execution

EXECUTED by or for and on behalf of the **EMPLOYER**

at (Place)

on (Date)

Signature Signature

Print Name Print Name

Position Position
(see notes A, B, C and D on Page 23) (see notes A, B, C and D on Page 23)

If second signatory is a witness: Witness address
.....

for information only

This is the Appendix referred to in the foregoing JCLI Scottish Landscape Maintenance Works Agreement between the Employer and the Contractor

The Scottish Revisions to JCLI LMWC 2012

(The following are the amendments and modifications to the Conditions and Schedules forming part of the JCLI Landscape Maintenance Works Contract 2012, which Conditions and Schedules are Contract Documents forming part of this Agreement).

The Conditions are amended as follows

- 1.1 At the end of the definition of "Conditions", insert "as amended by the Scottish Revisions".
- Delete the definitions of "CDM Co-ordinator" and "CDM Planning Period"
- In the definition of "CDM Regulations" delete "2007" and replace with "2015"
- Delete the text defining "Construction Phase Plan" and replace with "the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions."
- Delete the definition of "Principal Contractor"
- At the end of the definition of "Public Holiday", insert "in Scotland".
- In the definition of "Scheme", delete "England and Wales" and replace with "Scotland".
- Insert a new definition as follows:
- "Scottish Revisions the amendments to the Conditions set out in the Appendix to the Agreement".
- 1.5 Delete the heading for clause 1.5 and replace with "**Third Party Rights**".
- 1.7 Delete "England" and replace with "Scotland".
- 3.3.2.2 Delete the text and replace with "each party to the sub-contract shall in relation to the Works and the site comply with applicable CDM Regulations;"
- Delete footnote [23]
- 3.9 In the heading delete "– Undertakings to comply"^[21] "
- Delete the text and footnote [24] and replace with the following:
- "Each Party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations. In particular but without limitation:
1. if a Principal Designer and a Principal Contractor have been appointed, the Employer shall ensure that the Principal Designer carries out his duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;
 2. the Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;²⁴

²⁴ Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8.

Appendix

The Scottish Revisions to JCLI LMWC 2012

3. whether or not the Contractor is the Principal Contractor, compliance by the Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Contractor to an extension of time;
 4. if the Employer appoints a Principal Designer or a Principal Contractor or a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee."
- 3.10 Delete the clause heading, number and text
- 5.2 Delete "real or personal" on line two and replace with "heritable or moveable".
- 6.1.4.1 After "compromise" on line one insert ", trust deed".
- 6.1.4.2 After "individual arrangement or" insert "trust deed for the benefit of his creditors or".
- 6.6 Delete "sub-section (2) of section 117 of the Local Government Act 1972" and replace with "any applicable Statutory Requirements or at common law in respect of fraudulent or corrupt acts".
- 6.10.1.5 After "United Kingdom Government" insert "or the Scottish Government".

Appendix

The Scottish Revisions to JCLI LMWC 2012

Schedule 1 is amended as follows

Delete the provisions of Schedule 1 and replace with the following:

"Conduct of arbitration

- 1 Any reference to arbitration to be made and any arbitration conducted pursuant to Article 7 shall be in accordance with the Arbitration (Scotland) Act 2010 ("the Act"). References in this Schedule 1 to a Rule or Rules are references to the Scottish Arbitration Rules as set out in schedule 1 of the Act as amended in this Schedule 1.

Notice of reference to arbitration

- 2 Where pursuant to Article 7 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with the Act identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual:
 - .1 agreed by the Parties; or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served,
 - .2 appointed on the application of either Party by the person named in the Contract Particulars; or, failing such appointment within 14 days (or any agreed extension of that period) after such application,
 - .3 appointed on the application of either Party in accordance with Rule 7 by an arbitral appointments referee."

Schedule 3 is amended as follows ²⁸

Delete the provisions of Schedule 3 and replace with the following:

"Agreement

Among **The Employer**

.....

..... (Company No.) ²⁹

of/whose registered office is at

.....

.....

And **The Contractor**

.....

..... (Company No.) ²⁹

of/whose registered office is at

.....

.....

And **The Substitute Employer**

.....

..... (Company No.) ²⁹

of/whose registered office is at

.....

.....

Background

(A) The Employer has appointed the Contractor by a contract dated
("the **Contract**") to carry out landscape maintenance works at
..... as more particularly described in the Contract.

or

The Employer has entered into a Novation Agreement dated
under which the Employer assumed all the rights and liabilities of

²⁸ The JCLI Scottish Employer Novation Agreement is available from www.landscapeinstitute.org. See the Guidance Notes to JCLI LMWC.

²⁹ Where the Employer, Contractor or Substitute Employer is not a company incorporated under the Companies Acts delete the references to Company number and registered office.

Appendix

The Scottish Revisions to JCLI LMWC 2012

..... under a contract between and the Contractor dated ("the **Contract**") to carry out landscape maintenance works at as more particularly described in the Contract.

- (B) The Employer, the Contractor and the Substitute Employer have agreed that the Substitute Employer shall assume all the rights and liabilities of the Employer under the Contract (which the Employer has previously assumed).

NOW IT IS HEREBY AGREED as follows:

1. **Release of Employer**

The Contractor releases and discharges the Employer from further performance of the Employer's obligations under the Contract and from all claims and demands whatsoever arising out of or in respect of the Contract whether arising prior to, on or subsequent to the date of this Agreement and the Contractor accepts the liability of the Substitute Employer in place of the liability of the Employer.

2. **Release of Contractor**

The Employer releases and discharges the Contractor from further performance of the Contractor's obligations under the Contract and from all claims and demands whatsoever arising out of or in respect of the Contract whether arising prior to, on or subsequent to the date of this Agreement.

3. **Contractor's obligation to Substitute Employer**

The Contractor hereby undertakes to perform the Contract and to be bound by its terms in every way as if the Substitute Employer were, and had been from inception, a party to the Contract in lieu of the Employer and agrees to undertake all obligations and liabilities arising under the Contract on the part of the Contractor.

4. **Substitute Employer's obligation to Contractor**

The Substitute Employer hereby undertakes to perform the Contract and to be bound by its terms in every way as if the Substitute Employer were, and had been from inception, a party to the Contract in lieu of the Employer and agrees to undertake all obligations and liabilities arising under the Contract on the part of the "Employer".

5. **Affirmation of Contract**

Subject to the terms of this Agreement, the Contract shall remain in full force and effect.

6. **Performance of prior obligations and payments**

The Contractor confirms and warrants to the Substitute Employer that as at the date of this Agreement all obligations due to be made and performed by the Employer under the Contract have been made and performed by the Employer, including payment of the sum of £..... pounds exclusive of VAT for the current year of maintenance, and including payment of all amounts due for previous annual account periods.

7. **Contractor's liability to Substitute Employer for pre-novation Services**

- .1 The Contractor acknowledges that the Substitute Employer has relied upon the Contractor's performance of the landscape maintenance works carried out prior to the date of this Agreement and agrees that the Substitute Employer shall have the right to pursue claims and demands arising in respect of any breach of the Contract by the Contractor whether arising prior to, on or subsequent to the date of this Agreement.
- .2 The Contractor agrees it will not contend that the Substitute Employer is precluded from recovering any loss resulting from any breach of the Contract by the Contractor

by reason that the Substitute Employer was not the employer of the Contractor at the time the breach occurred or by reason that the employer at the time of breach escaped any loss resulting from such breach or that such employer has not suffered any or as much loss.

8. **Third Party Rights**

Nothing in this Agreement is intended to confer on any third party any right to enforce any term of this Agreement.

9. **Governing law and jurisdiction**

This Agreement and the rights and obligations of the parties shall be governed and construed according to Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents consisting of this and the preceding two pages are subscribed as follows:³⁰

for information only

³⁰ Signing blocks and notes on execution are included in the JCLI Scottish Employer Novation Agreement available from www.landscapeinstitute.org.

Appendix

The Scottish Revisions to JCLI LMWC 2012

Schedule 4 is amended as follows ³¹

Delete the provisions of Schedule 4 and replace with the following:

"Agreement

Among **The Employer**

.....

..... (Company No.) ³²

of/whose registered office is at

.....

.....

And **The Contractor**

.....

..... (Company No.) ³²

of/whose registered office is at

.....

.....

And **The Substitute Contractor**

.....

..... (Company No.) ³²

of/whose registered office is at

.....

.....

Background

(A) The Contractor has been appointed by the Employer by a contract dated
..... ("the **Contract**") to carry out landscape maintenance works at
..... as more particularly described in the Contract.

or

³¹ The JCLI Scottish Contractor Novation Agreement is available from www.landscapeinstitute.org. See the Guidance Notes to JCLI LMWC.

³² Where the Employer, Contractor or Substitute Contractor is not a company incorporated under the Companies Acts delete the references to Company number and registered office.

The Contractor has entered into a Novation Agreement dated under which the Contractor assumed all the rights and liabilities of under a contract between and the Employer dated ("the **Contract**") to carry out landscape maintenance works at as more particularly described in the Contract.

- (B) The Employer, the Contractor and the Substitute Contractor have agreed that the Substitute Contractor shall assume all the rights and liabilities of the Contractor under the Contract (which the Contractor has previously assumed).

NOW IT IS HEREBY AGREED as follows:

1. **Release of Contractor**

The Employer releases and discharges the Contractor from further performance of the Contractor's obligations under the Contract and from all claims and demands whatsoever arising out of or in respect of the Contract whether arising prior to, on or subsequent to the date of this Agreement and the Employer accepts the liability of the Substitute Contractor in place of the liability of the Contractor.

2. **Release of Employer**

The Contractor releases and discharges the Employer from further performance of the Employer's obligations under the Contract and from all claims and demands whatsoever arising out of or in respect of the Contract whether arising prior to, on or subsequent to the date of this Agreement.

3. **Employer's obligation to Substitute Contractor**

The Employer hereby undertakes to perform the Contract and to be bound by its terms in every way as if the Substitute Contractor were, and had been from inception, a party to the Contract in lieu of the Contractor and agrees to undertake all obligations and liabilities arising under the Contract on the part of the Employer.

4. **Substitute Contractor's obligation to Employer**

The Substitute Contractor hereby undertakes to perform the Contract and to be bound by its terms in every way as if the Substitute Contractor were, and had been from inception, a party to the Contract in lieu of the Contractor and agrees to undertake all obligations and liabilities arising under the Contract on the part of the "Contractor".

5. **Affirmation of Contract**

Subject to the terms of this Agreement, the Contract shall remain in full force and effect.

6. **Performance of Prior obligations and payments**

The Contractor confirms and warrants to the Substitute Contractor that as at the date of this Agreement all obligations due to be made and performed by the Employer under the Contract have been made and performed by the Employer, including payment of the sum of £..... pounds exclusive of VAT for the current year of maintenance, and including payment of all amounts due for previous annual account periods.

7. **Contractor's liability to Substitute Contractor for pre-novation Services**

The Contractor acknowledges that the Substitute Contractor has relied upon the Contractor's performance of the landscape maintenance works carried out prior to the date of this Agreement and agrees that the Substitute Contractor shall have the right to pursue claims and demands arising in respect of any breach of the Contract by the Contractor whether arising prior to, on or subsequent to the date of this Agreement.

8. **Third Party Rights**

Nothing in this Agreement is intended to confer on any third party any right to enforce any term of this Agreement.

The Scottish Revisions to JCLI LMWC 2012

9. **Governing law and jurisdiction**

This Agreement and the rights and obligations of the parties shall be governed and construed according to Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents consisting of this and the preceding two pages are subscribed as follows:³³

for information only

³³ Signing blocks and notes on execution are included in the JCLI Scottish Contractor Novation Agreement available from www.landscapeinstitute.org.

Guidance specific to the Scottish Revisions

Care has been taken in preparing this guidance, but users are reminded that the effect in law of the provisions of the JCLI Scottish Landscape Maintenance Works Agreement 2015-04 or of the JCLI Landscape Maintenance Works Contract 2012 are, in the event of a dispute as to their effect, a matter for decision in adjudication, arbitration or litigation.

Notes on Execution

Signing

Although Scots law does not share the English law distinction between signing a document as a deed and signing as a simple contract, the parties should nonetheless be careful to ensure that the manner in which they sign the Agreement is consistent with the Requirements of Writing (Scotland) Act 1995.

Two signing blocks are provided for execution, one by the Employer and the other for the Contractor. Guidance has been provided below to assist in these being used for four types of organisation: a limited company, a partnership, a limited liability partnership and an individual.

The guidance below will be appropriate for the majority of limited companies, partnerships and LLPs. However parties must ensure that, where they have different requirements in relation to contract signature, for example under their Articles of Association or corporate governance rules, those requirements are met by making the appropriate modifications and signing accordingly.

Similarly, if a party does not fall within any of these categories (e.g. because they are a trust or local authority or the contract is being signed by a person acting under a power of attorney) then details should either be completed to satisfy that party's particular signing requirements or the relevant signing block struck out altogether and replaced with one appropriate for that party's circumstances.

At least one party must sign on page 12.

Note A: Where a party is a **limited company**:

the first signatory should be a **Director** or **Secretary** or **Authorised Signatory**;

and the second a **Witness** or **Director** or **Secretary** or **Authorised Signatory**.

Note B: Where a party is a **partnership** formed under the Partnership Act 1890 (note: NOT a limited liability partnership):

the first signatory should be a **Partner** or **Authorised Signatory**;

and the second a **Witness** or **Authorised Signatory**.

Note C: Where a party is a **limited liability partnership** (note: NOT a partnership formed under the Partnership Act 1890):

the first signatory should be a **Member**;

and the second a **Witness** or **Member**.

Note D: Where a party is a **natural person**:

the first signatory should be the **person**;

and the second a **Witness**.

Parties must ensure that the Place and Date are completed and that the signing block is appropriate for their circumstances.

Guidance specific to the Scottish Revisions

Differences from the Guidance to the English form

While most of the Guidance provided in the JCLI Contract applies equally to this document, the following matters should be noted:

*Paragraph of
English form*

Comment

- 15 Please note that under the Scottish Revisions any arbitration would be governed by Arbitration (Scotland) Act 2010 and the Scottish Arbitration Rules set out at schedule 1 to the 2010 Act.
- 16 The rules in Scotland around the period after which a party's liability will expire are different from those in England. Under the Prescription and Limitation (Scotland) Act 1973, a party would be able to make a claim in respect of the other party's breach of contract for a period of five years running from when the loss, injury or damage occurred (which, in the case of latent defects under a contract like this would not be until the Employer is aware, or by using reasonable diligence should have become aware, of the harm). This period can in certain circumstances be interrupted, in which case the five year period would restart. In any event a hard longstop date would apply at twenty years from the date the loss actually occurred.
- To provide more certainty, a new provision at Article 9 has been inserted with an item in the Contract Particulars for six or twelve years to be selected for a contractual longstop date for liability. The item in the Contract Particulars has a default of six years from the date of practical completion. The normal period for landscape maintenance works contracts is six years, unless the Employer requires a longer period.

Preservation and execution

If the parties wish the contract to be registered in the Books of Council and Session for preservation and execution, then legal advice should be taken as to the Registers of Scotland's formal requirements.