

JCLI Scottish
Landscape Maintenance Works
Agreement August 2020
(JCLI SLMWA 2020-08)

for use with the

JCLI Landscape Maintenance Works
Contract 2017
(JCLI LMWC 2017)



JCLI Scottish Landscape Maintenance Works Agreement (JCLI SLMWA)

This document has been drafted for use in conjunction with the JCLI Landscape Maintenance Works Contract 2017 ("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.

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.

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 2017; 'JCLI Practice Note No 9, Revision 2'; 'Model Certificates and other Forms for use with JCLI LMWC 2017' 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 2016 Edition

Contents

Pg

2 **Agreement**

3 Recitals

5 Articles

8 **Contract Particulars**

12 **Execution**

14 **Appendix: the Scottish Revisions to JCLI LMWC 2017**

23 **Guidance specific to the Scottish Revisions**

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

.....

.....

¹ Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside the United Kingdom, particulars of its place of incorporation should be inserted immediately before its Company number.

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 2017)
- 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") ⁵ are annexed to this Agreement;⁶

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 It is envisaged that in those cases where there is an applicable BIM or other communications protocol this will be included within one of the Contract Documents identified in the Second Recital.
⁶ Where a Contract Document has been priced by the Contractor it is that version of the document that should be annexed.

Agreement

Recitals

- 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
- 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** whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;
- 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;

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 2017 (JCLI LMWC 2017) shall be amended in accordance with the provisions of the Appendix.

Article 2 Contract Sum ⁷

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 becomes payable under this Contract.

Article 3 Landscape Architect/Contract Administrator

For the purposes of this Contract the Landscape Architect/Contract Administrator ⁸ is

.....

⁷ See the Guidance Notes in the JCLI Contract and JCLI Practice Note No 9 Revision 2 for guidance on the options in Article 2 and the alternative ways of completing Article 2A.

⁸ Unless the person appointed by or under Article 3 is a Chartered Landscape Architect (ie a Chartered Member of the Landscape Institute), the term 'Landscape Architect' shall so long as that person holds that post be deemed deleted throughout this Contract. Any appointee as Contract Administrator should be suitably experienced for the role. Irrespective of experience or qualifications, the Employer should not at any time appoint himself to the role without the Contractor's prior agreement.

Agreement

Articles

of

or, if he ceases to be the Landscape Architect/Contract Administrator, such other person as the Employer nominates (such nomination to be made within 14 days of the cessation). No replacement appointee as Landscape Architect and/or Contract Administrator 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 ⁹ is

.....
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 ⁹ is

.....
of

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

⁹ In Article 4 insert the name of the Principal Designer or 'the Landscape Architect/Contract Administrator' if the Landscaper Architect/Contract Administrator is to fulfil that role and in Article 5 that of the Principal Contractor, or 'the Contractor' if the Contractor is to fulfil that role.

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 4 and 5 are not applicable if the project that comprises or includes the Works does not involve any "construction work" (as defined in the CDM Regulations 2015) or if there will be only 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).

See the Guidance Notes in the JCLI Contract and JCLI Practice Note No 9 Revision 2

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 7.2.¹⁰

Article 7 Arbitration

Where Article 7 applies,¹¹ 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 2010.¹² 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 Proceedings¹¹

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^{12A}

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.

¹⁰ 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.

¹¹ 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 1.8).

¹² See the "Guidance specific to the Scottish Revisions" set out at the back of this agreement and the Guidance Notes in the JCLI Contract.

^{12A} See the "Guidance specific to the Scottish Revisions" set out at the back of this agreement.

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 ¹³	<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 not notifiable or * the following parts of the project are notifiable
Fifth Recital	Framework Agreement (if applicable) <i>(State date, title and parties.)</i>

¹³ See the Guidance Notes in the JCLI Contract and JCLI Practice Note No 9 Revision 2. 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. If any part or parts of the project are notifiable state the relevant parts or refer to a schedule of them or other document listing them included in one of the other Contract Documents.

Agreement

Contract Particulars

<i>Clause etc.</i>	<i>Subject</i>	
Sixth Recital and Schedule 5 to the Conditions	Supplemental Provisions ¹⁴ <i>(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)</i>	
	Collaborative working	* Supplemental Provision 1 applies/does not apply
	Health and safety	* Supplemental Provision 2 applies/does not apply
	Cost savings and value improvements	* Supplemental Provision 3 applies/does not apply
	Sustainable development and environmental considerations	* Supplemental Provision 4 applies/does not apply
	Performance Indicators and monitoring	* Supplemental Provision 5 applies/does not apply
	Notification and negotiation of disputes	* Supplemental Provision 6 applies/does not apply
	Where Supplemental Provision 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 <u>must</u> be stated that Article 7 and Schedule 1 to the Conditions apply.)</i> ¹⁵	* Article 7 and Schedule 1 to the Conditions (<i>Arbitration</i>) apply/do not apply

¹⁴ Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Procurement Reform (Scotland) Act and the Public Contracts (Scotland) Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the Procurement Act and the PC (Scotland) Regulations.

¹⁵ 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 11.

Agreement

Contract Particulars

Clause etc.	Subject	
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..... or * Duration
3.5	Period to comply with notice <i>(The period is 5 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 or * not applicable
4.8	Bonus <i>(If not stated otherwise the bonus is 5% 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 1% and if there are 5 or more Failure Events in the account period no bonus shall be payable.)</i>	* Bonus % No of Failure Events or * not applicable
4.9	Inflation: Price Index <i>(Retail Price Index unless a different index is stated.)</i>	*
4.10	Percentage addition for Schedule 2 to the Conditions (paragraph 12) per cent
5.3	Contractor's Public Liability insurance: injury to persons or property - the required level of cover is not less than	£..... for any one occurrence or series of occurrences arising out of one event

Agreement

Contract Particulars

Clause etc.	Subject	
6.4.3	Termination by Employer <i>(If not stated otherwise 3 or more times in any 3 month period.)</i> or more times in any period
6.8.2	Termination by Contractor <i>(If not stated otherwise, one month.)</i>	suspension period:
6.10.1	Termination by either Party <i>(If not stated otherwise, one month.)</i>	suspension period:
7.2	Adjudication ¹⁶	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) ¹⁷ <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.com¹⁸ * Association of Independent Construction Adjudicators¹⁹ * Chartered Institute of Arbitrators (Scottish Branch)
Schedule 1 to the Conditions (paragraph 2.2)	Arbitration ²⁰ – appointor of Arbitrator (and of any replacement) ²¹ <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, or Chair or Vice-Chair as applicable: <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)

¹⁶ 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.

¹⁷ Delete all but one of the nominating bodies asterisked.

¹⁸ constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

¹⁹ 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.

²⁰ 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.

²¹ Delete all but one of the bodies asterisked.

Agreement

Execution (continued)

Clause etc.	Subject
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
.....

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
.....

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 2017

(The following are the amendments and modifications to the Conditions and Schedules forming part of the JCLI Landscape Maintenance Works Contract 2017, 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 definition of "PC Regulations", insert a new definition as follows:
- "PC (Scotland) Regulations: the Public Contracts (Scotland) Regulations 2015."
- 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 new definitions as follows:
- "Procurement Act: the Procurement Reform (Scotland) Act 2014."
- "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 "**Contract (Third Party Rights) (Scotland) Act 2017**".
- 1.8 Delete "England" and replace with "Scotland".
- 5.2 Delete "real or personal" on line two and replace with "heritable or moveable".
- 6.1 Delete 6.1 in its entirety and replace with the following:
- "6.1 For the purposes of these conditions:
- .1 a company becomes insolvent:
 - .1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
 - .2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
 - .3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
 - .4 on the making of a winding-up order under Part IV or V of that Act.
 - .2 a partnership becomes insolvent when sequestration is awarded on the state of the partnership under the Bankruptcy (Scotland) Act 1985 (as amended) or the partnership grants a trust deed for its creditors.

The Scottish Revisions to JCLI LMWC 2017

- .3 an individual (to include a sole trader) becomes insolvent on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 (as amended) or when he grants a trust deed for his creditors.
- .4 an individual (to include a sole trader) also becomes insolvent if he enters into an arrangement, compromise or composition in satisfaction of his debts, including but not restricted to a Debt Payment Programme under the debt Arrangement Scheme.

Each of clauses 6.1.1 to 6.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction."

6.6 Where "PC Regulations" appears, delete and replace with "PC (Scotland) Regulations"

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".

6.7.2.2 Delete reference to "6.1.3" and replace with "6.1.4".

6.10 Where "PC Regulations" appears, delete and replace with "PC (Scotland) Regulations"

6.10.1.5 After "United Kingdom Government" insert "or the Scottish Government".

Appendix

The Scottish Revisions to JCLI LMWC 2017

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."

Appendix

The Scottish Revisions to JCLI LMWC 2017

Schedule 3 is amended as follows ²⁷

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

"Agreement

Among **The Employer**
.....
..... (Company No.) ²⁸
of/whose registered office is at
.....
.....

And **The Contractor**
.....
..... (Company No.) ²⁸
of/whose registered office is at
.....
.....

And **The Substitute Employer**
.....
..... (Company No.) ²⁸
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.

²⁷ The JCLI Scottish Employer Novation Agreement is available from www.landscapeinstitute.org. See the Guidance Notes to JCLI LMWC.

²⁸ 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 2017

or

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

Appendix

The Scottish Revisions to JCLI LMWC 2017

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. **Contract (Third Party Rights) (Scotland) Act 2017**

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: ²⁹

²⁹ 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 2017

Schedule 4 is amended as follows ³⁰

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

"Agreement

Among The Employer
.....
..... (Company No.) ³¹
of/whose registered office is at

And The Contractor
.....
..... (Company No.) ³¹
of/whose registered office is at

And The Substitute Contractor
.....
..... (Company No.) ³¹
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.

³⁰ The JCLI Scottish Contractor Novation Agreement is available from www.landscapeinstitute.org. See the Guidance Notes to JCLI LMWC.

³¹ 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 Scottish Revisions to JCLI LMWC 2017

or

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

Appendix

The Scottish Revisions to JCLI LMWC 2017

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. **Contract (Third Party Rights) (Scotland) Act 2017**

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:³²

Schedule 5 is amended as follows at Supplemental Provision 8

Delete the heading "The Public Contracts Regulations 2015" and insert "The Procurement Reform (Scotland) Act and the Public Contracts (Scotland) Regulations 2015".

In the opening paragraph of Supplemental Provision 8, delete the first line and insert "Where the Employer is a Local or a Public Authority and this contract is subject to the Procurement Act and the PC (Scotland) Regulations;

In the footnote to the opening paragraph of Supplemental Provision 8, where "PC Regulations" appears, delete and insert "'Procurement Act and PC (Scotland) Regulations".

8.1 In the first line delete "regulation 113 of the PC Regulations" and insert " section 15(5)(d) of the Procurement Act". At the end of the paragraph delete "regulation 113(2)(c)(i) and (ii)" and insert "section 15(5)(d)".

8.2.1 Delete "71(4)". Delete "PC Regulations" and replace with "PC (Scotland) Regulations".

8.3.1 Delete "regulation 57" and replace with "regulation 58".

8.3.2 In the third line delete "regulation 71(9)" and replace with "regulation 71(10) and 71(11)".

³² 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 2020-08 or of the JCLI Landscape Maintenance Works Contract 2017 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.