

JCLI Scottish  
Landscape Works Agreement with  
Contractor's Design April 2017  
(JCLI SLWAD 2017-04)

for use with the

JCLI Landscape Works Contract with  
Contractor's Design 2017  
(JCLI LWCD 2017)



## **JCLI Scottish Landscape Works Agreement with Contractor's Design (JCLI SLWAD)**

This document has been drafted for use in conjunction with the JCLI Landscape Works Contract with Contractor's Design 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 LWCD 2017; 'JCLI Practice Note No 8, Revision 2'; 'Model Certificates and other Forms for use with JCLI LWC 2017 and LWCD 2017' which are also applicable to this agreement; and the 'Differences' documents, all of which are available free from [www.landscapeinstitute.org](http://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 with Contractor's Design 2016 Edition

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for information only

# Agreement

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**Between**            **The Employer** .....

.....

..... (Company No. ....)<sup>1</sup>

of/whose registered office is at .....

.....

.....

**And**                **The Contractor** .....

.....

..... (Company No. ....)<sup>1</sup>

of/whose registered office is at .....

.....

.....

for information only

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<sup>1</sup> 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

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## Recitals

### Whereas

**First** the Employer wishes to have the following work carried out: <sup>2</sup>

.....

.....

at .....

..... ("the Works")

under the direction of the Landscape Architect/Contract Administrator referred to in Article 3;

**Second** the Works include the design and construction of <sup>3</sup>

.....

.....

.....

("the Contractor's Designed Portion");

**Third** 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 Works Contract with Contractor's Design (JCLI LWCD 2017)
- the drawings numbered/listed in ..... ("the Contract Drawings") <sup>4 5</sup>
- a Specification ("the Contract Specification") <sup>4</sup>
- Work Schedules <sup>4</sup>
- other documents showing or describing or otherwise stating his requirements for the design and construction of the Contractor's Designed Portion ("the Employer's Requirements")

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<sup>2</sup> State nature and location of intended works.

<sup>3</sup> State nature of work in the Contractor's Designed Portion either here or by reference to an identified Annex to this Agreement. The Annex or any continuation sheets should be signed or initialled by or on behalf of each Party.

<sup>4</sup> Delete as appropriate.

<sup>5</sup> State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.

## Agreement

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### Recitals

which for identification have been signed or initialled by or on behalf of each Party and those documents with, if applicable, a Schedule of Rates referred to in the Fourth Recital (collectively "the Contract Documents") are annexed to this Agreement;<sup>6</sup>

- Fourth** the Contractor has supplied the Employer with a copy of the priced Contract Specification or Work Schedules or with a Schedule of Rates;<sup>4</sup>
- Fifth** for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;
- Sixth** 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;
- Seventh** where so stated in the Contract Particulars, this Contract is supplemented by the Framework Agreement identified in those particulars;
- Eighth** whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;
- Ninth** 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;

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<sup>6</sup> Where a Contract Document has been priced by the Contractor it is that version of the document that should be annexed.

**Agreement**

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**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 Third Recital, all of which Contract Documents are hereby incorporated in and form part of this Agreement. The Conditions and Schedules of the JCLI Landscape Works Contract with Contractor's Design 2017 (JCLI LWCD 2017) shall be amended in accordance with the provisions of the Appendix.

**Article 2 Contract Sum**

The Employer will pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of

.....

..... (£.....) ("the Contract Sum")

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 <sup>7</sup> is

.....

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.

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<sup>7</sup> 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

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## Articles

### 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 <sup>8</sup> 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 <sup>8</sup> is

.....

of .....

.....

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

### 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. <sup>9</sup>

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<sup>8</sup> 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 (Sixth Recital).

**See the Guidance Notes in the JCLI Contract and JCLI Practice Note No 8 Revision 2**

<sup>9</sup> 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.



# Agreement

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## Articles

### Article 7 Arbitration

Where Article 7 applies,<sup>10</sup> 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.<sup>11</sup> 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 Proceedings<sup>10</sup>

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<sup>11A</sup>

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.

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<sup>10</sup> 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).

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

<sup>11A</sup> 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*

<b>Clause etc.</b>	<b>Subject</b>
Fifth Recital and Schedule 2 to the Conditions (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)	Base Date .....20.....
Fifth Recital and Clause 4.2	Construction Industry Scheme (CIS) * Employer at the Base Date is a 'contractor'/is not a 'contractor' for the purposes of the CIS
Sixth Recital	CDM Regulations <sup>12</sup> * The CDM Regulations do not apply and Articles 4 and 5 and clauses 2.1.2.1 and 3.9 are not applicable (unless circumstances change) or * The CDM Regulations apply, only one contractor (as defined in those regulations) is required, clauses 2.1.2.1 and 3.9 apply 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 clauses 2.1.2.1 and 3.9 apply and the project * is/is not notifiable
Seventh Recital	Framework Agreement (if applicable) ..... ..... <i>(State date, title and parties.)</i> ..... .....
Eighth Recital and Schedule 3 to the Conditions	Supplemental Provisions <sup>13</sup> <i>(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)</i>

<sup>12</sup> See the Guidance Notes in the JCLI Contract and JCLI Practice Note No 8 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.

# Agreement

## Contract Particulars

<i>Clause etc.</i>	<i>Subject</i>	
Eighth Recital and Schedule 3 to the Conditions (continued)	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 <b>must</b> be stated that Article 7 and Schedule 1 to the Conditions apply.)</i> <sup>14</sup>	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 date of practical completion of the Works.)</i>	* six / twelve years after the date of practical completion of the Works

<sup>13</sup> 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.

<sup>14</sup> 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.

## Agreement

### Contract Particulars

<b>Clause etc.</b>	<b>Subject</b>	
2.3	Works Commencement Date	..... 20.....
2.3	Date for Completion	..... 20..... or such later date for completion as is fixed under clause 2.7
2.9	Liquidated damages	at the rate of £..... per ..... <sup>16</sup>
2.11A or 2.11B	Defects and plant establishment by Contractor or Defects and plant establishment by Employer	* Clause 2.11A applies (2.11B deleted) or * Clause 2.11B applies (2.11A deleted)
2.11A or 2.11B	Rectification Period <i>(The period is 12 months unless a different period is stated.)</i>	..... months <sup>17</sup> from the date of practical completion
2.14	Theft or malicious damage (prior to practical completion) <i>(This clause only applies if a Provisional Sum is stated.)</i>	Provisional Sum £.....
4.3.1	Percentage of total value of work etc. <i>(The percentage is 95 per cent unless a different rate is stated.)</i>	..... per cent <sup>17</sup>
4.4.1	Percentage of the total value of work etc. <i>(The percentage is 97½ per cent unless a different rate is stated.)</i>	..... per cent <sup>17</sup>

<sup>14</sup> not used.

<sup>16</sup> Insert "day", "week" or other period.

<sup>17</sup> An insertion is needed here only if the default position is not to apply. If no retention is required, insert "100" in the entries for clauses 4.3.1 and 4.4.1.

# Agreement

## Contract Particulars

<b>Clause etc.</b>	<b>Subject</b>	
4.3, 4.4 and 4.8	Fluctuations provision <i>(Unless another provision or entry is selected, Schedule 2 applies.)</i>	<ul style="list-style-type: none"> <li>* Schedule 2 (Contribution, levy and tax changes) applies/</li> <li>* no fluctuations provision applies/</li> <li>* the following fluctuations provision applies</li> </ul> <p>.....</p> <p>.....</p>
4.3,4.4 and 4.8	Percentage addition for Schedule 2 (paragraph 13) (if applicable)	..... per cent
4.8.1	Supply of documentation for computation of amount to be finally certified <i>(The period is the same as in clause 2.11A or 2.11B unless a shorter period is stated.)</i>	..... months <sup>17</sup> from the date of practical completion
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
5.4A, 5.4B, 5.4C and 5.4D	Insurance of the Works etc. – alternative provisions <sup>18</sup>	<ul style="list-style-type: none"> <li>* Clause 5.4A (<i>Works insurance by Contractor in Joint Names</i>) applies/</li> <li>* Clause 5.4B (<i>Works and existing structures insurance by Employer in Joint Names</i>) applies/</li> <li>* Clause 5.4C (<i>Existing structures insurance by Employer in own name</i>) applies(as well as clause 5.4A)/</li> <li>* Clause 5.4D (<i>Works and existing structures insurance by other means</i>) applies</li> </ul>
5.4A and 5.4B	Percentage to cover professional fees <i>(If no other percentage is stated, it shall be 15 per cent.)</i>	..... per cent

<sup>18</sup> As to choice of applicable insurance provisions, see the Guidance Notes in the JCLI Contract. Where there are existing structures, it is vital that any prospective Employer – in particular any Employer who is a tenant or a domestic homeowner – who is not familiar with clause 5.4B, whether clause 5.4C with clause 5.4A is appropriate, and the possible solutions under clause 5.4D, or an appropriate member of their professional team, should consult the Employer's insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

**Agreement**

**Contract Particulars**

<i>Clause etc.</i>	<i>Subject</i>	
5.4D	Insurance arrangements – details of the required policy or policies	are set out in the following document(s) ..... ..... ..... .....
7.2	Adjudication <sup>19</sup>	The Adjudicator is .....
	Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) <sup>20</sup>  <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"> <li>* The Royal Incorporation of Architects in Scotland</li> <li>* The Royal Institution of Chartered Surveyors in Scotland</li> <li>* constructionadjudicators.com <sup>21</sup></li> <li>* Association of Independent Construction Adjudicators <sup>22</sup></li> <li>* Chartered Institute of Arbitrators (Scottish Branch)</li> </ul>

<sup>19</sup> 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.

<sup>20</sup> Delete all but one of the nominating bodies asterisked.

<sup>21</sup> constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

<sup>22</sup> Association of Independent Construction Adjudicators is controlled by and acts as an agent of the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.

# Agreement

## Contract Particulars and Execution

<b>Clause etc.</b>	<b>Subject</b>	
Schedule 1 to the Conditions (paragraph 2.2)	Arbitration <sup>23</sup> – appointor of Arbitrator (and of any replacement) <sup>24</sup> <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: * The Royal Incorporation of Architects in Scotland * The Royal Institution of Chartered Surveyors in Scotland * Chartered Institute of Arbitrators (Scottish Branch)

**Notes on Execution: see page 18**

**IN WITNESS WHEREOF** these presents consisting of this and the preceding eleven 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 18) (see notes A, B, C and D on Page 18)  
If second signatory is a witness: Witness address .....  
.....

<sup>23</sup> 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.

<sup>24</sup> Delete all but one of the bodies asterisked.

# Agreement

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## Execution (continued)

**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 18) (see notes A, B, C and D on Page 18)

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

.....

for information only



# This is the Appendix referred to in the foregoing JCLI Scottish Landscape Works Agreement with Contractor's Design between the Employer and the Contractor

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## The Scottish Revisions to JCLI LWCD 2017

(The following are the amendments and modifications to the Conditions and Schedules forming part of the JCLI Landscape Works Contract with Contractor's Design 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 "**Third Party Rights**".
- 1.8 Delete "England" and replace with "Scotland".
- 3.1 Delete the heading for clause 3.1 and replace with "**Assignment**". After "assign" insert "or otherwise transfer". After "rights" insert "or obligations".<sup>24A</sup>
- 5.2 Delete "real or personal" 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.

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<sup>24A</sup> See the "Guidance specific to the Scottish Revisions" set out at the back of this agreement

## Appendix

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### The Scottish Revisions to JCLI LWC 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

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### The Scottish Revisions to JCLI LWC 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."

#### Schedule 3 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)".

## Guidance specific to the Scottish Revisions

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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 Works Agreement with Contractor's Design 2017-04 or of the JCLI Landscape Works Contract with Contractor's Design 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 13.**

**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.**

### 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:

<i>Paragraph of English form</i>	<i>Comment</i>
19	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.
20	<p>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.</p> <p>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 works projects of a size appropriate for this standard form contract is six years, unless the Employer requires a longer period, which is often the case when the landscape works are part of a much larger building or engineering project.</p>

### Assignment

Unlike under English law, in Scotland there is a school of thought that it is possible to assign obligations as well as rights under a contract, and accordingly the Scottish Revisions deal with this in Clause 3.1. However if parties are looking to assign obligations it is suggested that they enter into a novation agreement to give effect to that.

### 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.