



## **JCLI Landscape Maintenance Works Contract 2008 (JCLI LMWC 2008)**

### **Differences between JCLI LMWC 2008 and JCLI LWC 2008**

#### **Notes:**

- 1 This document shows the differences between JCLI LMWC 2008 and JCLI LWC 2008. Where complete paragraphs or clauses have been deleted these deletions are generally identified using a 'comment' but where there are wording additions or omissions within clauses or paragraphs these are highlighted using 'track changes'.
- 2 The setting out and pagination varies from the printed versions of both documents.
- 3 'Track changes' has not highlighted footnote number changes or footnote deletions. However new footnotes and revisions to footnote text have been highlighted. (Additionally, duplicated footnote numbers which have been changed have been highlighted in the text by 'track changes').
- 4 This document does not include the covers to the original documents except for the inside of the front cover.
- 5 There is no guarantee that all of the changes are highlighted but care has been taken in preparing this document.

## JCLI Landscape Maintenance Works Contract (JCLI LMWC)

Appropriate:

- where the work involved is landscape maintenance;
- where the work is for the establishment maintenance following a landscape construction project where the same contractor is used for both contracts;
- where the Employer is to provide drawings and/or specification and/or work schedules and/or schedule of rates and/or list of items of maintenance works to define adequately the quantity and quality of the work; and
- where a Landscape Architect/Contract Administrator is to administer the conditions.

**Deleted:** simple in character

**Deleted:** ¶  
<#>where the work is designed by or on behalf of the Employer;¶

Can be used:

- by both private and local authority employers.

Not suitable:

- where provisions are required to govern work carried out by named specialists;
- where detailed control procedures are needed;
- where significant landscape construction work is to be included with the maintenance work – consider implementing the landscape construction work under a separate contract, eg JCLI Landscape Works Contract.

For details of amendments and corrections visit [www.landscapeinstitute.org](http://www.landscapeinstitute.org)

**Deleted:** where the Contractor is to design discrete part(s) of the works, even though all the other criteria are met – consider the JCLI Landscape Works Contract with Contractor's Design (JCLI LWCD).¶

This Standard Form of Contract is issued by the **Joint Committee for Landscape Industries** comprising:

Arboricultural Association  
British Association Landscape Industries  
Horticultural Trades Association  
Institute of Chartered Foresters  
Landscape Institute



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**Deleted:** May

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Superseded

# Articles of Agreement

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**This Agreement** is made the \_\_\_\_\_ 20 \_\_\_\_\_

**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 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

# Recitals

## Whereas

**First**

the Employer wishes to have landscape maintenance work carried out at <sup>2</sup>:

**Deleted:** the following

\_\_\_\_\_ (‘the Works’)  
\_\_\_\_\_ under the direction of the Landscape Architect/Contract Administrator referred to in Article 3;

**Deleted:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ at

**Second**

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

the drawings numbered/listed in \_\_\_\_\_  
(‘the Contract Drawings’) <sup>3 4</sup>

a Specification (‘the Contract Specification’) <sup>3</sup>

Work Schedules <sup>3</sup>

a Schedule of Rates <sup>3</sup>

a List of Items of Maintenance Work <sup>3</sup>

a Schedule of Liquidated Damages (‘the Schedule of Liquidated Damages’) <sup>3</sup>

which for identification have been signed or initialled by or on behalf of each Party and those documents together with the Conditions (collectively ‘the Contract Documents’) are annexed to this Agreement <sup>5</sup>;

**Deleted:** and, if applicable, a Schedule of Rates as referred to in the Third Recital

**Third**

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

**Fourth**

for the purposes of the Construction (Design and Management) Regulations 2007 (the ‘CDM Regulations’) the status of the project that comprises or includes the Works is stated in the Contract Particulars;

**Deleted:** 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; <sup>¶</sup>  
**Fifth** .

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

<sup>3</sup> Delete as appropriate.

<sup>4</sup> State the identifying numbers of the Contract Drawings or identify the schedule of drawings or other document listing them.

<sup>5</sup> Where a Contract Document has been priced by the Contractor it is that version of the document that should be annexed.

**Deleted:** nature and

## Articles

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### Now it is hereby agreed as follows

#### Article 1: Contractor's obligations

The Contractor shall carry out and complete the Works in accordance with the Contract Documents.

#### Article 2: Contract Sum<sup>6</sup>

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<sup>3</sup>

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<sup>7</sup> is

\_\_\_\_\_

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 the predecessor if still in the post would then have had power under this Contract to do so.

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<sup>6</sup> See the Guidance Notes and JCLI Practice Note No 9 for guidance on the options in Article 2 and the alternative ways of completing Article 2A.

<sup>7</sup> Where the person named in Article 3 is a "Chartered Landscape Architect" (ie a 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.

**Article 4: CDM Co-ordinator**

If the CDM Regulations apply to the project and it is notifiable, the CDM Co-ordinator for the purposes of the CDM Regulations is the Landscape Architect/Contract Administrator

(or) <sup>8</sup> \_\_\_\_\_

of \_\_\_\_\_

or, if he ceases to be the CDM Co-ordinator, such other person as the Employer shall appoint pursuant to regulation 14(1) of those regulations.

**Article 5: Principal Contractor**

If the CDM Regulations apply to the project and it is notifiable, the Principal Contractor for the purposes of the CDM Regulations is the Contractor

(or) <sup>8</sup> \_\_\_\_\_ Deleted: <sup>7</sup>

of \_\_\_\_\_

or, if he ceases to be the Principal Contractor, such other contractor as the Employer shall appoint pursuant to regulation 14(2) of those regulations.

**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>

**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, whether before, during the progress or after the completion or abandonment of the Works or after the termination of the Contractor's employment, shall be referred to arbitration in accordance with Schedule 1 and the JCT 2005 edition of the Construction Industry Model Arbitration Rules (CIMAR) <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 English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

<sup>8</sup> Insert the name of the CDM Co-ordinator only where the Landscape Architect/Contract Administrator is not to fulfil that role, and that of the Principal Contractor only if that is to be a person other than the Contractor. Articles 4 and 5 are not applicable unless the circumstances change (eg the addition of work which makes the project notifiable under the CDM Regulations 2007) if the project that comprises or includes the Works does not involve any "construction work" (as defined in the CDM Regulations 2007) or is not notifiable under the CDM Regulations 2007 - see the Contract Particulars (Fourth Recital). See the Guidance Notes and JCLI Practice Note No 9.

<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.

<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 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 another jurisdiction the appropriate amendment should be made to Article 8 (see also clause 1.7).

<sup>11</sup> See the Guidance Notes.

# Contract Particulars

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

Clause etc.	Subject		
<a href="#">Article 2</a>	<a href="#">Contract Sum</a> <sup>6</sup>	* <a href="#">Option A applies and B will be deleted</a> or * <a href="#">Option B applies and A will be deleted</a>	
<a href="#">Fourth Recital</a>	CDM Regulations <sup>12</sup>	* The CDM Regulations do not apply and Articles 4 and 5, Clauses 3.9, and 3.10 are not applicable (unless circumstances change) or * The CDM Regulations apply, the project is not notifiable, Clause 3.9 applies and Articles 4 and 5 and Clause 3.10 are not applicable (unless circumstances change) or * The CDM Regulations apply and the project is notifiable and Articles 4 and 5 and Clauses 3.9 and 3.10 apply	<b>Comment [CM1]:</b> 2 entries deleted concerning 4 <sup>th</sup> recital. Base date moved to 'Schedule 2' item below <b>Deleted:</b> Fifth Recital
Article 7	Arbitration <i>(if neither entry is deleted, Article 7 and Schedule 1 will 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 apply.)</i> <sup>13</sup>	* Article 7 and Schedule 1 ( <i>Arbitration</i> ) apply/do not apply	
1.1	CDM Planning Period <sup>14</sup> <i>(Not applicable if the CDM Regulations do not apply)</i>	shall mean the period of * _____ days/weeks * ending on the Date for Commencement of the Works/ * beginning/ending on _____ 20 _____	
2.2	<a href="#">Commencement Date</a>	_____	<b>Deleted:</b> Date for
2.2	<a href="#">End Date or Duration</a>	* <a href="#">End Date</a> _____ 20 or * <a href="#">Duration</a> _____	<b>Deleted:</b> of the Works <b>Deleted:</b> Date for Completion
3.5	<a href="#">Period to comply with written notice</a> <i>(The period is 5 Business Days if no other period is stated)</i>	_____	

<sup>12</sup> See the Guidance Notes and JCLI Practice [Note No 9](#). A project is not notifiable under the CDM Regulations where it is not likely to involve more than 30 days, or 500 person days, of construction work, or it is being carried out for a residential occupier as a purely domestic project. **Deleted:** Note No 8

<sup>13</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. See also footnote [10](#).

<sup>14</sup> Under the CDM Regulations 2007 every client is expressly required to allocate sufficient time (the CDM Planning Period) prior to the commencement of construction to enable contractors and others to carry out necessary CDM planning and preparation. There may be cases where that planning and preparation needs to be completed earlier than the Date for Commencement of the Works. **Deleted:** 9

4.2	Liquidated damages	* applicable in accordance with the Schedule of Liquidated Damages or * not applicable	Deleted: 2.8
4.3	Periodic payment intervals (monthly if not stated otherwise)	_____ months	Deleted: at the rate of £ _____ per _____
4.8	Bonus (If not stated otherwise the bonus is 5 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 1% and if there are 5 or more Failure Events in the account period no bonus shall be payable)	Bonus % _____ No of Failure Events _____ _____ _____ _____ _____ or * not applicable	
4.10	Inflation: Price Index (Retail Price Index unless a different index is stated)	_____	Comment [CM2]: Deleted: 2 entries for 2.10; 2.13 entry; 4.3 entry; 4.5 entry; 4.8.1 entry, 4.11 option to omit
4.11 and Schedule 2 (paragraph 12)	Percentage addition for Fluctuations Option	_____ per cent	Deleted: paragraph 13
5.3.2	Contractor's insurance – injury to persons or property Insurance cover (for any one occurrence or series of occurrences arising out of one event)	£ _____	
6.4.3	Termination by Employer (3 or more times in any 3 month period if not stated otherwise.)	_____ or more times in any _____ period	Comment [CM3]: 2 entries for 5.4 deleted
6.8.2	Termination by Contractor (If not stated otherwise, one month)	suspension period: _____	
6.10	Termination by either Party (If not stated otherwise, one month)	suspension period: _____	
7.2	Adjudication <sup>15</sup>  Nominator of Adjudicator – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)	The Adjudicator is _____  President or a Vice-President of The Landscape Institute	
Schedule 1 (paragraph 2.1)	Arbitration <sup>16</sup> Appointor of Arbitrator (and of any replacement)	President or a Vice-President of The Landscape Institute	
Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)	Base Date	_____ 20 _____	

<sup>15</sup> The Parties should either name the Adjudicator or use the nominator if the need arises. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

<sup>16</sup> This only applies where the Contracted Particulars state (against the reference to Article 7) that Article 7 and Schedule 1 (Arbitration) apply.

# Attestation

## Note on Execution

This Agreement should be executed by both the Employer and the Contractor. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign below that, where indicated, and set out, under his signature, his name and address.

### Other forms of Attestation

In cases where the form of attestation set out is not appropriate, the appropriate forms may be inserted in the vacant space below.

**Deleted:** either under hand or as a deed. As to the main factor relevant to that choice, see the Guidance Notes

**Deleted:** ¶  
¶ **Execution under hand** ¶  
¶ If this Agreement is to be executed under hand, use the form set out on the following page.

**Deleted:** . **Execution as a Deed** ¶  
¶ If this Agreement is to be executed as a deed, each Party should use the other form in accordance with the notes provided. ¶  
¶

**Deleted:** s

**Deleted:** are

**Deleted:** e.g. in the case of certain housing associations and partnerships

**Deleted:** or on page 12

Superseded

**As witness**

the hands of the Parties  
or their duly authorised representatives

**Deleted:** Execution under  
hand

Signed by or on behalf of  
the Employer

\_\_\_\_\_

In the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*

\_\_\_\_\_

Signed by or on behalf of  
the Contractor

\_\_\_\_\_

In the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*

\_\_\_\_\_

**Comment [CM4]:** Execution  
as a deed deleted

# Conditions

## Section 1 Definitions and Interpretation

### Definitions

- 1.1 Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

<i>Word or phrase</i>	<i>Meaning</i>
Agreement:	the Articles of Agreement to which these Conditions are annexed, consisting of the Recitals, the Articles and the Contract Particulars.
Article:	an article in the <b>Agreement</b> .
Business Day:	any day which is not a Saturday, a Sunday or a Public Holiday.
CDM Co-ordinator:	if the project is notifiable under the CDM Regulations, the Landscape Architect/Contract Administrator or other person named in <b>Article 4</b> or any successor appointed by the Employer.
CDM Planning Period:	if the CDM Regulations apply to the project, the minimum amount of time referred to in regulation 10(2)(c) of the CDM Regulations, as specified in the <b>Contract Particulars</b> (against the reference to <b>clause 1.1</b> ).
CDM Regulations:	the Construction (Design and Management) Regulations 2007.
<u>Commencement Date:</u>	<u>the date stated in the <b>Contract Particulars</b> (against reference to <b>clause 2.2</b>)</u>
Conditions:	the clauses set out in sections 1 to 7, together with and including the Schedules hereto.
Construction Phase Plan:	the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.
Contract Particulars:	the particulars in the <b>Agreement</b> and there described as such, including the entries made by the Parties.
<u>Contract Period:</u>	<u>the period between the <b>Commencement Date</b> and the <b>End Date</b> stated in the <b>Contract Particulars</b> or established from the <b>Commencement Date</b> and the <b>Duration</b> stated in the <b>Contract Particulars</b> (against reference to <b>clause 2.2</b>)</u>
<u>Duration:</u>	<u>the period stated in the <b>Contract Particulars</b> (against reference to <b>clause 2.2</b>) if applicable.</u>
<u>End Date:</u>	<u>the date stated in the <b>Contract Particulars</b> (against reference to <b>clause 2.2</b>) if applicable.</u>
Excepted Risks:	ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
<u>Failure Event:</u>	<u>either a notice issued under <b>clause 3.5</b> or an individual deduction under <b>clause 4.2</b></u>

**Comment [CM5]:** All risk insurance deleted

**Comment [CM6]:** CIS deleted

Fluctuations Option:	the provisions set out in <b>Schedule 2</b> .
Insolvent:	see <b>clause 6.1</b> .
Interest Rate:	a rate 5% per annum above the official dealing rate of the Bank of England current at the date that a payment due under this Contract becomes overdue.
Parties:	the Employer and the Contractor together.
Party:	either the Employer or the Contractor.
<u>Price Index:</u>	<u>the index stated in the <b>Contract Particulars</b> (against reference to <b>clause 4.10</b>).</u>
Principal Contractor:	if the project is notifiable under the CDM Regulations, the Contractor or other person named in <b>Article 5</b> or any successor appointed by the Employer.
Provisional Sum:	includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Contract Documents.
Public Holiday:	Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday. <sup>17</sup>
Recitals:	the recitals in the <b>Agreement</b> .
Scheme:	Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.
Site Materials:	all unfixed materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein.
Specified Perils:	fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.
Statutory Requirements:	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected.
VAT:	Value Added Tax.

**Comment [CM7]:** Joint Names Policy deleted

**Comment [CM8]:** Deleted Rectification Period and Relevant Part.

**Agreement etc. to be read as a whole**

**1.2** The Agreement and these Conditions are to be read as a whole but nothing contained in the Contract Drawings, the Contract Specification or the Work Schedules shall override or modify the Agreement or these Conditions.

**Headings, references to persons, legislation etc.**

**1.3** In the Agreement and these Conditions, unless the context otherwise requires:

- .1 the headings are included for convenience only and shall not affect the interpretation of this Contract;
- .2 the singular includes the plural and vice versa;
- .3 a gender includes any other gender;

<sup>17</sup> Amend as necessary if different Public Holidays are applicable.

- .4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate; and
- .5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification.

**Reckoning periods of days**

- 1.4 Where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

**Contracts (Rights of Third Parties) Act 1999**

- 1.5 Notwithstanding any other provisions of this Contract, nothing in this Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

**Giving or service of notices and other documents**

- 1.6 Where this Contract does not specifically state the manner of giving or service of any notice or other document under this Contract such notice or other document may be given or served by any effective means to any agreed address. If no address has been agreed, then, if given or served by being addressed and sent by pre-paid post to the addressee's last known principal business address or, where the addressee is a body corporate, to the body's registered or principal office, it shall be treated as having been effectively given or served.

**Applicable law**

- 1.7 This Contract shall be governed by and construed in accordance with the law of England.<sup>18</sup>

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<sup>18</sup> Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

## Section 2 Carrying out the Works

### Contractor's obligations

- 2.1 .1 The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents, the Construction Phase Plan (where applicable) and other Statutory Requirements, and shall give all notices required by the Statutory Requirements.
- .2 Where and to the extent that approval of the quality of materials or of the standards of workmanship is a matter for the opinion of the Landscape Architect/Contract Administrator such quality and standards shall be to his reasonable satisfaction.
- .3 The Contractor shall take all reasonable steps to encourage employees and agents of the Contractor and sub-contractors employed in the execution of the Works to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

### Commencement and Duration

- 2.2 The Works may be commenced on the Commencement Date stated in the Contract Particulars and shall continue until the End Date or for the Duration stated in the Contract Particulars.

Deleted: completion

Deleted: be completed by the respective dates

### Landscape Architect/Contract Administrator's duties

- 2.3 The Landscape Architect/Contract Administrator shall issue any further information necessary for the proper carrying out of the Works, issue all certificates and confirm all instructions in writing in accordance with these Conditions.

### Correction of inconsistencies

- 2.4 Any inconsistency in or between the Contract Drawings, the Contract Specification and the Work Schedules shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a variation under clause 3.6.

### Divergences from Statutory Requirements

- 2.5 .1 If the Contractor becomes aware of any divergence between the Statutory Requirements and the Contract Documents or between the Statutory Requirements and any instruction of the Landscape Architect/Contract Administrator, he shall immediately give to the Landscape Architect/Contract Administrator a written notice specifying the divergence.
- .2 Provided the Contractor is not in breach of clause 2.5.1, the Contractor shall not be liable under this Contract if the Works do not comply with the Statutory Requirements to the extent that such non-compliance results from the Contractor having carried out work in accordance with the Contract Documents or any instruction of the Landscape Architect/Contract Administrator.

### Fees or charges legally demandable

- 2.6 The Contractor shall pay any fees or charges (including any rates or taxes) legally demandable under any of the Statutory Requirements. Such fees and charges shall not be reimbursable to the Contractor by the Employer, unless otherwise agreed.

### Extension of Contract Period

- 2.7 The Contract Period may be extended by written agreement signed by the Parties.

Comment [CM9]: Deleted: 2.7 Extension of time; 2.8 Damages for non completion; 2.9 Practical completion; 2.10A and B Defects...; 2.11 Certificate of making good; 2.12 Partial possession; 2.13 Theft and malicious damage...

## Section 3 Control of the Works

### Novation

Deleted: Assignment

- 3.1 .1 This Contract may be novated by the Employer and subsequently by the party taking the novation from the Employer by entering into the novation agreement attached at Schedule 3. The Contractor hereby agrees to enter into novation agreements in the form attached at Schedule 3 in order to allow novation by the Employer and subsequently by the party taking the novation from the Employer upon the request of the Employer. Any further novations requested by any party having taken novation from the Employer shall be at the discretion of the Contractor.
- .2 Pursuant to a novation under Clause 3.1.1 the party taking the novation from the Employer alone shall be liable to the Contractor for payment of sums due to the Contractor under this Contract and all references to the Employer shall be so construed.
- .3 This Contract may be novated by the Contractor and subsequently by the party taking the novation from the Contractor only with the written consent of the Employer, or a subsequent party having taken a novation from the Employer, by entering into the novation agreement attached at Schedule 4.
- .4 Within 14 days of a novation under clause 3.1.1 the party taking the novation from the Employer may give to the Contractor three months notice of termination of this Contract. On such termination an annual account shall be prepared pursuant to clause 4.5.

Deleted: Neither the Employer nor the Contractor shall, without the written consent of the other, assign this Contract or any rights thereunder.

### Person-in-charge

- 3.2 The Contractor shall ensure that at all reasonable times he has on the site a competent person in charge and any instructions given to that person by the Landscape Architect/Contract Administrator shall be deemed to have been issued to the Contractor.

### Sub-letting

- 3.3 .1 The Contractor shall not without the written consent of the Landscape Architect/Contract Administrator sub-let the whole or any part of the Works. Such consent shall not be unreasonably delayed or withheld. The Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with clause 2.1 notwithstanding any such sub-letting.
- .2 A sub-contract for the Works or any part of them shall provide that:
- .1 the sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under this Contract;
  - .2 each party undertakes to the other in relation to the Works and the site duly to comply with the CDM Regulations if applicable<sup>19</sup>;
  - .3 if by the final date for payment stated in the sub-contract the Contractor fails properly to pay any amount, or any part of it, due to the sub-contractor, the Contractor shall in addition to the amount not properly paid pay simple interest thereon at the Interest Rate for the period until such payment is made; such payment of interest to be on and subject to terms equivalent to those of clause 4.4 of these Conditions.

### Landscape Architect/Contract Administrator's instruction

- 3.4 The Landscape Architect/Contract Administrator may issue written instructions which the Contractor shall forthwith comply with. If instructions are given orally they shall, within 2 days, be confirmed in writing by the Landscape Architect/Contract Administrator.

### Non-compliance with instructions

- 3.5 If within the period stated in the Contract Particulars after receipt of a written notice from the Landscape Architect/Contract Administrator requiring compliance with an instruction the Contractor does not comply, the Employer may employ and pay other persons to execute any work whatsoever

Deleted: 7 days

<sup>19</sup> As to the duties imposed by the CDM Regulations 2007, see the Guidance Notes.

which may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made from the Contract Sum.

### Variations

- 3.6
- .1 The Landscape Architect/Contract Administrator may, without invalidating this Contract, issue instructions requiring an addition to, omission from, or other change in the Works or the order or period in which they are to be carried out.
  - .2 The Landscape Architect/Contract Administrator and the Contractor shall endeavour to agree a price prior to the Contractor carrying out the instruction.
  - .3 Failing any agreement under clause 3.6.2 any instructions issued under clause 3.6.1 shall be valued by the Landscape Architect/Contract Administrator on a fair and reasonable basis using any relevant prices in the priced Contract Specification/Work Schedules/Schedule of Rates, and such valuation shall include any direct loss and/or expense incurred by the Contractor due to the regular progress of the Works being affected by compliance with such instruction or due to the compliance or non-compliance by the Employer with clause 3.9.

### Provisional Sums

- 3.7 The Landscape Architect/Contract Administrator shall issue instructions in regard to the expenditure of any Provisional Sums included in the Contract Documents and such instructions shall be agreed or valued in accordance with clause 3.6.2 or 3.6.3.

### Exclusion from the Works

- 3.8 The Landscape Architect/Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of any person employed thereon.

### CDM Regulations – Undertakings to comply <sup>19</sup>

Deleted: <sup>26</sup>

- 3.9 Each Party acknowledges that he is aware of and undertakes to the other that in relation to the Works and site he will duly comply with the CDM Regulations to the extent applicable to the project. Without limitation, where the project that comprises or includes the Works is notifiable:
- .1 the Employer shall ensure both that the CDM Co-ordinator carries out all his duties and, where the Contractor is not the Principal Contractor, that the Principal Contractor carries out all his duties under those regulations;
  - .2 where the Contractor is and while he remains the Principal Contractor, he shall ensure that:
    - .1 the Construction Phase Plan is prepared and received by the Employer before construction work under this Contract is commenced, and that any subsequent amendment to it by the Contractor is notified to the Employer, the CDM Co-ordinator and (where not the CDM Co-ordinator) the Landscape Architect/Contract Administrator; and
    - .2 welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase <sup>20</sup>;
  - .3 where the Contractor is not the Principal Contractor, he shall promptly inform the Principal Contractor of the identity of each sub-contractor that he appoints and each sub-subcontractor appointment notified to him;
  - .4 promptly upon the written request of the CDM Co-ordinator, the Contractor shall provide, and shall ensure that any sub-contractor, through the Contractor, provides, to the CDM Co-ordinator, (or, if the Contractor is not the Principal Contractor, to the Principal Contractor) such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file.

<sup>20</sup> If the CDM Regulations apply to the project there is a duty on contractors to ensure compliance with Schedule 2 of the CDM Regulations so far as is reasonably practicable, whether or not the project is notifiable and whether or not the contractor is the Principal Contractor.

## Appointment of successors

- 3.10 If the Employer by a further appointment replaces the CDM Co-ordinator or the Principal Contractor, the Employer shall immediately upon the further appointment notify the Contractor in writing of the name and address of the new appointee. If the Employer appoints a successor to the Contractor as the Principal Contractor, the Contractor shall at no cost to the Employer comply with all reasonable requirements of the new Principal Contractor to the extent necessary for compliance with the CDM Regulations; no extension of time shall be given in respect of such compliance.

## Section 4 Payment

### VAT

- 4.1 The Contract Sum is exclusive of VAT and in relation to any payment to the Contractor under this Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

### Liquidated Damages

- 4.2 Where the Contractor fails to carry out an item of work listed in the Schedule of Liquidated Damages, or to carry out such an item in accordance with the specification, and where the Schedule of Liquidated Damages provides a rate in respect of such failure the Contractor shall, save where the default was caused by reasons entirely beyond the control of the Contractor, pay or allow to the Employer as liquidated damages a sum calculated in accordance with that rate.

### Periodic payments

- 4.3 The Landscape Architect/Contract Administrator shall, at intervals stated in the Contract Particulars calculated from the Commencement Date until the end of the Contract Period, certify periodic payments of the value of the work properly executed since the previous certificate including any amounts applicable to that period either ascertained or agreed under clauses 3.6 and 3.7 hereof and including if applicable any inflation adjustment under clause 4.10 less any amount to be deducted in accordance with clause 4.2. The certificate shall state to what the periodic payment relates and the basis on which the amount of the periodic payment has been calculated. The final date for payment by the Employer of the amount so certified shall be 14 days from the date of issue of that certificate. The provisions of clause 4.6 shall apply to any certificate issued under this clause 4.3.

### Employer's failure to pay amount due

- 4.4 If the Employer fails properly to pay the amount, or any part of it, due to the Contractor under clause 4.3 or 4.5 by the final date for its payment, the Employer shall pay to the Contractor in addition to the amount not properly paid simple interest thereon at the Interest Rate for the period until such payment is made. Payment of such simple interest shall be treated as a debt due to the Contractor by the Employer. The acceptance of any payment of interest under this clause 4.4 shall not in any circumstances be construed as a waiver by the Contractor of his right to proper payment of the principal amount due from the Employer to the Contractor in accordance with these Conditions or of the rights of the Contractor to suspend performance of his obligations under this Contract pursuant to clause 4.7 or to terminate his employment under section 6.

### Annual accounts

- 4.5 .1 The Contractor shall within one month following each anniversary of the Commencement Date and within one month after the end of the Contract Period supply all documentation reasonably required for the computation by the Landscape Architect/Contract Administrator of the final total amount for Works properly executed during the previous year or if appropriate part of a year.

Comment [CM10]: Deleted 4.2 CIS

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¶  
..1 . the work properly executed, including any amounts either ascertained or agreed under clauses 3.6 and 3.7; and

¶  
..2 . the materials and goods which have been reasonably and properly brought upon the site for the purpose of the Works and which are adequately protected against weather and other casualties

¶  
.. less the total amounts due to the Contractor in certificates of progress payment previously issued

Deleted: progress

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2 The Landscape Architect/Contract Administrator shall within 28 days of receipt of such information certify the amount due to the Contractor or due to the Employer as the case may be for work properly executed during the previous year (or if appropriate part of a year) including any amounts applicable to that period ascertained or agreed under clauses 3.6 and 3.7 hereof, including if applicable any fluctuations under clause 4.10 and any bonus calculated in accordance with clause 4.8 less any amounts to be deducted in accordance with clause 4.2 and less the total amounts due to the Contractor in certificates of periodic payments previously issued for that period. The certificate shall state to what the payment relates and the basis on which the amount of the certificate has been calculated. The final date for payment of the amount so certified shall be 14 days from the date of issue of that certificate. The provisions of clause 4.6 shall apply to the certificate issued under this clause 4.5.

**Deleted:** The Landscape Architect/Contract Administrator shall within 14 days after the date of practical completion certify payment as an amount due to the Contractor of the percentage stated in the Contract Particulars of the value of work properly executed, including any amounts ascertained or agreed under clauses 3.6 and 3.7 less the total amounts due to the Contractor in certificates of progress payment previously issued.

**Deleted:** progress

**Deleted:** . If the Employer fails properly to pay the amount, or any part of it, due to the Contractor by the final date for its payment the provisions of clause 4.4 shall apply

### Notices of amounts to be paid and deductions

- 4.6 .1 Not later than 5 days after the date of issue of a certificate of payment pursuant to clause 4.3 or 4.5 the Employer shall give a written notice to the Contractor which shall, in respect of the amount stated as due in that certificate, specify the amount of the payment proposed to be made, to what the amount relates and the basis on which that amount was calculated.
- .2 Not later than 5 days before the final date for payment the Employer may give a written notice to the Contractor which shall specify any amount proposed to be withheld and/or deducted from the amount due, the ground or grounds for such withholding and/or deduction and the amount of the withholding and/or deduction attributable to each ground.
- .3 Subject to any notice given under clause 4.6.2, the Employer shall no later than the final date for payment pay the Contractor the amount specified in the notice given under clause 4.6.1 or, in the absence of a notice under clause 4.6.1, the amount stated as due in the certificate.

### Contractor's right of suspension

- 4.7 Without affecting any other rights and remedies of the Contractor, if the Employer, subject to any notice issued pursuant to clause 4.6.2, fails to pay the Contractor in full by the final date for payment as required by these Conditions and such failure continues for 7 days after the Contractor has given to the Employer, with a copy to the Landscape Architect/Contract Administrator, written notice of his intention to suspend performance of his obligations under this Contract and the ground or grounds on which it is intended to suspend performance, the Contractor may then suspend such performance until payment in full occurs.

### Bonus

- 4.8 If the Contract Particulars provide that a bonus is applicable, a graduated bonus reduced by the total number of Failure Events during the account period as stated in the Contract Particulars shall be calculated on the final total amount of the annual account and included on each certificate prepared in accordance with clause 4.5.

**Comment [CM11]:** Deleted 4.8 Final Certificate

### Contractor's failure to pay amount due

- 4.9 If the Contractor fails properly to pay any amount, or any part of it, due under clause 4.5 by the final date for its payment, the Contractor shall pay to the Employer in addition to the amount not properly paid simple interest thereon at the Interest Rate for the period until such payment is made. The acceptance of any payment of interest under this clause 4.9 shall not in any circumstances be construed as a waiver by the Employer of his right to proper payment of the amount due to him.

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**Deleted:** , as the case may be,

**Deleted:** other

**Deleted:** Contractor or the

**Comment [CM12]:** Deleted 4.10 Fixed Price

### Inflation adjustment

- 4.10 Either the Contract Sum or the Priced Specification, Work Schedules or Schedule of Rates depending upon whether option A or B of Article 2 applies, shall be adjusted annually on the anniversary of the Commencement Date by the most recently published percentage change for the previous year of the Price Index stated in the Contract Particulars and all works carried out after the date of adjustment shall be paid at the adjusted rate.

### Contribution, levy and tax changes

- 4.11 Contribution, levy and tax changes shall be dealt with by the application of Schedule 2 (*Fluctuations Option*). The percentage addition under paragraph 12 of that Schedule is that stated in the Contract Particulars.

**Deleted:** unless shown as deleted in the Contract Particulars

**Deleted:** paragraph 13

## Section 5 Injury, Damage and Insurance

### Liability of Contractor – personal injury or death

- 5.1 The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible.

### Liability of Contractor – injury or damage to property

- 5.2 The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any person employed or engaged by the Contractor on or in connection with the Works or any part of them.

**Deleted:** (other than loss, injury or damage to the Works and/or Site Materials or, where clause 5.4B applies, to any property required to be insured thereunder caused by a Specified Peril)

### Contractor's insurance of his liability

- 5.3 Without prejudice to his obligation to indemnify the Employer under clauses 5.1 and 5.2, the Contractor shall take out and maintain (and shall cause any sub-contractor similarly to take out and maintain) insurance in respect of claims arising out of his liability referred to in clauses 5.1 and 5.2 which:
- .1 in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
  - .2 for all other claims to which clause 5.3 applies<sup>21</sup>, shall indemnify the Employer in like manner to the Contractor, but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Contract and shall be in a sum not less than that stated in the Contract Particulars for any one occurrence or series of occurrences arising out of one event.

### Evidence of insurance

- 5.4 The Contractor shall produce, and shall cause any sub-contractor to produce, such evidence as the Employer may reasonably require that the insurances referred to in clause 5.3 have been taken out and are in force at all material times.

**Comment [CM13]:** Deleted 5.4A, 5.4B and 5.4C Insurance of works / existing structures

**Deleted:** 5

**Deleted:** and, where applicable, clause 5.4A

**Deleted:** Where clause 5.4B or 5.4C is applicable and except where the Employer is a Local Authority, the Employer shall, as and when reasonably required by the Contractor, produce documentary evidence showing that the insurance referred to therein has been taken out and is being maintained.

<sup>21</sup> It should be noted that the cover granted under public liability policies taken out pursuant to clause 5.3 may not be co-extensive with the indemnity given to the Employer in clauses 5.1 and 5.2: for example, each claim may be subject to the excess in the policy and cover may not be available in respect of loss or damage due to gradual pollution.

## Section 6 Termination

### Meaning of insolvency

- 6.1 For the purposes of these Conditions, a Party is Insolvent if:
- .1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
  - .2 without a declaration of solvency, he passes a resolution or makes a determination that he be wound up; or
  - .3 he has a winding up order or bankruptcy order made against him; or
  - .4 he has appointed to him an administrator or administrative receiver; or
  - .5 (additionally, in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in clauses 6.1.1 to 6.1.4.

### Notices under section 6

- 6.2
- .1 Notice of termination of the Contractor's employment shall not be given unreasonably or vexatiously.
  - .2 Such termination shall take effect on receipt of the relevant notice.
  - .3 Each notice referred to in this section shall be in writing and given by actual, special or recorded delivery. Where given by special or recorded delivery it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.

### Other rights, reinstatement

- 6.3
- .1 The provisions of clauses 6.4 to 6.7 are without prejudice to any other rights and remedies of the Employer. The provisions of clauses 6.8 and 6.9 and (in the case of termination under either of those clauses) the provisions of clauses 6.11, are without prejudice to any other rights and remedies of the Contractor.
  - .2 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated if and on such terms as the Parties may agree.

### Default by Contractor

- 6.4
- .1 ~~If the Contractor:~~
    - .1 without reasonable cause wholly or substantially suspends the carrying out of the Works; or
    - .2 fails to proceed regularly and diligently with the Works; or
    - .3 fails to comply with clause 3.9,

the Landscape Architect/Contract Administrator may give to the Contractor a notice specifying the default or defaults (the 'specified default or defaults').
  - .2 If the Contractor continues a specified default for 7 days from receipt of the notice under clause 6.4.1, the Employer may on, or within 10 days from, the expiry of that 7 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.
  - .3 Without prejudice to clauses 6.4.1 and 6.4.2, if there are more Failure Events than stated in the Contract Particulars during the period stated in the Contract Particulars, the Employer may by notice given within 21 days of the last Failure Event terminate the employment of the Contractor under this Contract. Such termination shall take effect from the date of receipt of such notice.

**Deleted:** , before practical completion of the Works,

## Insolvency of Contractor

- 6.5
- .1 If the Contractor is insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.
  - .2 As from the date the Contractor becomes insolvent, whether or not the Employer has given such notice of termination:
    - .1 the provisions of clauses 6.7.3 and 6.7.4 shall apply as if such notice had been given and the other provisions of this Contract which require any further payment or any release of Retention shall cease to apply;
    - .2 the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

**Deleted:** ; and

## Corruption

- 6.6 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment, under this or any other contract with the Employer, if, in relation to this or any other such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916, or, where the Employer is a Local Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

**Deleted:** . .3 . the Employer may take reasonable measures to ensure that the site, the Works and Site Materials are adequately protected and that such Site Materials are retained on site; the Contractor shall allow and shall not hinder or delay the taking of those measures.¶

## Consequences of termination under clauses 6.4 to 6.6

- 6.7 If the Contractor's employment is terminated under clause 6.4, 6.5 or 6.6:
- .1 the Employer may employ and pay other persons to carry out and complete the Works;
  - .2 (if not already applicable) clauses 6.7.3 and 6.7.4 shall thereupon apply and the other provisions of this Contract which require any further payment to the Contractor shall cease to apply;
  - .3 within a reasonable time after the completion of the Works, an account of the following shall be set out in a certificate issued by the Landscape Architect/Contract Administrator or a statement prepared by the Employer:
    - .1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 6.7.1 and of any direct loss and/or damage caused to the Employer and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
    - .2 the amount of payments made to the Contractor; and
    - .3 the total amount which would have been payable for the Works in accordance with this Contract;
  - .4 if the sum of the amounts stated under clauses 6.7.3.1 and 6.7.3.2 exceeds the amount stated under clause 6.7.3.3, the difference shall be a debt payable by the Contractor to the Employer or, if that sum is less, by the Employer to the Contractor.

**Deleted:** , and he and they may enter upon and take possession of the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes

**Deleted:** or any release of Retention

**Deleted:** and the making good of defects (or of instructions otherwise, as referred to in clause 2.10A or 2.10B)

**Deleted:** and, where applicable, clause 6.5.2.3,

## Default by Employer

- 6.8
- .1 If the Employer:
    - .1 does not pay by the final date for payment the amount properly due to the Contractor in respect of any certificate and/or any VAT properly chargeable on that amount; or
    - .2 interferes with or obstructs the issue of any certificate due under this Contract; or
    - .3 fails to comply with clause 3.9,
- the Contractor may give to the Employer a notice specifying the default or defaults (the 'specified default or defaults').

.2 If the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the continuous period stated in the Contract Particulars or more by reason of:

Deleted: before practical completion of the Works

.1 Landscape Architect/Contract Administrator's instructions under clause 2.4 or 3.6, and/or

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.2 any impediment, prevention or default, whether by act or omission, by the Employer, the Landscape Architect/Contract Administrator or any person for whom the Employer is responsible

Deleted: of one month

(but in either case excluding such instructions as are referred to in clause 6.10.1.2) then, unless in either case that is caused by the negligence or default of the Contractor or his employees, agents or sub-contractors, the Contractor may give to the Employer a notice specifying the event or events (the 'specified suspension event or events').

.3 If a specified default or a specified suspension event continues for 7 days from the receipt of notice under clause 6.8.1 or 6.8.2, the Contractor may on, or within 10 days from, the expiry of that 7 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.

### Insolvency of Employer

6.9 .1 If the Employer is insolvent, the Contractor may by notice to the Employer terminate the Contractor's Employment under this Contract;

.2 as from the date the Employer becomes insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

### Termination by either Party

6.10 .1 If the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the continuous period stated in the Contract Particulars or more by reason of one or more of the following events:

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.1 force majeure;

.2 Landscape Architect/Contract Administrator's instructions under clause 2.4 or 3.6 issued as a result of the negligence or default of any Statutory Undertaker;

.3 loss or damage to the Works occasioned by any of the Specified Perils;

.4 civil commotion or the use or threat of Terrorism and/or the activities of the relevant authorities in dealing with such event or threat; or

.5 the exercise by the United Kingdom Government of any statutory power which directly affects the execution of the Works,

then either Party, subject to clause 6.10.2, may upon the expiry of that relevant period of suspension give notice in writing to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, he may terminate the Contractor's employment under this Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.

.2 The Contractor shall not be entitled to give notice under clause 6.10.1 in respect of the matter referred to in clause 6.10.1.3 where the loss or damage to the Works occasioned by a Specified Peril was caused by the negligence or default of the Contractor or his employees, agents or sub-contractors.

### Consequences of termination under clauses 6.8 to 6.10

6.11 If the Contractor's employment is terminated under any of clauses 6.8 to 6.10:

.1 the provisions of this clause 6.11 shall thereupon apply and the other provisions of this Contract which require any further payment to the Contractor shall cease to apply;

Deleted: or any release of Retention

- .2 the Contractor shall as soon as reasonably practical prepare an account. The account shall set out the amounts referred to in clauses 6.11.2.1 and 6.11.2.2 and, if applicable, clause 6.11.2.3, namely:
  - .1 the total value of work properly executed at the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;
  - .2 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
  - .3 any direct loss and/or damage caused to the Contractor by the termination;
- .3 the account shall include the amount, if any, referred to in clause 6.11.2.3 only where the Contractor's employment is terminated either:
  - .1 under clause 6.8 or 6.9, or
  - .2 under clause 6.10.1.3, if the loss or damage to the Works occasioned by any of the Specified Perils was caused by the negligence or default of the Employer or any person for whom the Employer is responsible;
- .4 after taking into account amounts previously paid to the Contractor under this Contract, the Employer shall pay to the Contractor the amount properly due in respect of the account within 28 days of its submission by the Contractor to the Employer, without deduction of any Retention. Payment by the Employer for any such materials and goods as are referred to in clause 6.11.2.2 shall be subject to such materials and goods thereupon becoming the property of the Employer.

#### Termination following termination of landscape works contract

6.12 Where the Employer and Contractor have entered into a landscape works contract and this Contract includes maintenance of some or all of the works carried out under the landscape works contract, either Party may, on its termination of the Contractor's employment under the landscape works contract, also give notice to terminate the Contractor's employment under this Contract. On such termination by the Employer clause 6.7 shall apply and on such termination by the Contractor clause 6.11 shall apply.

## Section 7 Settlement of Disputes

### Mediation

- 7.1 The Parties may by agreement seek to resolve any dispute or difference arising under this Contract through mediation.

### Adjudication

- 7.2 If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply except that for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars.

### Arbitration

- 7.3 For the purposes of Article 7, if it applies, the procedures for arbitration are set out in Schedule 1.<sup>22</sup>

<sup>22</sup> Arbitration or legal proceedings are **not** an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

# Schedules

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## Schedule 1 Arbitration

(clause 7.3)

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### Conduct of arbitration

- 1 Any arbitration pursuant to Article 7 shall be conducted in accordance with the JCT 2005 edition of the Construction Industry Model Arbitration Rules (CIMAR), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in this Schedule 1 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2005 edition of CIMAR.

### Notice of reference to arbitration

- 2
  - .1 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 written notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual 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, appointed on the application of either Party in accordance with Rule 2.3 by the person named in the Contract Particulars.
  - .2 Where two or more related arbitral proceedings in respect of the Works fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.
  - .3 After an arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 7 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

### Powers of Arbitrator

- 3 Subject to the provisions of Article 7 the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

### Effect of award

- 4 Subject to paragraph 5 the award of the Arbitrator shall be final and binding on the Parties.

### Appeal – questions of law

- 5 The Parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):
  - .1 apply to the courts to determine any question of law arising in the course of the reference, and

- .2 appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

#### Arbitration Act 1996

- 6 The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Contract wherever the same, or any part of it, shall be conducted.

## Schedule 2 Fluctuations Option – Contribution, levy and tax changes

(clause 4.11)

### Deemed calculation of Contract Sum – labour

- 1 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.
- .1 The Contract Sum is based upon the types and rates of contribution, levy and tax payable by a person in his capacity as an employer and which at the Base Date are payable by the Contractor. A type and a rate so payable are in paragraph 1.2 referred to as a 'tender type' and a 'tender rate'.
- .2 If any of the tender rates other than a rate of levy payable by virtue of the Industrial Training Act 1982 is increased or decreased, or if a tender type ceases to be payable, or if a new type of contribution, levy or tax which is payable by a person in his capacity as an employer becomes payable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays or will pay in respect of:
- .1 workpeople engaged upon or in connection with the Works either on or adjacent to the site; and
- .2 workpeople directly employed by the Contractor who are engaged upon the production of materials or goods for use in or in connection with the Works and who operate neither on nor adjacent to the site and to the extent that they are so engaged
- or because of his employment of such workpeople and what he would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective shall, as the case may be, be paid to or allowed by the Contractor.
- .3 There shall be added to the net amount paid to or allowed by the Contractor under paragraph 1.2, in respect of each person employed by the Contractor who is engaged upon or in connection with the Works either on or adjacent to the site and who is not within the definition of workpeople in [paragraph 11.3](#), the same amount as is payable or allowable in respect of a craftsman under paragraph 1.2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed.
- .4 For the purposes of paragraph 1.3:
- .1 no period of less than 2 whole working days in any week shall be taken into account and periods of less than a whole working day shall not be aggregated to amount to a whole working day;

Deleted: paragraph 12

- .2 "the same amount as is payable or allowable in respect of a craftsman" shall refer to the amount in respect of a craftsman employed by the Contractor (or by any sub-contractor under a sub-contract to which paragraph 3 refers) under the rules or decisions or agreements of the Construction Industry Joint Council or other wage-fixing body and, where those rules or decisions or agreements provide for more than one rate of wage, emolument or other expense for a craftsman, shall refer to the amount in respect of a craftsman employed as aforesaid to whom the highest rate is applicable; and
- .3 "employed by the Contractor" shall mean an employment to which the Income Tax (Pay As You Earn) Regulations 2003 apply.
- .5 The Contract Sum is based upon the types and rates of refund of the contributions, levies and taxes payable by a person in his capacity as an employer and upon the types and rates of premium receivable by a person in his capacity as an employer being in each case types and rates which at the Base Date are receivable by the Contractor. Such a type and such a rate are in paragraph 1.6 referred to as a 'tender type' and a 'tender rate'.
- .6 If any of the tender rates is increased or decreased or if a tender type ceases to be payable or if a new type of refund of any contribution, levy or tax payable by a person in his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his capacity as an employer becomes receivable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually receives or will receive in respect of workpeople as referred to in paragraphs 1.2.1 and 1.2.2 or because of his employment of such workpeople and what he would have received had the alteration, cessation or new type of refund or premium not become effective shall, as the case may be, be paid to or allowed by the Contractor.
- .7 The references in paragraphs 1.5 and 1.6 to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.
- .8 Where employer's contributions are payable by the Contractor in respect of workpeople as referred to in paragraphs 1.2.1 and 1.2.2 whose employment is contracted-out employment within the meaning of the Pensions Schemes Act 1993, the Contractor shall for the purpose of recovery or allowance under paragraph 1 be deemed to pay employer's contributions as if that employment were not contracted-out employment.
- .9 The references in paragraph 1 to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.

#### **Deemed calculation of Contract Sum – materials**

- 2** The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.
- .1 The Contract Sum is based upon the types and rates of duty, if any, and tax, if any (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) by whomsoever payable which at the Base Date are payable on the import, purchase, sale, appropriation, processing, use or disposal of the materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works by virtue of any Act of Parliament. A type and a rate so payable are in paragraph 2.2 referred to as a 'tender type' and a 'tender rate'.

- .2 If, in relation to any materials or goods or any electricity or fuels or materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works including temporary site installations for those Works, a tender rate is increased or decreased or a tender type ceases to be payable or a new type of duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) becomes payable on the import, purchase, sale, appropriation, processing, use or disposal of any of the above things after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays in respect of those materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas and what he would have paid in respect of them had the alteration, cessation or imposition not occurred shall, as the case may be, be paid to or allowed by the Contractor. In this paragraph 2.2 "a new type of duty or tax" includes an additional duty or tax and a duty or tax imposed in regard to any of the above in respect of which no duty or tax whatever was previously payable (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor).

#### **Sub-let work – incorporation of provisions to like effect**

- 3 .1 If the Contractor sub-lets any portion of the Works he shall incorporate in the sub-contract provisions to the like effect as the provisions of this Fluctuations Option (excluding this paragraph 3) including the percentage stated in the Contract Particulars pursuant to [paragraph 12](#) which are applicable for the purposes of this Contract.
- .2 If the price payable under such a sub-contract as referred to in paragraph 3.1 is increased above or decreased below the price in such sub-contract by reason of the operation of the said incorporated provisions, then the net amount of such increase or decrease shall, as the case may be, be paid to or allowed by the Contractor under this Contract.

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#### **Written notice by Contractor**

- 4 .1 The Contractor shall give a written notice to the Landscape Architect/Contract Administrator of the occurrence of any of the events referred to in such of the following provisions as are applicable for the purposes of this Contract:
  - .1 paragraph 1.2;
  - .2 paragraph 1.6;
  - .3 paragraph 2.2;
  - .4 paragraph 3.2.
- .2 Any notice required to be given under paragraph 4.1 shall be given within a reasonable time after the occurrence of the event to which the notice relates, and the giving of a written notice in that time shall be a condition precedent to any payment being made to the Contractor in respect of the event in question.

#### **Agreement – Landscape Architect/Contract Administrator and Contractor**

- 5 The Landscape Architect/Contract Administrator and the Contractor may agree what shall be deemed for all the purposes of this Contract to be the net amount payable to or allowable by the Contractor in respect of the occurrence of any event such as is referred to in any of the provisions listed in paragraph 4.1.

## Fluctuations added to or deducted from Contract Sum

- 6 Any amount which from time to time becomes payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraph 3 shall, as the case may be, be added to or deducted from the Contract Sum. The addition or deduction to which this paragraph 6 refers shall be subject to the provisions of paragraphs 7 to 9.

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## Evidence and computations by Contractor

- 7 As soon as is reasonable practicable the Contractor shall provide such evidence and computations as the Landscape Architect/Contract Administrator may reasonably require to enable the amount payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraph 3 to be ascertained; and in the case of amounts payable to or allowable by the Contractor under paragraph 1.3 (or paragraph 3 for amounts payable to or allowable under the provisions in the sub-contract to the like effect as paragraphs 1.3 and 1.4) – employees other than workpeople – such evidence shall include a certificate signed by or on behalf of the Contractor each week certifying the validity of the evidence reasonably required to ascertain such amounts.

## Actual payment by Contractor

- 8 No amount shall be added or deducted in the computation of the amount stated as due in periodic payments by virtue of this paragraph 8 unless on or before the date as at which the value of work, materials and goods is ascertained for the purposes of any periodic payment the Contractor shall have actually paid or received the sum which is payable by or to him in consequence of the event in respect of which the payment or allowance arises.

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## No alterations to Contractor's profit

- 9 No addition to or deduction from the Contract Sum made by virtue of paragraph 6 shall alter in any way the amount of profit of the Contractor included in that Sum.

## Work etc. to which paragraphs 1 to 3 not applicable

- 10 Paragraphs 1 to 3 shall not apply in respect of:

- .1 work for which the Contractor is allowed daywork rates under clause 3.6;
- .2 changes in the rate of VAT charged on the supply of goods or services by the Contractor to the Employer under this Contract.

Comment [CM14]: Deleted: 10 Position where Contractor in default over completion

Deleted: 1

## Definitions

- 11 In this Fluctuations Option:

- .1 the Base Date means the date stated as such in the Contract Particulars;
- .2 "materials" and "goods" include timber used in formwork but do not include other consumable stores, plant and machinery;
- .3 "workpeople" means persons whose rates of wages and other emoluments (including holiday credits) are governed by the rules or decisions or agreements of the Construction Industry Joint Council or some other wage-fixing body for trades associated with the building industry;
- .4 "wage-fixing body" means a body which lays down recognised terms and conditions of workers;

Deleted: 2

- .5 "recognised terms and conditions" means terms and conditions of workers in comparable employment in the trade or industry, or section of trade or industry, in which the employer in question is engaged which have been settled by an agreement or award to which the parties are employers' associations and independent trade unions which represent (generally, or in the district in question, as the case may be) a substantial proportion of the employers and of the workers in the trade, industry or section being workers of the description to which the agreement or award relates.

**Percentage addition to fluctuation payments or allowances**

12. There shall be added to the amount paid to or allowed by the Contractor under;

Deleted: 3

.1 paragraph 1.2,

.2 paragraph 1.3,

.3 paragraph 1.6,

.4 paragraph 2.2

the percentage stated in the Contract Particulars.

Superseded

**Schedule 3 Novation by Employer** <sup>23</sup>

(clause 3.1)

**This Agreement** is made on \_\_\_\_\_ 20\_\_\_\_

**Between:**

**(1)** \_\_\_\_\_  
(Company no: \_\_\_\_\_) of / whose registered office is at \_\_\_\_\_  
\_\_\_\_\_  
(the "**Employer**").

**(2)** \_\_\_\_\_  
(Company no: \_\_\_\_\_) of / whose registered office is at \_\_\_\_\_  
\_\_\_\_\_  
(the "**Contractor**"); and

**(3)** \_\_\_\_\_  
(Company no: \_\_\_\_\_) of / whose registered office is at \_\_\_\_\_  
\_\_\_\_\_  
(the "**Substitute Employer**").

**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 \_\_\_\_\_  
\_\_\_\_\_ 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).

<sup>23</sup> Available as a JCLI Standard Form of Agreement from [www.landscapeinstitute.org](http://www.landscapeinstitute.org). See Guidance Notes (item 18)

This Agreement witnesses 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**

7.1 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.

7.2 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 Contracts (Rights of Third Parties) Act 1999**

Nothing in this Agreement is intended to confer on any third party any right to enforce any term of this Agreement which that third party would not have had but for the Contracts (Rights of Third Parties) Act 1999.

Field Code Changed

**9 Governing law and jurisdiction**

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

In witness this Agreement has been executed and delivered on the date appearing at the head of this Agreement.

Signed by or on behalf of the **Employer** \_\_\_\_\_

In the presence of: \_\_\_\_\_

\_\_\_\_\_  
*Witness signature*

\_\_\_\_\_  
*Witness name*

\_\_\_\_\_  
*Witness address*

Signed by or on behalf of the **Contractor** \_\_\_\_\_

In the presence of: \_\_\_\_\_

\_\_\_\_\_  
*Witness signature*

\_\_\_\_\_  
*Witness name*

\_\_\_\_\_  
*Witness address*

Signed by or on behalf of the **Substitute Employer** \_\_\_\_\_

In the presence of: \_\_\_\_\_

\_\_\_\_\_  
*Witness signature*

\_\_\_\_\_  
*Witness name*

\_\_\_\_\_  
*Witness address*

**Schedule 4 Novation by Contractor** <sup>24</sup>

(clause 3.1)

This Agreement is made on \_\_\_\_\_ 20\_\_\_\_

**Between:**

(1) \_\_\_\_\_  
(Company no: \_\_\_\_\_) of / whose registered office is at \_\_\_\_\_  
\_\_\_\_\_  
(the "**Employer**").

(2) \_\_\_\_\_  
(Company no: \_\_\_\_\_) of / whose registered office is at \_\_\_\_\_  
\_\_\_\_\_  
(the "**Contractor**"); and

(3) \_\_\_\_\_  
(Company no : \_\_\_\_\_) of / whose registered office is at \_\_\_\_\_  
\_\_\_\_\_  
(the "**Substitute Contractor**").

**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

\_\_\_\_\_ 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).

<sup>24</sup> Available as a JCLI Standard Form of Agreement from [www.landscapeinstitute.org](http://www.landscapeinstitute.org). See Guidance Notes (item 18)

This Agreement witnesses 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 Contracts (Rights of Third Parties) Act 1999**

Nothing in this Agreement is intended to confer on any third party any right to enforce any term of this Agreement which that third party would not have had but for the Contracts (Rights of Third Parties) Act 1999.

**9 Governing law and jurisdiction**

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

In witness this Agreement has been executed and delivered on the date appearing at the head of this Agreement.

Signed by or on behalf of the **Employer** \_\_\_\_\_

In the presence of: \_\_\_\_\_

*Witness signature*

\_\_\_\_\_

*Witness name*

\_\_\_\_\_

*Witness address*

Signed by or on behalf of the **Contractor** \_\_\_\_\_

In the presence of: \_\_\_\_\_

*Witness signature*

\_\_\_\_\_

*Witness name*

\_\_\_\_\_

*Witness address*

Signed by or on behalf of the **Substitute Contractor** \_\_\_\_\_

In the presence of: \_\_\_\_\_

*Witness signature*

\_\_\_\_\_

*Witness name*

\_\_\_\_\_

*Witness address*

# Guidance Notes

## Introduction

The JCLI Landscape [Maintenance Works Contract \(JCLI LMWC\) 2008 Edition](#) is based on the [JCLI Landscape Works Contract \(JCLI LWC\) 2008 Edition, which is based on the JCT Minor Works Building Contract 2005 Edition Revision 1 May 2007 \(incorporating Amendment 1 April 2007\)](#). The differences [between the JCLI LMWC and JCLI LWC](#) are highlighted in the JCLI 'track-changes' document titled "Differences between JCLI LMWC 2008 and [JCLI LWC 2008](#)" available free at [www.landscapeinstitute.org](http://www.landscapeinstitute.org)

Additional guidance on the JCLI Landscape [Maintenance Works Contract 2008](#) is given in JCLI Practice [Note No 9](#), which is issued with the Contract and is available free at [www.landscapeinstitute.org](http://www.landscapeinstitute.org). The following documents are also available as free downloads from [www.landscapeinstitute.org](http://www.landscapeinstitute.org): Model Forms for use with the Contract; Differences between JCLI LMWC 2008 and JCLI Agreement for Landscape [Maintenance Works Feb 2002](#); [JCLI Standard Form of Agreement for Novation by Employer](#); [JCLI Standard Form of Agreement for Novation by Contractor](#).

## Use of Landscape [Maintenance Works Contract](#)

- 1 The Contract should only be used between a landscape contractor and an employer who has engaged a Landscape Architect or some other professionally qualified person to advise on and to administer its terms.
- 2 The criteria for determining the suitability of the Contract are set out on the inside of the front cover [and further guidance is provided in JCLI Practice Note No 9 item 1](#).
- 3 [If Article 2A is used](#), the Contract is predicated upon the lump sum obtained being based on drawings and/or a specification and/or work schedules [and/or List of Items of Maintenance Work and/or Schedule of Rates](#). [If Article 2B is used the actual work done is paid for on an operations basis in accordance with the rates in the Work Schedules or Schedule of Rates](#). The documents [the Contractor prices](#) should therefore be in a form sufficient to enable the Contractor accurately to identify the Works to be done [and to price it as a lump sum \(or sums\) or rates as appropriate](#).
- 4 [Landscape maintenance contracts are not subject to the Housing Grants, Construction and Regeneration Act 1996 provided that they do not include any landscape or other construction work. However, this Contract complies with the Act because the adjudication and payment provisions required by the Act are considered good practice. Therefore an Employer entering into a JCLI Landscape Maintenance Works Contract will be accepting these provisions as a means of resolving disputes and governing payment.](#)
- 5 [For some projects where it is intended to use the Contract, the Employer may wish to seek to control the selection of sub-contractors for specialist work. This may be done by naming a person or company in the tender documents or in instructions on the expenditure of a Provisional Sum but there are no provisions in the Contract which deal with the consequences of such naming. Such control of selection could be better achieved by the Employer entering into a direct contract with the specialist.](#)
- 6 [The Contract has no provisions for implementing landscape construction work as part of the maintenance works. For example there are no provisions for retention or rectification of defects. If significant landscape construction work is required consider implementing it using a separate contract, eg. the JCLI Landscape Works Contract.](#)

**Deleted:** JCT MW

**Deleted:** Note No 8

**Deleted:** Differences between JCLI LWCD 2008 and JCLI LWC 2008;

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 . 3 . For Works which do not fulfil these criteria, reference should be made to JCLI Practice Note No 8 for guidance as to the appropriate contract to be used.¶

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**Deleted:** . 5 . The Contract is not suitable for use where the Works are of a complex nature or where the period required for the execution of the Works is such that full labour and materials fluctuation provisions are required.¶  
 ¶

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**Deleted:** The Contract complies with the requirements of the

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**Deleted:** ; however, not all landscape/building contracts are subject to this Act. For example, a contract with a residential occupier within the meaning of section 106 of the Act is excluded and therefore it does not need to contain adjudication provisions, but a residential

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**Deleted:** Alternatively, the JCT Intermediate Building Contract which has the provisions for Named sub-contracts could be used.

## Outline of the Contract

### Landscape Architect/Contract Administrator

- 7.** This is the person whom the Employer has engaged to advise on and administer the Contract. If the Employer engages a professional who is not a Chartered Landscape Architect, that person is taken to be referred to in the Contract as the 'Contract Administrator'. Whether the professional is a 'Landscape Architect' or a 'Contract Administrator', his/her duties under the Contract are the same.

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### Role of the Landscape Architect/Contract Administrator

- 8.** The Landscape Architect/Contract Administrator is paid by the Employer and advises the Employer on all matters in connection with the maintenance work and administers the Contract on behalf of the Employer; however in the following matters he acts independently as between the Employer and the Contractor:

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- in issuing all payment certificates including applying bonus or liquidated damages;
- in valuing any variations or any work instructed in respect of Provisional Sums (see "Terms used") included in the Contract Documents;

### Instructions

- 9.** Under the Contract only the Landscape Architect/Contract Administrator can issue instructions to the Contractor; although the Employer is paying for the work he is not entitled to give any instructions direct to the Contractor in connection with it; if the Employer wishes to make any change to the work or the manner in which it is being carried out he must ask the Landscape Architect/Contract Administrator to give the necessary instructions to the Contractor.

Deleted: <#>in making any extension to the time stated in the Contract Particulars for the completion of the building work;¶  
¶  
<#>in certifying the date of practical completion (see "Terms used") and the date when in his opinion all defects which appear during the Rectification Period (see "Terms used") have been made good.¶  
¶

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### Price

- 10.** This is the lump sum (or sums) stated in the Contract plus any VAT properly chargeable on the maintenance work. This lump sum (or sums) may be increased or decreased depending on any changes to the work or the order or period in which it is carried out, the value of work in respect of Provisional Sums included in the Contract Documents, as may be instructed by the Landscape Architect/Contract Administrator, and, where applicable, in respect of any bonus, liquidated damages, inflation increase or any increase and decrease in contributions, levies and taxes.

### Payment

- 11.** 1. Payment is made under periodic certificates issued by the Landscape Architect/Contract Administrator at the regular intervals stated in the Contract Particulars against clause 4.3, calculated from the date of commencement until the End Date (or for the Duration). An annual account is prepared at the end of each year and at the end of the Contract (which may not be for a full year) and a certificate is issued for the payment of any balance. See JCLI Practice Note No 9 for further guidance. The final date for payment of certificates together with any VAT chargeable to the Employer is 14 days from the date of the issue of the certificate.
2. If the Employer fails to pay an amount due to the Contractor by the final date for its payment, interest at a rate of 5% per annum over the official dealing rate of the Bank of England is payable by the Employer for the period until such payment is made.

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Deleted: practical completion. A further certificate is issued within 14 days of practical completion. Further certificates may be issued if necessary to pay for work outstanding at practical completion but subsequently completed (see paragraph 23 below). The final balance is paid following the issue of the final certificate.

### Extension of Contract

- 12.** If the Employer and Contractor agree the Contract can be extended by written agreement between them.

Comment [CM15]: 12.2 deleted

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### Suspension

- 13.** If the Employer does not pay the amount due to the Contractor by the final date for its payment, the Contractor can, after giving notice, suspend performance of his obligations under the Contract until payment of that amount is made.

Comment [CM16]: 13 Timescale for the Work deleted

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## Termination

- 14** Either Party may end the Contractor's employment if the other Party does not comply with certain stated obligations, ~~if one of the Parties becomes insolvent, if the Contractor fails to perform as measured by the number of Failure Events in a stated period, or if a 'linked' landscape construction contract is terminated. A Failure Event is either the issue of a notice under clause 3.5 (notice to comply with an instruction) or an individual deduction under clause 4.2 (liquidated damages)~~

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## Dealing with disputes

- 15** Disputes are dealt with either by arbitration, if selected in the Contract Particulars, or through the Courts. The Parties may also agree to mediate a dispute. Either Party may also refer any dispute for a "fast track" decision by an adjudicator; such decision is binding unless and until the dispute is decided by an arbitrator or the court as if no adjudication had taken place. ~~The Contract Particulars enable the Parties to nominate an individual adjudicator in advance, should they wish. However, an individual should not be named in the Contract without his prior agreement. It also has to be recognised that those of sufficient standing to merit nomination are generally busy people and that when a dispute arises they may not be available.~~

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**Deleted:** Residential occupiers wishing to use the Contract should also refer to paragraph 6 above.

The JCT 2005 edition of the Construction Industry Model Arbitration Rules (CIMAR) includes the JCT Supplementary and Advisory Procedures and these will govern any arbitration that is commenced. It is recommended that anyone considering instituting arbitration proceedings should obtain a copy of the rules and, as with litigation, should take competent professional advice before taking steps to institute those proceedings.

In making the choice between arbitration and litigation one should consider, in addition to the existence of adjudication, a range of other factors. Arbitration provides the ability to choose an arbitrator from the relevant profession, greater freedom of choice procedurally and confidentiality, whereas in litigation there is the wider power of the court.

## Rights and remedies generally

- 16** Statutory and common law rights are not restricted by the terms of the Contract. The limitation period for a contract that is simply signed by the Parties is 6 years from the date of the breach.

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**Deleted:** or, where it is executed as a deed, 12 years. The limitation period should not be confused with the Rectification Period, which is provided to facilitate the remedying of the Contractor's defective work by allowing him to return to site to make good.

## Terms used

17. The Landscape Architect/Contract Administrator should, as part of his duties to the Employer, be prepared to explain the general meanings of the various terms used in the Contract. For example:

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### Novation

18. The transfer of rights and obligations under the Contract by one Party to a third person. For example, the Employer may transfer (novate) to 'X' the right to have the Contractor carry out the works for him and the obligations to make payment to the Contractor in return for the Contractor carrying out those works. The Contractor has confirmed agreement to novation by Employer on two occasions and may at its discretion agree to further novations. If novated the Contractor will then be required to carry out the works for 'X' instead of for the Employer. A Novation Agreement signed by the 3 parties will be required formalising the transfer and the Agreement for Novation by Employer is included as Schedule 3 and the Agreement for Novation by Contractor as Schedule 4. These Agreements are also available free as separate Standard Form of Agreement documents from [www.landscapeinstitute.org](http://www.landscapeinstitute.org). These Standard Forms should be used when novation is required and they include notes on how they should be completed. See also JCLI Practice Note No 9 for further guidance.

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## CDM Regulations

19. Regulations made under Act of Parliament to improve health and safety standards on construction sites.

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Whether the CDM Regulations apply to a particular project depends on whether the project includes any "construction work" as defined in the Regulations. The HSE Approved Code of Practice for the Regulations states that "tree planting and general horticultural work" is not "construction work". However, the maintenance of elements defined as "construction work" is "construction work". See JCLI Practice Note No 9 for further guidance.

Deleted: Note No 8

For a project which involves any "construction work", the extent to which the CDM Regulations apply depends on whether or not the project that comprises or includes the Works is notifiable under the CDM Regulations. Part 2 of the CDM Regulations 2007 imposes duties (e.g. as to competence, co-operation, co-ordination and preventive steps) on clients, designers, contractors and sub-contractors at each level, whether or not the project is notifiable, as does Part 4 in relation to contractors, sub-contractors and others controlling work during the construction period. The additional duties contained in Part 3 (including those relating to the CDM Co-ordinator and Principal Contractor) apply only where the project is notifiable. The majority of landscape maintenance works will not be notifiable, see JCLI Practice Note No 9.

Domestic clients (i.e. clients not acting in the course or furtherance of business) are not subject to duties under the CDM Regulations in relation to purely domestic projects, which in turn are treated as non-notifiable. However, the duties in Parts 2 and 4 of the CDM Regulations apply to the other duty holders involved on domestic projects which include any "construction work". See JCLI Practice Note No 9 for further guidance.

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Comment [CM17]: Deleted: 22 Date for Completion; 23 Date of Practical Completion; 24 Rectification Period; 25 Health and safety file; 26-28 Insurance in Joint Names;

## CDM Co-ordinator

20. The person named as the CDM Co-ordinator in the Articles of Agreement or subsequently appointed as such as required by the CDM Regulations. A CDM Co-ordinator is required if the Regulations apply and then only where the project is notifiable under the CDM Regulations.

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Deleted: The rate per day/week/month stated in the Contract Particulars by the Employer, to compensate him for the Contractor's failure to finish the work on time.

## Liquidated damages

21. A Schedule of Liquidated Damages can be included as a Contract Document if required. The Schedule should list rates per item for work not carried out properly, not carried out at all or not carried out at the appropriate time, for compensation to the Employer. The rates should be a genuine pre-estimate by the Employer of the financial loss that he is likely to suffer. It is for the Landscape Architect/Contract Administrator to decide whether to deduct any liquidated damages that the Employer might be entitled to. Liquidated damages are deducted on certificates issued by the Landscape Architect/Contract Administrator. See JCLI Practice Note No 9 for further guidance.

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Deleted: from any amount certified as due to the Contractor, such deduction is not taken into account

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### Provisional Sum

22 A sum included for work which the Employer may or may not decide to have carried out, or which cannot be accurately specified in the original contract documents. For instance, the pricing documents may say "Allow £X for additional work for special events". Subsequently, the Employer may decide to have some or no additional work done for special events. If such additional work is wanted by the Employer the specification required is instructed by the Landscape Architect/Contract Administrator and the price to be paid is either agreed between the Landscape Architect/Contract Administrator and the Contractor or valued by the Landscape Architect/Contract Administrator.

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Deleted: complete re-pointing of garden walls

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### Variation

23 A change to the work ordered by the Landscape Architect/Contract Administrator on behalf of the Employer. The Variation may be an addition to or an omission from the originally specified work or the order or period in which it is carried out.

### Inflation

24 The Contract allows for an annual increase in the lump sum(s) and/or rates as appropriate using the Retail Price Index (or other appropriate published index to be stated in the Contract Particulars).

### Bonus

25 If the Contract Particulars include a Bonus then it is applied to each annual account but is reduced by Failure Events. The percentage bonus and its graduated reduction relative to the number of Failure Events are to be stated in the Contract Particulars. A Failure Event is either the issue of a notice under clause 3.5 (notice to comply with an instruction) or an individual deduction under clause 4.2 (liquidated damages).

Comment [CM18]: Deleted: 32 Partial Possession

Care has been taken in preparing these Guidance Notes but they should not be treated as a definitive legal interpretation or commentary. Users are reminded that the effect in law of the provisions of the Landscape Maintenance Works Contract 2008 Edition is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.