



JCLI Landscape Works Contract with Contractor's Design 2008 (JCLI LWCD 2008)

Differences between JCLI LWCD 2008 and JCLI LWC 2008

Notes:

- 1 This document shows the differences between JCLI LWCD 2008 and JCLI LWC 2008 using 'track changes'. Hence if the 'track changes' were accepted the document would be JCLI LWCD 2008, but if the 'track changes' were not accepted it would be JCLI LWC 2008.
- 2 The setting out and pagination varies from the printed versions of both documents.
- 3 'Track changes' has not highlighted footnote number changes. (However, 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 Works Contract with Contractor's Design (JCLI LWCD)

Appropriate:

- where the work involved is simple in character;
- where the work is designed and the requirements for the contractor's design of discrete part(s) are detailed by or on behalf of the Employer, and where the Contractor is required to design those part(s) of the work (Contractor's Designed Portion);
- where the Employer is to provide drawings and/or specification and/or work schedules to define adequately the quantity and quality of the work; and
- where a Landscape Architect/Contract Administrator is to administer the conditions.

Can be used:

- by both private and local authority employers.

Not suitable:

- as a design and build contract;
- where provisions are required to govern work carried out by named specialists;
- where detailed control procedures are needed.

Deleted: ;

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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Articles of Agreement

This Agreement is made the _____ 20 _____

Between The Employer _____

_____ (Company No. _____)¹

of/whose registered office is at _____

And The Contractor _____

_____ (Company No. _____)¹

of/whose registered office is at _____

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

Deleted: LWC 2007

Recitals

Whereas

First the Employer wishes to have the following work carried out ²:

at _____

_____ ('the Works')

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

Second the Works include the design and construction of ³

1) _____

2) _____

3) _____

('the Contractor's Designed Portion');

Third 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') ^{4 5}

a Specification ('the Contract Specification') ⁴

Work Schedules ⁴

other documents showing or describing or otherwise stating his requirements for the design and construction of the Contractor's Designed Portion ('the Employer's Requirements')

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

Fourth the Contractor has supplied the Employer with a copy of the priced Contract Specification or Work Schedules or provided a Schedule of Rates ⁴;

Fifth for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;

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

² State nature and location of intended works.

³ State nature of work in the Contractor's Designed Portion and continue on a separate sheet if necessary, which sheet should be signed or initialled by or on behalf of each Party and identified here, either as a specified Annex to this Contract or by its reference number, date or other identifier.

⁴ Delete as appropriate.

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

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

Deleted: ³

Deleted: ³

Deleted: Third

Deleted: Third

Deleted: ³

Deleted: Fourth

Deleted: Fifth

Deleted: LWC 2007

Articles

Now it is hereby agreed as follows

Article 1: Contractor's obligations

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

Article 2: Contract Sum

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

_____ (£ _____) ('the Contract Sum')

or such other sum as shall become payable under this Contract.

Article 3: Landscape Architect/Contract Administrator

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

_____ 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.

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) ⁸ _____

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.

⁷ 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.

⁸ 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 ([Sixth Recital](#)). See the Guidance Notes and JCLI Practice Note 8.

Deleted: Fifth Recital

Deleted: LWC 2007¶

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) ⁸

of _____

Deleted: ⁷

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. ⁹

Article 7: Arbitration

Where Article 7 applies ¹⁰, then, subject to Article 6 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract, 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) ¹¹. The exceptions to this Article 7 are:

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

Article 8: Legal proceedings ¹⁰

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.

Deleted: ⁹

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

¹⁰ If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that the arbitration provisions of Article 7 and Schedule 1 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).

¹¹ See the Guidance Notes.

Deleted: LWC 2007

Contract Particulars

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

Clause etc.	Subject		
Fifth Recital and Schedule 2 (paragraphs 1.1, 1.2, 1.5 1.6, 2.1 and 2.2)	Base Date		Deleted: Fourth Recital
Fifth Recital and Clause 4.2	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'contractor'/is not a 'contractor' for the purposes of the CIS	Deleted: Fourth Recital
Sixth Recital	CDM Regulations ¹²	* The CDM Regulations do not apply and Articles 4 and 5, Clauses 2.1.4 , 3.9, and 3.10 are not applicable (unless circumstances change) or * The CDM Regulations apply, the project is not notifiable, Clauses 2.1.4 and 3.9 apply 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 2.1.4 , 3.9 and 3.10 apply	Deleted: 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> ¹³	Article 7 and Schedule 1 (<i>Arbitration</i>) * apply/do not apply	Deleted: applies
1.1	CDM Planning Period ¹⁴ <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 _____	

¹² See the Guidance Notes and JCLI Practice Note No 8. 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.

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

¹⁴ 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

Deleted: ⁹

Deleted: LWC 2007¶

2.3	Date for Commencement of the Works	_____	Deleted: 2.2
2.3	Date for Completion	_____	Deleted: 2.2
2.9	Liquidated damages	at the rate of £ _____ per _____ ¹⁵	Deleted: 2.8
2.11A or 2.11B	Defects and plant establishment by Contractor	* Clause 2.11A applies (2.11B deleted)	Deleted: 2.10
	or	or	Deleted: 2.10
	Defects and plant establishment by Employer	* Clause 2.11B applies (2.11A deleted)	Deleted: 2.10
2.11A or 2.11B	Rectification Period	_____ months ¹⁶	Deleted: 2.10
	<i>(The period is 12 months unless a different period is stated.)</i>	from the date of practical completion	Deleted: 2.10
2.14	Theft or malicious damage (prior to practical completion) <i>(This clause only applies if a Provisional Sum is stated)</i>	Provisional Sum: £ _____	Deleted: 2.10 Deleted: 2.13
4.3	Percentage of the total value of work etc. <i>(The percentage is 95 per cent unless a different rate is stated.)</i>	_____ per cent ¹⁶	Deleted: ¹⁵
4.5	Percentage of the total value of work etc, <i>(The percentage is 97½ per cent unless a different rate is stated.)</i>	_____ per cent ¹⁶	Deleted: ¹⁵
4.8.1	Supply of documentation for computation of amount to be finally certified <i>(The period is the same as in Clause 2.10A or 2.10B unless a shorter period is stated.)</i>	_____ months ¹⁶	Deleted: ¹⁵
4.11	Contribution, levy and tax changes	* Clause 4.11 deleted/applies ¹⁷	
4.11 and Schedule 2 (paragraph 13)	Percentage addition for Fluctuations Option	_____ per cent	
5.3.2	Contractor's insurance – injury to persons or property Insurance cover <i>(for any one occurrence or series of occurrences arising out of one event)</i>	£ _____	

_____ 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.

¹⁵ Insert 'day', 'week' or other period.

¹⁶ Only make an insertion here if the default position set out in this item is not to apply.

¹⁷ Delete if the contract period is of such limited duration as to make the provision inappropriate.

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5.4A, 5.4B and 5.4C	Insurance of the Works etc. - alternative provisions ¹⁸	<ul style="list-style-type: none"> * Clause 5.4A (<i>Works insurance by Contractor in Joint Names</i>) applies/ * Clause 5.4B (<i>Works and existing structures insurance by Employer in Joint Names</i>) applies/ * Clause 5.4C (<i>Existing structures insurance by Employer in own name</i>) applies
5.4A.1 and 5.4B1.2	Percentage to cover professional fees (If no other percentage is stated, it shall be 15 per cent.)	_____ per cent
7.2	Adjudication ¹⁹ Nominator of Adjudicator – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established) ²⁰	The Adjudicator is _____ President or a Vice-President of The Landscape Institute
Schedule 1 (paragraph 2.1)	Arbitration ²¹ Appointor of Arbitrator (and of any replacement) ²²	President or a Vice-President of The Landscape Institute

¹⁸ Delete as appropriate.
Depending on the nature of the project and insurance available, the Parties may use:

- (i) clause 5.4A on its own (where the Works are not an extension to or an alteration of an existing structure);
- (ii) clause 5.4B on its own (where the Works are an extension to or an alteration of an existing structure and the Employer can obtain the insurance in Joint Names in compliance with clause 5.4B); or
- (iii) clause 5.4C together with clause 5.4A (where the Works are an extension to or an alteration of an existing structure and where the Employer is a residential occupier and cannot obtain the insurance in Joint Names in compliance with clause 5.4B). See the Guidance Notes.

¹⁹ 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.

²⁰ not used.

²¹ This only applies where the Contracted Particulars state (against the reference to Article 7) that Article 7 and Schedule 1 (*Arbitration*) apply.

²² not used.

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Attestation

Note on Execution

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to the main factor relevant to that choice, see the Guidance Notes.

Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. 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.

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.

Other forms of Attestation

In cases where the forms of attestation set out are not appropriate e.g. in the case of certain housing associations and partnerships, the appropriate forms may be inserted in the vacant space below or on page 12.

Deleted: LWC 2007

Execution under hand

As witness

the hands of the Parties
or their duly authorised representatives

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

Deleted: LWC 2007

Notes on Execution as a Deed

- 1 In the case of execution as a deed, the full name of the Employer or Contractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant section.

Companies etc.

- 2 For companies and other bodies corporate there are set out the alternative methods of execution as a deed:

- (a) through signature by a Director and the *Company* Secretary or by two Directors: or
- (b) by affixing the company's common seal in the presence of a Director and the *Company* Secretary or of two Directors or other duly authorised officers.

Alternative (a) is available to companies incorporated under the Companies Acts whether or not they have a common seal but is not available to local authorities or to certain other bodies corporate (e.g. those incorporated by Act of Parliament or by charter) which fall outside the provisions of the Companies Act 1985 (see section 718 of that Act).

For the purpose of alternative (a) each of the officers by whom the company is acting in this case **MUST** be a Director and/or the *Company* Secretary. (Execution solely by one person who is both a Director and the *Company* Secretary is not sufficient.)

The execution of deeds and other documents in accordance with English law by foreign companies is governed by the Foreign Companies (Execution of Documents) Regulations 1994 (as amended).

- 3 The introductory words for whichever of alternatives (a) or (b) that is not used should be deleted (**but not** the lines for the two signatures, which are for use with each of the alternatives).
- 4 Where alternative (a) is used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the *Company* Secretary, who are to sign.
- 5 Signature should be here for each alternative. If alternative (b) (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the *Company* Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to *Company* Secretary/Director. (In the case of other bodies corporate, the reference to "*Company*" should be deleted).

Individuals

- 6 A separate form is given in each case for execution by an individual. In the case of an individual there is no longer any requirement for any form of seal to be affixed to the document but he should sign the form 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.

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Executed as a Deed by the Employer

namely ¹ _____
(where the Employer is a company or other body corporate) ²

(a) acting by a Director and the _____ - (or) ³ -
Company Secretary/two Directors ⁴ namely

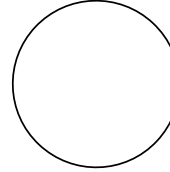
(b) by affixing hereto its common seal
in the presence of

_____ and

(Insert names of signatories)

Signature Director ⁵

Signature Company Secretary/Director ⁵



[Common seal of
company]

**(where the Employer is an
individual)** ⁶

Employer's signature

In the presence of

Witness' signature _____

Witness' name _____

Witness' address _____

Executed as a Deed by the Contractor

namely ¹ _____
(where the Contractor is a company or other body corporate) ²

(a) acting by a Director and the _____ - (or) ³ -
Company Secretary/two Directors ⁴ namely

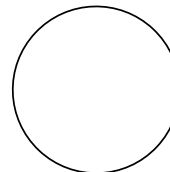
(b) by affixing hereto its common seal
in the presence of

_____ and

(Insert names of signatories)

Signature Director ⁵

Signature Company Secretary/Director ⁵



[Common seal of
company]

**(where the Contractor is an
individual)** ⁶

Contractor's signature

In the presence of

Witness' signature _____

Witness' name _____

Witness' address _____

Note: The reference numbers refer to the paragraph numbers of Notes on Execution as a Deed

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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.
All Risks Insurance ²³ :	insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify: <ul style="list-style-type: none">(a) property which is defective due to:<ul style="list-style-type: none">(i) wear and tear,(ii) obsolescence, or(iii) deterioration, rust or mildew;(b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective ²⁴;(c) loss or damage caused by or arising from:<ul style="list-style-type: none">(i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government <i>de jure</i> or <i>de facto</i> or public, municipal or local authority,(ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or(iii) an Excepted Risk.
Article:	an article in the Agreement .
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 Article 4 or any successor appointed by the Employer.

²³ The definition of All Risks Insurance defines the risks for which insurance is required. Policies issued by insurers are not standardised and the way in which insurance for those risks is expressed varies.

²⁴ In any policy for All Risks Insurance taken out under clause 5.4A or 5.4B.1.2, cover should not be reduced by the terms of any exclusion written in the policy beyond the terms of paragraph (b) in this definition of All Risks Insurance; thus an exclusion in terms 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of those insurance clauses or of that definition. Wider All Risks cover than that specified may be available to Contractors, though it is not standard.

Deleted: LWC 2007¶

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 Contract Particulars (against the reference to clause 1.1).
CDM Regulations:	the Construction (Design and Management) Regulations 2007.
<u>CDP Works:</u>	<u>that part of the Works comprised in the Contractor's Designed Portion.</u>
Conditions:	the clauses set out in sections 1 to 7, together with and including the Schedules hereto.
Construction Industry Scheme (or 'CIS'):	see the <u>Fifth Recital</u> .
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 Agreement and there described as such, including the entries made by the Parties.
<u>Contractor's Designed Portion:</u>	<u>see the Second Recital.</u>
<u>Employer's Requirements:</u>	<u>see the Third Recital.</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.
Fluctuations Option:	the provisions set out in Schedule 2 .
Insolvent:	see clause 6.1 .
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.
Joint Names Policy:	a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or recognised as an insured thereunder.
Parties:	the Employer and the Contractor together.
Party:	either the Employer or the Contractor.
Principal Contractor	if the project is notifiable under the CDM Regulations, the Contractor or other person named in Article 5 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. ²⁵
Recitals:	the recitals in the Agreement .

Deleted: Fourth Recital

²⁵ Amend as necessary if different Public Holidays are applicable.

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Rectification Period:	the period stated as such period in the Contract Particulars (against the reference to clause 2.11A or 2.11B).
Relevant Part	See clause 2.13 .
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.

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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 or the Employer's Requirements 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;
 - .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,

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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.²⁶

Section 2 Carrying out the Works

Contractor's obligations

2.1 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. In relation to the Contractor's Designed Portion, the Contractor shall:

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.1 using reasonable skill, care and diligence, complete the design for the Contractor's Designed Portion, including, as far as not described or stated in the Employer's Requirements, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works;

.2 not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them but if an inadequacy is found in any design in the Employer's Requirements then, subject to clause 2.6, the Employer's Requirements shall be altered or modified accordingly;

.3 comply with the directions of the Landscape Architect/Contract Administrator for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole, subject to the provisions of clause 3.4.2;

.4 if the CDM Regulations apply, in complying with clause 2.1, comply with regulations 11, 12 and 18 of the CDM Regulations;

.5 without charge provide the Landscape Architect/Contract Administrator, as and when necessary, with two copies of such drawings or details, specifications of materials, goods and workmanship, and (if required) related calculations and information, as are reasonably necessary to explain the Contractor's Designed Portion; and

.6 not commence any work to which the documents referred to in clause 2.1.5 relate, before the expiration of 7 days from the date of delivery.

Materials, goods and workmanship

2.2 .1 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. To the extent that the quality of materials and goods or standards of workmanship are neither described in the Contract Documents nor stated to be a matter for such opinion or satisfaction, they shall in the case of the Contractor's Designed Portion be of a standard appropriate to it and shall in any other case be of a standard appropriate to the Works.

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.2 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.

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²⁶ Where the Parties do not wish the law applicable to this Contract to be the law of England appropriate amendments should be made.

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Commencement and completion

- ~~2.3~~ The Works may be commenced on and shall be completed by the respective dates stated in the Contract Particulars. Deleted: 2.2

Landscape Architect/Contract Administrator's duties

- ~~2.4~~ 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. Deleted: 2.3

Correction of inconsistencies

- ~~2.5~~ .1 Any inconsistency in or between the Contract Drawings, the Contract Specification, the Work Schedules and the Employer's Requirements 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. Deleted: 2.4
Deleted: and

~~2.5~~ .2 Any inconsistency in or between documents prepared by the Contractor for the CDP Works shall be corrected by the Contractor at his own expense after the Landscape Architect/Contract Administrator has expressed his reasonable satisfaction as to the manner in which the Contractor proposes to deal with the inconsistency.

Divergences from Statutory Requirements

- ~~2.6~~ .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. Deleted: 2.5

- .2 Provided the Contractor is not in breach of clause ~~2.6.1~~, 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. Deleted: 2.5

Fees or charges legally demandable

- ~~2.7~~ 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. Deleted: 2.6

Extension of time

- ~~2.8~~ If it becomes apparent that the Works will not be completed by the Date for Completion stated in the Contract Particulars (or any later date fixed in accordance with the provisions of this clause ~~2.8~~) for reasons beyond the control of the Contractor, including compliance with any instruction of the Landscape Architect/Contract Administrator under this Contract not arising from a default of the Contractor, then the Contractor shall thereupon in writing so notify the Landscape Architect/Contract Administrator who shall make, in writing, such extension of time for completion as may be reasonable. Reasons within the control of the Contractor include any default of the Contractor or of others employed or engaged by or under him for or in connection with the Works and of any supplier of goods or materials for the Works. Deleted: 2.7
Deleted: 2.7

Damages for non-completion

- ~~2.9~~ .1 If the Works are not completed by the Date for Completion stated in the Contract Particulars or by any later Date for Completion fixed under clause ~~2.8~~ the Contractor shall pay or allow to the Employer liquidated damages at the rate stated in the Contract Particulars between such Date for Completion and the date of practical completion. Deleted: 2.8
Deleted: 2.7

.2 The Employer may either deduct the liquidated damages from any monies due to the Contractor under this Contract (provided that a notice of deduction pursuant to clause 4.6.2 or 4.8.3 has been given) or recover the liquidated damages from the Contractor as a debt.

.3 If the Employer intends to deduct any such damages from the sum stated as due in the final certificate, he shall additionally inform the Contractor, in writing, of that intention not later than the date of issue of the final certificate.

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Practical completion

~~2.10~~ The Landscape Architect/Contract Administrator shall certify the date when in his opinion the Works have reached practical completion and the Contractor has complied sufficiently with clause 3.9.4.

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Defects and establishment care of plants by Contractor

~~2.11A~~ If any defects, shrinkages or other faults in the Works appear within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with his obligations in respect of the CDP Works, the Landscape Architect/Contract Administrator shall notify the Contractor who shall make good such defects, shrinkages or other faults entirely at his own cost unless the Landscape Architect/Contract Administrator with the consent of the Employer shall otherwise instruct.

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The care of trees, shrubs, grass and other plants after practical completion is excluded from this Contract, but shall be undertaken by the Contractor under a separate contract.

Defects and establishment care of plants by Employer

~~2.11B~~ If any defects, shrinkages or other faults in the Works, other than tree shrub grass or other plant failures appear within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with his obligations in respect of the CDP Works, the Landscape Architect/Contract Administrator shall notify the Contractor who shall make good such defects, shrinkages or other faults entirely at his own cost unless the Landscape Architect/Contract Administrator with the consent of the Employer shall otherwise instruct.

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The care of trees, shrubs, grass and other plants after practical completion shall be undertaken by the Employer who will be responsible for and will bear the cost of the replacement of any trees shrubs grass or other plants which are subsequently defective.

Certificate of making good

~~2.12~~ The Landscape Architect/Contract Administrator shall certify the date when in his opinion the Contractor's obligations under clause ~~2.11A~~ or ~~2.11B~~ have been discharged.

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Partial possession by Employer

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~~2.13~~ If before practical completion of the Works the Employer with the consent of the Contractor (such consent shall not be unreasonably withheld) shall take possession of any part of the Works (hereinafter called 'the Relevant Part') then:

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1. the date of possession of the Relevant Part shall be the date for practical completion of the Relevant Part and clause 4.5 shall apply to the Relevant Part;
2. the Contractor shall have complied sufficiently with clause 3.9.3 for the Relevant Part;
3. any sum due from the Contractor to the Employer under Clause ~~2.9~~ shall be reduced by a percentage equal to the value of the Relevant Part as a percentage of the Contract Sum.

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Before the Contractor shall give his consent to the Employer taking possession of the Relevant Part the Contractor or the Employer shall notify the insurers under clause 5.4A or clause 5.4B and obtain confirmation that such possession will not prejudice the insurance.'

Theft or malicious damage (prior to practical completion)

~~2.14~~ If a Provisional Sum for inclusion in the Contract Sum is stated in the Contract Particulars it shall be expended as instructed by the Landscape Architect/Contract Administrator in respect of all work arising from any theft or malicious damage beyond the control of the Contractor prior to practical completion of the Works.

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Section 3 Control of the Works

Assignment

- 3.1 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 ²⁷;
 - .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 .1 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.
- ~~.2 The Landscape Architect/Contract Administrator shall not issue any instruction affecting the design of the CDP Works without the consent of the Contractor, such consent not to be unreasonably delayed or withheld.~~

Non-compliance with instructions

- 3.5 If ~~the Contractor unreasonably delays or withholds his consent to an instruction referred to in clause 3.4.2 or fails to comply~~ within 7 days after receipt of a written notice from the Landscape Architect/Contract Administrator requiring compliance with any other instruction, the Employer may employ and pay other persons to execute any work whatsoever 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.

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Variations

- 3.6 .1 The Landscape Architect/Contract Administrator may, without invalidating this Contract, issue instructions effecting a change in the Employer's Requirements which necessitates an alteration or modification of the design of the CDP Works or 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.

²⁷ As to the duties imposed by the CDM Regulations 2007, see the Guidance Notes.

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- .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 ²⁷

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- 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 ²⁸;
 - .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.

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.

²⁸ 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.

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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.

Construction Industry Scheme (CIS)

- 4.2 If the Employer is or at any time up to the payment of the final certificate becomes a 'contractor' for the purposes of the CIS²⁹, the obligation of the Employer to make any payment under this Contract is subject to the provisions of the CIS.

Progress payments and retention

- 4.3 The Landscape Architect/Contract Administrator shall, at intervals of 4 weeks calculated from the Date for Commencement of the Works, certify progress payments of the percentage stated in the Contract Particulars of the total value of:

- .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. The certificate shall state to what the progress payment relates and the basis on which the amount of the progress 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.

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 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.

Penultimate certificate

- 4.5 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. The certificate shall state to what the progress 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. 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. The provisions of clause 4.6 shall apply to the certificate issued under this clause 4.5.

²⁹ See the Contract Particulars (~~Fifth Recital~~ and clause 4.2)

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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.

Final certificate

- 4.8 .1 The Contractor shall supply within the period stated in the Contract Particulars from the date of practical completion all documentation reasonably required for the computation of the amount to be finally certified by the Landscape Architect/Contract Administrator and, provided that the Landscape Architect/Contract Administrator has issued the certificate under clause ~~2.12~~, the Landscape Architect/Contract Administrator shall within 28 days of receipt of such documentation issue a final certificate certifying the amount due to the Contractor or due to the Employer, as the case may be. The Final Certificate shall state the basis on which that amount has been calculated.
- .2 Not later than 5 days after the date of issue of the final certificate the Employer shall give a written notice to the Contractor which shall, in respect of any balance stated as due in that certificate, specify the amount of the payment proposed to be made, to what the amount of the payment relates and the basis on which that amount was calculated.
- .3 The final date for payment of such amount payable by the Employer to the Contractor or by the Contractor to the Employer, as the case may be, shall be 14 days from the date of issue of the final certificate. Not later than 5 days before the final date for payment of the balance the Employer may give a written notice to the Contractor which shall specify any amount proposed to be withheld and/or deducted from any balance due to the Contractor, the ground or grounds for such withholding and/or deduction and the amount of the withholding and/or deduction attributable to each ground.
- .4 Where the Employer does not give a written notice pursuant to clause 4.8.2 the Employer shall subject to any notice given under clause 4.8.3 pay the Contractor any balance stated as due to the Contractor in the final certificate.

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Failure to pay final amount

- 4.9 If the Employer or the Contractor fails properly to pay the amount, or any part of it, due under clause 4.8 by the final date for its payment, the Employer or the Contractor, as the case may be, shall pay to the other 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 Contractor or the Employer of his right to proper payment of the amount due to him.

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Fixed price

- 4.10 Except as provided in clause 4.11, if applicable, no account shall be taken in any payment to the Contractor under this Contract of any change in the cost to the Contractor of the labour, materials, plant and other resources employed in carrying out the Works.

Contribution, levy and tax changes

- 4.11 Contribution, levy and tax changes shall be dealt with by the application of Schedule 2 (*Fluctuations Option*) unless shown as deleted in the Contract Particulars. The percentage addition under paragraph 13 of that Schedule is that stated in the Contract Particulars.

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 (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) 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.

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 applies³⁰, 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.

Insurance of the Works by Contractor in Joint Names

- 5.4A .1 If the Contract Particulars state that clause 5.4A applies³¹, the Contractor shall take out and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract

³⁰ 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.

³¹ Where the Contractor has in force an All Risks Policy which insures the Works, this Policy may be used to provide the insurance required by clause 5.4A provided the Policy recognises the Employer as a joint insured with the Contractor in respect of the Works and the Policy is maintained. As to full reinstatement value see the Guidance Notes.

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Particulars to cover professional fees) and shall maintain such Joint Names Policy up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment (whether or not the validity of that termination is contested).

- .2 .1 After any inspection required by the insurers in respect of a claim under the insurance has been completed, the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out and completion of the Works.
- .2 The Contractor shall authorise the insurers to pay all monies from such insurance to the Employer and the Employer may retain from monies paid by the insurers the amount properly incurred by the Employer in respect of professional fees up to an amount which shall not exceed the amount of the percentage additional cover for those fees or (if less) the amount paid by insurers in respect of those fees.
- .3 In respect of restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris, the Contractor shall not be entitled to any payment other than monies received under the insurance referred to in clause 5.4A.1 (less only the amount stated in clause 5.4A.2.2) and such monies shall be paid to the Contractor under certificates of the Landscape Architect/Contract Administrator at the periods stated in clause 4.3.

Insurance of existing structures and the Works by Employer in Joint Names

- 5.4B** .1 If the Contract Particulars state that clause 5.4B applies, the Employer shall take out and maintain:
- .1 a Joint Names Policy in respect of the existing structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils;
 - .2 a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees)
- and shall maintain such Joint Names Policies up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment (whether or not the validity of that termination is contested). The Contractor shall authorise the insurers to pay all monies from such insurance to the Employer.
- .2 If any loss or damage as referred to in clause 5.4B.1.2 occurs to the Works or to any Site Materials then the Landscape Architect/Contract Administrator shall issue instructions under clause 3.4, as are reasonable, for the reinstatement and making good of such loss or damage and such instructions shall be valued under clause 3.6.

Insurance of existing structures by Employer in own name

- 5.4C** If the Contract Particulars state that clause 5.4C applies, the Employer shall, if he has not already done so, take out and maintain in his own name a policy in respect of the existing structures together with the contents thereof owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils up to and including the date of issue of the practical completion certificate or (if earlier) the date of termination of the Contractor's employment (whether or not the validity of that termination is contested).

Evidence of insurance

- 5.5** 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 and, where applicable, clause 5.4A have been taken out and are in force at all material times. 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.

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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, before practical completion of the Works, the Contractor:
 - .1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Contractor's Designed Portion; or
 - .2 fails to proceed regularly and diligently with the Works or the design of the Contractor's Designed Portion; 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.

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.

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- .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; and
 - .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.

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.

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, 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;
 - .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 or any release of Retention to the Contractor shall cease to apply;
 - .3 within a reasonable time after the completion of the Works and the making good of defects (or of instructions otherwise, as referred to in clause ~~2.11A~~ or ~~2.11B~~), 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, where applicable, clause 6.5.2.3, 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.

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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,

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the Contractor may give to the Employer a notice specifying the default or defaults (the 'specified default or defaults').

- .2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of one month or more by reason of:

- .1 Landscape Architect/Contract Administrator's instructions under clause ~~2.5~~ or 3.6, and/or
- .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

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(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, before practical completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for the relevant continuous period of one month or more by reason of one or more of the following events:

- .1 force majeure;
- .2 Landscape Architect/Contract Administrator's instructions under clause ~~2.5~~ 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,

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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.

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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 or any release of Retention to the Contractor shall cease to apply;
 - .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.

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 1.³²

³² 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.

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Schedules

Schedule 1 Arbitration

(clause 7.3)

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.

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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 engagedor 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 12.3, 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;
 - .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'.

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- .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 13 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 10.1.

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 progress payments by virtue of this paragraph 8 unless on or before the date as at which the total value of work, materials and goods is ascertained for the purposes of any progress 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.

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.

Position where Contractor in default over completion

- 10 .1 Subject to the provisions of paragraph 10.2 no amount shall be added or deducted in the computation of the amount stated as due in progress payments or in the final certificate in respect of amounts otherwise payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraphs 3 if the event (as referred to in the provisions listed in paragraph 4.1) in respect of which the payment or allowance would be made occurs after the Date for Completion stated in the Contract Particulars or after any later Date for Completion fixed under clause ~~2.8~~.

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.2 Paragraph 10.1 shall not be applied unless:

- .1 the printed text of clause ~~2.8~~ is unamended and forms part of the Conditions; and Deleted: 2.7
- .2 the Landscape Architect/Contract Administrator has, in respect of every written notification by the Contractor under clause ~~2.8~~, fixed or confirmed in writing such Date for Completion as he considers to be in accordance with that clause. Deleted: 2.7

Work etc. to which paragraphs 1 to 3 not applicable

11 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.

Definitions

12 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;
- .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

13 There shall be added to the amount paid to or allowed by the Contractor under:

- .1 paragraph 1.2,
- .2 paragraph 1.3,
- .3 paragraph 1.6,
- .4 paragraph 2.2

the percentage stated in the Contract Particulars.

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Guidance Notes

Introduction

The JCLI Landscape Works Contract with Contractor's Design 2008 Edition is based on the JCT Minor Works Building Contract with Contractor's Design 2005 Edition Revision 1 May 2007 (incorporating Amendment 1 April 2007). The differences between the JCLI Landscape Works Contract with Contractor's Design 2008 Edition and the JCLI Landscape Works Contract 2008 Edition are highlighted in the JCLI 'track-changes' document titled "Differences between JCLI LWCD 2008 and JCLI LWC 2008" available free at www.landscapeinstitute.org

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Additional guidance on the JCLI Landscape Works Contract with Contractor's Design 2008 is given in JCLI Practice Note No 8 which is issued with the Contract and is available free at www.landscapeinstitute.org. Model Forms for use with the Contract are also available with explanatory notes free at www.landscapeinstitute.org.

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Deleted: ; Differences between JCLI LWCD 2008 and JCLI LWC 2008; Differences between JCLI LWC 2008 and JCLI Agreement for Landscape Works Feb 2002.

Use of Landscape Works Contract with Contractor's Design

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.

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.

4 The Contract makes provision for a Contractor's Designed Portion which may comprise of one or more discrete parts. However, the Contract is not drafted as a design and build contract and should not be used where this form of contractual arrangement is required.

5 The Contract is predicated upon the lump sum obtained being based on drawings and/or a specification and/or work schedules. Those documents should therefore be in a form sufficient to enable the Contractor accurately to identify the Works to be done.

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6 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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7 The Contract complies with the requirements of the Housing Grants, Construction and Regeneration Act 1996 in providing for adjudication and certain payment provisions; 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 occupier in entering into a Landscape Works Contract will be accepting adjudication as a means of resolving disputes.

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

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Outline of the Contract

Landscape Architect/Contract Administrator

~~9~~ 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

~~10~~ The Landscape Architect/Contract Administrator is paid by the Employer and advises the Employer on all matters in connection with the landscape 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;
- in valuing any variations or any work instructed in respect of Provisional Sums (see "Terms used") included in the Contract Documents;
- 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.

Instructions

~~11~~ 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. Although the Landscape Architect/Contract Administrator has wide powers to issue instructions, those instructions affecting the design of the Contractor's Designed Portion can only be issued with the consent of the Contractor. The Contractor must act reasonably and cannot delay or withhold his consent unless it is reasonable to do so.

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Contractor's Designed Portion

~~12~~ The Second Recital provides for the identification of the work that is to comprise the Contractor's Designed Portion. The Third Recital refers to the Employer's Requirements which is the document supplied by the Employer to the Contractor setting out the Employer's Requirements for the design of work by the Contractor. The Contractor is required to complete the design of the Contractor's Designed Portion and to comply with any Landscape Architect/Contract Administrator's directions with regard to its integration into the Works but the Contractor is not responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design therein.

Price

~~13~~ This is the lump sum stated in the Contract plus any VAT properly chargeable on the landscape work. This lump sum 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 increase and decrease in contributions, levies and taxes.

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Payment

~~14~~ .1 Payment is made under certificates issued by the Landscape Architect/Contract Administrator every 4 weeks calculated from the date of commencement until 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 ~~25~~ below). The final balance is paid following the issue of the final certificate. 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.

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- .2 Until practical completion, payment certificates will reflect the fact that the Employer is entitled to withhold 5 per cent or, where a figure other than 95 per cent has been inserted in the Contract Particulars, such other percentage. Between practical completion and the final certificate, the percentage is halved.
- .3 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.

Time-scale for the work

- 15** .1 If the work cannot be finished within the original time stated in the Contract Particulars for reasons beyond the control of the Contractor, the Landscape Architect/Contract Administrator is required to give such extension of time as is reasonable.
- .2 The Employer can recover liquidated damages (see "Terms used") from the Contractor if the work is not finished by the Date for Completion (see "Terms used") having taken into account any extension of time.

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Suspension

- 16** 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.

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Termination

- 17** Either Party may end the Contractor's employment if the other Party does not comply with certain stated obligations or if one of the Parties becomes insolvent.

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Dealing with disputes

- 18** 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. Residential occupiers wishing to use the Contract should also refer to paragraph 7 above. 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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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

- 19** 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 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.

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Terms used

- 20** 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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Assignment

- ~~21~~ The transfer of rights under the Contract by one Party to a third person. For example, the Contractor may transfer (assign) his rights to payment to 'X'; the Employer, if notified, will then be required to pay 'X' instead of the Contractor. Deleted: 19

CDM Regulations

- ~~22~~ Regulations made under Act of Parliament to improve health and safety standards on construction sites. Deleted: 20

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". See JCLI Practice Note No 8 for further guidance.

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.

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 8 for further guidance.

CDM Co-ordinator

- ~~23~~ 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. Deleted: 21

Date for Completion

- ~~24~~ The date by which the Contractor is required to finish the work. This is the date stated in the Contract Particulars or as extended by the Landscape Architect/Contract Administrator. Deleted: 22

Date of practical completion

- ~~25~~ The date certified by the Landscape Architect/Contract Administrator when in his opinion the Contractor actually finishes the work to all practical intents and purposes. If some of the work is not complete, for example due to seasonal planting requirements, the Employer may accept partial possession of the completed work under clause 2.13, or if the amount of incomplete work is small the Landscape Architect/Contract Administrator may certify practical completion on receiving the Contractor's written undertaking to complete the outstanding work within an agreed time, and if clause 2.11A applies to extend the Rectification Period by that agreed time for the work concerned, and if clause 2.11B applies to extend the Rectification Period by that agreed time for work excluding trees, shrubs, grass and other plants. Deleted: 23
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Rectification Period

- ~~26~~ The Rectification Period is 12 months from the date of practical completion unless otherwise agreed. Defects in the work which appear during the Rectification Period are required to be put right by the Contractor before he is entitled to be paid the balance of the monies due to him under the Contract. If clause 2.11A is chosen the Rectification Period applies to all the Works and the Contractor undertakes subsequent maintenance work for at least the duration of the Rectification Period. If clause 2.11B is chosen the Rectification Period applies to the Works excluding trees, shrubs, grass and other plants, and subsequent maintenance work is not carried out by the Contractor. For further guidance see JCLI Practice Note No 8. Deleted: 24
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Health and safety file

~~27~~ A manual which the CDM Co-ordinator has to ensure is delivered to the Employer on completion of the work, giving Information for the future on the management of health and safety in the maintenance, repair, renovation, occupancy or demolition of the work. It is only required where the CDM Regulations apply and the project is notifiable and is not required where the client is a residential occupier undertaking a purely domestic project.

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Insurance in Joint Names

~~28~~ A policy of insurance under which both Parties are covered if certain events occur. It is difficult to obtain Joint Names insurance for existing structures and contents in those cases that involve residential occupiers. Where such Joint Names insurance is unavailable, the alternative of taking out insurance in the Employer's name (clause 5.4C) should be selected. Where such insurance is already provided under an existing policy the Employer's insurer must be notified that works are to be carried out. The insurer may require the Employer to pay an additional premium. In circumstances where clause 5.4C is to apply clause 5.4A should also remain operative so that the Contractor is required to insure the Works in Joint Names.

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~~29~~ Each Party should obtain advice from his own insurance adviser about coverage of the risks stated in the Contract. This should be done before the Contract is signed.

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~~30~~ Any excesses under a policy are normally borne by the Party required to take out the insurance. Care should be taken in determining the full reinstatement value and/or replacement value (including any applicable VAT) for insurance purposes and ensure that the policy includes the removal of debris arising from loss or damage to the Works.

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Liquidated damages

~~31~~ 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. The rate should be a genuine pre-estimate by the Employer of the financial loss that he is likely to suffer. It is for the Employer to decide whether to deduct any liquidated damages that he might be entitled to from any amount certified as due to the Contractor, such deduction is not taken into account by the Landscape Architect/Contract Administrator in the calculation of any certificate. See JCLI Practice Note No 8 for further guidance

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Provisional Sum

~~32~~ 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 complete re-pointing of garden walls". In the event, the Employer may decide to have all, some or none of the boundary walls re-pointed. If re-pointing 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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Variation

~~33~~ 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.

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Partial Possession

~~34~~ Possession of part of the site by the Employer (by area or occasionally by type of work – eg all grass and shrubs but excluding trees due to season) before practical completion of the whole of the site. It is instigated by the Employer (advised by the Landscape Architect/Contract Administrator). A certificate of practical completion is issued for that part of the works and the requirements met in accordance with clause 2.13.

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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 Works Contract [with Contractor's Design](#) 2008 Edition is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.

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