

Guidance on using the JCLI Homeowner Agreement and Contracts 2019

This Practice Note provides guidance for customers, consultants and landscape contractors wishing to use the 2019 editions of the:

- **JCLI Consultancy Agreement for a Home Owner / Occupier Appointing a Consultant to Provide Consultancy Services in Relation to Landscape Work 2019 (JCLI HCA)** (“the Consultancy Agreement”)
- **JCLI Landscape Contract for a Home Owner / Occupier who has Appointed a Consultant to Oversee the Work 2019 (JCLI HLC/C)** (“the Landscape Contract with Consultant”)
- **JCLI Landscape Contract for a Home Owner / Occupier who has not Appointed a Consultant to Oversee the Work 2019 (JCLI HLC)** (“the Landscape Contract without Consultant”)
- **JCLI Homeowner Amendments for use in Scotland 2019 (JCLI HSA)**

for a new garden or garden improvement works.

The guidance is divided into five sections:

- **Section 1: Introduction**, includes guidance on when the documents are appropriate to use.
- **Section 2: Advice to customers**, includes guidance on finding appropriate consultants and contractors.
- **Section 3: Consultancy Agreement**, includes detailed guidance to customers and consultants on the use of the Consultancy Agreement.
- **Section 4: Landscape Contract with Consultant**, includes detailed guidance to customers, consultants and contractors on the use of the Landscape Contract with Consultant.
- **Section 5: Landscape Contract without Consultant**, includes detailed guidance to customers, consultants and contractors on the use of the Landscape Contract without Consultant.

Scotland: All items in this Practice Note which are specific to Scotland have an “S” after the item number and the same number as the previous item, which generally concerns the same issue.

Section 1 Introduction

- 1.1 The 2019 homeowner documentation is for use where a householder or homeowner (the customer) intends to have work done by a landscape contractor to create or improve their garden, but also wants a professional consultant to design the garden and either oversee the contractor's work, or to advise the customer while the contractor builds the garden. There is an agreement to appoint a consultant and two alternative contracts to appoint a contractor:
- JCLI Consultancy Agreement for a Home Owner / Occupier Appointing a Consultant to Provide Consultancy Services in Relation to Landscape Work 2019 (JCLI HCA/C) ("the Consultancy Agreement")
 - JCLI Landscape Contract for a Home Owner / Occupier who has Appointed a Consultant to Oversee the Work 2019 (JCLI HLC/C) ("the Landscape Contract with Consultant")
 - JCLI Landscape Contract for a Home Owner / Occupier who has not Appointed a Consultant to Oversee the Work 2019 (JCLI HLC) ("the Landscape Contract without Consultant")
- 1.1S Amendment documents are available so that the Consultancy Agreement and both Landscape Contracts can be used in Scotland by attaching the Amendment document for the particular agreement or contract. The three 2019 Scottish Amendments with guidance notes are in the document, JCLI Homeowner Amendments for use in Scotland.
- 1.2 These documents are appropriate for customers having work done on their own garden or the garden of a close relative, in a personal capacity (a domestic client). They are not appropriate if the customer is a business, authority, charity, community group or other organisation intending to create or improve a garden. In this case a commercial landscape contract should be used, like the JCLI Landscape Works Contract available from the Landscape Institute (www.landscapeinstitute.org). Commercial standard forms of agreement for appointing consultants are also available from the Landscape Institute or RIBA. However commercial standard form contracts are not appropriate for domestic clients without modification.
- 1.3 The documents are only applicable in England and Wales. The documents can be used in Northern Ireland by changing "England and Wales" to "Northern Ireland" in the "Law of the contract" or "Law of the agreement" condition which is the last condition of Part 2 in each document.
- 1.3S The documents are also appropriate for use in Scotland if the JCLI Scottish Amendment for the particular contract or agreement is attached to it.
- 1.4 If the customer is appointing the consultant and does not wish to commit to more than the initial design stages then the Consultancy Agreement can be used for the initial appointment and extended by agreeing the additional services and associated fees at a later date (see 3.2.5 below).
- 1.5 If the customer wants the consultant to oversee the contractor and deal direct with the contractor then the Consultancy Agreement including stage 6 option 1 and the Landscape Contract with Consultant should be used.
- 1.6 If the customer does not want the consultant to oversee the contractor and deal direct with the contractor, the consultant can advise the customer while the contractor builds the garden, but the customer deals with the contractor. In this case the Consultancy Agreement including stage 6 option 2 and the Landscape Contract without Consultant should be used.

- 1.7 If the customer intends to appoint one organisation to design and build the garden (the design-and-build contractor), the Consultancy Agreement would be appropriate to appoint the design-and-build contractor for the design stages (stages 1-4) and the Landscape Contract without Consultant would be appropriate to appoint the design-and-build contractor to build the garden.
- 1.8 Neither of the landscape contracts is appropriate if the consultant is appointed by the customer for stage 6 (either option), but is paid part of their fee by the contractor. Any payment to the consultant from the contractor for anything to do with the project while the consultant is appointed directly by the customer would create a conflict of interest making the consultant's role to the customer inappropriate for the purposes of either landscape contract. Similarly, any payment to the consultant from any supplier for anything to do with the project would create a conflict of interest.
- 1.9 The landscape contracts are not appropriate for domestic garden projects which are either very large or need complicated contractual requirements. In these situations a standard form of contract appropriate for the scale and contractual requirements should be used, like the JCLI Landscape Works Contract available from the Landscape Institute (www.landscapeinstitute.org) or one of the larger JCT standard form contracts. However standard form contracts for non-domestic clients are generally not appropriate for domestic clients without modification.
- 1.10 The landscape contracts are also not appropriate if the contractor will be required to design any part of the proposed works (for example, to prepare fabrication drawings for metalwork). If the contractor will be required to design elements of the work an appropriate standard form contract should be used, like the JCLI Landscape Works Contract with Contractor's Design available from the Landscape Institute (www.landscapeinstitute.org) or one of the larger JCT standard form contracts which allow for contractor's design of part of the works. See also last sentence of 1.9 above. For example: If the garden lighting design and specification is done by the lighting manufacturer or a lighting designer and incorporated in the tender documents which the contractor prices then a JCLI Homeowner contract could be used; whereas, if the tender documents require the contractor to design the lighting layout in accordance with a performance specification (which would normally include details of the light fittings required) then neither of the JCLI Homeowner contracts would be appropriate.

However, a customer could appoint a design-and-build contractor initially to design the whole garden using the JCLI Homeowner Consultancy Agreement and subsequently to build it using the JCLI Homeowner Landscape Contract without Consultant, see 1.7 above.

- 1.11 The documents are based on the well respected *JCT Consultancy agreement for a home owner / occupier appointing a consultant to provide consultancy services in relation to building work*, the *JCT Building contract for a home owner / occupier who has appointed a consultant to oversee the work*, and the *JCT Building contract for a home owner / occupier who has not appointed a consultant to oversee the work*, which are written to be easy to understand and without technical and legal jargon.
- 1.12 Neither of the landscape contracts nor the consultancy agreement mention the CDM Regulations 2015. The regulations concern health and safety for the construction industry and apply to 'hard' but not 'soft' landscape work. For customer guidance on these regulations see 2.9 below.

The regulations are the law and must therefore be complied with regardless of whether they are mentioned in contracts. Designers, contractors and workers have the same duties under the CDM Regulations 2015 for both domestic and commercial projects, which are very similar to their duties under the previous CDM Regulations. Additionally for projects for domestic clients, if there will be more than one contractor working on site at any one time the designer in control of the pre-construction phase will be the Principal Designer

(PD) and the contractor in control of the construction phase will be the Principal Contractor (PC) whether appointed or not by the domestic client as PD or PC. Note that sub-contractors count as contractors and that the PD and PC are appointments specific to the CDM Regulations. The PC (or contractor if there is only one) will also be responsible for the domestic client's CDM duties (unless the client has specifically appointed the PD in writing to be responsible for the client's CDM duties).

The designer and when appropriate the contractor should advise the client as necessary concerning the regulations so that the client can decide either to not be involved with the regulations and allow the defaults in the regulations to apply, or to be involved with appointing the PD and PC and with the health and safety management of their project.

CDM Guidance (free):

- The Regulations and HSE Legal Guidance on them are in HSE L153 available from www.hse.gov.uk/pubns/books/l153.htm
- Construction industry guidance for each duty holder is available from www.citb.co.uk/health-safety-and-other-topics/health-safety/construction-design-and-management-regulations
- Landscape industry standard guidance on the application of the CDM Regulations 2015 to landscape works and landscape maintenance works (agreed by the Health and Safety Executive) is available in JCLI Practice Notes 8 and 9 respectively (item 3 in both) from www.landscapeinstitute.org/technical/jcli/

Section 2 Advice to customers

- 2.1 See the introduction above for details of when the documents should and should not be used.
- 2.2 **Finding a consultant.** When you are looking for a garden designer to help you with your garden project you may find recommendations from friends and neighbours useful. You can also get a list of their members who are garden design professionals in your area from:

Society of Garden Designers

44-46 Wollaton Road
Beeston
Nottingham, NG9 2NR

Phone: 01159 68318
Website: www.sgd.org.uk

Association of Professional Landscapers

Horticulture House
Chilton
Didcot
Oxfordshire OX11 0RN

Phone: 0333 003 3550
Website: www.landscaper.org.uk

The Landscape Institute

Charles Darwin House 2
107 Gray's Inn Road
London WC1X 8TZ

Phone: 020 7685 2640
Website: www.landscapeinstitute.org

British Association of Landscape Industries

Landscape House
Stoneleigh Park
Warwickshire
CV8 2LG

Phone: 024 7669 0333
Website: www.bali.org.uk

The consultant you choose will want to:

- discuss your garden project with you;
- find out how much you want to spend; and

- arrange the terms under which they will provide their professional services to you.

This is where the Consultancy Agreement comes in.

2.2S If your garden is in Scotland the above organisations will be able to provide you with a list of their members who provide a garden design service in your area.

2.3 **The Consultancy Agreement** is an agreement between you (the customer) and the consultant. It covers a range of services that the consultant can provide for you (such as producing designs and detailed specifications for the work, applying for planning permission if required, and overseeing the contractor's work or advising you while it is being done).

Ask the consultant to go through the Consultancy Agreement with you and to discuss precisely what is involved in each of the stages shown in Part 1, and the conditions shown in Part 2.

When you have both agreed on the services the consultant will provide, the consultant will then be able to tell you their fee.

Before you and the consultant sign the Consultancy Agreement, make sure that if the consultant will be dealing with the contractor stage 6 option 1 of the service is selected and you agree how many times they will inspect the work while it is being done. If you wish to deal with the contractor at stage 6, but with advice from the consultant make sure that stage 6 option 2 of the services is selected. (See 3.2.9 to 3.2.13 below).

Before signing the Consultancy Agreement make sure that you are signing two original (purchased) documents which have been filled in identically, one for you and one for the consultant (as indicated on the front covers). Any revisions to the wording should be initialled by both the customer and consultant at the same time as signing the Consultancy Agreement.

2.4 **Finding a contractor.** It is vital that you choose a good and reputable landscape contractor. You may want to rely on personal recommendations, but you can ask the consultant to get quotations for the work and suggest a contractor as part of their services at stage 5 of the Consultancy Agreement. You may also get lists of garden landscape contractors in your area from the following:

Association of Professional Landscapers

Horticulture House
Chilton
Didcot
Oxfordshire OX11 0RN

Phone: 0333 003 3550
Website: www.landscaper.org.uk

British Association of Landscape Industries

Landscape House
Stoneleigh Park
Warwickshire
CV8 2LG

Phone: 024 7669 0333
Website: www.bali.org.uk

You will obviously want to make sure that all the landscape work is being done properly, but remember that if you are using the Landscape Contract with Consultant the consultant is dealing with the contractor for you, all the instructions about the work or changes you want to make to it should be given to the contractor by the consultant and not by you. If you are using the Landscape Contract without Consultant then you will be dealing direct with the contractor.

If you have appointed the consultant for stage 5 of the Consultancy Agreement, ask the consultant if they have any current business relationship with any of the contractors quoting for the work and whether they have had any in the past (including as a consultant to any of

the contractors, as opposed to working as a customer's agent with a contractor). See also 3.2.8 below.

2.4S If your garden is in Scotland the above organisations will be able to provide you with a list of their members who provide a garden construction service in your area.

2.5 **The Landscape Contract with Consultant** is for use between you and the landscape contractor, but only when a consultant is dealing with the landscape contractor on your behalf. It covers the work the contractor must carry out and the consultant's role in dealing with the contractor. Ask the consultant to explain how the contract works and their own role. See also paragraph 1.8 above. Before you sign the Landscape Contract with Consultant, ask the consultant to explain the adjudication scheme referred to in paragraph L2 of the contract and how this affects you if a dispute arises (see also 2.7 below). Details of the adjudication scheme are available at www.jctltd.co.uk and from the organisations running the scheme.

Before signing the Landscape Contract with Consultant make sure that you are signing two original (purchased) documents which have been filled in identically, one for you and one for the contractor (as indicated on the front covers). Any revisions to the wording should be initialled by both the customer and contractor at the same time as signing the contract.

2.6 **The Landscape Contract without Consultant** is for use between you and the landscape contractor, and you deal direct with the landscape contractor. It covers the work the contractor must carry out and what you must do. If you have appointed a consultant to design the garden, ask the consultant to explain how the contract works and your role. The consultant will also be able to **advise** you but not **deal** with the contractor for you during the construction of the garden. See also paragraph 1.8 above. Before you sign the Landscape Contract without Consultant, ask the consultant (or the contractor) to explain the adjudication scheme referred to in paragraph L2 of the contract and how this affects you if a dispute arises (see also 2.7 below). Details of the adjudication scheme are available at www.jctltd.co.uk and from the organisations running the scheme.

Before signing the Landscape Contract without Consultant make sure that you are signing two original (purchased) documents which have been filled in identically, one for you and one for the contractor (as indicated on the front covers). Any revisions to the wording should be initialled by both the customer and contractor at the same time as signing the contract.

2.7 **Disputes.** If you have a disagreement with your consultant that you can't settle, mediation or conciliation can be used to try to agree a settlement. But if agreement can't be achieved then the Consultancy Agreement allows you to refer the problem to an adjudicator or to go to court. Adjudication is also available under the landscape contracts for any disputes between you and the contractor. The cost and chance of success of adjudication or court action should be assessed before proceeding.

2.7S For mediation in Scotland see www.scottishmediation.org.uk

2.8 **Right to cancel.** The customer can cancel the Consultancy Agreement or a subsequent extension to it (see 3.2.5 below), or either of the landscape contracts within 14 days of signing it. See 'Right to cancel' in Part 2 of the Consultancy Agreement or landscape contracts. There is a cancellation form at the back of the Consultancy Agreement and the landscape contracts. If the customer chooses not to use the form provided then the information on the form should be included in a signed letter to the consultant (to cancel the Consultancy Agreement within 14 days of signing it) or contractor (to cancel either of the landscape contracts within 14 days of signing it). The consultant or contractor must complete the information required on the Cancellation Form before the agreement or contract is signed.

- 2.9 **The CDM Regulations 2015:** The Construction (Design and Management) Regulations 2015 are health and safety regulations specifically for the construction industry. They do not apply to 'soft' landscape works (planting and grass) but do apply to 'hard' landscape works (paving, fencing, walls, earthworks, drainage and similar work). They give designers, contractors, workers and clients duties but domestic clients are not treated the same as other clients in the regulations. If a domestic client does not wish to be involved with the CDM Regulations 2015 the client's duties in the regulations will be undertaken by the contractor. Before you appoint a consultant ask them to explain the CDM Regulations 2015 so that you can decide the extent to which you wish to be involved. For further information see www.hse.gov.uk/construction/cdm/2015/domestic-clients.htm

Section 3 Consultancy Agreement

- 3.1 See Sections 1 and 2 above particularly paragraphs 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.12, 2.2, 2.3, 2.7, 2.8 and 2.9.
- 3.1S If the garden is in Scotland, both the customer and consultant must ensure before signing the Consultancy Agreement that the appropriate Scottish Amendment is attached in accordance with the guidance notes with the Scottish Amendment, and should sign it at the same time as signing the Consultancy Agreement.
- 3.2 Part 1 of the Consultancy Agreement covers the services the consultant will provide, the fee for those services, details of the consultant's insurance and how disputes will be resolved.
- 3.2.1 Stage 1 is normally undertaken before the Consultancy Agreement is signed and can be either agreed and paid for separately, paid retrospectively as part of the Consultancy Agreement, or sometimes the consultant may provide this stage free provided a Consultancy Agreement for further stages is signed.
- 3.2.2 Stage 2: Surveys: Some projects may require detailed surveys undertaken by others, for example a topographical survey, tree survey, services survey, soil survey, ecological survey, contamination survey. The need for one or more such surveys does not depend on the size or value of the project but on the existing site characteristics and sometimes on the design proposals. The consultant is unlikely to be able to do most of these surveys but will be able to arrange for others to do them. The consultant should advise the customer of any surveys that are necessary and can obtain alternative prices for each if required. Paragraph B3 of the Consultancy Agreement states that the cost of such surveys is not part of the consultant's fee. Normally such surveys would be organised by the consultant but paid for by the customer direct to the surveying organisation. Hence, the consultant prepares the brief for the surveyor, obtains quotations, the customer accepts a quotation and the resulting contract for the survey is between the customer and the surveyor. If the consultant will be undertaking any detailed surveys themselves or appointing others to do so for them (rather than the client appointing the surveyors) one or more items should be added under the "provide other services at this stage" item.
- 3.2.3 Stage 2: Permissions and consents: The consultant should advise the customer whether any permissions or consents are required for the project with details of the process, implications and costs. Paragraph B3 of the Consultancy Agreement states that the charges for such applications are not part of the consultant's fee, see also 3.2.17 below.
- 3.2.4 Stage 2: Other consultants: The consultant will advise the customer if other consultants are required, for example a structural engineer, and Paragraph B3 of the

Consultancy Agreement states that the fees for other consultants are not part of the consultant's fee but paid for by the customer direct to the other consultant. A consultancy agreement between the other consultant and the customer will be necessary. The procedure is usually the same as outlined for commissioning surveys in 3.2.2 above although the other consultant may wish to use an appropriate standard form of appointment for their profession.

- 3.2.5 Stage 2: Agree services at future stages: This item will only be required if the initial Consultancy Agreement is only for stages 1 and 2. However, at the end of stage 2 the customer may only wish to commit to stage 3 or stages 3 and 4 rather than all remaining stages. In this situation an 'agree services at future stages' item will be necessary in the last stage of each extension of the service.

Stages can be added at a later date by writing them into both copies of the original signed agreement, by:

- inserting "Added" with the date beside the stage heading for each of the stages added and the customer and consultant initialling the insertion ("Added xx/xx/xxxx initials initials") and ticking the appropriate boxes for that stage, and;
- adding the fee for each of the added stages in the spaces provided in B1 and inserting "Added xx/xx/xxxx initials initials" beside each addition.

Also see 3.2.15 below.

The Right to Cancel will apply to each addition of stages (see 2.8 above). The consultant must advise the customer of this right before each extension is signed. Additionally, at the same time, write at the top of Schedule 1 "Notice of Right to Cancel given for extensions to agreement dated xx/xx/xxxx". For each subsequent extension add the extension date.

If the customer cancels the agreement or an extension to it but subsequently agrees to further work by the consultant a new consultancy agreement document will be required.

- 3.2.6 Stage 3: For some projects the customer and consultant may agree that stage 3 is not required but that the stage 2 sketch plan will include enough detail (including the materials proposed), and that the consultant will explain the proposals at the end of stage 2, to enable the customer to clearly understand the design proposals and agree them so that stage 4 can commence. If stage 3 is omitted then stage 2 should include the item for advising on options for obtaining quotations and appointing a contractor.
- 3.2.7 Stage 4: This stage includes the preparation of the drawings and specifications which the contractor will use to construct the garden. It also includes the submissions for approvals and consents as necessary for the project to proceed to construction. However, any additional permissions or consents not envisaged when the Consultancy Agreement was signed, or providing additional information in order to achieve permissions, will normally involve additional fees.
- 3.2.8 Stage 5: The consultant must not have any current or past business relationship with any of the contractors quoting for the work or be working currently as a consultant to any of the contractors. However, this does not include acting as a consultant in the past to any of the contractors or working as a customer's agent with any of the contractors currently or in the past.
- 3.2.9 Stage 6 Option 1: If the customer wants the consultant to oversee the contractor building the garden then stage 6 option 1 should apply. The total number of visits by the consultant to inspect the contractor's work should be agreed, and included in the

Consultancy Agreement, before the fee for stage 6 is agreed. The number of visits usually depends more on the duration and complexity of the construction work rather than its value. Too few visits and the consultant will not be able to oversee the work adequately. If additional visits are required, through no fault of the consultant, they and the associated additional fee should be agreed beforehand. A rate per agreed additional visit should be included in the space provided in paragraph B2 of the Consultancy Agreement.

- 3.2.10 Stage 6 Option 1: The consultant will issue certificates of the value of work for periodic instalments (not for stage payments): This item will only be applicable if the periodic instalments option for paying the contractor has been or will be chosen in the Landscape Contract with Consultant (see 4.2.5 below).
- 3.2.11 Stage 6 Option 1: Model forms for certificates and instructions required by the Landscape Contract with Consultant are available with a commentary in the document titled JCLI Model Certificates and Other Forms for use with JCLI Landscape Contract for a Home Owner / Occupier who has Appointed a Consultant to Oversee the Work. Paragraph 1.3 in the Introduction to the document provides details of which certificates are required for each of the three payment options in the Landscape Contract with Consultant clause E1. It is available free from www.sgd.org.uk, as are the individual forms in 'Word' format for adaption by consultants for use on their projects. Model forms are not required for the Landscape Contract without Consultant.
- 3.2.12 Stage 6 Option 1: See section 4 below for additional relevant information concerning this stage.
- 3.2.13 Stage 6 Option 2: If the customer wants to deal direct with the contractor with the consultant advising them during stage 6 and the Landscape Contract without Consultant (or any other contract where the consultant does not oversee the work) will be used then stage 6 option 2 should apply. If the customer does not want the consultant to oversee the contractor building the garden, or advise them during stage 6 then neither option in stage 6 will apply, but the Landscape Contract without Consultant could be used.

The amount of the advisory input required from the consultant should be agreed so that a fee can be inserted for stage 6 in paragraph B1. An hourly rate and a rate for additional visits should also be inserted in paragraph B2. Normally the consultant will either, provide a full advisory inspection service for a lump sum or, a limited service 'on request' at a rate per hour or per visit. If there a combination of lump sum and time or visit fees then the type of fee for each service required should be clearly identified in the agreement.

- 3.2.14 B1 and 2: All fee amounts inserted include VAT. If the VAT percentage is increased or decreased then the fees should increase or decrease by the appropriate amount. If the consultant becomes VAT registered after the Consultancy Agreement is signed then the fees will increase by the VAT percentage from the appropriate date.
- 3.2.15 B1: If the customer does not wish to commit to all 6 stages initially but may extend the service later, in the first line of B1 delete "£ _____" and insert instead "the total of the amounts below inserted against the 6 stages". Both the customer and consultant should initial the change when signing the agreement. See also 3.2.5 above)
- 3.2.16 B1: Stage 6: If the periodic payment option will be chosen in the Landscape Contract with Consultant clause E1, two of the intervals for payment of the consultant at stage 6 must be 'when Periodic Instalment Certificate is issued after all the work is finished' and 'when Final Periodic Instalment Certificate is issued'. If either of the other

payment options in the Landscape Contract with Consultant clause E1 will be chosen then two of the intervals must be 'when All Work Finished Certificate is issued' and 'when All Faults Put Right Certificate is issued',

B1: Stage 6: If the contractor is delayed after starting work, the intervals and/or fee amounts before the contractor finishes all of the work should be changed by agreement between the customer and consultant.

3.2.17 B3: Any similar charges for permissions, other types of survey or information, for example utility company or Environment Agency charges, should not be part of the consultant's fee but paid for by the customer separately.

3.2.18 C: The consultant should review their Professional Indemnity Insurance Policy and Schedule to ensure compatibility with this clause; for example whether the limit is different or aggregated for contamination and pollution.

3.2.19 C: The consultant should also have Public Liability Insurance of at least £1,000,000 and should provide the customer with evidence of it.

3.2.20 D: Disputes: see 2.7 above.

3.3 Part 2 of the Consultancy Agreement covers the legal conditions of the agreement, including the responsibilities of the consultant and customer, changing the services, payment, copyright and ending the Consultancy Agreement.

3.3.1 Condition 8: Right to cancel: See 2.8 above.

3.4 Schedule 1. The consultant must complete the information required on Schedule 1 before the agreement is signed. Additional information must be inserted before each extension of the service, see 3.2.5 above.

Section 4 Landscape Contract with Consultant

4.1 See Sections 1 and 2 above particularly paragraphs 1.2, 1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.12, 2.4, 2.5, 2.7, 2.8 and 2.9.

4.1S If the garden is in Scotland, both the customer and contractor must ensure before signing the Landscape Contract with Consultant that the appropriate Scottish Amendment is attached in accordance with the guidance notes with the Scottish Amendment, and should sign it at the same time as signing the Landscape Contract.

4.2 Part 1 of the Landscape Contract with Consultant covers the arrangements for the work, particularly: the work to be done, permissions and consents, use of facilities, price and payment, working period, guarantees, plant failures, insurance, working hours, security and disputes.

4.2.1 A2: It is important that there should be no ambiguity in which documents are the contract documents. This can be achieved by them having unique dates and references stated in clause A2 and on the documents and initialling the copies kept with the signed contracts. More certainty can be achieved by writing on each document "This is the {*document name*} referred to in the contract between {*customer's name*} and {*contractor's name*} dated xx/xx/xxxx" and the customer and contractor signing it at the time of signing the contract. The consultant should also have a copy of all the documents and the completed signed Landscape Contract with Consultant.

- 4.2.2 B1: If the customer has applied for permissions and consents then the word “consultant” should be replaced with “customer” in this clause.
- 4.2.3 D1, E1: The price includes VAT. Similarly the stage instalments or periodic instalments include VAT if either is selected in E1. See also Condition 8 in the Landscape Contract with Consultant.
- 4.2.4 E1: Model forms for Certificates and Instructions required by the Landscape Contract with Consultant are available with a commentary in the document titled JCLI Model Certificates and Other Forms for use with JCLI Landscape Contract for a Home Owner / Occupier who has Appointed a Consultant to Oversee the Work. Paragraph 1.3 in the Introduction to the document provides details of which certificates are required for each of the three payment options in the Landscape Contract with Consultant clause E1. It is available free from www.sgd.org.uk, as are the individual forms in ‘Word’ format for adaption by consultants for use on their projects.
- 4.2.5 E1: If the periodic instalments option is chosen, a period must be inserted which would typically be 2, 3 or 4 weeks. Before the Landscape Contract with Consultant is signed, the contractor should be asked to provide a breakdown of the price for the project to enable the consultant to value the work done in order to certify the periodic payments. Each price in the breakdown and the amounts the consultant certifies should include any VAT applicable. Although it is the consultant’s responsibility to determine and certify the amount due on time, it is normal practice for the consultant and contractor to discuss the valuation of the work done, or for the contractor to submit their valuation for the consultant to consider when preparing the certificate. The contractor should issue an invoice to the customer copied to the consultant as soon as possible after receipt of a periodic instalment certificate or final certificate.
- 4.2.6 H: Landscape work is different to building work particularly because plants are living materials. Plants can die for a wide variety of reasons and this is particularly true during the establishment period after planting, which varies from a few weeks for turf to a few years for trees planted at large sizes. Additionally, plants grow and mature over a period of time and in the case of trees maturity can take 50 or more years depending on the variety. Maintenance of plants is essential to ensure they mature but is most important to ensure they establish. The Landscape Contract with Consultant has two options for the responsibility for failure of plants, turf and seed after the consultant certifies that the contractor has finished all of the work:
- Either, the contractor undertakes maintenance of the planting, turfing and seeding, under a separate contract, for at least the period stated in condition 7(b) after the consultant certifies that the contractor has finished all of the work, and the contractor is responsible for replacing any plants, turf and seed he supplied that fail for the same period. See also 4.3.2 below.
 - Or, the contractor has no responsibility for replacement and the customer is responsible for maintaining the planting, turfing and seeding and replacing any plants, turf and seed that fail after the consultant certifies that the contractor has finished all of the work.

In the first option, after the work has finished the contractor is only responsible for replacing plants, turf and seed they supply which fail and not any plants, turf and seed supplied by the customer or consultant.

JCLI recommends the first option. It encourages the contractor to supply high quality healthy plants, turf and seed, to ensure the soiling and other work associated with the planting, turfing and seeding is done properly, and to maintain the planting, turfing, seeding and soil properly, because of his ongoing liability for replacement if they fail

to thrive.

If the first option is chosen then the maintenance should be undertaken under a separate contract (often agreed in an exchange of letters) which should be agreed at the same time as the Landscape Contract with Consultant is signed.

The maintenance contract should include:

- the requirement that the contractor replaces plants, turf and seed they originally supplied and planted which fail to thrive (repeatedly if necessary) at no cost to the customer for the duration of the maintenance contract, which could be as long as 5 years;
- the required frequency of inspection and replacement and the species/size of the replacements. For example:
 - annual inspection in September/October and replacement before the end of the year;
 - or, monthly inspection with replacement within a month;
 - replacement with plants the same variety and size as originally specified;
 - or, with plants of the same variety as originally planted and of the same size as the adjacent plants of the same variety or the size originally planted whichever is larger;
 - or, for some projects it may be appropriate to have the frequency of inspection and replacement and/or the size requirement different for different types or varieties of plants, turf types and seed mixes.

The maintenance contract should state clearly whether any trees or other plants and grass which were not planted by the contractor are to be included in the maintenance work. It should also state that the requirement for replacing plants, turf or seed which fail at no cost to the customer will not apply to plants, turf or seed not supplied and planted by the contractor. The maintenance contract could also include the maintenance of 'hard' landscape if required by the customer.

4.2.7 K1: The contractor must be advised of any access restrictions that will apply before his price is agreed. For example: The customer may require access to a building within the garden at all times or at specific times when the contractor will be working; or the customer may require the work phased so that parts of the garden are available for the customer to use at different times through the project; or the customer may have specific events planned when the contractor will not be allowed to work and the garden must be presentable for the events. These requirements should be explained on a drawing or described elsewhere in the work details so that the contractors quoting for the work can allow for them in their price.

4.2.8 L: Disputes: see 2.7 above

4.3 Part 2 of the Landscape Contract with Consultant covers the conditions including: the responsibilities of the contractor, customer and the role of the consultant; health and safety; changes and extending the working period; certifying finished work and making good; payment; and ending the contract.

4.3.1 Conditions 3 and 5: The consultant should explain to the customer before the Landscape Contract with Consultant is signed that the consultant's role includes changing the work details on behalf of the customer. Hence, if the customer wishes to change anything, they should discuss it with the consultant, the consultant will

advise of any implications of the proposed change on the design and the Landscape Contract with Consultant, and if they agree to make the change the consultant will instruct the contractor accordingly. The Landscape Contract with Consultant does not give the customer the power to issue instructions to the contractor and if the customer does so it will cause both confusion and potentially considerable additional cost. The contractor should be made aware that any instruction they receive from the customer (other than day to day liaison having no cost or programme implications) should not be implemented but referred immediately to the consultant for clarification. The contractor should also be made aware before work commences that if they implement a customer instruction they may have to reinstate the work to comply with the work details and they are unlikely to be paid any additional money for the work involved.

Methods of communication between the customer and consultant and the consultant and contractor (and, for an emergency, between the customer and contractor) must be agreed in order for projects to run smoothly. For example, if the customer is on holiday and the consultant needs authorisation for an essential change then an appropriate means of communication should be agreed before the holiday in order to ensure the project is not delayed and unnecessary additional costs incurred.

- 4.3.2 Condition 7(b): If the contractor is responsible for plant losses and maintenance for at least the period stated in condition 7(b) after the consultant certifies that the contractor has finished all of the work, the period in 7(b) should be 12 months. The maintenance contract should last for at least the same period but if trees or specimen plants have been planted at large sizes then the maintenance contract should last at least 24 months (and preferably longer). See also 4.2.6 above.

If the customer is responsible for plant losses and maintenance after the consultant certifies that the contractor has finished all of the work, the period in condition 7(b) should be 6 months. The period is 3 months in the JCT Building contract but 6 months is more appropriate for landscape work. If the space is not completed in this condition, the default period is 6 months.

- 4.3.3 Condition 8: Before work commences, the contractor should give the customer a list of invoices showing invoice dates and estimated amounts including VAT to assist the customer with cashflow. If the project is delayed the contractor should provide a revised list.
- 4.3.4. Condition 9. If agreement over responsibility for faults in the work cannot be reached, refer to 2.7 above and L in Part 1 of the Landscape Contract with Consultant.
- 4.3.5 Condition 11: Right to cancel: See 2.8 above.
- 4.3.6 Conditions 3a, 5a, 7a, 7c, 8a and 8b: The consultant is required by various conditions of the Landscape Contract with Consultant to issue certificates or instructions. Model forms for these are available free from www.sgd.org.uk in one document with explanatory notes and as individual 'Word' documents for use on projects.

- 4.4 Schedule 1: The contractor should complete the information required on Schedule 1 before the agreement is signed.

Section 5 Landscape Contract without Consultant

- 5.1 See Sections 1 and 2 above particularly paragraphs 1.2, 1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.12, 2.4, 2.6, 2.7, 2.8 and 2.9.
- 5.1S If the garden is in Scotland, both the customer and contractor must ensure before signing the Landscape Contract without Consultant that the appropriate Scottish Amendment is attached in accordance with the guidance notes with the Scottish Amendment, and should sign it at the same time as signing the Landscape Contract.
- 5.2 Part 1 of the Landscape Contract without Consultant covers the arrangements for the work, particularly: the work to be done, permissions and consents, use of facilities, price and payment, working period, guarantees, plant failures, insurance, working hours, security and disputes.
- 5.2.1 A2: It is important that there should be no ambiguity in which documents are the contract documents. This can be achieved by them having unique dates and references stated in clause A2 and on the documents and initialling the copies kept with the signed contracts. More certainty can be achieved by writing on each document "This is the {*document name*} referred to in the contract between {*customer's name*} and {*contractor's name*} dated xx/xx/xxxx" and the customer and contractor signing it at the time of signing the contract. If a consultant is advising the customer then the consultant should also have a copy of all the documents and the completed signed Landscape Contract without Consultant.
- 5.2.2 D1, E1: The price includes VAT. Similarly the stage instalments include VAT if that option is selected in E1. See also Condition 6 in the Landscape Contract without Consultant.
- 5.2.3 H: Landscape work is different to building work particularly because plants are living materials. Plants can die for a wide variety of reasons and this is particularly true during the establishment period after planting, which varies from a few weeks for turf to a few years for trees planted at large sizes. Additionally, plants grow and mature over a period of time and in the case of trees maturity can take 50 or more years depending on the variety. Maintenance of plants is essential to ensure they mature but is most important to ensure they establish. The Landscape Contract without Consultant has two options for the responsibility for failure of plants, turf and seed that the contractor has supplied:
- Either, the contractor undertakes maintenance of the planting, turfing and seeding, under a separate contract, for at least the period stated in condition 6(c) after the contractor has finished all of the work, and the contractor is responsible for replacing any plants, turf and seed they supplied that fail for the same period. See also 5.3.1 below.
 - Or, the contractor has no responsibility for replacement and the customer is responsible for maintaining the planting, turfing and seeding and replacing any plants, turf and seed that fail after the contractor has finished all of the work.

In the first option, after the work has finished the contractor is only responsible for replacing plants, turf and seed they supply which fail and not any plants, turf and seed supplied by the customer or consultant.

JCLI recommends the first option. It encourages the contractor to supply high quality healthy plants, turf and seed, to ensure the soiling and other work associated with the planting, turfing and seeding is done properly, and to maintain the planting, turfing, seeding and soil properly, because of his ongoing liability for replacement if they fail

to thrive.

If the first option is chosen then the maintenance should be undertaken under a separate contract (often agreed in an exchange of letters) which should be agreed at the same time as the Landscape Contract without Consultant is signed.

The maintenance contract should include:

- the requirement that the contractor replaces plants, turf and seed they originally supplied and planted which fail to thrive (repeatedly if necessary) at no cost to the customer for the duration of the maintenance contract, which could be as long as 5 years;
- the required frequency of inspection and replacement and the species/size of the replacements. For example:
 - annual inspection in September/October and replacement before the end of the year;
 - or, monthly inspection with replacement within a month;
 - replacement with plants the same variety and size as originally specified;
 - or, with plants of the same variety as originally planted and of the same size as the adjacent plants of the same variety or the size originally planted whichever is larger;
 - or, for some projects it may be appropriate to have the frequency of inspection and replacement and/or the size requirement different for different types or varieties of plants, turf types and seed mixes.

The maintenance contract should state clearly whether any trees or other plants and grass which were not planted by the contractor are to be included in the maintenance work. It should also state that the requirement for replacing plants, turf or seed which fail at no cost to the customer will not apply to plants, turf or seed not supplied and planted by the contractor. The maintenance contract could also include the maintenance of 'hard' landscape if required by the customer.

5.2.4 K1: The contractor must be advised of any access restrictions that will apply before his price is agreed. For example: The customer may require access to a building within the garden at all times or at specific times when the contractor will be working; or the customer may require the work phased so that parts of the garden are available for the customer to use at different times through the project; or the customer may have specific events planned when the contractor will not be allowed to work and the garden must be presentable for the events. These requirements should be explained on a drawing or described elsewhere in the work details so that the contractors quoting for the work can allow for them in their price.

5.2.5 L: Disputes: see 2.7 above

5.3 Part 2 of the Landscape Contract without Consultant covers the conditions including: the responsibilities of the contractor and customer; health and safety; changes and extending the working period; payment; and ending the contract.

5.3.1 Condition 6(c): If the contractor is responsible for plant losses and maintenance for at least the period stated in condition 6(c) after the contractor has finished all of the work, the period in 6(c) should be 12 months. The maintenance contract should last for at least the same period but if trees or specimen plants have been planted at large sizes then the maintenance contract should last at least 24 months (and

preferably longer). See also 5.2.3 above.

If the customer is responsible for plant losses and maintenance after the contractor has finished all of the work, the period in condition 6(c) should be 6 months. The period is 3 months in the JCT Building contract but 6 months is more appropriate for landscape work. If the space is not completed in this condition, the default period is 6 months.

5.3.2 Condition 6: Before work commences, the contractor should give the customer a list of invoices showing invoice dates and estimated amounts including VAT to assist the customer with cashflow. If the project is delayed the contractor should provide a revised list.

5.3.3. Condition 7. If agreement over responsibility for faults in the work cannot be reached, refer to 2.7 above and L in Part 1 of the Landscape Contract without Consultant.

5.3.4 Condition 9: Right to cancel: see 2.8 above.

5.4 Schedule 1. The contractor must complete the information required on Schedule 1 before the agreement is signed.

Changes in Revision 3 of JCLI Practice Note No 10 compared to Revision 2:

- 1 Preamble deleted
- 2 CDM Regulations 2015 items added: 1.12, 2.9
- 3 Stage 6 options 1 and 2: revisions to accommodate options in items 1.5, 1.6, 2.3 (4th paragraph), 3.2.9 - 13
- 4 Moved items: previous 1.2 moved to 1.4 and previous 1.3 and 1.4 renumbered 1.2 and 1.3; previous 3.2.9 moved to 3.2.13 with consequent renumbering
- 5 Significant and substantial changes to items: 3.3.1, 4.3.5.
- 6 Significant but small changes to items 1.2 (first and last sentences added), 1.9 (last sentence added), 1.10, 3.2.2 (last sentence added), 3.2.17, 4.2.4 (last sentence added), 4.2.5 (last sentence added), 4.2.6 (last sentence added), 5.2.3 (last sentence added).
- 7 Minor changes and corrections: 1.1, 1.1S, 1.8, 2.7, 3.4, 4.4, 5.1S, 5.4.
- 8 Revision number of Practice Note revised throughout, dates of all documents updated, cross-references corrected (due to item number changes) and some organisation information updated, Changes list updated.

Care has been taken in preparing this Practice Note but it should not be treated as a definitive legal interpretation or commentary. Users are reminded that the effect in law of the provisions of the JCLI Consultancy agreement for a home owner / occupier appointing a consultant to provide consultancy services in relation to landscape work (JCLI HCA), the JCLI Landscape contract for a home owner / occupier who has appointed a consultant to oversee the work (JCLI HLC/C) and the JCLI Landscape contract for a home owner / occupier who has not appointed a consultant to oversee the work (JCLI HLC) is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.

About us

JCLI contracts are well respected standard forms of contract for the landscape industry. They are produced by organisations within the industry but agreed by the JCLI Contracts Forum which represents all parts of the landscape industry. The members of the Forum are listed below.



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First published November 2011. Revised November 2012, January 2013 and October 2019.
Published for JCLI Contracts Forum by the Society of Garden Designers, 44-46 Wollaton Road, Beeston, Nottingham, NG9 2NR.

Available free from the Society of Garden Designers website: www.sgd.org.uk