



JCLI Scottish Contractor Novation Agreement 2017-04

for use with the JCLI Scottish Landscape Maintenance Works Agreement 2013, 2015-04 and 2017-04

Project: Landscape Maintenance Works at _____

Agreement

Among The Employer _____

_____ (Company No: _____)
of / whose registered office is at [1] _____

And The Contractor _____

_____ (Company No: _____)
of / whose registered office is at [1] _____

And The Substitute Contractor _____

_____ (Company No: _____)
of / whose registered office is at [1] _____

Background:

(A) The Contractor has been appointed by the Employer by a contract dated _____
_____ (“the **Contract**”) to carry out landscape maintenance
works at _____
_____ as more particularly described in the Contract. [2]

or [3]

The Contractor has entered into a Novation Agreement dated _____
_____ under which the Contractor assumed all the rights and
liabilities of _____
under a contract between _____
_____ and the Employer dated _____
_____ (“the **Contract**”) to carry out landscape maintenance works at _____
_____ as more particularly
described in the Contract. [4]

(B) The Employer the Contractor and the Substitute Contractor have agreed that the
Substitute Contractor shall assume all the rights and liabilities of the Contractor
under the Contract (which the Contractor has previously assumed). [5]

NOW IT IS HEREBY AGREED as follows:

1 Release of Contractor

The Employer releases and discharges the Contractor from further performance of
the Contractor’s obligations under the Contract and from all claims and demands
whatsoever arising out of or in respect of the Contract whether arising prior to, on
or subsequent to the date of this Agreement and the Employer accepts the liability
of the Substitute Contractor in place of the liability of the Contractor.

2 Release of Employer

The Contractor releases and discharges the Employer from further performance of
the Employer’s obligations under the Contract and from all claims and demands
whatsoever arising out of or in respect of the Contract whether arising prior to, on
or subsequent to the date of this Agreement.

3 Employer's obligation to Substitute Contractor

The Employer hereby undertakes to perform the Contract and to be bound by its terms in every way as if the Substitute Contractor were, and had been from inception, a party to the Contract in lieu of the Contractor and agrees to undertake all obligations and liabilities arising under the Contract on the part of the Employer.

4 Substitute Contractor's obligation to Employer

The Substitute Contractor hereby undertakes to perform the Contract and to be bound by its terms in every way as if the Substitute Contractor were, and had been from inception, a party to the Contract in lieu of the Contractor and agrees to undertake all obligations and liabilities arising under the Contract on the part of the "Contractor".

5 Affirmation of Contract

Subject to the terms of this Agreement, the Contract shall remain in full force and effect.

6 Performance of prior obligations and payments

The Contractor confirms and warrants to the Substitute Contractor that as at the date of this Agreement all obligations due to be made and performed by the Employer under the Contract have been made and performed by the Employer, including payment of the sum of £ _____ pounds exclusive of VAT for the current year of maintenance, and including payment of all amounts due for previous annual account periods.

7 Contractor's liability to Substitute Contractor for pre-novation Services

The Contractor acknowledges that the Substitute Contractor has relied upon the Contractor's performance of the landscape maintenance works carried out prior to the date of this Agreement and agrees that the Substitute Contractor shall have the right to pursue claims and demands arising in respect of any breach of the Contract by the Contractor whether arising prior to, on or subsequent to the date of this Agreement.

8 Third Party Rights

Nothing in this Agreement is intended to confer on any third party any right to enforce any term of this Agreement.

9 Governing law and jurisdiction

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

IN WITNESS WHEREOF these presents consisting of this and the preceding three pages are subscribed as follows:

EXECUTED by or for and on behalf of the **CONTRACTOR**

at _____ (Place)

on _____ (Date)

Signature _____

Signature _____

Print Name _____

Print Name _____

Position _____
(see notes A, B, C and D on Pages 7-8)

Position _____
(see notes A, B, C and D on Pages 7-8)

If second signatory is a witness: Witness address _____

EXECUTED by or for and on behalf of the **EMPLOYER**

at _____ (Place)

on _____ (Date)

Signature _____ Signature _____

Print Name _____ Print Name _____

Position _____ Position _____
(see notes A, B, C and D on Pages 7-8) (see notes A, B, C and D on Pages 7-8)

If second signatory is a witness: Witness address _____

EXECUTED by or for and on behalf of the **SUBSTITUTE CONTRACTOR**

at _____ (Place)

on _____ (Date)

Signature _____ Signature _____

Print Name _____ Print Name _____

Position _____ Position _____
(see notes A, B, C and D on Pages 7-8) (see notes A, B, C and D on Pages 7-8)

If second signatory is a witness: Witness address _____

Care has been taken in preparing this guidance, but users are reminded that the effect in law of the provisions of the JCLI Scottish Contractor Novation Agreement 2013, 2015-04 and 2017-04 or of the JCLI Scottish Landscape Maintenance Works Agreement 2013, 2015-04 and 2017-04 or of the JCLI Landscape Maintenance Works Contract 2012 and 2017 are, in the event of a dispute as to their effect, a matter for decision in adjudication, arbitration or litigation.

Notes:

- [1] Where the Employer, Contractor or Substitute Contractor is not a company incorporated under the Companies Acts, delete the references to Company number and registered office.
- [2] If this contractor novation follows an employer novation then insert the original employer's name instead of "the Employer" in the first line and add a final sentence: "The Contract was novated to the Employer by a novation agreement dated _____"
- [3] Delete the first or second paragraph. The second paragraph is for a second novation by Contractor.
- [4] If this second contractor novation follows an employer novation then insert the original employer's name instead of "the Employer" in the fifth line of this paragraph and add a final sentence: "The Contract was novated to the Employer by a novation agreement dated _____"
- [5] Delete the words in brackets unless it is a second contractor novation.

Notes on Execution: Signing

Although Scots law does not share the English law distinction between signing a document as a deed and signing as a simple contract, the parties should nonetheless be careful to ensure that the manner in which they sign the Agreement is consistent with the Requirements of Writing (Scotland) Act 1995.

Three signing blocks are provided for execution, one for the Employer, one for the Contractor and the other for the Substitute Contractor. Guidance has been provided below to assist in these being used for four types of organisation: a limited company, a partnership, a limited liability partnership and an individual.

The guidance below will be appropriate for the majority of limited companies, partnerships and LLPs. However parties must ensure that, where they have different requirements in relation to contract signature, for example under their Articles of Association or corporate governance rules, those requirements are met by making the appropriate modifications and signing accordingly.

Similarly, if a party does not fall within any of these categories (e.g. because they are a trust or local authority or the contract is being signed by a person acting under a power of attorney) then details should either be completed to satisfy that party's particular signing requirements or the relevant signing block struck out altogether and replaced with one appropriate for that party's circumstances.

At least one party must sign on page 4.

Note A: Where a party is a **limited company**:

the first signatory should be a **Director** or **Secretary** or **Authorised Signatory**;

and the second a **Witness** or **Director** or **Secretary** or **Authorised Signatory**.

Note B: Where a party is a **partnership** formed under the Partnership Act 1890 (note: NOT a limited liability partnership):

the first signatory should be a **Partner** or **Authorised Signatory**;

and the second a **Witness** or **Authorised Signatory**.

Note C: Where a party is a **limited liability partnership** (note: NOT a partnership formed under the Partnership Act 1890):

the first signatory should be a **Member**;

and the second a **Witness** or **Member**.

Note D: Where a party is a **natural person**:

the first signatory should be the **person**;

and the second a **Witness**.

Parties must ensure that the Place and Date are completed and that the signing block is appropriate for their circumstances.

This document is issued by the **JCLI Contracts Forum** comprising:

Association of Professional Landscapers
British Association of Landscape Industries
Horticultural Trades Association
Institute of Chartered Foresters
Landscape Institute
Society of Garden Designers



Published for the JCLI Contracts Forum by the Landscape Institute
Charles Darwin House 2 107 Gray's Inn Road London WC1X 8TZ

Incorporated as Schedule 4 in the Appendix of the JCLI Scottish Landscape Maintenance Works Agreement 2013, 2015-04 and 2017-04

Available to download free from the Landscape Institute web-site www.landscapeinstitute.org

© Landscape Institute April 2017