



## JCLI Scottish Employer 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 Employer** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Company No: \_\_\_\_\_)  
of / whose registered office is at [1] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Background:**

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

or [3]

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

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

**NOW IT IS HEREBY AGREED** as follows:

**1 Release of Employer**

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

**2 Release of Contractor**

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

### **3 Contractor's obligation to Substitute Employer**

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

### **4 Substitute Employer's obligation to Contractor**

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

### **5 Affirmation of Contract**

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

### **6 Performance of prior obligations and payments**

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

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

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

7.2 The Contractor agrees it will not contend that the Substitute Employer is precluded from recovering any loss resulting from any breach of the Contract by the Contractor by reason that the Substitute Employer was not the employer of the Contractor at the time the breach occurred or by reason that the employer at the time of breach escaped any loss resulting from such breach or that such employer has not suffered any or as much loss.

**8 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 \_\_\_\_\_ 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 **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 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 \_\_\_\_\_

\_\_\_\_\_

Care has been taken in preparing this guidance, but users are reminded that the effect in law of the provisions of the JCLI Scottish Employer 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 Employer is not a company incorporated under the Companies Acts, delete the references to Company number and registered office.
- [2] If this employer novation follows a contractor novation then insert the original contractor's name instead of "the Contractor" in the first line and add a final sentence: "The Contract was novated to the Contractor by a novation agreement dated \_\_\_\_\_"
- [3] Delete the first or second paragraph. The second paragraph is for a second novation by Employer.
- [4] If this second employer novation follows a contractor novation then insert the original contractor's name instead of "the Contractor" in the fifth line of this paragraph and add a final sentence: "The Contract was novated to the Contractor by a novation agreement dated \_\_\_\_\_"
- [5] Delete the words in brackets unless it is a second employer 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 Employer. 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:

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