



Construction Industry Council

SUPPLEMENTAL AGREEMENT

CIC/NovAgr/EWa
first edition 2004

Standard form of agreement for use with the
CIC Novation Agreement where a warranty is to
be given by the consultant to the employer



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For use with the CIC Novation Agreement CIC/NovAgr only, where - following the novation of a consultant from an employer to a design and build contractor - a warranty is to be given by the consultant to the employer.

THIS AGREEMENT

is made the day of..... 20.....

Between

1 *Insert name of Consultant*

2. The Consultant.....¹

2 *Insert company number if applicable and place of registration if incorporated outside England and Wales*

company number and place of registration.....²

whose address/registered office is at

.....
.....
.....

and

3 *Insert name of Employer*

1. The Employer.....³

company number and place of registration.....²

whose address/registered office is at

.....
.....
.....

Now it is hereby agreed

1. This Agreement is supplemental to an agreement (the 'Novation Agreement')
dated⁴ made between the Employer, the Consultant
and⁵ (the 'Contractor').

*4 Insert date of
Novation Agreement*

5 Insert name of Contractor

2. (a) The Consultant warrants to the Employer that the services and other obligations to be performed for the Contractor under clause 2 of the Novation Agreement shall be performed for the Contractor in accordance with the said clause 2.

(b) In any claim for loss suffered by the Employer that is alleged to have arisen as a result of a breach by the Consultant of the warranty in this clause, the Consultant shall be entitled to rely on any limitation in the Novation Agreement or in the appointment referred to in the Novation Agreement (including without restriction any limitation or exclusion of liability therein) and to raise the equivalent rights in defence of liability for such loss as if the claim were being brought by the Contractor rather than the Employer, save that the Consultant shall not be absolved from liability to the Employer for such loss merely by virtue of the fact that the loss has not been suffered by the Contractor.

(c) Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs the Consultant's liability for any claim or claims under the warranty in this clause shall be limited to such sum as it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the loss or damage giving rise to such claim or claims ('the loss and damage') and on the assumptions that:

(i) all other consultants and advisers, contractors (including the Contractor) and subcontractors, engaged in connection with the project referred to in the Novation Agreement have provided warranties or other contractual undertakings on terms no less onerous than those set out in this clause to the Employer in respect of the carrying out of all or any obligations performed or required to be performed by them at any time in connection with the said project; and

(ii) the warranties or other contractual undertakings assumed to have been so provided are subject to no joint insurance or co-insurance provisions and to no exclusions or limitations of liability of a greater extent than those to which the warranty in this clause is subject and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Employer for the loss and damage; and

(iii) all such other consultants and advisers, contractors and subcontractors have paid to the Employer such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

3. The second sentence of clause 2 of the Novation Agreement is subject to this Agreement.



Where the Agreement is to be executed under hand and not as a deed

As witness the hands of the parties hereto

Signed by or on behalf of the Consultant

6 *Name and signature of person signing on behalf of Consultant* 6

Signed by or on behalf of the Employer

7 *Name and signature of person signing on behalf of Employer* 7

Where the Agreement is to be executed as a deed

In witness whereof the parties have executed this Agreement as deed the day and year before written

[WHERE THE CONSULTANT IS A SOLE PRACTITIONER OR PARTNERSHIP]

Signed as a deed by the Consultant

8 *Name and signature of sole practitioner or first partner* 8

9 *Name and signature of witness* in the presence of 9

10 *Address of witness* of 10

.....

11 *Name and signature of additional partner* and by 11

in the presence of 9

of 10

.....

and by 11

in the presence of 9

of 10

.....



[WHERE THE CONSULTANT IS A LIMITED LIABILITY PARTNERSHIP OR COMPANY]

Executed as a deed by the Consultant

- 12 *Name and signature of member or director* by 12
- 13 *Name and signature of member or director or company secretary* and 13

[WHERE THE EMPLOYER IS AN INDIVIDUAL OR PARTNERSHIP]

Signed as a deed by the Employer

- 14 *Name and signature of individual or first partner* 14
- 9 *Name and signature of witness* in the presence of 9
- 10 *Address of witness* of 10
- 15 *Name and signature of additional partner* and by 15
- in the presence of 9
- of 10
- and by 15
- in the presence of 9
- of 10

[WHERE THE EMPLOYER IS A LIMITED LIABILITY PARTNERSHIP OR COMPANY]

Executed as a deed by the Employer

- by 12
- and 13