



Construction Industry Council

## SUPPLEMENTAL AGREEMENT

**CIC/NovAgr/EWa(S)**  
Scottish edition 2006

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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Construction Courts' Barristers' Association • Technology and  
Construction Solicitors' Association

For use with the CIC Novation Agreement CIC/NovAgr(S) 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.

## AGREEMENT

### Between

- 1 *Insert name of Consultant* 2. The Consultant ..... 1
- 2 *Insert company number if applicable and place of registration if incorporated outside Great Britain* 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')

*4 Insert date of  
Novation Agreement*

dated .....<sup>4</sup> made between the Employer, the Consultant

*5 Insert name of Contractor*

and .....<sup>5</sup> (the '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.

4. This Agreement is subject to the law of Scotland and the parties hereto submit to the jurisdiction of the courts of Scotland.

**In witness whereof** these presents consisting of this and the two preceding pages are (under declaration that the insertion of the names and addresses of the parties and the insertions in clause 1 all as initialled by the parties were made prior to the subscription of this Agreement by the parties<sup>6</sup>) subscribed as follows:

6 All alterations to the Agreement, including insertions and deletions, made by the parties should be initialled by the parties before signing the Agreement

7 Delete when subscription by party signing on own behalf

8 Delete when subscription on behalf of party

9 Enter full name of person subscribing including middle names; where signing on behalf of party, capacity of person signing should be added after signature (where on behalf of a company 'director' or 'company secretary', a partnership 'partner', and an LLP 'member' of said party); where any other form of execution is being considered, or where party is any other corporate body, legal advice should be sought

10 Enter location of place of signing

11 Enter date of signing

12 Enter full name of witness including middle names

13 Enter address of witness

they are subscribed [for and on behalf of <sup>7</sup>] [by <sup>8</sup>] the said Consultant [by <sup>7</sup>]

..... 9

at ..... 10

on ..... 11

which subscription is witnessed by

..... 12

of ..... 13

..... (Consultant)

..... (Consultant witness)

they are subscribed [for and on behalf of <sup>7</sup>] [by <sup>8</sup>] the said Employer [by <sup>7</sup>]

..... 9

at ..... 10

on ..... 11

which subscription is witnessed by

..... 12

of ..... 13

..... (Employer)

..... (Employer Witness)