

Novation Agreement

DEED dated and delivered []

BETWEEN the Employer the Consultant and the Contractor named in the Particulars below

1. PARTICULARS

1.1. **Employer** []

Company Number: []

Registered Office: []

1.2. Consultant []

Company Number: []

Registered Office: []

1.3. Contractor []

Company Number: []

Registered Office: []

1.4. Development the Employer's Development at []

1.5. Appointment the agreement dated [] under which the Employer appointed the Consultant to provide services in relation to the Development

2. BACKGROUND

2.1. The Consultant has since commencing work to which the Appointment relates been aware that a contractor to whom the Appointment would be novated will be entering into a building contract with the Employer which will incorporate and be partly based on work done by the Consultant prior to the date of novation.

2.2. The Contractor is intending to enter into such a building contract (or has entered into such a building contract subject to a legally binding confirmation from the Employer that the novation contained in this Deed will be carried out) and has based his price and programme on the assumption that the warranty in clause 2.3 below is correct.

2.3. The Consultant therefore warrants to the Contractor that the Contractor may rely upon work performed by the Consultant pursuant to the Appointment up to the date of this Deed having been performed: with reasonable skill, care and diligence; in accordance with the requirements of the Appointment; and as if it had been performed for the Contractor from the outset

2.4. The Consultant warrants to the Contractor that as at the date of this Deed there is no negligence or default by the Consultant and that there is no other fact or circumstance known to the Consultant which should be drawn to the attention of a

prudent building contractor about to sign such a building contract which has not been drawn to the attention of the Contractor

3. NOVATION

- 3.1. The Employer is substituted and replaced as client under the Appointment by the Contractor and the Appointment will take effect as if it had been entered into originally between the Contractor and the Consultant
- 3.2. The Consultant releases and discharges the Employer from the liabilities which the Employer may have or have had under the Appointment to the Consultant
- 3.3. For the avoidance of doubt the Employer confirms that it assigns to the Contractor all rights of action arising from the Appointment including any which have already arisen and the Consultant warrants to the Contractor that it has to date complied with its obligations under the Appointment
- 3.4. The Consultant shall forthwith execute and deliver a collateral warranty to the Employer in the appropriate form required by the Appointment

4. FEES

- 4.1. The Employer and the Consultant warrant that the Employer has paid to the Consultant all fees due under the Appointment to date (which fees are not repayable by the Contractor to the Employer)
- 4.2. Without prejudice to the generality of Clauses 3.1 and 3.2 the Contractor undertakes to discharge all fees due under the Appointment save for those referred to in Clause 4.1

5. LAW AND THIRD PARTY RIGHTS

- 5.1. This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the same law as governs similar matters under the Appointment and disputes arising under or relating to this Deed shall be referred to the same tribunal as would decide any broadly similar dispute under the Appointment.
- 5.2. Nothing in this Deed shall affect any collateral warranty or third party rights under the Appointment given or to be given by the Consultant to the Employer or to any third party in respect of the Development. A third party given any such collateral warranty or third party rights by the Consultant may enforce the benefit of this clause

5.2 (and no other clauses of it) by virtue of the Contracts (Rights of Third Parties) Act 1999.

- 5.3. Save as set out in clause 5.2 the parties to this Deed do not intend that any of its provisions should be enforceable by any person by virtue of that Act. Notwithstanding clause 5.2 the parties to this Deed may vary or rescind this Deed without informing or obtaining the consent of any third party.

6. EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this deed. This document may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.

[Insert appropriate signature blocks]