NOVATION AGREEMENT

Between/Among

[CONSULTANT]

and

[EMPLOYER]

and

[CONTRACTOR]

In relation to Appointment as [insert discipline/s] [insert brief description of the project]
at [insert property details]

**NOVATION AGREEMENT**

**Between/Among**

[**CONSULTANT**], incorporated under the Companies Acts (Company Number: [insert company number]) and having its registered office at [insert registered office address] (hereinafter referred to as **"Consultant"**); and

[**EMPLOYER**], incorporated under the Companies Acts (Company Number: [insert company number]) and having its registered office at [insert registered office address] (the **"Employer"**); and

[**CONTRACTOR**], incorporated under the Companies Acts (Company Number: [insert company number]) and having its registered office at [insert registered office address] (the **"Contractor"**).

**WHEREAS:**

(A) By an agreement in writing dated [insert dates] (the **"Appointment"**) the Employer appointed the Consultant to provide [insert discipline/services] services in connection with [insert brief description of the project] (the **"Development"**);

(B) The Employer and the Contractor have entered into or will be entering into a contract (the **"Building Contract"**) under which the Contractor has been appointed to complete the design and construction of the Development; and

(C) The parties have agreed to novate the Appointment to the Contractor on the terms set out below.

**NOW IT IS AGREED** as follows:

* + 1. Novation of Appointment

The Appointment is hereby novated from the Employer and the Consultant to the Contractor and the Consultant. The Consultant shall carry out the Services in [Part [x] of the Schedule] to the Appointment which remain to be performed at the Effective Date of this Agreement.

* + 1. Release of Employer

The Employer shall no longer owe any duty or obligation to the Consultant under or in respect of the Appointment.

* + 1. Release of Consultant

Without prejudice to the Consultant’s duties, obligations and liabilities under any collateral warranty granted or to be granted by the Consultant in favour of the Employer, the Consultant shall no longer owe any duty or obligation or liability to the Employer under the Appointment whether by virtue of its terms or by virtue of any breach or otherwise.

* + 1. Binding of Consultant to Contractor
			1. The Consultant accepts the liability of the Contractor in place of the liability of the Employer under the Appointment and agrees to be bound by the same terms in every way as if the Contractor were named in the Appointment as a party to the Appointment in place of the Employer.
			2. The Consultant hereby warrants and undertakes to the Contractor that it has performed and will continue to perform each and all of its obligations and duties under the Appointment and agrees to be bound to the Contractor by the terms of the Appointment in respect of the services carried out on behalf of the Employer. The Consultant acknowledges that the Contractor is entitled to rely, and may rely, upon the performance by the Consultant of all of its obligations and the services required to be carried out by the Consultant under the Appointment and that the Contractor may suffer loss consequent upon the failure by the Consultant to perform such obligations and/or services under the Appointment and whether or not the obligations and/or services were originally performed for the Contractor or the Employer, before or after the date/s of this Agreement. The Consultant further undertakes that it shall not plead in defence of any claim brought by the Contractor in respect of breach by the Consultant of its duties and/or obligations under the Appointment prior to the Effective Date that the Contractor is precluded from recovering any loss resulting from any such breach of the Appointment on the ground that the Employer for whom such duties and/or obligations were originally performed has suffered no loss or a different loss from that sustained by the Contractor by reason of any breach by the Consultant.
			3. The Consultant is deemed to be aware of the terms of the Building Contract and of the obligations of the Contractor to the Employer thereunder. The Consultant undertakes that it shall have regard to any obligations on the part of the Contractor contained in the Building Contract and shall perform its duties and obligations under the Appointment in such a manner and at such times that no act, omission or default of the Consultant in relation thereto shall constitute, cause or contribute to any breach of the Building Contract by the Contractor.
		2. Binding of Contractor to Consultant

The Contractor binds itself to the Consultant in the terms of the Appointment as if the Contractor were and always had been named in the Appointment in place of the Employer.

* + 1. Vesting of Remedies in Contractor

All rights of action and remedies vested in the Employer against the Consultant under the Appointment shall hereupon vest in the Contractor.

* + 1. Vesting of Remedies against Contractor

All rights of action and remedies vested in the Consultant against the Employer under and in respect of the Appointment shall hereinafter lie against the Contractor.

* + 1. Fees and Disbursements

The parties agree that from the Effective Date all sums of whatever nature whether arising before or after the Effective Date due by the Client to the Consultant under the Appointment shall be met in full by the Contractor and paid to the Consultant when said sums fall due for payment.

* + 1. Affirmation of Appointment
			1. Subject to the terms of this Agreement the Appointment shall remain in full force and effect.
			2. The provisions of this Agreement shall take effect between the parties hereto on the last date of execution of this Agreement (the **"Effective Date"**) notwithstanding the date or dates hereof.
			3. The Consultant confirms that it has not agreed with the Employer to waive or release the Consultant from any of the obligations or services under the Appointment.
		2. Collateral Warranties

Nothing in this Agreement shall affect or derogate from any collateral warranty agreement given or to be given by the Consultant to the Employer under the Appointment and respecting the Development.

* + 1. Governing Law and Interpretation
			1. The law of this Agreement is the laws of England and the English Courts shall have exclusive jurisdiction with regard to all matters arising therefrom.
			2. The definitions given in the Recitals hereto shall apply to this Agreement.
			3. Clause headings in this Agreement shall be of no effect.

**IN WITNESS WHEREOF** these presents on this and the [XX] preceding pages are executed as follows:

They are signed for and on behalf of **[CONSULTANT]:**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| signature of Director/ Company Secretary/Authorised Signatory |  | signature of Director/Company Secretary/Authorised Signatory/ Witness |
|  |  |  |
| full name of above (print) |  | full name of above (print) |
|  |  |  |
| date of signing |  |  |  |
|  |  |  |
| place of signing |  | address of witness  |

They are signed for and on behalf of **[EMPLOYER]:**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| signature of Director/ Company Secretary/Authorised Signatory |  | signature of Director/Company Secretary/Authorised Signatory/ Witness |
|  |  |  |
| full name of above (print) |  | full name of above (print) |
|  |  |  |
| date of signing |  |  |  |
|  |  |  |
| place of signing |  | address of witness  |

[They are signed for and on behalf of **[CONTRACTOR]:**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| signature of Director/ Company Secretary/Authorised Signatory |  | signature of Director/Company Secretary/Authorised Signatory/ Witness |
|  |  |  |
| full name of above (print) |  | full name of above (print) |
|  |  |  |
| date of signing |  |  |  |
|  |  |  |
| place of signing |  | address of witness] |