DATE 20

**WINCHESTER CITY COUNCIL**

**-and-**

**[CONSULTANT]**

**-and-**

**[INCOMING PARTY]**

# Deed of Novation

Anthony Collins Solicitors LLP

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Ref: 45410.0001

**DEED OF NOVATION** (“**this Deed**”) dated **20**

## PARTIES

(1) **WINCHESTER CITY COUNCIL** whose principal place of business is at City Offices, Colebrook Street, Winchester, Hants, SO23 9LJ (“the Employer”);

(2) **[THE CONSULTANT]** (Company Number [ ]) whose registered office is at [ ] (“the Consultant”); and

(3) **[INCOMING PARTY]** (Company Number [ ]) whose registered office is at [ ] (“the Incoming Party”).

**SUPPLEMENTAL TO** an Appointment dated [ ] and made between the Employer and the Consultant.

## INTRODUCTION

1. Under the Appointment the Employer has appointed the Consultant to provide architectural and other services (“the Services”).
2. [Insert interest of the Incoming Party.]
3. The Employer, Consultant and the Incoming Party have agreed that:

* the Incoming Party shall assume the obligations of the Employer;
* the Consultant shall perform its obligations under the Appointment in favour of the Incoming Party; and
* the Employer and the Consultant shall each release the other from any obligations owed by the other to them under the Appointment except as provided in this Deed.

## IT IS AGREED THAT:

1. DEFINITIONS
   1. In this Deed the following words have the following meanings:

|  |  |
| --- | --- |
| **“Appointment**” | means the appointment referred to in Paragraph (A) of the Introduction; |
| “**Parties**” | means the parties to this Deed; and |
| **“the Services”** | means the services the Consultant is to provide under the Appointment. |

* 1. In this Deed:
     1. references to Clauses are (unless stated otherwise) references to clauses of this Deed and to Paragraphs are to paragraphs of the Introduction to it;
     2. the headings and references to them are not to affect its interpretation; and
     3. references to any document are (unless specified) references to such document as amended or supplemented from time to time.

1. NOVATION
   1. Subject to receiving an executed collateral warranty from the Consultant in favour of the Employer in accordance with the Appointment, the Employer releases and discharges the Consultant from all obligations and liabilities owed to the Employer under the Appointment.
   2. The Consultant undertakes to the Incoming Party to perform the Appointment and to be bound by its terms in every way as if the Incoming Party were, and had been from the inception, a party to the Appointment instead of the Employer.
   3. Except as provided in Clause 2.1 the Consultant releases and discharges the Employer from any and all obligations and liabilities owed to the Consultant under the Appointment and accepts the liability of the Incoming Party under the Appointment in lieu of the liability of the Employer.
   4. The Consultant undertakes to the Employer that it has performed and will continue to perform the duties it continues to owe to the Employer under the Appointment as set out in Clause 2.1.
   5. The Consultant shall be liable for any loss or damage suffered or incurred by the Incoming Party arising out of any negligent act, default or breach by the Consultant in performing the Consultant’s obligations under the Appointment before the date of this Deed. The Consultant shall be liable for such loss or damage even if such loss or damage would not have been suffered or incurred by the Employer (or suffered or incurred to the same extent by the Employer).
   6. The Incoming Party undertakes to perform the Appointment and to be bound by its terms in every way as if the Incoming Party were, and had been from the inception, a party to the Appointment in lieu of the Employer.
   7. Except in relation to the duties the Consultant is to continue to perform for the Employer as set out in this Deed references to the Employer in the Appointment shall be construed as references to the Incoming Party.
2. WAIVER AND CONSENT
   1. Any clause in the Appointment purporting to prohibit or restrict the novation of the Appointment is waived by mutual consent for the purpose of the novation contained in Clause 2 of this Deed.
   2. The Consultant expressly consents to the novation of the Appointment from the Employer to the Incoming Party.
3. ACKNOWLEDGEMENT OF PAYMENT

The Consultant acknowledges that all fees and expenses properly due to the Consultant under the Appointment up to the date of this Deed have been paid by the Employer.

1. ENTIRE AGREEMENT
   1. This Deed and the Appointment together set out the whole agreement between the Parties in relation to the Appointment. They supersede and invalidate all other commitments, representations and warranties relating to its subject matter which either party has made orally or in writing.
   2. Each Party warrants that it has not entered into this Deed on the basis of any representation made by the other except to the extent that such representation is expressly set out in it (but nothing in this Clause 5.2 excludes any liability for fraudulent misrepresentation).
2. EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE
   1. Nothing in this Deed is to require the Employer to act in any way which is inconsistent with its statutory duties or obligations as a local authority or is to act as a fetter on the exercise of those statutory duties and obligations.
   2. Each Party undertakes (subject to Clause 6.1) to do all things and execute all further documents that the other may reasonably require to give effect to this Deed.
3. THIRD PARTIES

Nothing in this Deed shall confer any benefit on a person who is not a party to it or give any such third party a right to enforce any of its terms.

1. GOVERNING LAW AND ENFORCEMENT
   1. This Agreement is governed by English law. Any dispute shall be subject to the jurisdiction of the English courts.
   2. The rights and remedies given by this Deed are cumulative and do not exclude any other rights or remedies given by law or under this Deed.
2. COUNTERPARTS

This Deed may be executed in two or more counterparts each of which shall be deemed to be an original but the counterparts shall together constitute one and the same Deed.

1. COSTS

Each Party shall bear their own costs in relation to the negotiation and completion of this Deed.

**IN WITNESS** of the above all of the parties have executed and delivered this Deed on the date set out at the start of it.

**[INSERT EXECUTION CLAUSES]**