

FREQUENTLY ASKED QUESTIONS

PUBLICATIONS

COLLATERAL WARRANTIES

- Q:** What are the latest versions of the CIC collateral warranties?

A: Collateral Warranty – Purchaser/Tenant March 2003
Collateral Warranty – Consultant/Employer August 2010
Collateral Warranty – Consultant/Funder March 2003
- Q:** Are the CIC collateral warranties available digitally?

A: No, these documents are not available digitally.
- Q:** What collateral warranty forms do I need from my tenant’s structural engineer and architect?

A: The collateral warranty consultant/employer is the most appropriate one. The recitals, marked A and B, can be adjusted to state the actual relationship between the various parties.
- Q:** CIC collateral warranty – purchaser/tenant – is there an electronic version of this document available that can be amended? If not, what is the recommended way of making the amendments and adding clauses?

A: There is no electronic version of this collateral warranty available and amendments are not recommended. However, if amendments are to be made, they should be added in manuscript either in the document itself or, where they are too long, on a separate sheet which is attached to the collateral warranty and cross referenced on the front page, e.g. by writing “This document consists of [x] pages including the amendments on page [x]”. All the amendments should be initialled by both parties.

5. **Q:** Which is the correct form of collateral warranty to use suitable for a client with an architect and structural engineer?

A: If the client is to be in direct contract with the architect, or structural engineer, the document needed is a form of appointment and not a collateral warranty. If the client is not to be in direct contract with the architect or structural engineer, the CIC collateral warranty consultant/employer, for use with a contractor's consultants, will be the right one.

6. **Q:** Which collateral warranty can I use where the subcontractor's consultant is to give a collateral warranty to the employer?

A: The CIC collateral warranty consultant/employer could be adapted for this situation by re-wording recital 'A' on page one as follows:

"A. The Employer [] (the "Main Contractor") has entered into a contract dated [] (the "Main Contract") for the design and construction of [] at [] (the "Development"). The Main Contractor and [] (the "Contractor") have entered into a contract dated [] (the "Building Contract") to carry out the works specified in the Building Contract."

7. **Q:** Is the CIC collateral warranty consultant/employer suitable for use with a subcontractor to the design and build contractor?

A: This collateral warranty is not really suitable for this purpose as it is intended for a consultant and not a subcontractor.

APPOINTMENTS

8. **Q:** Is the CIC consultant conditions – second edition – November 2011 a full appointment contract?

A: This document does not include the scope of services or the handbook which goes with the scope of services, so it is not a complete appointment.

9. **Q:** Does the CIC publish a form of consultant's appointment suitable for use under Scots' law?

A: Yes, the CIC consultant appointment and conditions can be used for contracts under Scots' law.

NOVATION AGREEMENT

10. **Q:** Can the CIC novation agreement be used "where the novation is a "consultant switch" and also where it is a "true novation (ab initio i.e. dating back to the start of the original appointment)"

A: The document is intended for a consultant switch, but in paragraph 4(a) if the contractor is responsible under the main contract for design ab initio, the consultant warrants to the contractor that design carried out for the employer before the switch, has been performed **for the employer** in accordance with the terms of the appointment. The consultant could not of course perform those design services for the contractor, because at that stage he was not in contract with him and the duties which a designer owes to the contractor are slightly different from those which he owes to the employer.

11. **Q:** Does the CIC novation agreement protect a contractor?

A: Clause 4(a) of the novation agreement deals with protection to the contractor in relation to work carried out by the novated consultant before the novation.

12. **Q:** In what circumstances should the CIC supplemental agreement – CIC/NovAgr/EWa – be used?

A: This agreement should be used where the employer wishes the consultant to warrant his work carried out after the novation agreement has been entered into.

13. **Q:** Is the CIC supplemental agreement – CIC/NovAgr/EWa essentially a collateral warranty?

A: Yes, but it is intended that this is used with the CIC novation agreement, which means that the consultant's duties to the employer under the appointment before the novation will still be owed to the employer, i.e. the employer can still sue on those obligations if they were carried out negligently and he has suffered loss.

14. **Q:** Are there any circumstances in which the CIC supplemental agreement – CIC/NovAgr/EWa can be used without the CIC novation agreement?

A: No, this document should only be used in conjunction with the CIC novation agreement.

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MODEL ADJUDICATION PROCEDURE

16. **Q:** What are the terms and conditions of the model adjudication procedure?

A: The model adjudication procedure can be used with whatever terms and conditions the parties have signed up to, for the underlying construction contract.