

## Novation agreement: transfer of architectural or building contract

This novation is dated: [date] :

[James Smith Ltd] (“[ ]”)

whose registered office is at [address], [ ]

And

[Freda Brown] (“[ ]”)

whose address is at [address].

And

[Name of contractor/ architect] (“ / ”)

of / whose registered office is at [address], [ ]

### Background

- A. [Smith] owns land at [address] (“the Land”) on which he has contracted with the ( “ ”).
- B. [Smith] has agreed to sell the land to [Brown]
- C. Completion of the sale of land will take [ ].
- D. The [Contractor / Architect] has agreed to [construct the house / perform the services] as set out in the Contract, a copy of

It is now agreed as follows:

### 1. Conditionality

This novation agreement is conditional upon Completion and takes effect on the date of Completion. If Completion is delayed, this

## 2. Novation

In consideration of the advantage each of the parties acknowledges it will receive by this agreement,

:

- 2.1. [Brown] is substituted for [Smith] under the Contract as if [Brown] had originally been the party to the Contract instead of [Smith]. All references in the Contract [ ] [ ]].
- 2.2. [Brown] is bound by and must fulfil, comply [ ] .
- 2.3. The [Contractor / Architect] will continue to be [ ] .
- 2.4. [All the construction [ ] ]
- 2.5. [So far as there are unwanted materials [ ] , [ ] ]
- 2.6. Whether or not mentioned in the Contract, all [ ] , [ ] .
- 2.7. [As additional consideration for this agreement, [Smith] will pay to [ ] \$ [ 5 , 000 ] [ ] [ 1st 2000 31st 2099 ].]

## 3. Changes to the Contract

- 3.1. [Paragraph [number] of the Contract [ ] - [ ] ]
- 3.2. [In paragraph [number] of the Contract, the date shall be : [ ] [ ] ]

[ ]  
.]

## 4. Indemnities

4.1. [Brown] agrees to take over all the liability of [Smith]  
[ / ]  
[ ]

OR

4.2. The [Contractor / Architect] releases and discharges [Smith]  
[ , ]  
/ ] [ ]

AND / OR

4.3. [Smith] agrees to indemnify the [ / ]  
[ ]

## 5. Further assistance

Each of the parties undertakes to do ,  
 ,

## 6. Counterparts

This agreement may be executed in any number of counterparts  
, ,

## 7. Entire understanding

This agreement contains the entire agreement between the parties and  
supersedes all previous agreements and understandings between  
, .

## **8. Dispute resolution**

## **9. Publicity / Announcements**

## **10. Miscellaneous matters**

10.1.

10.2.

10.3.

10.4.

10.5.

10.6.

10.7.

[ 72 ]

[ 24 ]

10.8.

10.9.

10.10.

].

[ ]

Signed by / on behalf of the named parties by their representatives who personally accept liability for the proper authorisation by their respective employer or principal to enter into this agreement.

OR

Signed by / on behalf of the first named party by its representative who personally accepts liability for the proper authorisation to enter into this agreement and by the second party personally / as a partner in [name of partnership].

For, and on behalf of [ ]

print name

For, and on behalf of [ ]

print name



## Explanatory notes:

### Novation of construction or architectural contract on sale of land

## Paragraph specific notes:

Note: numbering refers to paragraph numbers.

2 It is important that the price (or “consideration”) for the deal is inserted can be expressed in some other way than cash. As here, the price can be expressed in some other way than cash. This acknowledgment that each party has received an advantage is sufficient to enable any party to sue on the agreement without it being signed as a deed. We advise that you do not edit this paragraph.

2.7 You can do a deal whereby any party pays money under some arrangement or another. In bad times, maybe the

3 The deal resulting in the agreement may have other terms which should be included for the sake of completeness. Such terms may relate to the completion of a contract of service, or provision of goods or a change in the terms of debt.

We have entered example provisions to illustrate the sort of

4 It is for you to negotiate who is to indemnify whom. First, ask yourself whether there is some known conflict or issue between any two of the parties. If yes, decide who is to carry the ongoing liability. Next, consider the type of contract and the value. If it is possible that there may be some liability appearing out of the woodwork, ask yourself who should pay for it.

The most common provision in a novation agreement is for the in-comer to

6 It is sometimes convenient for the parties to sign separate copies particularly if the deal is urgent.

- 9 Read these carefully, but leave in place unless you know you want to remove them.

## End of notes