The CIC forms of collateral warranty and novation agreement are generally considered to be the only reasonable standard forms of collateral warranty and novation agreement from a consultant’s (or sub-consultant’s or contractor’s) perspective.

A new suite of the following standard form novation agreements and collateral warranties were published by the CIC on 8 November 2018:

- Novation Agreement - Ab Initio (first edition)
- Collateral Warranty Consultant – Funder (second edition)
- Collateral Warranty Consultant – Purchaser/Tenant (second edition)
- Collateral Warranty Sub-consultant – Client (first edition)
- Collateral Warranty Consultant – Employer (third edition)

Beale & Co was involved in the drafting of the new suite, which was steered by the CIC Liability Panel. The chair of the panel, Professor Sarah Lupton, said, “It was exciting to work with a multi-discipline team, including expert consultants, lawyers and insurers drawn from the liability panel. The novation ab initio agreement is a completely new form, and we hope its introduction will help to standardise arrangements across the industry, and avoid the need for multiple ad-hoc documents. The panel also liaised with the RIBA to ensure compatibility with its new professional service contracts, and is grateful for its support in this venture.”

These industry-standard documents are intended to balance the interests of clients and consultants in respect of the novation agreement and collateral warranties. The suite includes two new documents (i) the ‘Novation Agreement - Ab Initio’ and (ii) the ‘Collateral Warranty Sub-consultant – Client’. The ‘Novation Agreement – Ab Initio’ reflects the increasing trend on employers/contractors insisting on an ab initio novation where it is appropriate to do so.

The ‘Novation Agreement - Ab Initio’ is intended for use when a consultant engaged by a building owner or developer is novated to a new client, who may be a design and build contractor, or another developer or other organisation. As this is an ab initio form of novation it has effect as if the consultant had been appointed by the new client from the outset. Whilst any ab initio novation, is a “legal fiction” and may create a conflict of interest between the consultant’s duties to the original client prior to novation and those to the new client following novation, the ‘Novation Agreement - Ab Initio’ includes drafting to help mitigate these risks.

A ‘Novation Agreement – Switch’ (which novates the consultant to the new client on the date of novation) and related collateral warranty will also be published in the near future. In light of the risks of “ab initio” novation mentioned above, we would suggest that the “switch” form is proposed in the first instance if novation is required.

The new ‘Collateral Warranty Sub-consultant – Client’ is in a similar form to the other CIC collateral warranties and enables a consultant to procure collateral warranties in favour of the client from any sub-consultant as is often required by clients.

The other forms have not changed significantly - they have mostly been updated to reflect the current legal position and market practices. One key point to note is that the
‘Collateral Warranty Consultant – Employer’ can now be used to provide a collateral warranty to the contractor’s employer either when the consultant is employed by the contractor throughout or is novated to the contractor on an ab initio basis.

Beale & Co are very pleased to have been involved in this exciting project and we hope the new forms of collateral warranty and novation agreement encourage reasonable forms of novation agreement and collateral warranty to be agreed. If a collateral warranty or novation is required, we suggest that the CIC forms are proposed by consultants.

Andrew Croft, Senior Associate, considered the updated suite of CIC collateral warranties and novation agreement (as well as the new RIBA Professional Services Contract 2018) in a webinar on 23 May 2019, which is available to view here.