|  |  |
| --- | --- |
| **Department of [insert]** |  |

Deed of Novation

**The Parties**

|  |
| --- |
| **STATE OF QUEENSLAND**, through [insert] |

**and**

|  |  |
| --- | --- |
| **Original Party** | [insert]  |
| **ABN/ACN** | [insert]  |

**and**

|  |  |
| --- | --- |
| **Replacement Party** | [insert]  |
| **ABN/ACN** | [insert]  |

**Background**

The Original Party and the Department are parties to each Service Agreement.

The Original Party wishes to novate its rights and obligations under each Service Agreement to the Replacement Party, and the Replacement Party has agreed to accept the novation in relation to each Service Agreement on the terms of this Deed.

The Department consents to the proposed novation, subject to the terms of this Deed in relation to each Service Agreement.

**Agreed Terms**

1. Definitions & Interpretation
	1. In this Deed, unless a contrary intention appears:

***Department*** means State of Queensland, acting through [insert];

***Claim*** includes any claim, action, proceeding, demand, liability, obligation, costs, loss, damages and expenses including legal expenses;

***Deed*** means this document and any schedules to it;

***Effective Date*** means [insert];

***Replacement Party*** means the entity named as the Replacement Party under ‘The Parties’ in this Deed;

***Original Party*** means the entity named as the Original Party under ‘The Parties’ in this Deed; and

***Service Agreement*** means a Service Agreement between the Department and the Original Party for the provision of social services and funding payments described in Schedule 1 and, in each case, being comprised of:

* + 1. *Service Agreement – Standard Terms*, version 1.1 – dated 17 February 2015; and
		2. *Service Agreement – Funding and Service Details* and associated ‘Funding Schedules,

as amended from time to time.

* 1. A reference to a government entity (as that term is defined in the *Public Sector Act 2022* in the event that entity is reconstituted or replaced, will be a reference to the entity then carrying out its powers or functions.
1. novation
	1. On and from the Effective Date, each Service Agreement is novated to the Replacement Party such that, for each Service Agreement:
		1. the Replacement Party is substituted for the Original Party under the Service Agreement as if the Replacement Party had originally been a party to the Service Agreement instead of the Original Party;
		2. the Replacement Party assumes all obligations and liabilities of, and will enjoy all rights and benefits of, the Original Party under and in relation to the Service Agreement;
		3. the references in the Service Agreement to the Original Party (and which may be expressed as ‘You’ and related parts of speech or other grammatical forms) will be interpreted as if they were references to Replacement Party; and
		4. the Replacement Party is bound by and must comply with the Service Agreement and will enjoy all the rights and benefits under the Service Agreement as if it were the Original Party.
	2. The Replacement Party and Original Party each warrant to the Department that the Replacement Party has obtained all relevant assets (including all relevant intellectual property rights) required to perform its obligations under each Service Agreement.
2. Variation of Service Agreement(s)
	1. The Replacement Party and the Department agree to vary the Service Agreement(s) from the Effective Date in the way described in Schedule 2.
	2. In all other respects, each Service Agreement remains unaltered.
3. INDEMNITIES & release
	1. The Original Party releases and indemnifies the Department from and against any Claim which it may have against the Department in connection with the Department’s obligations under any Service Agreement and which arises in relation to any event, matter or thing occurring prior to the Effective Date.
	2. The Original Party indemnifies the Replacement Party from and against any Claim which may be brought against, made upon or incurred by the Replacement Party in connection with the Original Party’s rights and obligations under any Service Agreement and which arises in relation to any event, matter or thing occurring prior to the Effective Date.
	3. The Replacement Party indemnifies and releases the Original Party from and against any Claim which may be brought against, made upon or incurred by the Original Party in connection with the Replacement Party’s rights and obligations under any Service Agreement and which arises in relation to any event, matter or thing occurring on or after the Effective Date.
4. General provisions
	1. Neither the Original Party nor the Replacement Party may assign its rights and obligations under this Deed without the consent of the Department.
	2. This Deed will be governed by and construed under the law of the State of Queensland and the parties agree to submit to the jurisdiction of the courts of the State of Queensland.
	3. If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason then that part will be severed from the rest of this Deed and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.
	4. Each party must do all things reasonably required to give effect to this Deed.
	5. No right under this Deed will be deemed to be waived except by notice signed by each party. Any failure by a party at any time to enforce a clause of this Deed, or any forbearance, delay or indulgence granted by a party to another will not constitute a waiver of the party’s rights. A waiver by a party of a breach of any provision of this Deed will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.
	6. This Deed may be varied at any time by a written agreement signed by all parties.
	7. This Deed constitutes the entire agreement between the parties and supersedes any prior arrangements, agreements, warranties, representations or undertakings.
	8. Each party to this Deed will pay its own costs in relation to the negotiation, preparation and execution of this Deed.
	9. All notices relating to this Deed must be sent to the relevant party at the address stated below:

**Department**

Delivery address: [insert]

Postal Address: [insert]

Email: [insert]

**Original Party**

Delivery address: [insert]

Postal Address: [insert]

Email: [insert]

**Replacement Party**

Delivery address: [insert]

Postal Address: [insert]

Email: [insert]

* 1. A notice will be deemed to be given:
		1. if posted – four Business Days after the date of posting;
		2. if delivered by hand during a Business Day – on the date of delivery; and
		3. if emailed – on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered.

except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.

* 1. This Deed may be executed in counterparts, each of which, taken together, will constitute one instrument. The parties may communicate their execution by posting the executed document, providing a copy of the executed document by facsimile or scanning and sending a copy of the executed document by electronic mail.

**SCHEDULE 1
(Service Agreement(s) being novated)**

1. Service Agreement number [insert], with an ‘Agreement Commencement Date’ of [insert].
2. [insert **OR** delete if only a single Service Agreement is being novated]

**SCHEDULE 2
(Variation of Service Agreement(s) – clause 3.1)**

|  |  |
| --- | --- |
| **Service Agreement**  | **Details of Variation** |
| 1. Service Agreement number [insert], with an ‘Agreement Commencement Date’ of [insert]
 | * + 1. The ‘*Service Agreement – Funding and Service Details*’ forming part of the Service Agreement is amended by replacing the ‘Funded Organisation’ and the ‘ABN/ACN’ on the cover page with the following:

|  |  |
| --- | --- |
| **Funded organisation**  | [insert]  |
| **ABN/ACN** | [insert]  |

* + 1. Item 3 (Service Outlets) in each ‘*Funding Schedule*’ forming part of the Service Agreement is amended by replacing the table in that item with the following:

|  |  |  |
| --- | --- | --- |
| Service outlet number | Service outlet  | Departmental region/area where service outlet is located |
| [insert]  | [insert]  | [insert]  |

 |
| 1. [insert if other Service Agreements]
 |  |

**EXECUTED AS A DEED ON THE DATES APPEARING BELOW**

**SIGNED SEALED and DELIVERED** )

on behalf of ) …………………………….............

**STATE OF QUEENSLAND** through ) *(name of authorised officer)*

**[insert]** )

by an authorised officer)

in the presence of:) …………………………….............

 *) (signature of authorised officer)*

……………………………............. )

*(name of witness) )* ........ / ........ /……..

 *)* *(date)*

……………………………............. *)*

*(signature of witness)* )

**[Original Party]**

**SIGNED SEALED and DELIVERED** )

by Original Party **[insert]** ) …………………………….............

**ACN [insert]** in accordance with )  *(name of director)*

s 127 of the *Corporations Act 2001* (Cth))

)

……………………………………………. ) …………………………….............

*(name of director/secretary)*) *(signature of director)*

)

 )........ / ........ /……..

……………………………………………. ) *(date)*

*(signature of director/secretary)* )

**[Replacement Party]**

**SIGNED SEALED and DELIVERED** )

By Replacement Party **[insert]** )

**ACN [insert]** accordance with ) ……………………………………

s 127 of the *Corporations Act 2001* (Cth) ) *(name of director)*

 )

…………………………………………….)

*(name of director/secretary)* ) …………………………….............

) *(signature of director)*

 *)*

……………………………………………. ) ........ / ........ /…….

*(signature of director/secretary)* ) *(date)*