Deed of Novation

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| **INSTRUCTIONS FOR USING THIS DOCUMENT - TO BE DELETED BEFORE SENDING TO SUPPLIER**  This Deed of Novation is to be used where a new supplier is to take over the rights and obligations of the Supplier under the Contract.  The Deed is to be executed by the Customer, the Supplier and the New Supplier.  **Should the Customer agree to the New Supplier taking on the Contract?**  Before agreeing to the New Supplier taking on the Contract, consider the following:  • Are you satisfied that the New Supplier can perform the obligations under the Contract and manage risk? Have you undertaken a due diligence process as to the probity, financial viability and capability of the new supplier?  • Will the novation have any effect on subcontracts or other agreements?  • Are there specific issues for this particular Contract? For example, are there assets or intellectual property that need to be transferred at the same time?   * Are there any existing securities or financial arrangements under the original Contract that need to be replaced?   **What form of Deed of Novation should the Customer use?**  This form of Deed of Novation is sometimes referred to as a ‘partial discharge’, as it does not release the Supplier from liability in respect of any act or omission of the Supplier prior to the effective date of novation.  Sometimes circumstances may warrant that a ‘full or complete discharge’ Deed of Novation is used, by which the New Supplier accepts liability for all acts and omissions, whether occurring before, on or after the effective date of novation. The Supplier is released from any claim that the Customer may have in respect of any act or omission of the Supplier before the effective date of novation. The benefit of this Deed of Novation is that the Customer will always have recourse against the New Supplier, even if the claim arises out of events occurring before the New Supplier assumed the obligations under the Contract. This will protect the Customer’s interests if, for example, the original Supplier is wound up.  A copy of the complete discharge Deed of Novation can be obtained from ***<insert relevant contact details>.***  If there is any doubt as to which form of Deed of Novation to use, seek professional advice. |

Deed of Novation

[Insert subheading if required]

This **Deed of Novation** is made this day of 20

**Between**

[insert name of the Supplier] (the “**Supplier**”)

**And**

ACN/ABN

[insert name of New Supplier] (the “**New Supplier**”)

**And**

ACN/ABN

[insert name of the Customer] (the “**Customer**”)

# Recitals

A. By way of [……………………………….], the Customer entered into [insert name of Contract Details] (the “Contract”) a <<insert type of Contract>> with the Supplier for the supply of <<insert details of Contract>> to the Customer, [as varied] .

B. The Supplier desires to be released and discharged from the Contract and the New Supplier desires to assume the rights and obligations of the Supplier under this Contract.

C. With effect from the date of this Deed of Novation [the “Effective Date”], the Customer has agreed to release and discharge the Supplier from the Contract upon condition that the New Supplier undertakes to perform the conditions of the Contract and to be bound by the conditions of this Deed of Novation.

## The Parties agree as follows:

# 1.0 Novation

1.1 With effect and from the Effective Date:

1. the New Supplier shall be substituted for the Supplier under the Contract as if it had originally been a party to the Contract instead of the Supplier, and all references in the Contract to the Supplier in any capacity shall be read and construed as if they were references to the New Supplier;
2. the New Supplier shall be bound by and comply with the provisions of the Contract binding upon the Supplier and shall enjoy all the rights and benefits of the Supplier under the Contract; and
3. the New Supplier assumes all the obligations of the Supplier under the Contract, whether arising before, on or after the Effective Date.

# 2.0 Indemnity

2.1 The Supplier agrees with the New Supplier to indemnify and keep indemnified the New Supplier from and against any liability incurred by the New Supplier as a result of any action, demand, claim or proceeding (“Claim”) against the New Supplier by the Customer under or in respect of the Contract relating to any act or omission of the Supplier before the Effective Date).

2.2 The New Supplier agrees with the Supplier to release, indemnify and keep indemnified the Supplier from and against any liability incurred by the Supplier as a result of any action, demand, claim or proceeding against the Supplier by the Customer under or in respect of the Contract relating to any act or omission of the New Supplier on or after the Effective Date.

# 3.0 Release of Supplier

3.1 With effect on and from the Effective Date the Customer releases the Supplier from all its obligations under the Contract and all actions, claims or proceedings that it may have against the Supplier under or in respect of the Contract relating to any act or omission of the Supplier on or after the Effective Date.

3.2 The Parties acknowledge and agree that the Supplier shall remain liable under the Contract in respect of all acts or omissions prior to the Effective Date.

# 4.0 Representation and Warranties

4.1 Representations and Warranties

4.1.1 Each of the Supplier and the New Supplier represents and warrant to the Customer and to each other that:

1. it is a corporation validly existing under the laws applicable in the State of Queensland;
2. It is compliant with the Ethical Supplier Threshold (and Mandate where applicable);
3. It does not participate in any forms of slavery and human trafficking;
4. it has the corporate power to enter and perform its obligations under this Deed and has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
5. this Deed is evidence of each parties’ valid and binding obligations that are enforceable against each of them in accordance with its terms;
6. no application or order has been made for the winding up or liquidation of either party, no action has been taken to seize or take possession of any of either parties’ assets; there are no unsatisfied judgements against either party and each party is able to pay its debts as they fall due; and
7. it shall execute all documents and do all acts and things reasonably required for the purposes of giving effect to this Deed.
8. The parties’ consent to the use of electronic communications as a method for the signing of this Deed, noting this would require printing, execution and witnessing on this printed document and this executed document then being electronically transmitted.
9. By the execution and transmission, the parties intend to be bound by the Novation as a deed.

4.2 Reliance

4.2.1 The current Supplier and the New Supplier acknowledge that the Customer has entered this Deed in reliance on the representations and warranties in clause 4.1.

# 5.0 Expenses

5.1 The New Supplier shall reimburse the Customer for its reasonable costs and expenses of and relating to the preparation, execution and completion of this Deed, including reasonable legal costs and expenses on a full indemnity basis.

# 6.0 Stamp Duty

6.1 The New Supplier shall pay all stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this Contract or any payment or receipt or other transaction contemplated by this Deed.

# 7.0 Applicable Law

7.1 This Deed shall be governed by and construed in accordance with the laws in force in the State of Queensland, Australia and the Parties agree to submit to the jurisdiction of the courts in Queensland.

The Parties to this Deed of Novation have executed the Deed on the dates set out below.

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| EXECUTED AS A DEEDEXECUTION BY CUSTOMER: Signed, Sealed and Delivered  For and on behalf of    (insert name of Customer)  by  (insert name of Customer representative)  this day of 20  In the presence of:    (insert name of witness) | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | (signature of Customer representative)    (signature of witness) |
| EXECUTION BY SUPPLIER: Signed, Sealed and Delivered for and on behalf of    (insert Supplier’s name; ACN and ABN)  ***in accordance with s.127 of the*** [***Corporations Act 2001 (Cth)***](https://www.legislation.gov.au/Details/C2017C00328)  this day of 20  by    (insert name of Director)    (insert name of Director/Secretary)  in the presence of    (insert name of witness) | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | (signature of Director)    (signature of Director/Secretary)    (signature of witness) |
| EXECUTION BY NEW SUPPLIER: Signed, Sealed and Delivered for and on behalf of    (insert New Supplier’s name; ACN and ABN)  ***in accordance with s.127 of the*** [***Corporations Act 2001 (Cth)***](https://www.legislation.gov.au/Details/C2017C00328)  this day of 20  by    (insert name of Approved Party)  in the presence of    (insert name of witness) | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | (signature of Approved Party)    (signature of witness) |

Where an attorney or other agent executes this Deed or affixes a seal the form of execution must indicate the source of this authority and such authority must be in the form of a Deed and a certified copy thereof provided to the Customer.