



Novation Deed

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Novation Deed

Date	
Parties	<hr/> <p style="text-align: right;">(Novatee)</p> <hr/> <p style="text-align: right;">(Novator)</p>
Background	<p>A. Novatee and Novator entered into an agreement dated _____ pursuant to which _____ (Agreement).</p> <p>B. Clause ___ of the Agreement allows for the parties to novate the Agreement provided all parties to the Agreement consent to the novation.</p> <p>C. The parties consent to the novation of the Agreement on the terms set out in this Deed.</p>

Novation Deed

1. Definitions and interpretations

1.1 Definitions

In this Deed, unless the context or subject matter otherwise require:

Authorised Representative means:

- (a) in respect of a party which is a corporation:
 - (i) a company secretary or director or any officer of the corporation whose title or office includes the words "manager" or "director"; or
 - (ii) a person acting with the title or in the office of manager or director; and
- (b) in respect of each party, a solicitor of that party or a person nominated by notice to the other party as an authorised representative;

Claims means actions, demands, losses, injuries, damages, suits, judgments, orders, decrees, costs and expenses of every description including, without limitation, consequential losses and damages.

Deed means this deed, (including the recitals, the Schedules, appendices and exhibits to it), as it may later be amended or supplemented by the parties in writing.

Effective Date means _____.

Government Authority means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them.

Obligation means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability.

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

1.2 Interpretation

In the interpretation of this Deed, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Deed;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time: and
- (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. Novation

2.1 Novation

The parties agree that, pursuant to clause ____ of the Agreement, the Agreement is discharged and a new agreement (**New Agreement**) is entered into on the same terms and conditions as the agreement contained in the Annexure to this Deed, except as follows:

- (a) _____
- (b) _____

2.2 Assumption of Rights and Obligations

The parties agree that, on and from the Effective Date, they will each enjoy the Rights and benefits and be bound by the Obligations and liabilities as set out in the New Agreement.

3. Release

3.1 Release by Novatee

On and from the Effective Date, Novatee releases Novator from:

- (a) its Obligations and liabilities arising under the Agreement; and
- (b) all Claims that Novatee may have or but for this release might have had against Novator in connection with the Agreement.

3.2 Release by Novator

On and from the Effective Date, Novator releases Novatee from:

- (a) its Obligations and liabilities arising under the Agreement; and
- (b) all Claims that Novator may have or but for this release might have had against Novatee in connection with the Agreement.

4. Indemnity

4.1 Indemnity by Novatee

Novatee indemnifies Novator against each Claim incurred or suffered by or brought or made or recovered against Novator connection with any matter relating to, or any act or omission of Novatee with respect to, the Agreement before the Effective Date.

4.2 Indemnity by Novator

Novator indemnifies Novatee against each Claim incurred or suffered by or brought or made or recovered against Novatee in connection with any matter relating to, or any act or omission of Novator with respect to, the Agreement before the Effective Date.

5. Confidentiality

The parties hereby covenant that the terms of this Deed and all matters associated with it and all information exchanged between the parties pursuant to this Deed or during negotiations preceding it will be and remain confidential and will not be disclosed to any person except:

- (a) as required by law;
- (b) with the written consent of the other parties to this Deed;
- (c) to their legal or accounting advisors; or
- (d) for the purposes of enforcing this Deed.

6. Proper Law, Jurisdiction

6.1 Choice of law

This Deed is governed by and construed in accordance with the laws of the Commonwealth of Australia.

6.2 Jurisdiction

Actions, suits or proceedings relating in any way to this Deed or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in Queensland.

6.3 Submission to jurisdiction

Each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.

6.4 Service of process

A party may by notice appoint another person at a specified address in Queensland to receive service of process in connection with proceedings and process served on that person is taken to be served on the party making the appointment.

7. General Provisions

7.1 Costs

Each party shall pay and bear its own costs of and incidental to the preparation, negotiation and execution of this Deed and shall pay all stamp duty costs associated with this Deed.

7.2 Independent Advice

Each party has been given the opportunity to seek independent legal advice with respect to the content and effect of this Deed and has sought such advice as it deems necessary.

7.3 No Adverse Construction

No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Deed or any part of it.

7.4 Variations

No variation of this Deed nor consent to a departure by a party from a provision, shall be of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation or consent shall be effective only to the extent to or for which it may be made or given.

7.5 **Waiver**

The non-exercise of or delay in exercising a Right of a party shall not operate as a waiver of that Right, nor does a single exercise of a Right preclude another exercise of it or the exercise of other Rights. A Right may only be waived by notice, signed by the party (or its Authorised Representative) to be bound by the waiver.

7.6 **Further assurances**

Each party to this Deed shall do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by notice from another party to carry out and give effect to the terms and intentions of this Deed and to perfect, protect and preserve the Rights of the other parties to this Deed.

7.7 **Liability of parties**

If a party consists of more than one person:

- (a) an Obligation of those parties is a joint Obligation of all of them and a several Obligation of each of them;
- (b) a Right given to those parties is a Right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

7.8 **Counterparts**

This Deed may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.

7.9 **Warranty of authority**

Each person signing this Deed:

- (a) as attorney, by so doing, warrants to the other parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and
- (b) as an Authorised Representative, agent or trustee of a party, warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Deed on behalf of that party.

7.10 **Severability**

This Deed shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Deed shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

7.11 Multi Capacity

If a party to this Deed is a party in more than one capacity, it is only necessary for that party to execute this Deed once and such execution shall bind that party in all capacities.

7.12 Delivery as a deed

Subject to express provisions in this Deed to the contrary, each party by signing or executing this Deed is deemed to unconditionally sign, seal and deliver this Deed as a deed, with the intention of being immediately legally bound by this Deed.

Executed as a Deed

Executed by _____ **ACN**)
_____ in accordance with section)
127 of the Corporations Act 2001)

.....
Director

.....
Director/Secretary

.....
Name (please print)

.....
Name (please print)

Executed by _____ **ACN**)
_____ in accordance with section)
127 of the Corporations Act 2001 by its)
attorney _____ under power of)
attorney no _____ in the)
presence of:

.....
Witness

.....
By executing this deed, the attorney states that
the attorney has received no notice of
revocation of the power of attorney.

.....
Name (please print)

Signed, sealed and delivered by)
_____ Under power of attorney)
no _____ dated)
_____ in the presence of:

.....
Witness

.....
By executing this deed, the attorney states that
the attorney has received no notice of
revocation of the power of attorney.

.....
Name (please print)

Signed, sealed and delivered by)
_____ in the presence of:)
.....)

.....
Witness

.....
Name (please print)

.....
Name (please print)

ANNEXURE A