

Deed of Novation

Date

[Insert]

Parties

Principal

Name [Insert]

Principal's Representative [Insert]

ACN/ABN [Insert]

Address for Notices [Insert]

Consultant

Name [Insert]

ACN/ABN [Insert]

Consultant's [Insert]

Representative

Address for Notices [Insert]

Contractor

Name [Insert]

ACN/ABN [Insert]

Consultant's [Insert]

Representative

Address for Notices [Insert]

Details

Project [Insert]

Original Contract Date [Insert]

Novation Date [Insert]

Outstanding Fee [Insert]

Future Fee [Insert]

Preserved Claims [Insert]

Relevant Jurisdiction [Insert]

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1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed of Novation:

- (a) words and phrases which are defined in the Original Contract have the same meaning as they have in the Original Contract (unless the context requires otherwise);
- (b) the following words and phrases have the meaning given below (unless the context requires otherwise):
 - (i) **Future Fee** means the amount described as such in the Details;
 - (iii) **Novated Contract** means the agreement between the Consultant and the Contractor created through clause 2.1(b) of this Deed of Novation;
 - (iv) **Original Contract** means the agreement between the Consultant and the Principal in relation to the Project and dated as noted in the Details;
 - (v) **Outstanding Fee** means the amount described as such in the Details;
 - (vi) **Project** means the project described as such in the Details;
 - (vii) **Preserved Claims** means the claims described as such in the Details; and
 - (viii) **Relevant Jurisdiction** means the State or Territory described as such in the Details.
 - (ix) **Works** means the works to be carried out by the Contractor under the Works Contract;
 - (x) **Works Contract** means the agreement between the Contractor and the Principal providing for the carrying out of the Works in relation to the Project;

1.2 Interpretation

The rules of interpretation set out in the Original Contract apply to this Deed of Novation (unless the context requires otherwise).

2 NOVATION

2.1 Novation

On the Novation Date:

- (a) the Original Contract is discharged; and

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- (b) the Novated Contract is formed.

2.2 The Novated Contract

Following the formation of the Novated Contract:

- (a) the parties to the Novated Contract are the Consultant and the Contractor;
- (b) the terms of the Novated Contract are, subject to this clause 2.2, the same as the Original Contract;
- (c) references to the Principal in the Original Contract shall be taken to be references to the Contractor in the Novated Contract;

and

- d) terms in the Original Contract which are not included in the Novated Contract are set out in Schedule 1 of this Deed of Novation.

2.3 Confirmations and Releases

- (a) On the Novation Date:
 - (i) the Principal releases the Consultant from further performance of the Original Contract;
 - (ii) the Principal releases the Consultant from all claims, loss and damage the Principal has, or may have had, against the Consultant;
 - (iii) subject to clause 2.4, the Consultant releases the Principal from all claims, loss and damage the Consultant has, or may have had, against the Principal; and
- (b) The Consultant confirms to the Contractor that the Consultant has performed the obligations imposed on the Consultant under the Original Contract (where those obligations fell to be performed prior to the Novation Date) and that the Consultant is not in breach of the Original Contract.

2.4 Preserved Claims

The release provided for in paragraph 2.3(a)(iii) does not operate in relation to Preserved Claims.

3 TERMINATION OR VARIATION OF NOVATED CONTRACT OR DEED OF NOVATION

- a) The Contractor and the Consultant are not permitted to:
 - (i) terminate the Novated Contract or this Deed of Novation;

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- (ii) vary the Novated Contract or this Deed of Novation (including the services to be provided by the Consultant under those documents); or
 - (iii) assert that the Novated Contract or this Deed of Novation has been terminated or varied, without the consent of the Principal (which consent shall not be unreasonably withheld).
- (b) If the Contractor or the Consultant act, or purport to act, in breach of paragraph 3(a), any such termination or variation shall be of no effect.

4 FEES

The Parties agree as follows:

- (a) in respect of services performed by the Consultant before the Effective Date, the Principal must pay to the Consultant the Outstanding Fee in accordance with the Original Contract; and
- (b) subject to the Novated Contract, the Contractor must pay to the Consultant the Future Fee, together with any further amounts which may become due under the Novated Contract, in accordance with the Novated Contract.

5 THE WORKS, THE DESIGN AND THE SPECIFICATIONS

5.1 Variation of the Design and Specification

- (a) The parties acknowledge that the Works Contract is a design and construct contract and that the Contractor has the discretion and responsibility to complete the design of the Works (within the constraints and requirements of the Works Contract).
- (b) In completing the design of the Works:
 - (i) the Contractor is not permitted to substitute products or materials or otherwise vary the Works such that the completed design or Works are not in accordance with the Works Contract; and
 - (ii) the Consultant is not obliged to, and is not permitted to, give effect to any direction or instruction from the Contractor where to do so would result in a breach of paragraph 5.1(b)(i).

5.2 Reports and Certificates

- (a) The Contractor must provide, to the Principal, copies of all reports and certificates provided by the Consultant to the Contractor. These reports and certificates must be provided in a timely manner and without amendment or omission.
- (b) The Consultant must provide copies of all reports which it was obliged to provide to the Principal under the Original Contract to the Contractor and the Principal.

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- (c) The Consultant may:
- (i) provide a copy of any report or certificate the subject of paragraph 5.2(a) directly to the Principal; and
 - (ii) advise the Principal if the Consultant forms the view that the Works may not comply with the Works Contract.

5.3 Non Compliance

If the Consultant considers that any direction or instruction by or on behalf of the Contractor will have a material adverse effect on the Works or will result in the Works not complying with the Works Contract the Consultant is not required to, and must not comply with that direction or instruction.

5.4 Principal's Enquiries

The Principal may make reasonable enquiries of the Consultant for the purpose of considering whether the design of the Works and the Works are in accordance with the Works Contract.

5.5 Access to Site

The Contractor must allow the Consultant access to the site sufficient to enable the Consultant to discharge the Consultant's obligations and responsibilities efficiently and effectively under the Novated Contract and the Deed of Novation. The Consultant must comply with the reasonable requirements of the Contractor in relation to access to the site.

6 BUDGET, VALUE MANAGEMENT AND PROGRAMMING

6.1 Budget and Value Management

- (a) The Contractor must:
- (i) provide, to the Consultant, information in relation to the budget for the works (as it might vary during the Works) and in relation to any value management process;
 - (ii) facilitate the participation of the Consultant in any value management process; and
 - (iii) take into consideration any observations which the Consultant may have in relation to the value management process and the proposed outcomes of that process where those observations and outcomes are relevant to the compliance of the Works with the Works Contract.

6.2 Programming

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- (a) Subject to any constraints or requirements in the Works Contract, the Contractor must:
 - (i) allow the Consultant sufficient time to diligently discharge the Consultant's obligations and responsibilities under the Novated Contract; and
 - (ii) program the Works so that there is sufficient time for the Consultant to diligently discharge the Consultant's obligations and responsibilities under the Novated Contract and the Deed of Novation.

7.1 Communication and Meetings

- (a) The parties must comply with the Communication Protocol if included as a schedule or annexure to this Deed of Novation.
- (b) The Consultant shall participate in all project control group (or similar) meetings and the Contractor must facilitate such participation.

8 LIMITATION OF LIABILITY

8.1 Continuation of Limitation

Any clause in the Original Contract limiting the liability or excluding the liability of the Consultant applies to any liability of the Consultant under the Novated Contract and the Deed of Novation.

8.2 No Duplication or Increase

The total combined liability of the Consultant under the Original Contract, the Novated Contract, and this Deed of Novation shall not exceed the amount of the liability the Consultant had under the Original Contract prior to the Novation Date.

9 GENERAL PROVISIONS

9.1 Severability of Provisions

Any provision of this Deed of Novation which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of the prohibition or unenforceability, without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of any other jurisdiction.

9.2 Waiver

No failure to exercise and no delay in exercising, on the part of any party of any right, power or privilege under this Deed of Novation will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

9.3 Rights and Remedies Cumulative

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The rights and remedies provided in this Deed are additional to and not exclusive of any rights or remedies provided by law.

9.4 Counterparts

This Deed may be executed in any number of counterparts and all of such taken together will be deemed to constitute one and the same instrument.

9.5 Further Assurances

Each party shall sign, execute and deliver all documents, instruments in writing and shall do all other acts, matters and things as may be necessary or desirable to give full effect to this Deed.

9.6 Variation

This Deed of Novation:

- (a) may only be varied in writing by all of the parties; and
- (b) may be varied by simple agreement (rather than a Deed).

9.7 Assignment

- (a) The Principal may assign its rights and obligations under this Deed to any person without the consent of the Contractor or the Consultant.
- (b) The Consultant and the Contractor shall not assign their respective rights and obligations under this Deed without the prior consent of the Principal.

9.8 Proper Law

This Deed shall be interpreted in accordance with the laws of the Relevant Jurisdiction and any dispute arising in any way related to this Deed shall be determined by the Courts of the Relevant Jurisdiction.

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