



DEED OF NOVATION

THIS DEED MADE ON THE ____ DAY OF _____ 20__

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DEED OF NOVATION

THIS DEED OF NOVATION made the _____ day of _____ 20__

BETWEEN: the Persons named and described in Part A of the Schedule (collectively the “**Current Parties**”);

AND: the Persons named and described in Part B of the Schedule (collectively the “**New Parties**”).

RECITALS

- A. The Current Parties entered into an Agreement on the 1 January 2010 (the “**Old Agreement**”), a copy of which is Attachment A to this Deed.
- B. The Current Parties have agreed to release those Current Parties named and described in Part C of the Schedule (the “**Exiting Parties**”) and to the substitution of the New Parties to take the place of the Exiting Parties.
- C. The Current Parties and the New Parties have entered into this Deed to give effect to their intent to release and discharge the Exiting Parties from the Old Agreement and to substitute in their place the New Parties and to otherwise confirm that the New Agreement shall be in the same terms as the Old Agreement except that the parties thereto are the Continuing Parties and the New Parties.

BY THIS DEED OF NOVATION IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1. In this Deed, these words and phrases have the following meanings:

“**Breach**” means a breach of the Old Agreement.

“**Consent**” means the consent, approval or permission of whatsoever kind or nature which might be required from any person, including the parties to this Deed, in order to give full and complete effect to its terms.

“**Continuing Parties**” means those of the Current Parties named and described in Part D of the Schedule that are continuing as parties to the New Agreement, having exactly the same rights and obligations as they had under the Old Agreement.

“**Current Parties**” means all of the persons named and described in Part A of the Schedule, which includes the Continuing Parties and the Exiting Parties.

“**Deed**” means this Deed of Novation.

“Exiting Parties” means the Current Parties that are by this Deed released and discharged from their obligations under the Old Agreement and that forfeit their rights under the Old Agreement.

“Law” means the laws of Australia and where applicable the laws of any State or Territory in which the Deed is executed.

“New Agreement” means the new agreement between the Continuing Parties and the New Parties, the terms of which are identical to the terms of the Old Agreement.

“New Parties” means collectively the persons named and described in Part B of the Schedule.

“Old Agreement” means the current agreement between the Current Parties.

1.2. In the interpretation of this Deed:

1.2.1. headings and underlining are for convenience only and do not affect the meaning, construction or interpretation of any word, phrase or clause;

1.2.2. words denoting the singular include the plural and vice versa and words denoting any gender include all genders including the neuter gender;

1.2.3. the expression “person” includes an individual, body corporate or where applicable unincorporated association;

1.2.4. any reference to a party includes that party’s legal personal representatives, lawful successors in title and lawful assignees;

1.2.5. where a party comprises two or more persons, the rights and obligations of such persons pursuant to this Deed shall benefit and bind all of them jointly and each of them severally, and

1.2.6. any reference to a statute, regulation, by-law, code of practice or standard includes all amendments, variations and replacements.

2. CONFIRMATION OF THE OLD AGREEMENT

2.1. Each of the Current Parties confirms all of the terms of the Old Agreement and represents to each other and to the New Parties that the Old Agreement is the whole agreement between the Current Parties and there are no other understandings, arrangements, promises or collateral agreements, formal or otherwise, between them that in any way modify, change or enhance any of the rights or obligations of any of the Current Parties under the Old Agreement.

2.2. Each of the Current Parties represents to the New Parties that there has been no waiver, forbearance or release of any of the rights or obligations of any of the Current Parties under the Old Agreement.

2.3. Each of the Current Parties represents to the New Parties that there have been no amendments to the Old Agreement and that the Old Agreement is current and binding on all of the Current Parties as at the time immediately prior to the execution of this Deed.

2.4. Each of the Current Parties represents to the New Parties that the Old Agreement is in good standing, no Current Party is in breach and except for the Exiting Parties, no Current Party has given notice of intention to terminate the Old Agreement.

3. RELEASE OF OBLIGATIONS AND RIGHTS

3.1. Effective immediately from the date of this Deed, the Exiting Parties are jointly and each separately released and fully discharged by the Continuing Parties from all liabilities and obligations of whatsoever kind or nature that they or any of them might have under the terms of the Old Agreement up to the execution of this Deed.

3.2. This Deed does not release the Exiting Parties from any Breach committed by them prior to the entry into of this Deed, with the intent that all prior Breaches will continue to be actionable against the Exiting Parties. The Continuing Parties likewise continue to be liable to the Exiting Parties for any Breaches committed by the Continuing Parties prior to the entry into of this Deed.

3.3. Where in the course of performing any obligation under the Old Agreement or exercising any right under the Old Agreement such right or obligation has not been fully performed as at the execution of this Deed then the Continuing Parties hereby waive, release and forever abandon all rights which they had to require continued performance of that right by any of the Exiting Parties and the Exiting Parties hereby waive, forever abandon and release all rights which they had to require the Continuing Parties to continue to perform those obligations or recognise those rights.

3.4. Where under the terms of the Old Agreement a right has been fully exercised prior to the execution of this Deed or any obligation fully performed prior to the execution of this Deed or title to any property, whether in law or in equity or by statute has passed prior to the execution of this Deed then nothing in this Deed shall affect such completed right, completed performance of an obligation or changed or created ownership of any property, whether tangible or intangible, for the New Parties.

3.5. Effective from the date of this Deed, the Exiting Parties will have no contractual rights within the Old Agreement, all of which are hereby expressly waived and abandoned by the Exiting Parties.

4. NEW PARTIES

- 4.1. The New Parties shall as and from the execution of this Deed be substituted for the Exiting Parties in the Old Agreement and take over, be responsible for and liable in respect of all liabilities and obligations which but for this Deed the Exiting Parties would have been liable for had this Deed not been entered into. It is intended that from the date hereof the Continuing Parties are entitled to look to the New Parties and each of them to perform, carry out and fully satisfy all liabilities and obligations which the Exiting Parties would have been obliged or liable for had this Deed not been entered into.
- 4.2. Nothing in this Deed shall be construed so as to make liable the New Parties to perform any obligation which the Exiting Parties should have performed prior to the execution of this Deed and which non-performance of constitutes a breach by the Exiting Parties of the Old Agreement. Further, to the extent to which the Exiting Parties have rights under the Old Agreement, which rights were fully satisfied prior to the execution of this Deed, the New Parties shall not be entitled to exercise any right which has been fully satisfied.
- 4.3. As from the date of the Deed, the New Parties will have all rights, entitlements and interests which the Exiting Parties would have been entitled to have and enjoy had this Deed not been executed, with the intent that as from the execution of this Deed the Continuing Parties recognise and acknowledge that the New Parties are the successors to all such rights, entitlements and interests that the Exiting Parties would have had after the date hereof but for the Execution of this Deed.
- 4.4. No prior breach by the Old Parties or any of them of the terms of the Old Agreement may be deemed to in any way affect, modify, extinguish or vary any right, entitlement or interest of the New Parties, with the intent that insofar as there was any such Breach it shall for all purposes affecting the New Parties' rights, entitlements and interests be deemed to have never occurred. This sub-clause shall not in any way modify, discharge or release the Exiting Parties from any prior Breach insofar as that Breach gives rights of action and entitlements to bring claims against them by the Continuing Parties.
- 4.5. To the extent (if at all) any promises, covenants or undertakings (including continuing covenants) have been given by the Exiting Parties in the Old Agreement to the Continuing Parties, those promises, covenants and undertakings are hereby given by the New Parties.

4.6. Where there are continuing rights and obligations, those continuing rights and obligations will be performed or exercised by the Continuing Parties and the New Parties.

5. NEW AGREEMENT

5.1. This Deed shall for all purposes be deemed to have created the New Agreement, the parties to which are the Continuing Parties on the one hand and the New Parties on the other.

5.2. The terms of the New Agreement are identical to the terms of the Old Agreement save only that:

5.2.1. any reference to the Exiting Parties in the Old Agreement shall be deemed to be a reference to the New Parties;

5.2.2. any and all rights, entitlements and interests of the Exiting Parties accrue to the benefit of the New Parties from the execution of this Deed;

5.2.3. the liabilities and obligations of the Exiting Parties are taken over by and shall be under the New Agreement the liabilities and obligations of the New Parties but only from the execution of this Deed;

5.2.4. to the extent to which the Old Agreement has, prior to the date of this Deed been breached, then such Breach will not be a Breach under the New Agreement; and

5.2.5. the Continuing Parties shall be entitled to enforce all rights and entitlements that they previously had against the Retiring Parties against the New Parties but only from the date of this Deed.

5.3. Each party to this Deed agrees and undertakes to each other party to sign all agreements, execute all transfers, give all Consents, participate in all notifications and otherwise do all things and sign all documents to facilitate or give effect to the intentions in this Deed.

6. GENERAL

6.1. Each of the Parties acknowledges all of the rights, entitlements, obligations, releases, discharges and waivers that are set out in this Deed and that the same are fully and completely enforceable to the fullest extent permitted by Law.

6.2. Any party may rely on any of the terms of this Deed in any court of Law to establish any right, entitlement, obligation or Consent given by any party to the terms of this Deed.

6.3. Any stamp duty payable on this Deed must be paid by the New Parties.

7. INDEPENDENT LEGAL ADVICE

7.1. Each party to this Deed acknowledges that it, he or she has had the opportunity to seek separate and independent legal advice before entering into this Deed and if it, he or she has failed to obtain that separate independent legal advice then that failure will not be relied upon by that party in any way whatsoever, including any claim that such party did not understand the consequences or effect of this Deed.

SCHEDULE

PART A – THE CURRENT PARTIES

Name of Company: Company Pty Ltd
ACN 111 222 333
Address of Company 1 Sydney StreetSydney2000

Name of Individual: John Smith
Address of Individual 1 Rodger StreetSydney2000

Name of Individual: Sir John Commander
Address of Individual 1 Perth StreetPerth2000

PART B - THE NEW PARTIES

Name of Company: Other Company Pty Ltd
ACN 333 222 111
Address of Company 1 Newcastle StreetNewcastle2500

PART C - THE EXITING PARTIES

Name of Individual: Sir John Commander
Address of Individual 1 Perth StreetPerth2000

PART D - THE CONTINUING PARTIES

Name of Company: Company Pty Ltd
ACN 111 222 333
Address of Company 1 Sydney StreetSydney2000

Name of Individual: John Smith
Address of Individual 1 Rodger StreetSydney2000

EXECUTED by the Parties as a Deed on the day and year first mentioned.

SIGNED AS A DEED BY)
Company Pty Ltd)
ACN 111 222 333 pursuant to)
Section 127 of the *Corporations Act* 2001)
in the presence of:

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

SIGNED AS A DEED BY)
John Smith)
in the presence of:

Signature of Witness
Print Name:

Signature
Print Name:

SIGNED AS A DEED BY)
Sir John Commander)
in the presence of:

Signature of Witness
Print Name:

Signature
Print Name:

SIGNED AS A DEED BY)
Other Company Pty Ltd)
ACN 333 222 111 pursuant to)
Section 127 of the *Corporations Act* 2001)
in the presence of:

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

ATTACHMENT A

[Attach behind this page a full copy of the original Agreement (see Recital A) or alternatively write/type “Attachment A” at the top of the 1st page of a copy of that agreement.]

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU
PROVIDE THROUGH THE BUILDING PROCESS