



YOUR LOGO
HERE

DEED OF NOVATION

THIS DEED MADE ON THE ____ DAY OF _____ 20__

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

DEED OF NOVATION

THIS DEED made the _____ day of _____ 20__

BETWEEN: Company Pty Ltd ACN 111 222 333 having its registered office at 1 Sydney Street Sydney 2000 in NSW (the “**Continuing Party**”);

AND: Other Company Pty Ltd ACN 333 222 111 having its registered office at 1 Brisbane Street Brisbane 7000 in QLD (the “**Retiring Party**”);

AND: Andrew Smith of 1 Perth Street Perth 5000 (the “**New Party**”).

RECITALS

- A. The Continuing Party and the Retiring Party are parties to an Existing Agreement, a copy of which is attached as Attachment A.
- B. The Continuing Party agrees to release the Retiring Party from the Existing Agreement and to substitute the New Party to take the place of the Retiring Party.
- C. The Continuing Party and the New Party have entered into this Deed to give effect to their intent to release and discharge the Retiring Party from the Existing Agreement and to substitute the New Party and to otherwise confirm that the New Agreement is in the same terms as the Existing Agreement except that the parties are the Continuing Party and the New Party.

THE PARTIES AGREE 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 Existing 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 Party**” means the party to the New Agreement having exactly the same rights and obligations as it had under the Existing Agreement.

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

“**Existing Agreement**” means the agreement dated 1 January 2010 between the Continuing Party and the Retiring Party, a copy of which is Attachment A.

“**Retiring Party**” means the party that is by this Deed is released and discharged from its obligations under the Existing Agreement and which forfeits its rights under the Existing Agreement.

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

“New Party” means the party acquiring the rights and obligations of the Retiring Party under the Existing Agreement.

1.2. Interpretation of this Deed:

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

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

2. CONFIRMATION OF THE EXISTING AGREEMENT

2.1. The Continuing Party and the Retiring Party confirm all of the terms of the Existing Agreement and represent to each other and to the New Party that the Existing Agreement is the whole agreement between the Continuing Party and the Retiring Party and there are no other understandings, arrangements, promises or collateral agreement, formal or otherwise, between them that in any way modify, change or enhance any of the rights or obligations of either the Continuing Party or the Retiring Party under the Existing Agreement.

2.2. The Continuing Party and the Retiring Party represent to the New Party that there has been no waiver, forbearance or release of any of the rights or obligations of either the Continuing Party or the Retiring Party under the Existing Agreement.

2.3. The Continuing Party and the Retiring Party represent to the New Party that there have been no amendments to the Existing Agreement and that the Existing Agreement is current and binding on the Continuing Party and the Retiring Party as at the time immediately prior to the execution of this Deed.

2.4. The Continuing Party and the Retiring Party each represent to the New Party that the Existing Agreement is in good standing and that the Continuing Party is not in breach and has not given notice of intention to terminate the Existing Agreement.

3. DISCHARGE AND RELEASE OF RETIRING PARTY AND REPLACEMENT BY THE NEW PARTY

- 3.1. Effective immediately on the execution of this Deed, the Retiring Party is released and fully discharged by the Continuing Party from all liabilities and obligations of whatsoever kind or nature that it might have under the terms of the Existing Agreement up to the execution of this Deed.
- 3.2. This Deed does not release the Retiring Party from any Breach committed by it prior to the entry into of this Deed and any such prior Breach continues to be actionable against the Retiring Party. The Continuing Party likewise continues to be liable to the Retiring Party for any Breach committed by the Continuing Party prior to the entry into of this Deed.
- 3.3. Where in the course of performing any obligation or exercising any right under the Existing Agreement such right and obligation has not been fully performed as at the execution of this Deed, then the Continuing Party hereby waives, releases and forever abandons all rights which it had to require continued performance of that right by the Retiring Party and the Retiring Party hereby waives, forever abandons and releases all rights which it had to require the Continuing Party to continue to perform those obligations or recognise those rights.
- 3.4. Where under the terms of the Existing 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 may affect such complete right, completed performance of an obligation or changed or created ownership of any property, whether tangible or intangible, for the New Party.
- 3.5. Effective from the date of this Deed, the Retiring Party has no contractual rights within the Existing Agreement, all of which are hereby expressly waived and abandoned by the Retiring Party.

4. NEW PARTY

- 4.1. The New Party shall as and from the execution of this Deed be substituted for the Retiring Party in the Existing Agreement and take over, be responsible for and liable in respect of all liabilities and obligations which but for this Deed the Retiring Party would have been liable for had this Deed not been entered into with the intent that from the date hereof the Continuing Party is entitled to look to the New Party to

- perform, carry out and fully satisfy all liabilities and obligations which the Retiring Party 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 Party to perform any obligation which the Retiring Party should have performed prior to the execution of this Deed and which non-performance of constitutes a breach by the Retiring Party of the Existing Agreement. Further, to the extent to which the Retiring Party has rights under the Existing Agreement, which rights were fully satisfied prior to the execution of this Deed, the New Party will not be entitled to exercise any right which has been fully satisfied.
- 4.3. As from the date of this Deed, the New Party will have all rights, entitlements and interests which the Retiring Party would have been entitled to enjoy had this Deed not been executed, with the intent that as from the execution of this Deed the Continuing Party recognises and acknowledges that the New Party is the successor to all such rights, entitlements and interests that the Retiring Party would have had after the date hereof but for the Execution of this Deed.
- 4.4. No prior Breach by the Retiring Party may be deemed in any way to affect, modify, extinguish or vary any right, entitlement or interest of the New Party, with the intent that insofar as there was any such Breach it will for all purposes affecting the New Party's rights, entitlements and interests be deemed to have never occurred. This sub-clause shall not in any way modify, discharge or release the Retiring Party from any prior Breach insofar as that Breach gives rights of action and entitlements to bring claims against it by the Continuing Party.
- 4.5. To the extent (if at all) any promises, covenants or undertakings (including continuing covenants) have been given by the Retiring Party in the Existing Agreement to the Continuing Party, those promises, covenants and undertakings are hereby given by the New Party.

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 Party on the one hand and the New Party on the other.
- 5.2. The terms of the New Agreement are identical to the terms of the Existing Agreement save only that:
- 5.2.1. any reference to the Retiring Party in the Existing Agreement will be deemed to be a reference to the New Party;

- 5.2.2. any and all rights, entitlements and interests of the Retiring Party accrue to the benefit of the New Party from the execution of this Deed;
 - 5.2.3. the liabilities and obligations of the Retiring Party are taken over by and shall be under the New Agreement the liabilities and obligations of the New Party but only from the execution of this Deed;
 - 5.2.4. to the extent to which the Existing Agreement has, prior to the execution of this Deed, been breached then such Breach will not be a breach of the New Agreement; and
 - 5.2.5. the Continuing Party shall be entitled to enforce all rights and entitlements that it previously had against the Retiring Party against the New Party 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

- 6.1.1. 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.
- 6.1.2. 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.

7. INDEPENDENT LEGAL ADVICE

- 7.1. Each party to this Deed acknowledges that it has had the opportunity to seek separate and independent legal advice before entering into this Deed and if it 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.

EXECUTED by the Parties as a Deed on the date 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)
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:

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

Signature of Witness
Print Name:

Signature
Print Name:

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

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.]

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