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| Deed of Novation <Contract title and reference number> <Customer name>  <Supplier name>  <New supplier name> |

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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.  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? The Customer needs to fill out all yellow highlighted sections with details of the Customer’s requirements.  The Customer is to delete all highlighting before giving the Supplier and the New Supplier the Deed. |

## General information

| No. | Topic | Details |
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|  | **Customer** | Name: <<insert>>  ABN or ACN: <<insert>> |
|  | **Supplier** | Name: <<insert>>  ABN or ACN: <<insert>> |
|  | **New Supplier** | Name: <<insert>>  ABN or ACN: <<insert>>  Street address:  Postal address:  Email: |
|  | **Contract**  (to be novated) | Contract name: <<insert name of contract>>  Contract number: <<insert contract reference number>>  Date of Contract: <<insert date>> |
|  | **effective date**  (see clause 1.3) | <<insert effective date for this Deed of Novation>> |

# Background

* 1. The Customer and the Supplier are parties to the Contract <<if the Contract has been varied since the date it was entered into, then add the words “as amended by letter/Deed of variation dated [insert date].”>>.
  2. The Supplier wishes to be released and discharged from the Contract. The New Supplier wishes to assume the rights and obligations of the Supplier under the Contract.
  3. With effect from the **effective date**, the Customer has agreed to release and discharge the Supplier from the Contract on condition that the New Supplier undertakes to perform the terms and conditions of the Contract and to be bound by the covenants in this Deed of Novation.

# Definitions and interpretation

The definitions and rules of interpretation applicable to this Deed are available on the [Department of Housing and Public Works website](http://www.hpw.qld.gov.au/Procurement/Buyers/HowToBuy/GovernmentTermsConditions/Pages/QGTenderDocuments.aspx). Certain terms are defined where indicated in this Deed of Novation.

# Novation

With effect on and from the effective date:

* + 1. the New Supplier will be substituted for the Supplier under the Contract, as if the New Supplier had originally been a party to the Contract instead of the Supplier;
    2. all references in the Contract to the Supplier will be interpreted as if they were references to the New Supplier;
    3. the New Supplier:
       1. must comply with the obligations of the Supplier; and
       2. will have all the rights and benefits of the Supplier,

under the Contract, whether accruing before, on or after the effective date.

# Indemnity

* 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 concerning the Contract relating to any act or omission of the Supplier before the effective date.
  2. The New Supplier agrees with the Supplier to indemnify and keep indemnified the Supplier from and against any liability incurred by the Supplier as a result of any Claim against the Supplier by the Customer concerning the Contract relating to any act or omission of the New Supplier on or after the effective date.

# Release of Supplier

* 1. With effect on and from the effective date, the Customer releases the Supplier from all the Supplier’s obligations under the Contract and all Claims that the Customer may have against the Supplier concerning the Contract relating to any act or omission of the Supplier on or after the effective date.
  2. The parties acknowledge that the Supplier will remain liable under the Contract concerning all acts or omissions before the effective date.

# Representations and warranties

* 1. The Supplier and the New Supplier each represents and warrants to the Customer and each other that:
     1. it is a corporation validly existing under the laws applicable in the State of Queensland;
     2. it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
     3. this Deed is evidence of its valid and binding obligations that are enforceable against it in accordance with its terms;
     4. no application or order has been made for its winding up or liquidation; no action has been taken to seize or take possession of its assets; there are no unsatisfied judgments against it and it is able to pay its debts as they fall due; and
     5. it will execute all documents and do all things reasonably required to give effect to this Deed.
  2. The Supplier and the New Supplier acknowledge that the Customer has entered into this Deed in reliance on the representations and warranties in clause 6.1.

# General

* 1. The New Supplier must reimburse the Customer for its costs and expenses concerning the preparation, execution and completion of, or the enforcement of, or preservation of any rights under, this Deed, including legal costs and expenses on a full indemnity basis.
  2. The New Supplier must pay all stamp, transaction, registration, financial institution, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable concerning the execution, delivery, performance or enforcement of this Deed or any payment or receipt or other transaction contemplated by this Deed.
  3. The laws of the State of Queensland govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

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| **SIGNED AND DELIVERED for and on behalf of <<insert name of Customer>>**  by    Name of Customer representative  in the presence of:      Signature of witness    Name of witness (block letters) | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of Customer representative |

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| **EXECUTED as a deed by the Supplier**:  **<<insert name of Supplier >>**  in accordance with s.127 of the *Corporations Act 2001* (Cth)    Name of Director    Name of Director/Secretary | )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of Director    Signature of Director/Secretary |

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| **EXECUTED as a deed by the New Supplier**:  **<<insert name of New Supplier >>**  in accordance with s.127 of the *Corporations Act 2001* (Cth)    Name of Director    Name of Director/Secretary | )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of Director    Signature of Director/Secretary |