Schedule of Collateral Documents

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| --- | --- | --- | --- | --- |
| **Revision:** | **Date:** | **Clause reference:** | **Details:** | **Endorsed by:** |
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1. - Form of Statutory Declaration

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| **Guidance Note:** This is the form of statutory declaration to be submitted by the Contractor with each payment claim to confirm that its employees and subcontractors have been paid their entitlements during the relevant payment period as at the date of the payment claim. |

I, [*##insert name*] of *[##insert address*], *[##insert occupation*], make the following statutory declaration under the ***Oaths and Affirmations Act 2018* (Vic)**:

1. I make this statutory declaration in the matter of:

(a) the contract for *[##insert description*] entered into between [*##insert name*] of [*##insert address*] (**Principal**)and [*##insert name and ACN*] of [*##insert address*] (**Contractor**)dated [*##insert date*] (**Contract**); and

(b) a payment claim made under the Contract for the period [*##insert*] to [*##insert*] (**Payment Period**).

2. I am an employee duly authorised to make this statutory declaration on behalf of the Contractor*.*

3. All employees who are, or have been, engaged by the Contractorin connection with the Contracthave been paid their full remuneration for work done during the Payment Period,including any superannuation or redundancy payments (if applicable) and in accordance with any applicable award or industrial agreement.

4. Subject to paragraph 5(d), all consultants, suppliers and subcontractors who are, or have been, engaged by the Contractorin connection with the Contracthave been paid in full all amounts that have become payable to them under the terms of their agreement with the Contractor during the Payment Period.

5. As at the end of the Payment Period:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (a) | the total amount payable by the Contractorto all subcontractors in respect of the Contractor's Activities and the Works is: | | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| (b) | the amount paid by the Contractor to all subcontractors in respect of the Contractor's Activities and the Works is: | | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| (c) | the amount claimed by all subcontractors in respect of the Contractor's Activities and the Works which is disputed by the Contractor as being due and payable is:  [*#if no amounts are disputed, insert "none stated"]* | | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| (d) | if applicable, the amount referred to in paragraph 5(c) of this statutory declaration is disputed as, at the date of this statutory declaration, on the following grounds:  [*##insert grounds for dispute*] | |  | |
| **I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.** | | | | |
| *Signature of person making the declaration:* | | |  | |
| **Declared at** [*##Insert place (city, town or suburb)*] in the State of Victoria on this [*##Insert*] day of 20[*##Insert*] | | | | |
| **I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration:** | | | | |
| *Signature of authorised witness:* | | |  | |
| On this [*##Insert*] day of 20[*##Insert*] | | | | |
| *Full name, capacity in which person has authority to witness statutory declaration and address (in legible writing, typing or stamp).* | | |  | |
| A person authorised under section 30(2) of the ***Oaths and Affirmations Act 2018* (Vic)** to witness the signing of a statutory declaration. | | | | |

1. - Deed of Novation

|  |
| --- |
| **Guidance Note:** This form of deed of novation is to be used when the Principal (Outgoing Party) wishes to effect a novation of the Contract to a new Principal (Incoming Party). |

Deed of Novation

[Insert name of Outgoing Party]

Outgoing Party

[Insert name of Continuing Party]

Continuing Party

[Insert name of Incoming Party]

Incoming Party

Deed of Novation

Date

**Parties [Outgoing Party name] [ABN]** of **[address]** (**Outgoing Party**)

**[Continuing Party name] [ABN]** of **[address]** (**Continuing Party**)

**[Incoming Party name] [ABN]** of **[address]** (**Incoming Party**)

Background

1. The Outgoing Party and the Continuing Party are parties to the Contract.
2. The Outgoing Party has agreed to novate the Contract to the Incoming Party on the terms and conditions of this deed.
3. The Continuing Party has agreed to the novation of the Contract from the Outgoing Party to the Incoming Party on the terms and conditions of this deed.

Operative provisions

# Definitions and interpretation

## Definitions

1. In this deed, defined terms have the meanings given to them in the Contract unless set out below:
2. **Claim** includes any claim, demand, action or proceeding, whether based in contract, tort (including negligence), statute or otherwise.
3. **Contract** means the agreement between the Outgoing Party and the Continuing Party described in the Schedule.
4. **Contract Guarantee** means any guarantee, unconditional undertaking, insurance bond, deed of guarantee or deed of substitution and indemnity issued or required to be issued under the Contract in respect of the performance by the Continuing Party, by a bank or insurer or, where required by the Contract, a person named in the Contract as a guarantor.
5. **Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.
6. **Novated Contract** meansthe contract between the Incoming Party and the Continuing Party which results from the novation of the Contract on the Novation Date.
7. **Novation Date** means the date specified in the Schedule as the novation date.
8. **Schedule** means the schedule to this deed.

## Interpretation

1. In this deed:

### headings are for convenience only and do not affect interpretation;

1. and unless the context indicates a contrary intention:

### an obligation or a Liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

### “person” includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

### a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

### a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

### a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re‑enactments and replacements;

### a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

### a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

### if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

### “includes” in any form is not a word of limitation;

### a reference to "or" is to the inclusive use of the word "or";

### a reference to “$” or “dollar” is to Australian currency;

### if the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day;

### a reference to a right includes any benefit, remedy, function, discretion, authority or power;

### each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision; and

### a reference to time is a reference to time in Melbourne, Victoria, Australia.

# Novation

## Novation

### On and from the Novation Date:

### the Outgoing Party and the Continuing Party mutually agree to terminate the Contract; and

### the Incoming Party and the Continuing Party will be deemed to have entered into the Novated Contract on the same terms as the Contract, except that any reference in the Contract to the Outgoing Party must be read as a reference to the Incoming Party.

## Assumption of rights and obligations

### On and from the Novation Date:

### the Incoming Party will:

#### be bound by and must comply with the Novated Contract, and will enjoy the rights and benefits conferred on the Outgoing Party under the Contract; and

#### assume the obligations and Liabilities of the Outgoing Party under the Contract,

* 1. in all respects as if the Incoming Party had originally been named in the Contract as a party instead of the Outgoing Party; and

### the Continuing Party must comply with and perform its obligations under the Novated Contract on the basis that the Incoming Party has replaced the Outgoing Party under the Contract in accordance with this deed.

## Release by Continuing Party

### Subject to clause 2.3(b), on and from the Novation Date, the Continuing Party releases the Outgoing Party from any:

* + - * 1. obligation or Liability; and
        2. Claim it has, or but for this clause would have had, against the Outgoing Party,

#### arising out of or in connection with the Contract.

### The release under clause 2.3(a) does not affect any rights the Continuing Party may have against the Incoming Party as a result of the assumption by the Incoming Party under this deed of the obligations and Liabilities of the Outgoing Party under the Contract.

## Release by Outgoing Party

### Subject to clause 2.4(b), on and from the Novation Date, the Outgoing Party releases the Continuing Party from any:

#### obligation or Liability; and

#### Claim it has, or but for this clause would have had, against the Continuing Party,

#### arising out of or in connection with the Contract.

### Nothing in clause 2.4(a) affects the obligations of the Continuing Party to the Incoming Party under the Novated Contract.

## Insurance

1. On and from the Novation Date:

### the Incoming Party must replace any insurances effected and maintained by the Outgoing Party under the Contract; and

### the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the Contract, the Incoming Party is named in place of the Outgoing Party as required by the Novated Contract.

## Replacement of Guarantees

1. On and from the Novation Date, the Continuing Party must replace or procure the replacement of any Contract Guarantees with guarantees on similar terms in favour of the Incoming Party.

# Overriding effect

1. The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract from the Outgoing Party to the Incoming Party.

# Representations and warranties

## Authority

1. Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

## Authorisations

1. Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

## Binding obligations

1. Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

# General

## Governing law

1. This deed is governed by and is to be construed according to the law applying in Victoria.

## Jurisdiction

1. Each party irrevocably:

### submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

### waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 5.2(a).

## Amendments

1. This deed may only be amended by a document signed by each party.

## Waiver

### Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

### A waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing and signed by that party.

### No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

## Electronic signature

### Each party warrants that immediately prior to entering into this deed it unconditionally consented to:

#### the requirement for a signature under any law being met; and

#### any other party to this deed executing it,

* 1. by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

### Without limitation, the parties agree that this deed may be exchanged by hand, post, facsimile or any electronic method that evidences a party's execution of this deed, including by a party forwarding a copy of its executed counterpart by hand, post, facsimile or electronic means to the other party.

## Counterparts

1. This deed may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

## Severance

1. To the extent a provision of this deed is or becomes illegal, void or unenforceable, that provision (or the relevant part) will be severed, and the remainder of this deed has full force and effect.

## Cost and expenses

Each party must bear its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

## Further acts and documents

1. Each party must, if requested by another party, promptly do all further acts and execute and deliver all further documents reasonably necessary to give effect to this deed.

## Assignment

1. A party must not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of the other party.

**Schedule**

|  |  |
| --- | --- |
| **Novation Date** (clause 1.1) | [##insert] |
| **Contract** (clause 1.1) | [##insert] |

**Executed** as a deed.

|  |
| --- |
| **Guidance Note:** The execution blocks set out below are provided for guidance only. The correct execution blocks for each party must be confirmed and included prior to the deed of novation being finalised. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Outgoing Party]** by its duly authorised delegatein the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised delegate |
|  |  |  |  |
| Name of witness |  |  | Name of authorised delegate |
|  |  |  |  |
| Office held |  |  | Office held |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Continuing Party and ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Incoming Party and ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |

1. - Subcontractor Deed of Novation

|  |
| --- |
| **Guidance Note:** This form of deed of novation is to be used when the Principal requires the Contractor to novate a Subcontract to the Principal, including where the Contract is terminated by the Principal (e.g. clause 12.7 of the Medium Works Contract). |

Subcontractor Deed of Novation

[Insert name of Outgoing Party]

Outgoing Party

[Insert name of Continuing Party]

Continuing Party

[Insert name of Incoming Party]

Incoming Party

Deed of Novation

Date

**Parties [Outgoing Party name] [ABN]** of **[address]** (**Outgoing Party**)

**[Continuing Party name] [ABN]** of **[address]** (**Continuing Party**)

**[Incoming Party name] [ABN]** of **[address]** (**Incoming Party**)

Background

1. The Incoming Party and the Outgoing Party are parties to the Contract.
2. The Outgoing Party and the Continuing Party are parties to the Subcontract.
3. The Outgoing Party and the Incoming Party have asked the Continuing Party to agree to the novation of the Subcontract on the terms and conditions of this deed.
4. The Outgoing Party and the Continuing Party have agreed to novate the Subcontract to the Incoming Party on the terms and conditions of this deed.

Operative provisions

# Definitions and interpretation

## Definitions

1. In this deed, defined terms have the meanings given to them in the Contract unless set out below:
2. **Claim** includes any claim, demand, action or proceeding, whether based in contract, tort (including negligence), statute or otherwise.
3. **Contract** means the agreement between the Outgoing Party and the Incoming Party described in the Schedule.
4. **Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.
5. **Novated Subcontract** means the agreement between the Incoming Party and the Continuing Party which results from the novation of the Subcontract on the Novation Date.
6. **Novation Date** means the date specified in the Schedule as the novation date.
7. **Prior Event** means any:
   1. failure by the Outgoing Party to fulfil any obligation which it owed to the Continuing Party prior to the Novation Date;
   2. failure by the Continuing Party to fulfil any obligation which it owed to the Outgoing Party prior to the Novation Date;
   3. Claims made, or which may be made by the Outgoing Party against the Continuing Party or by the Continuing Party against the Outgoing Party for breach of the Subcontract or on any other basis whatsoever arising out of or in connection with the Subcontract in relation to events which occurred or work which was performed prior to the Novation Date; or
   4. Liability, obligation or other circumstance arising or occurring prior to the Novation Date.
8. **Schedule** means the schedule to this deed.
9. **Subcontract** means the agreement between the Outgoing Party and the Continuing Party described in the Schedule.
10. **Subcontract Guarantee** means any guarantee, unconditional undertaking, insurance bond, deed of guarantee or deed of substitution and indemnity issued or required to be issued under the Subcontract in respect of the performance by the Continuing Party, by a bank or insurer or, where required by the Subcontract, a person named in the Subcontract as a guarantor.

## Interpretation

1. In this deed:

### headings are for convenience only and do not affect interpretation;

1. and unless the context indicates a contrary intention:

### an obligation or a Liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

### “person” includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

### a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

### a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

### a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re‑enactments and replacements;

### a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

### a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

### if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

### “includes” in any form is not a word of limitation;

### a reference to "or" is to the inclusive use of the word "or";

### a reference to “$” or “dollar” is to Australian currency;

### if the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day;

### a reference to a right includes any benefit, remedy, function, discretion, authority or power;

### each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision; and

### a reference to time is a reference to time in Melbourne, Victoria, Australia.

# Novation

## Novation

### On and from the Novation Date:

### the Outgoing Party and the Continuing Party mutually agree to terminate the Subcontract; and

### the Incoming Party and the Continuing Party will be deemed to have entered into the Novated Subcontract on the same terms as the Subcontract, except that any reference in the Subcontract to the Outgoing Party must be read as a reference to the Incoming Party.

## Assumption of rights and obligations

1. On and from the Novation Date:

### the Continuing Party must comply with and perform its obligations under, and will be bound by, the Novated Subcontract on the basis that the Incoming Party has replaced the Outgoing Party under the Subcontract in accordance with this deed; and

### subject to clause 2.5, the Incoming Party:

#### will be bound by the Novated Subcontract and will enjoy the rights and benefits conferred on the Outgoing Party under the Subcontract; and

#### accepts all of the Outgoing Party's obligations under the Subcontract, except for any obligation arising before the Novation Date.

## Release by Continuing Party

1. On and from the Novation Date, the Continuing Party releases the Outgoing Party from all obligations, Liabilities and Claims arising out of or in connection with the Subcontract after the Novation Date, other than in respect of any Prior Events.

## Release by Outgoing Party

1. On and from the Novation Date, the Outgoing Party releases the Continuing Party from all obligations, Liabilities and Claims arising out of or in connection with the Subcontract after the Novation Date, other than in respect of any Prior Events.

## Release of Incoming Party

1. The Incoming Party will not be liable to the Continuing Party or to the Outgoing Party in respect of, and the Continuing Party and the Outgoing On release the Incoming Party from, all obligations, Liabilities and Claims arising out of or in connection with any Prior Events.

## Insurance

1. On and from the Novation Date:

### the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the Subcontract, the Incoming Party is named in place of the Outgoing Party as required by the Novated Subcontract; and

### the Incoming Party must replace any insurances effected and maintained by the Outgoing Party under the Subcontract.

## Replacement of Guarantees

1. On and from the Novation Date the Continuing Party must replace or procure the replacement of the Subcontract Guarantees (if any) with guarantees on similar terms in favour of the Incoming Party.

# Liability

Notwithstanding any other provision of this deed or the Novated Subcontract, the Incoming Party:

### may, in its absolute discretion, pay any amount claimed as due by the Continuing Party for work performed prior to the Novation Date, for and on behalf of the Outgoing Party (and in discharge of the Outgoing Party’s obligations to pay the Continuing Party), and any amounts so paid will be a debt due and payable by the Outgoing Party to the Incoming Party under this deed; and

### is entitled to recover its own Liabilities arising out of or in connection with any breach or negligence on the part of the Continuing Party (whether occurring before or after the Novation Date) irrespective of whether the Outgoing Party would have suffered the same Liabilities.

# Overriding effect

1. The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Subcontract relating to any requirement for consent to assignment of the Subcontract so far as any such provisions would apply with respect to the novation of the Subcontract from the Outgoing Party to the Incoming Party.

# Representations and warranties

## Authority

1. Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

## Authorisations

1. Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

## Binding obligations

1. Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

# General

## Governing law

1. This deed is governed by and is to be construed according to the law applying in Victoria.

## Jurisdiction

1. Each party irrevocably:

### submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

### waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.2(a).

## Amendments

1. This deed may only be amended by a document signed by each party.

## Waiver

### Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

### A waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing and signed by that party.

### No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

## Electronic signature

### Each party warrants that immediately prior to entering into this deed it unconditionally consented to:

#### the requirement for a signature under any law being met; and

#### any other party to this deed executing it,

* 1. by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

### Without limitation, the parties agree that this deed may be exchanged by hand, post, facsimile or any electronic method that evidences a party's execution of this deed, including by a party forwarding a copy of its executed counterpart by hand, post, facsimile or electronic means to the other party.

## Counterparts

1. This deed may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

## Severance

1. To the extent a provision of this deed is or becomes illegal, void or unenforceable, that provision (or the relevant part) will be severed, and the remainder of this deed has full force and effect.

## Cost and expenses

Each party must bear its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

## Further acts and documents

1. Each party must, if requested by another party, promptly do all further acts and execute and deliver all further documents reasonably necessary to give effect to this deed.

## Assignment

1. A party must not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of the other party.
2. **Schedule**

|  |  |
| --- | --- |
| **Novation Date** (clause 1.1) | [insert] |
| **Contract** (clause 1.1) | [insert] |
| **Subcontract** (clause 1.1) | [insert] |

**Executed** as a deed.

|  |
| --- |
| **Guidance Note:** The execution blocks set out below are provided for guidance only. The correct execution blocks for each party must be confirmed and included prior to the deed of novation being finalised. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Incoming Party and ABN]** by its duly authorised delegatein the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised delegate |
|  |  |  |  |
| Name of witness |  |  | Name of authorised delegate |
|  |  |  |  |
| Office held |  |  | Office held |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Continuing Party and ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Outgoing Party]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |

1. - Consultant Deed of Novation

|  |
| --- |
| **Guidance Note:** This form of deed of novation is to be used when the Principal has engaged a consultant to perform preliminary design work and then elects to novate that consultant to the Contractor under the Medium Works Contract and the optional design obligations apply. |

Consultant Deed of Novation

[Insert name of Outgoing Party]

Outgoing Party

[Insert name of Continuing Party]

Continuing Party

[Insert name of Incoming Party]

Incoming Party

Deed of Novation

Date

**Parties [Outgoing Party name] [ABN]** of **[address]** (**Outgoing Party**)

**[Continuing Party name] [ABN]** of **[address]** (**Continuing Party**)

**[Incoming Party name] [ABN]** of **[address]** (**Incoming Party**)

Background

1. The Outgoing Party and the Incoming Party are parties to the Contract.
2. The Outgoing Party and the Continuing Party are parties to the Consultancy Agreement.
3. The Contract and the Consultancy Agreement require the Incoming Party and the Continuing Party to enter into this deed for the purpose of effecting a novation of the Consultancy Agreement from the Outgoing Party to the Incoming Party.
4. The Incoming Party and the Continuing Party have agreed to the novation of the Consultancy Agreement on the terms and conditions of this deed.

Operative provisions

# Definitions and interpretation

## Definitions

1. In this deed, defined terms have the meanings given to them in the Contract unless set out below:
2. **Claim** includes any claim, demand, action or proceeding, whether based in contract, tort (including negligence), statute or otherwise.
3. **Consultancy Agreement** means the agreement between the Outgoing Party and the Continuing Party described in the Schedule.
4. **Contract** means the agreement between the Outgoing Party and the Incoming Party described in the Schedule.
5. **Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.
6. **Novated Consultancy Agreement** meansthe consultancy agreement between the Incoming Party and the Continuing Party which results from the novation of the Consultancy Agreementon the Novation Date.
7. **Novation Date** means the date identified as the novation date in the Schedule.
8. **Schedule** means the schedule to this deed.

## Interpretation

1. In this deed:

### headings are for convenience only and do not affect interpretation;

1. and unless the context indicates a contrary intention:

### an obligation or a Liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

### “person” includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

### a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

### a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

### a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re‑enactments and replacements;

### a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

### a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

### if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

### “includes” in any form is not a word of limitation;

### a reference to "or" is to the inclusive use of the word "or";

### a reference to “$” or “dollar” is to Australian currency;

### if the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day;

### a reference to a right includes any benefit, remedy, function, discretion, authority or power;

### each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision; and

### a reference to time is a reference to time in Melbourne, Victoria, Australia.

# Novation

## Novation

1. On and from the Novation Date:

### the Outgoing Party and the Continuing Party mutually agree to terminate the Consultancy Agreement; and

### the Incoming Party and the Continuing Party will be deemed to have entered into the Novated Consultancy Agreement on the same terms as the Consultancy Agreement, except that any reference in the Consultancy Agreement to the Outgoing Party must be read as a reference to the Incoming Party.

## Assumptions of rights and obligations

1. On and from the Novation Date:

### the Incoming Party:

#### will be bound by and must comply with the Novated Consultancy Agreement, and will enjoy the rights and benefits conferred on the Outgoing Party under the Consultancy Agreement; and

#### will assume the obligations and Liabilities of the Outgoing Party under the Consultancy Agreement,

* 1. in all respects as if the Incoming Party had originally been named in the Consultancy Agreement as a party instead of the Outgoing Party; and

### the Continuing Party must comply with and perform its obligations under the Novated Consultancy Agreement on the basis that the Incoming Party has replaced the Outgoing Party under the Consultancy Agreement in accordance with this deed.

## Release by Continuing Party

### On and from the Novation Date, the Continuing Party releases the Outgoing Party from:

#### any obligation or Liability; and

#### any Claim it has, or but for this clause would have had, against the Outgoing Party,

#### arising out of or in connection with the Consultancy Agreement.

### The release under clause 2.3(a) does not affect any rights the Continuing Party may have against the Incoming Party as a result of the assumption by the Incoming Party under this deed of the obligations and Liabilities of the Outgoing Party under the Consultancy Agreement.

## Insurance

1. On and from the Novation Date:

### the Incoming Party must have in place insurances which replace the insurances required to be effected and maintained by the Outgoing Party under the terms of the Consultancy Agreement; and

### the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Consultancy Agreement, the Incoming Party is named in place of the Outgoing Party as required by the Novated Consultancy Agreement.

# Rights of Outgoing Party

## Direct enquiries

1. In addition to any other rights which the Outgoing Party may have, the Continuing Party and the Incoming Party each agree that the Outgoing Party may make enquiries directly of the Continuing Party for the purpose of establishing whether:

### the Continuing Party is complying with its obligations under the Novated Consultancy Agreement; and

### the Incoming Party is complying with its obligations under the Contract.

## Report by Continuing Party

1. The Continuing Party must immediately report to both the Incoming Party and the Outgoing Party any:

### instruction or direction which it receives, or any work or services of which it becomes aware, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Novated Consultancy Agreement; and

### any non-conformity of any documentation produced under the Novated Consultancy Agreement, or of documentation in existence at the date of this deed, upon becoming aware of the non-conformity.

# Overriding effect

1. The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Consultancy Agreement relating to any requirement for consent to assignment of the Consultancy Agreement so far as any such provisions would apply with respect to the novation of the Consultancy Agreement to the Incoming Party.

# General

## Governing law

1. This deed is governed by and is to be construed according to the law applying in Victoria.

## Jurisdiction

1. Each party irrevocably:

### submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

### waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 5.2(a).

## Amendments

1. This deed may only be amended by a document signed by each party.

## Waiver

### Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

### A waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing and signed by that party.

### No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

## Electronic signature

### Each party warrants that immediately prior to entering into this deed it unconditionally consented to:

#### the requirement for a signature under any law being met; and

#### any other party to this deed executing it,

* 1. by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

### Without limitation, the parties agree that this deed may be exchanged by hand, post, facsimile or any electronic method that evidences a party's execution of this deed, including by a party forwarding a copy of its executed counterpart by hand, post, facsimile or electronic means to the other party.

## Counterparts

1. This deed may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

## Severance

1. To the extent a provision of this deed is or becomes illegal, void or unenforceable, that provision (or the relevant part) will be severed, and the remainder of this deed has full force and effect.

## Cost and expenses

Each party must bear its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

## Further acts and documents

1. Each party must, if requested by another party, promptly do all further acts and execute and deliver all further documents reasonably necessary to give effect to this deed.

## Assignment

1. A party must not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of the other party.
2. **Schedule**

|  |  |
| --- | --- |
| **Novation Date** (clause 1.1) | [insert] |
| **Consultancy Agreement** (clause 1.1) | [insert] |
| **Contract** (clause 1.1) | [insert] |

**Executed** as a deed.

|  |
| --- |
| **Guidance Note:** The execution blocks set out below are provided for guidance only. The correct execution blocks for each party must be confirmed and included prior to the deed of novation being finalised. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Outgoing Party]** by its duly authorised delegatein the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised delegate |
|  |  |  |  |
| Name of witness |  |  | Name of authorised delegate |
|  |  |  |  |
| Office held |  |  | Office held |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Continuing Party and ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Incoming Party and ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |
|  |  |  |  |

1. - Unconditional Undertaking

**DEED POLL made at on 20**

|  |  |
| --- | --- |
| **IN FAVOUR OF** | [##Insert] (**Principal**) |
| **BY** | [##Insert] (**Financial Institution**) |
| Contractor | [##Insert] |
| Contract | [##Insert] |
| Security Amount | $[##Insert] |

**This deed poll provides:**

1. At the request of the Contractor, and in consideration of the Principal accepting this undertaking from the Financial Institution in respect of the Contract, the Financial Institution unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that the Principal requires the whole or part of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and notwithstanding any notice from the Contractor not to pay.
3. The Financial Institution may, at any time without being required to do so, pay to the Principal the Security Amount less any amounts previously paid under this undertaking, and the liability of the Financial Institution will then immediately end.
4. A demand under this undertaking may be made in Melbourne at [##insert].
5. The undertaking continues until:
   * 1. the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
     2. this undertaking is returned to the Financial Institution; or
     3. the Financial Institution pays to the Principal the whole of the Security Amount.
6. This undertaking is governed by the laws of the State of Victoria.

**Executed** as a deed poll.

[##insert execution block]

On the expiry under its terms or when no longer required, please return this document for cancellation to [insert].

1. - Deed of Guarantee and Indemnity

**Date**

**Parties** **[Insert name of Principal]** of [**Insert address**] (**Principal**)

**[Insert name and ABN of Guarantor]** of [**Insert registered address**] (**Guarantor**)

**[Insert name and ABN of Contractor]** of [**Insert registered address**] (**Contractor**)

Background

1. The Principal has engaged the Contractor under the Contract.
2. Under the Contract, the Contractor is required to provide this Deed to the Principal.

Operative provisions

# Definitions and interpretation

## Definitions

1. In this Deed:
2. **Contract** means the document titled [##insert description] dated on or about the date of this Deed between the Principal and the Contractor.
3. **Cost** means any cost, expense (including legal costs on a full indemnity basis), charge, liability or disbursement.
4. **Insolvency Event** (or such other analogousterm as is used in the Contract) has the meaning given in the Contract.
5. **Obligations** means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in connection with the Contract or the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which are liquidated or unliquidated, are present, prospective or contingent, are in existence before or come into existence on or after the date of this Deed﻿ or relate to the payment of money or the performance or omission of any act.

## Interpretation

1. In this Deed, headings are for convenience only and do not affect interpretation and, unless the context indicates a contrary intention:

### if the Contractor is more than one person, "Contractor" means each of them severally and all of them jointly;

### if the Guarantor is more than one person, "Guarantor" means each of them severally and all of them jointly;

### a reference to any party includes that party’s executors, administrators, successors and permitted assigns, including any person taking by way of novation;

### a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;

### words importing the singular include the plural (and vice versa); and

### the word "includes" in any form is not a word of limitation.

# Guarantee

### The Guarantor unconditionally and irrevocably guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

### If the Contractor does not pay or satisfy any Obligation in full on the due date, the Guarantor will immediately on demand by the Principal satisfy or pay that Obligation in full.

# Indemnity

### The Guarantor, as a separate, additional and primary liability, unconditionally and irrevocably indemnifies the Principal against all losses, damages, Costs, claims, demands or actions suffered or incurred by the Principal arising out of or in connection with:

#### any failure by the Contractor to satisfy the Obligations; or

#### any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

### Subject to clause 3(c), the Guarantor's liability to the Principal in connection with this Deed (including in connection with the Obligations) is limited in the aggregate to the maximum liability of the Contractor under the Contract.

### For the purposes of clause 3(b), the maximum liability of the Contractor under the Contract in respect of an obligation or liability of the nature referred to in clause 3(a)(ii) will be the maximum liability that the Contractor would have had under the Contract but for the obligation or liability being void, voidable or unenforceable against or irrecoverable from the Contractor.

# Nature and preservation of liability

## Absolute liability

1. The liability of the Guarantor under this Deed:

### is absolute and is not subject to the execution of this Deed or any other instrument or document by any person other than the Guarantor, and is not subject to the performance of any condition precedent or subsequent; and

### will not be affected by any act, omission, matter or thing which, but for this clause 4.1(b), might release the Guarantor from that liability or reduce the liability of the Guarantor, including any of the following:

#### the occurrence of any Insolvency Event in relation to the Contractor or the Guarantor;

#### the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;

#### the Principal granting any time, waiver, indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;

#### the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation, or any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;

#### any variation to the Contract or any Obligation, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages the Contractor or the Guarantor;

#### the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation; or

#### any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor.

## No set-off or counterclaim

1. The liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim, and the Guarantor irrevocably waives any rights of set-off or counterclaim which it may have against the Principal.

## Restriction on Guarantor's dealings

1. The Guarantor:

### irrevocably appoints the Principal as its attorney to prove in the insolvency of the Contractor for all money to which the Guarantor may be entitled from the Contractor up to an amount which does not exceed the amount which may be payable by the Guarantor under this Deed; and

### acknowledges that the Principal may, subject to the terms of this Deed, retain any money which the Principal may receive from any proof on account of the Guarantor's liability under this Deed.

## Claim on the Guarantor

1. The Guarantor agrees that the Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

## Settlement conditional

1. If a claim that a payment to the Principal in connection with this Deed or the Contract is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised, then:

### the Principal is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Deed if the payment had not occurred;

### the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and

### the Guarantor must indemnify the Principal against all Costs and losses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

# Representations and warranties

1. The Guarantor represents and warrants to the Principal that:

### this Deed constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms;

### the execution, delivery and performance of this Deed and each transaction contemplated by this Deed does not violate or breach any law or any document (including the constitution of the Guarantor) or agreement to which it is a party or which is binding on it or any of its assets;

### no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the business assets or financial condition of the Guarantor;

### all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and

### it is not the trustee of any trust.

# Notices

1. A notice, consent or other communication in connection with this Deed must be in writing and left at or sent by prepaid ordinary post to the address of the party specified in this Deed or if the addressee notifies another address to the other parties, then to that address. Unless a later time is specified in it a notice, consent or other communication takes effect from the time it is received. Proof of posting is proof of receipt on the third day after posting.

# General

## Governing law and jurisdiction

### This Deed is governed by and is to be construed according to the law applying in Victoria.

### Each party irrevocably:

#### submits to the non‑exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and

#### waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.1(a).

## Severance

1. To the extent a provision of this Deed is or becomes illegal, void or unenforceable, that provision (or the relevant part) will be severed, and the remainder of this Deed has full force and effect.

## Counterparts

1. This Deed may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart.

## Electronic signature and exchange

### Each party warrants that immediately prior to entering into this Deed it unconditionally consented to:

#### the requirement for a signature under any law being met; and

#### any other party to this Deed executing it,

* 1. by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

### Without limitation, the parties agree that this Deed may be exchanged by hand, post or any electronic method that evidences a party's execution of this Deed, including by a party forwarding a copy of its executed counterpart by hand, post, facsimile or electronic means to the other party.

**Executed** as a deed.

|  |
| --- |
| **Guidance Note:** The execution blocks set out below are provided for guidance only. The correct execution blocks for each party must be confirmed and included prior to this deed being finalised. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Insert Principal]** by its duly authorised delegatein the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised delegate |
|  |  |  |  |
| Name of witness |  |  | Name of authorised delegate |
|  |  |  |  |
| Office held |  |  | Office held |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Insert Contractor]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[Insert Guarantor]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |

1. - Collateral Warranty

Warranty Deed Poll made at on , 20   
  
By [##insert] (ABN [##insert]) of [##insert] (Warrantor)

In favour of [##insert] of [##insert] (Principal)

Recitals

1. The Principal and the party specified in the Annexure to this deed (**Contractor**) have entered into the contract described in the Annexure (**Contract**).
2. The Warrantor is to perform the activities or supply the goods specified in the Annexure (**Warranted Item**), which will be incorporated into the Works (as defined in the Contract).
3. The Warrantor has agreed to give the warranties, indemnity and other promises contained in this deed in respect of the Warranted Item to the Principal.

This deed poll provides

1. The Warrantor warrants in favour of the Principal that the Warranted Item will be to the quality and standard specified in the Contract and will be fit for the purpose for which it is required.
2. The warranty in clause 1 is in addition to and does not derogate from any warranty implied by Law in respect of the Warranted Item.
3. The Warrantor must at its cost make good or replace, to the reasonable satisfaction of the Principal, the Warranted Item or any part which, within the period specified in the Annexure (**Warranty Period**) is found to not comply with the requirements set out in clause 1.
4. The liability of the Warrantor under clause 3 is reduced to the extent that the failure of the Warranted Item (or part) to comply with the requirements set out in clause 1 is caused by normal wear and tear.
5. If the Warrantor does not, within 14 days of the Principal giving the Warrantor notice to do so (or any longer period specified by the Principal in its notice), make good or replace the Warranted Item, then:
   * 1. without limiting any other rights or remedies which the Principal may have against the Warrantor, the Principal may do so; and
     2. the costs, expenses, losses and damages suffered or incurred by the Principal in making good or replacing the Warranted Item as required by clause 3 will be a debt due from the Warrantor to the Principal.
6. The Warrantor will indemnify the Principal against all costs, expenses, losses and damages suffered or incurred by the Principal arising out of or in connection with any breach by the Warrantor of:
   * 1. the warranties given by it under this deed; or
     2. its other obligations under this deed.
7. Nothing contained in this deed is intended to nor will render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.
8. The Warrantor agrees that the rights of the Principal under:
   * 1. this deed are in addition to and do not derogate from any other rights which the Principal may have; and
     2. any clause of this deed are cumulative and the rights arising under one clause do not derogate from rights arising under any other clause.
9. This deed comes into effect when executed by the Warrantor and is effective whether or not executed by the Principal.
10. This deed may not be revoked or otherwise modified without the prior written consent of the Principal.
11. The Principal may assign the benefits and rights under this deed.
12. This deed is governed by and is to be construed according to the law applying in Victoria. The Warrantor irrevocably:
    * 1. submits to the non‑exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
      2. waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10(a).

**Annexure**

|  |  |  |
| --- | --- | --- |
| **Item** | **Description** | **Details** |
|  | **Principal** | [Insert] |
|  | **Contractor** | [Insert] |
|  | **Warrantor** | [Insert] |
|  | **Contract** | [Insert] |
|  | **Warranted Item** | [Insert] |
|  | **Warranty Period** | [Insert] |

**Executed** as a deed poll.

|  |
| --- |
| **Guidance Note:** Insert appropriate execution block for Warrantor. |