

**Annexure to the Australian Standard
General conditions of contract for
design and construct**

Part D

Note: Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

Deed of Novation

(Subclause 9.4)

This Deed made this day of 20.....

between (the **Principal**)

of ACN ABN

between (the **Consultant**)

of ACN ABN

between (the **Contractor**)

of ACN ABN

1. Upon receipt by the *Consultant* of all moneys due and payable by the *Principal* for the *Services* under the agreement described in the Schedule hereto ('the **Consultancy Services Agreement**'):
 - (a) the *Consultant* shall punctually perform the obligations of the *Contractor* under the *Consultancy Services Agreement* as far as they are not performed. The *Consultant* acknowledges itself bound by the provisions of the *Consultancy Services Agreement* as if the *Contractor* had been named as the *Principal* in the *Consultancy Services Agreement*;
 - (b) the *Contractor* shall punctually perform like obligations and be bound to the *Consultant* as if the provisions of the *Consultancy Services Agreement* were incorporated herein; and
 - (c) the *Principal* and the *Consultant* shall each release and forever discharge each other from the further performance of the *Consultancy Services Agreement*.
2. The *Consultant* warrants to the *Contractor* that the *Services* performed under the *Consultancy Services Agreement* to the date hereof have been performed in accordance with the provisions of the *Consultancy Services Agreement*.

3. The *Consultant* and the *Contractor* acknowledge and agree that, despite the novation under the terms of this Deed, the *Principal* has a legitimate interest in the *Services* under the *Consultancy Services Agreement* being performed in accordance with the terms of the *Consultancy Services Agreement* and to this end, on and from the date of this Deed:
- (a) if the *Consultant* reasonably believes that any direction given to it by the *Contractor* has the effect or may have the effect of inducing or causing the *Consultant's* documents or a *separable portion* to materially depart from the architectural design intent of the *Principal's project requirements* for the *separable portion* (to be produced by the *Consultant* under the *Consultancy Services Agreement*), the *Consultant* must promptly notify the *Principal* by notice in writing (with a copy to the *Contractor*);
 - (b) the *Consultant* must:
 - (i) inspect all areas of the *separable portion* and the *design documents* for the *separable portion* (to the extent they are relevant to its discipline) until the *date of practical completion* of the *separable portion* under the *Contract* at such times and frequencies that:
 - (A) are necessary to enable it to provide the *Consultant's* Certificate of Compliance in the form set out in [insert] of the *Consultancy Services Agreement* at the times required under the *Consultancy Services Agreement*; and
 - (B) would normally be performed by a prudent and competent professional consultant having regard to the nature of the *Services* and the *separable portion*; and
 - (ii) advise the *Principal* in writing promptly if it identifies anything which would prevent it from issuing a *Consultant's* Certificate of Compliance in the form set out in [insert] of the *Consultancy Services Agreement* without identifying any non-conformances in paragraph (b) of that certificate;
 - (c) the *Consultant* must advise the *Principal* in writing promptly upon becoming aware of any direction by the *Contractor* regarding the *Services* which, in the *Consultant's* professional opinion, would have the effect of materially diminishing the quality of the *Services* or the *separable portion*;
 - (d) the *Principal* must, on request from time to time, be given free and unfettered access to:
 - (i) the *Consultant* for the purpose of consultation in relation to the *Services* at no cost to the *Principal*;
 - (ii) all reports (including, without limitation, construction services inspection reports), requests for information and other correspondence between the *Consultant* and the *Contractor* (including the right to take copies);
 - (iii) all meetings between the *Consultant* and the *Contractor*;
 - (iv) all requests for information and other correspondence in connection with *subcontract* tender packages for the *Project* (including the right to take copies); and
 - (v) without limiting the foregoing, all correspondence between the *Consultant* and the *Contractor* in relation to *defects* in *separable portion* (including the right to take copies); and
 - (e) the *Consultant* must report any other concerns it has from time to time with the performance of the *Contractor* or the *separable portion* generally to the *Principal* in writing.
4. The *Contractor* acknowledges that it will not have any claim against the *Consultant*, nor be permitted to withhold payment from the *Consultant*, by reason of the *Consultant* complying with its obligations under clause 3.
5. This Deed shall be governed by the governing law of the *Consultancy Services Agreement*.
6. Words defined in the *Contract* have the same meaning when used in this Deed, unless otherwise defined in this Deed, and “*Services*” has the meaning given in the *Consultancy Services Agreement*.

Schedule

[insert].

EXECUTED as a deed.

SIGNED for an on behalf of the **Principal**

by [insert] in the presence of:

.....
Name of Witness

.....
Signature of [insert]

.....
Name of Witness (please print)

EXECUTED by the **Consultant**

in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

EXECUTED by the **Contractor**

in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)