

## NOVATION DEED

This deed is dated [date], and is between:

- (1) **Party 1**, a company incorporated in [country] under company number XXX (the “**Continuing Party**”);
- (2) **Party 2**, a company incorporated in [country] under company number XXX (the “**Exiting Party**”);
- (3) **Party 3**, a company incorporated in [country] under company number XXX (the “**New Party**”).

### Background

- (A) The Continuing Party and the Exiting Party are parties to a [type of agreement being novated e.g. software licence agreement].
- (B) The Continuing Party and the Exiting Party wish to novate their agreement by having the New Party take the position of the Exiting Party.
- (C) The New Party is willing to take the position of the Exiting Party, including becoming liable to the Continuing Party for past breaches of the novated agreement.

### The parties now agree:

#### 1. Definitions

1.1 In this deed, these terms have these meanings:

“**Claims**” means claims for breach of contract, tort (including negligence), debt, or misrepresentation.

“**Novating Agreement**” means the [title of the agreement being novated] dated [date of the agreement being novated] between (1) the Continuing Party and (2) the Exiting Party.

“**Novation Date**” means [insert a specific date that is on or after the date of this deed].

“**Relevant Claims**” means Claims of the Continuing Party regarding the Novating Agreement where the Claims arise from:

- (a) acts or omissions of the Exiting Party before the Novation Date;
- (b) acts or omissions of the New Party on or after the Novation Date; or
- (c) a combination of (a) and (b).

“**Transferring Obligations**” means obligations of the Exiting Party remaining to be performed under the Novating Agreement.

“**Transferring Rights**” means:

- (a) rights of the Exiting Party under the Novating Agreement (despite when these rights arise); and
- (b) Claims of the Exiting Party regarding the Novating Agreement where the Claims arise from acts or omissions of the Continuing Party before the Novation Date (despite whether the Exiting Party is aware on the Novation Date of these Claims or the facts supporting these Claims).

“**Retained Warranties**” means clauses [clause numbers in the Novating Agreement containing warranties (i.e. statements of fact) made by the Exiting Party about the Exiting Party itself] of the Novating Agreement.

## **2. Novation**

- 2.1 With effect from the Novation Date:
- (a) the parties novate the Novating Agreement under this deed;
  - (b) the Continuing Party consents to the transfer under clause 2.1(c) of this deed.
  - (c) the Exiting Party transfers to the New Party (and the New Party accepts) the Transferring Obligations and the Transferring Rights;
  - (d) the New Party shall perform the Transferring Obligations as if it were the original party to the Novating Agreement in place of the Exiting Party;
  - (e) the Continuing Party releases the Exiting Party from performance of the Transferring Obligations;
  - (f) the Continuing Party shall perform its obligations remaining to be performed under the Novating Agreement as if the New Party were the original party to the Novating Agreement in place of the Exiting Party.

## **3. Retained Warranties**

- 3.1 The Continuing Party may continue to enforce its Claims regarding the Retained Warranties against the Existing Party, with enforcement being under the Novating Agreement as in force immediately before the Novation Date.

## **4. Retained Claims**

- 4.1 With effect from the Novation Date, the Continuing Party may enforce Relevant Claims against the New Party (and the New Party may defend Relevant Claims) as if:
- (a) the New Party were the original party to the Novating Agreement in place of the Exiting Party; and
  - (b) the acts and omissions of the Exiting Party under the Novating Agreement before the Novation Date were the acts and omissions of the New Party.
- 4.2 The Exiting Party shall promptly provide all documentation and information in its possession or control (including access to the relevant staff of the Exiting Party) as the New Party may reasonably require in dealing with Relevant Claims.
- 4.3 The Exiting Party shall promptly reimburse the New Party for:
- (a) the proportion of damages and legal costs paid by the New Party to the Continuing Party for Relevant Claims that are attributable, as between the New Party and the Exiting Party, to the acts or omissions of the Exiting Party before the Novation Date;
  - (b) the proportion of legal costs incurred by the New Party in dealing with Relevant Claims that are attributable, as between the New Party and the Exiting Party, to the acts or omissions of the Exiting Party before the Novation Date.

## **5. Waiver**

- 5.1 With effect from the Novation Date, the Continuing Party waives its right to enforce Relevant Claims against the Exiting Party. This waiver applies even if the Relevant Claims or the facts supporting those Relevant Claims are unknown to the Continuing Party at the Novation Date. This waiver does not apply to enforcement by the Continuing Party under clauses 3.1 or 4.1 of this deed.

## **6. Division of Benefit of Indemnity**

- 6.1 The transfer of Transferring Rights under clause 2.1(c) of this deed:
- (a) excludes the benefit of clause [*clause number of the indemnity in the Novating Agreement protecting the Exiting Party against third party claims*] of the Novating Agreement for liabilities occurring before the Novation Date;
  - (b) includes the benefit of clause [*clause number of the indemnity in the Novating Agreement protecting the Exiting Party against third party claims*] of the Novating Agreement for liabilities occurring on or after the Novation Date.
- 6.2 The Exiting Party may continue to enforce clause [*clause number of the indemnity in the Novating Agreement protecting the Exiting Party against third party claims*] of the Novating Agreement for liabilities occurring before the Novation Date, with enforcement being under the Novating Agreement as in force immediately before the Novation Date.

## **7. Amendments to the Novating Agreement**

- 7.1 With effect from the Novation Date, these amendments are made to the Novating Agreement:
- (a) the Retained Warranties are deleted;
  - (b) [*details of other amendments to the Novating Agreement*]

## **8. Continuation of Novating Agreement**

- 8.1 Other than as provided in this deed, the Novating Agreement remains in force on its current terms.

## **9. Law and Jurisdiction**

- 9.1 The laws of England apply to this deed.
- 9.2 The courts of England have exclusive jurisdiction to settle every dispute regarding this deed.

**EXECUTED as a DEED** by the parties on the date of this deed.

SIGNED and DELIVERED as a DEED by  
**PARTY1**  
acting through a director

\_\_\_\_\_  
signature

And witnessed by:

\_\_\_\_\_  
signature

\_\_\_\_\_  
print name

\_\_\_\_\_  
occupation

\_\_\_\_\_  
address

SIGNED and DELIVERED as a DEED by  
**PARTY2**  
acting through a director

\_\_\_\_\_  
signature

And witnessed by:

\_\_\_\_\_  
signature

\_\_\_\_\_  
print name

\_\_\_\_\_  
occupation

\_\_\_\_\_  
address

SIGNED and DELIVERED as a DEED by  
**PARTY3**  
acting through a director

\_\_\_\_\_  
signature

And witnessed by:

\_\_\_\_\_  
signature

\_\_\_\_\_  
print name

\_\_\_\_\_  
occupation

\_\_\_\_\_  
address