

# Standard Deed of Novation

*Between*

The entity described in Item 1 of the Schedule as the State of Queensland

*("State")*

*AND*

The entity described in Item 2 of the Schedule as the Finance Company

*("Finance Company")*

*AND*

The person described in Item 3 of the Schedule as the Employee

*("Employee")*



**Queensland  
Government**

Department of Public Works  
80 George Street  
BRISBANE QLD 4000

**BETWEEN:**

\_\_\_\_\_  
The State of Queensland as described in Item 1 of the Schedule ("State")

**AND:**

\_\_\_\_\_  
Name of Finance Company as described in Item 2 of the Schedule ("Finance Company")

**AND:**

\_\_\_\_\_  
Name of Employee as described in Item 3 of the Schedule ("Employee")

**BACKGROUND**

- A. The Employee leases the Vehicle from the Finance Company under the Original Lease.
- B. The Employee and the Finance Company agree that the Original Lease may be novated on the terms and conditions of this Deed.
- C. The State and the Finance Company agree to assume the rights and obligations under the Novated Lease on the terms and conditions of this Deed.

**OPERATIVE PROVISIONS**

**1. Definitions and Interpretation**

1.1 In this Deed unless the context otherwise requires –

"**Authorised Personnel**" means employees, agents or subcontractors of the Finance Company who assist the Finance Company to comply with its obligations under this Deed;

"**Business Day**" means between 9.00am and 5.00pm on a weekday other than a Saturday, Sunday or public holiday at the Agency's address;

"**Certified agreement**" means an agreement made in accordance with Chapter 6 of the *Industrial Relations Act 1999 (Qld)* or Part 2-4 of the *Fair Work Act 2009 (Cth)*;

"**Commencement Date**" means the date the last party to this Deed signs this Deed;

"**Deed**" means this Deed, any variations permitted by this Deed and any Schedules, Annexures or Attachments to this Deed;

"**Department**" or "**Agency**" means a Queensland Government department or an administrative unit thereof;

"**Employee**" means the person described in **Item 3** of the Schedule;

"**Finance Company**" means the entity described in **Item 2** of the Schedule;

"**Machinery of Government Change**" means a transfer of responsibility, function or operations either wholly or partly, from a Queensland Government Department or Queensland Government Body to another Queensland Government Department or Queensland Government Body;

“**Novated Lease**” means the lease of the Vehicle between the State and the Finance Company;

“**Original Lease**” means the lease between the Finance Company and the Employee, a copy of which is set out in Annexure A to this Deed;

“**Personal Information**” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

“**Residual Payment**” means a payment to the Finance Company for the residual value of the Vehicle at the end of the Original Lease or Novated Lease;

“**State**” means the State of Queensland acting through the entity described in Item 1 of the Schedule;

“**Term**” means the period beginning on the Commencement Date and ending on the Termination Date;

“**Termination Date**” means the earlier of:

- a) the date the Employee ceases to be employed by the State;
- b) the Employee’s date of death;
- c) the date the State notifies the Employee that clause 4 applies; or
- d) the termination date under the Novated Lease;

“**Third Party Service Provider**” means the service provider identified in Item 4 of the Schedule;

“**Vehicle**” means the vehicle leased to the Employee by the Finance Company under the Original Lease.

## 1.2 Interpretations

1.2.1 In this Deed, the index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of this Deed.

1.2.2 The following rules shall apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- (e) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- (f) “consent” means prior written consent;
- (g) “in writing” means either by letter, email or facsimile;
- (h) a clause, Schedule, attachment or annexure is a reference to a clause, Schedule, attachment or annexure to this Deed;
- (i) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;
- (j) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (k) a clause is a reference to all of its sub-clauses; and

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- (l) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

Terms defined in the Original Lease have the same meaning in this Deed.

## 2. Novation of Lease

### 2.1 From the Commencement Date:

- (a) the Original Lease is terminated and the Employee and Finance Company:
  - (i) surrender all their rights; and
  - (ii) release each other from all obligations, under the Original Lease; and
- (b) the Employee's rights and obligations under the Original Lease are novated to, and assumed by, the State under the Novated Lease.

### 2.2 The terms of the Novated Lease are identical to the terms of the Original Lease except that:

- (a) any reference to the Employee in the Original Lease will be taken to be a reference to the State in the Novated Lease;
- (b) the Finance Company releases the State from any obligation to make the Residual Payment under the Novated Lease;
- (c) the governing law of the Novated Lease will be the law of Queensland; and
- (d) any indemnity provided by the State to the Finance Company is limited to loss or damage incurred by the Finance Company as a result of a breach of the Novated Lease by the State.

## 3. Employee's use of Vehicle

### 3.1 During the Term the State must make the Vehicle available to the Employee as part of the Employee's agreed remuneration package.

### 3.2 The Finance Company consents to the State providing the Vehicle to the Employee under clause 3.1.

### 3.3 During the Term the Employee must:

- (a) keep the Vehicle in the Employee's possession and control;
- (b) at the Employee's own cost, maintain the Vehicle in good working order;
- (c) pay all costs (other than rent) relating to or in connection with the Vehicle and the Novated Lease including, but not limited to, administration costs, stamp duty, insurance premiums, registration, maintenance, repairs, replacement parts, fuel and oil;
- (d) maintain comprehensive insurance in respect of the Vehicle that is acceptable to the State and Finance Company and ensure that the State and Finance Company's interests are noted under the insurance policy;
- (e) not do anything that may result in the insurer refusing an insurance claim in relation to the Vehicle;
- (f) not do anything which may void the insurance on the Vehicle;
- (g) not do anything that may void the supplier's or manufacturer's warranty for the vehicle;
- (h) only use the Vehicle in accordance with the manufacturer's recommendations;
- (i) not carry any dangerous, noxious or hazardous substance in the Vehicle;
- (j) not use the Vehicle in any race or competition;

- (k) not offer the Vehicle for hire;
- (l) notify the State and Finance Company of any change to the Employee's residential address; and
- (m) comply with any reasonable directions given by the State in relation to the Vehicle.

#### **4. Termination of Novated Lease**

- 4.1 The State may at any time without reason terminate the Novated Lease by notice in writing to the Finance Company and the Employee. The period of the notice will be the period provided for in the Employee's relevant Certified agreement, or if no period is provided for, then at least 21 days.
- 4.2 On the Termination Date:
  - (a) all the State's rights and obligations under the Novated Lease become rights and obligations of the Employee as if references to the State in the Novated Lease were references to the Employee; and
  - (b) the State will cease to have any liability under the Novated Lease other than for unpaid lease payments or unpaid interest payments due and payable on the Termination Date.
- 4.3 The Employee will become personally liable for ongoing lease payments and the Residual Payment from the Termination Date.

#### **5. Indemnity**

- 5.1 The Employee indemnifies the State against any costs, loss or damage incurred by the State under the Novated Lease (other than rent and interest payments), including costs, loss or damage:
  - (a) in connection with the Employee failing, refusing or neglecting to duly and punctually perform the Employee's obligations under this Deed;
  - (b) in connection with any act or omission of the Employee that causes the State to be in breach of the Novated Lease or this Deed;
  - (c) as a result of the loss of or damage to the Vehicle;
  - (d) as a result of the termination of the Novated Lease; and
  - (e) as a result of this Deed after the Termination Date.
- 5.2 The State may enforce the indemnity in clause 5.1 without first incurring any expense or making any payment.
- 5.3 This clause 5 will survive the termination or expiration of this Deed.

#### **6. Employee's acknowledgements**

- 6.1 The Employee acknowledges that:
  - (a) either:
    - (i) the Employee has received financial, taxation and legal advice in relation to the Original Lease and this Deed; or
    - (ii) the Employee has sufficient understanding of the Original Lease and this Deed;
  - (b) FBT charges shall be the responsibility of the employee;
  - (c) the risks of incurring an FBT liability is solely the Employee's, regardless of the circumstances that result in the FBT;

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- (d) the Employee is responsible for obtaining financial, taxation and legal advice, if necessary.
  - (e) the State recommended that the Employee seek independent financial, taxation and legal advice before entering into the Original Lease and this Deed;
  - (f) the Employee has not relied on the advice of the State or the Finance Company in entering into the Original Lease or this Deed;
  - (g) the Employee has entered into the Original Lease and this Deed voluntarily;
  - (h) the State does not guarantee the Employee's employment will continue until the end of the term of the Novated Lease;
  - (i) the Employee will become liable for any Residual Payment that becomes due under the Original Lease or the Novated Lease; and
  - (j) any Residual Payment may be more than the value of the Vehicle.
- 6.2 The Employee consents to the Finance Company and the State exchanging and disclosing to the Third Party Service Provider, Personal Information relating to the Employee for purposes associated with the parties' obligations under this Deed, the Original Lease and the Novated Lease and the collection of the Residual Payment.
- 6.3 The employee consents to the Finance Company and the Third Party Service Provider providing to the State or a nominated representative of the State, details of all operating costs and data (including fuel costs, litres of fuel purchased, registration, insurance, lease charges) associated with the operation of the vehicle that is the subject of this Deed of Novation for a period from 1 April to 31 March in any year or part thereof during the Term.
- 7. Finance Company Obligations**
- 7.1 The Finance Company will exchange and disclose to the Third Party Service Provider, Personal Information relating to the Employee for purposes associated with the parties' obligations under this Deed, the Original Lease and the Novated Lease and the collection of the Residual Payment.
- 7.2 The State may request in writing (as defined in sec.36 of the *Acts Interpretation Act 1954*) that the Finance Company provide to the State or a nominated representative, information within the possession or control of the Finance Company about operating costs (including fuel cost, litres of fuel purchased, registration, insurance, lease charges) associated with the operation of the Vehicle that is for a period from 1 April to 31 March in any year or part thereof during the Term.
- 7.3 The information requested under clause 7.2 must be provided to the State or the nominated representative within 21 business days of the request being made by the State in a format that can be utilised by the State unless that information is not within the possession or control of the Finance Company.
- 7.4 This clause 7 will survive expiration or termination of this Deed.
- 8. Privacy**
- 8.1 To the extent that the Finance Company has access to, or collects, Personal Information in order to fulfill its obligations under this Deed, the Original Lease and the Novated Lease then it must comply with the privacy obligations in clause 8.2.

- 8.2 The Finance Company must, unless otherwise consented to in writing by the State:
- (a) where it is responsible for holding Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
  - (b) not use Personal Information other than for the purposes of this Deed, the Original Lease or the Novated Lease unless required or authorised by law;
  - (c) subject to clause 6.2, not disclose Personal Information without the written consent of the Employee to whom the Personal Information relates, unless:
    - (i) the disclosure is required or authorised by law; or
    - (ii) the Personal Information is disclosed to the Third Party Service Provider or the State and, when that information was collected, the Employee was made aware that it is Finance Company's usual practice to disclose information of that type to the Third Party Service Provider or the State;
  - (d) ensure that only Authorised Personnel have access to Personal Information;
  - (e) promptly notify the State if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law;
  - (f) make its employees, agents and subcontractors aware of the Finance Company's obligations under this clause including, when requested by the State requiring those employees, agents and subcontractors to promptly sign a privacy deed, in a form approved by the State relating to Personal Information;
  - (g) not transfer the Personal Information outside Australia for any reason unless approved under a written authority from the State;
  - (h) indemnify the State for any liability, loss or cost arising from a breach by the Finance Company of this clause despite any other provision of this Deed or any other indemnity available to the Finance Company from the State; and
  - (i) comply with such other privacy and security measures as the State reasonably advises the Finance Company of in writing from time to time.
- 8.3 The Finance Company must immediately notify the State upon becoming aware of any breach of clause 8.2.
- 8.4 This clause 8 will survive expiration or termination of this Deed.
- 8.5 The Finance Company must not use any subcontractor, servant or agent who is based in a foreign jurisdiction without the approval of the State.
- 8.6 The Employee acknowledges that the Finance Company is required to collect the Employee's Personal Information for the purposes of this Deed, the Original Lease and/or the Novated Lease.

**9. Inconsistencies**

9.1 The terms of this Deed will prevail to the extent of any inconsistency with the terms of the Novated Lease.

**10. Relationship of the Parties**

10.1 Except as is specifically provided in this Deed or any other agreement in writing between the parties –

- (a) none of the parties to this Deed shall incur any expenditure on behalf of any other party to this Deed; and
- (b) none of the parties to this Deed have the power to bind the other party, pledge the credit of any party or bind the party to any contractual obligation whatsoever, without specific approval in writing of the other party.

10.2 This Deed does not create any partnership, contract of employment or employment relationship, joint venture or relationship of principal and agent between the parties.

**11. Costs**

11.1 The parties to this Deed shall pay their own costs, (including legal costs), expenses and disbursements of and incidental to the preparation and execution of this Deed

**12. Waiver**

12.1 Any failure by a party at any time to enforce a clause of this Deed, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.

12.2 No provision of this Deed will be deemed to be waived unless that waiver is in writing and signed by the waiving party.

12.3 A waiver by a party of breach of any part of this Deed will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

**13. Assignment**

13.1 Notwithstanding any other provision of this Deed, the Finance Company and Employee agree that the State is entitled to freely transfer responsibility for this Deed and the Novated Lease to another Department or to freely transfer any of its rights and obligations to another Department on the same terms and conditions as this Deed, but only as a consequence of either:

- (a) a Machinery of Government Change; or
- (b) a temporary or permanent change in the Employee's Department of employment.

**14. Variation of Deed**

14.1 This Deed may be varied at any time by an agreement in writing executed by both parties.

14.2 It shall be sufficient evidence of an agreement to vary a Schedule to this Deed, if the parties execute as a deed a document purporting to be a substitute Schedule.



**15. Governing Law**

15.1 This Deed is governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

**16. Severability**

16.1 If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Deed and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

**17. Notices**

17.1 Any Notice or other form of communication (a "notice") which may be given to or served on to a party under this Deed must be in writing and must be sent by prepaid postage, fax or email or delivered by hand to the following respective addresses:

- (a) for the State – as described in Item 1 of the Schedule;
- (b) for the Finance Company – as described in Item 2 of the Schedule;
- (c) for the Employee – as described in Item 3 of the Schedule, or such other address as a party may subsequently notify to the other/s.

17.2 Notwithstanding clause 10.1, the State may serve a notice at any time on the Finance Company's registered office.

17.3 A notice will be deemed to be given:

- (a) if posted – two Business Days after the date of posting;
- (b) if delivered by hand during a Business Day – on the date of delivery;
- (c) if faxed – on the date the sender's facsimile machine notes a complete and successful transmission; or
- (d) if emailed – on the date of the email

except that a fax or email received after 5.00pm (local time of the receiving party) will be deemed to be given on the next Business Day.

17.4 The parties may from time to time change their respective addresses, telephone and facsimile numbers by providing the other party with written notice.

**18. Counterparts**

18.1 This Deed may be executed in any number of counterparts. Each counterpart constitutes an original of this Deed, all of which together constitute one instrument.





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SCHEDULE

**Item 1 State of Queensland acting through a Department or Agency being:**

Name:

ABN:

Address:

**Item 2 Finance Company:**

Name:

ABN:

Address:

**Item 3 Employee:**

Name:

Address:

Facsimile:

Email:

**Item 4 Third party service provider -**

Name:

ABN:

Address:

*(If there is more than one third party service provider associated with this Deed of Novation, then the headings contained within Item 4 must be duplicated, as required).*

Annexure A – Original Lease

RTI RELEASE