|  |  |
| --- | --- |
| The Deed is made on |  |
| **between** |  |
| Name | The State of Queensland acting through the Department of Transport and Main Roads |
| of |
| Address |  |
|  | ‘the Principal’ |
| **and** |
| Company name |  |  | **ACN** |  |
| of |
| Address |  |
|  | ‘the Contractor’ |
| **and** |
| **Company name** |  |  | **ACN** |  |
| of |  |  |
| **Address** |  |
|  | ‘the Designer’ |

**Recitals**

1. The Principal and the Contractor have entered into a Contract described as follows —

|  |  |  |  |
| --- | --- | --- | --- |
| Contract number |  | Date of Contract |  |
| ‘the Contract’ |  |  |
| to design and construct, as part only of the works, the following work — |
|  |
| ‘the Defined Part’ |

1. The Contractor and the Designer have entered into an agreement described as follows —

|  |  |  |  |
| --- | --- | --- | --- |
| Agreement number |  | Date of Agreement |  |
|  | ‘the Design Agreement’ |  |  |
| to design the following work — |
|  |
| ‘the Design’ |

1. The Principal, the Contractor and the Designer have agreed to the novation of the Design Agreement in certain circumstances and according to the conditions as set out in the *General Conditions - Designer’s Deed of Covenant*.

|  |
| --- |
| Authorisation |
| Executed as a Deed on the date first appearing above. |
| For the Principal |
| Signed, sealed and delivered for and on behalf of the State of Queensland acting through the Department of Transport and Main Roads by |
| Name/Position | Signature | Date |
|  |  |  |
| as delegate of the Director-General of the Department of Transport and Main Roads |
| in the presence of |
| Name of witness | Signature of witness | Date witnessed |
|  |  |  |

|  |
| --- |
| For the Contractor |
| Signed, sealed and delivered for and on behalf of |
| Company name | ACN | The company seal (where applicable) |
|  |  |  |
| by its duly authorised attorney |
| Attorney’s name | Date executed |
|  |  |
| Attorney’s position | Attorney’s signature |
|  |  |
| pursuant to a power of attorney dated | Date of power of attorney | and the attorney hereby declares that he/she has not received notice of revocation of the power of attorney |
|  |
| in the presence of  |
| Name of witness | Signature of witness | Date witnessed |
|  |  |  |

|  |
| --- |
| For the Designer |
| Signed, sealed and delivered for and on behalf of |
| Company name | ACN | The company seal (where applicable) |
|  |  |  |
| by its duly authorised attorney |
| Attorney’s name | Date executed |
|  |  |
| Attorney’s position | Attorney’s signature |
|  |  |
| pursuant to a power of attorney dated | Date of power of attorney | and the attorney hereby declares that he/she has not received notice of revocation of the power of attorney |
|  |
| in the presence of  |
| Name of witness | Signature of witness | Date witnessed |
|  |  |  |
| The Department of Transport and Main Roads collects personal information on this form so that you may execute the deed. The information on this form is accessible by authorised departmental officers and external personnel who are engaged to administer the Contract who will not disclose your personal details to a third party without your consent unless required to do so by law. |

General conditions

# Designer’s Deed of Covenant

# Definitions and interpretations

In this Deed, unless the context requires otherwise:

* ‘the Nominee’ means the person, firm or corporation (if any) nominated by the Principal pursuant to Clause 2(c) hereof
* ‘this Deed’ means this document and includes its schedules and annexure (if any).

In this Deed, unless the context requires otherwise, words importing the singular number include the plural number and vice versa.

# Novation

If the Principal exercises one of the powers conferred on it by either paragraphs (i) or (ii) of Clause 44.4 of the *General Conditions of Contract* and thereafter gives notice in writing to the Contractor and the Designer advising them that the provisions of this Deed are to apply, then:

1. the Designer shall forward a copy of the Design Agreement to the Principal
2. the Contractor and the Designer mutually agree to terminate the Design Agreement, reserving always their respective rights accrued prior to termination
3. the Principal may give notice of the name of the person, firm or corporation (if any) which is to be a party to the new contract referred to in paragraph (d) of this Clause
4. the Principal or the Nominee (as the case may be) and the Designer agree that they shall hereby enter into a new contract on the same terms and conditions as the Design Agreement, save and except that:
	1. the Principal or the Nominee (as the case may be) shall be named therein in lieu of the Contractor, and
	2. the obligations of the Principal or the Nominee (as the case may be) and the Designer will be as if the Principal or the Nominee (as the case may be) had executed the Design Agreement in lieu of the Contractor, and
	3. the Principal or the Nominee (as the case may be) shall pay the Designer for work carried out under the new Design Agreement (pro rata amounts or at the rates in the Design Agreement) after the date of the new Design Agreement
	4. in no circumstances shall the Principal or the Nominee (as the case may be) be obliged to pay the Designer for any work done by the Designer prior to the execution of the new Design Agreement and the Designer hereby indemnifies and saves harmless the Principal from all claims, costs (including, without limitation, any unpaid fees under the Design Agreement), expenses and losses (including, without limitation, consequential loss) arising out of or incidental to any work which may have been performed by the Designer under the Design Agreement with the Contractor prior to its termination
5. the Designer must provide the Principal or Nominee (as the case may be) with full details of:
	1. all work carried out by the Designer prior to the execution of the new Design Agreement
	2. all payments made by the Contractor to the Designer prior to the execution of the new Design Agreement
	3. any unpaid claims for payment by the Designer against the Contractor as at the date of execution of the new Design Agreement, and
	4. any work completed by the Designer prior to the execution of the new Design Agreement, but for which the Designer had not claimed payment from the Contractor prior to that time.

Where the Principal exercises one of the powers conferred on it by either paragraphs (i) or (ii) of Clause 44.4 of the *General Conditions of Contract*, but does not take steps to novate the Design Agreement as set out in this Clause, then the Designer shall provide the Principal with full details of:

* the work completed by the Designer
* all payments made by the Contractor to the Designer
* all unpaid claims for payment by the Designer
* any amounts due for work which has not been claimed by the Designer up to the date of the takeover or cancellation of the Contract.

The Designer shall, within 14 days of such takeover or cancellation, provide to the Principal copies of current Drawings and Specifications for the Defined Part.

The Principal may pay the Designer from any securities or Retention Moneys remaining after statutory payments have been made. Such payment shall be up to the full amount determined by the Superintendent on the basis of the ratio of monies due to the Designer from the Contractor and the amount due to the Principal under Clause 44.6 of the *General Conditions of Contract*.

# Duty of Care

The Designer hereby warrants to the Principal that it will exercise reasonable skill and care in performing the Design and in issuing the certificates referred to in Clauses 8.6.6(b) or 8.6.10(a) of the *Conditions of Contract*, and further acknowledges that the Principal will be relying upon the skill and judgement of the Designer in performing the Design and in issuing these certificates.

# Assignment

This Deed is personal between the parties and neither party may assign any right under this Deed except with, and in strict compliance with any conditions of, the prior written consent of each other party.

# Further assurances

The Contractor and the Designer undertake upon request by the Principal, whether upon or after completion, to execute all documents and do all things necessary to vest in the Principal or the Nominee (as the case may be) the Design Agreement or otherwise to give effect to the terms of this Deed.

# Governing law and jurisdiction

This Deed shall be construed in accordance with the law of the State of Queensland and the parties irrevocably submit to the jurisdiction of the Courts of that State.

# Notices

A party may give a notice required under this Deed by delivering such notice to the address provided in the Deed. Such notice may be delivered by hand.

If a party gives the notice by post, the notice will be taken as given on the second business day in the place of delivery after the notice is posted.

The parties may give notice of another address (within Australia) to the other parties and the new address shall be the address for service of the party for the purpose of this Clause.

# No merger on settlement

The provisions of this Deed and the warranties, and covenants given and made and any other obligations under this Deed which are not satisfied by the due date shall not merge on settlement.

# Non-revocation of Power of Attorney

Any Attorney executing this Deed states that at the time of execution of this Deed, the Attorney has received no notice of revocation of the Power of Attorney pursuant to which the Attorney has executed this Deed.