**DEED OF NOVATION**

 NAME OF EMPLOYER

("Employer")

 (NAME OF FINANCE COMPANY)

("Finance Company")

and

 (NAME OF EMPLOYEE)

("Employee")

**THIS DEED OF NOVATION** is made on (Insert date)

**PARTIES:**

1. (Insert Employer's Name, Address and ACN if applicable) **("Employer")**
2. (Insert Finance Company's Name, Address and ACN if applicable) **("Finance Company")**
3. (Insert Employee's Name and Address) **("Employee")**

**RECITALS:**

1. The Employee and the Finance Company are parties to the Lease under which the Employee has leased the vehicle from the Finance Company.
2. The Employee and the Finance Company hereby contractually extinguish and substitute the Lease in respect of the vehicle on the terms and conditions set out in this Deed of Novation.
3. The Employer and the Finance Company have agreed to enter into a novated vehicle lease and assume rights and obligations under the novated vehicle lease on substantially the same terms as the Lease between the Employee and the Finance Company subject to the terms and conditions set out in this Deed of Novation.

**OPERATIVE PROVISIONS OF THIS DEED OF NOVATION:**

1. **Definitions and Interpretation**
	1. Terms of this Deed which have not been defined in Clause 1.2 shall have the same meaning as is given to those terms in the Lease between the Employee and the Finance Company.
	2. In this Deed the following terms shall have the meaning given to them in this clause unless otherwise expressly provided in this Deed:

**"Deed"** means this Deed of Novation including the recitals, which recitals are deemed by the parties to be true and correct in all material particulars.

**"Date of Termination"** means the earlier of:

* + - 1. The date of termination (for whatever reason) of the Employee's employment with the Employer;
			2. The date of death of the Employee;
			3. The Employer at its sole discretion notifying the Employee that Clause 3 of this Deed shall apply; and
			4. The date of termination of the Novated Vehicle Lease.

**"Lease"** means the lease between the Finance Company and the Employee (a copy of which is annexed to this Deed) and in which is set out the terms and conditions on which the Vehicle is provided to the Employee.

**"Novated Vehicle Lease"** means the lease between the Employer and the Finance Company made pursuant to this Deed whereby the Employer agrees to lease the Vehicle from the Finance Company.

**"Residual Obligation"** means the obligation, if any, to make a payment upon the expiration of the Lease that is solely referable to any residual value of the Vehicle as provided for in the Lease.

**"Vehicle"** means the vehicle referred to in the Lease.

* 1. In this Deed unless otherwise expressly provided:
		1. Reference to a person includes any other entity recognised by law and vice versa.
		2. Words importing a singular number include plural numbers and vice versa.
		3. Words importing one gender include every gender.
		4. Any reference to any of the parties by the defined terms includes that party's executors, administrators or permitted assigns, or being a company, its successors or permitted assigns.
		5. Reference to writing includes any mode of representing or reproducing words in a permanent and visible form and includes telex and facsimile transmissions.
		6. Clause headings are for reference only. Reference to a document, agreement or deed including this Deed includes a reference to that document, agreement or deed as amended, novated, supplemented, varied or replaced from time to time by the parties.
		7. A reference to a business day is a reference to any day in which the trading Banks are open for business in the capital city of the State or Territory in which this Deed is executed by the Finance Company, excluding a Saturday, Sunday or public holiday and if any act, matter or thing is required under this Deed to be done on a day that is not a business day then the day on which the act, matter or thing is required to be done shall be deemed to be the next business day.
1. **Novation of Lease Obligations**
	1. From the date of execution of this Deed:
		1. The Lease between the Finance Company and the Employee shall terminate and the Finance Company and the Employee each hereby waive all of their rights under the Lease and each release and forever discharge the other from all obligations under and in respect of the Lease.
		2. The Finance Company and the Employer shall novate obligations towards each other and shall acquire rights against each other which obligations and rights shall be identical in all respects to the rights and obligations which previously existed between the Finance Company and the Employee under the Lease which is terminated in accordance with Clause 2.1(a) and the Finance Company and the Employer hereby agree to enter into a vehicle lease (the "Novated Vehicle Lease") and that the terms of the Novated Vehicle Lease shall be identical to the terms of the Lease except for the following:
2. Any reference in the Lease to the Employee shall be read as a reference to the Employer.
3. The date of commencement of the Novated Vehicle Lease shall be the date of execution of this Deed.
4. The term of the Novated Vehicle Lease shall be the unexpired term of the Lease between the Finance Company and the Employee, had that Lease not been terminated in accordance with this Deed.
5. **Novation of Vehicle to the Employee**
	1. On the Date of Termination all of the Employer's rights and obligations under and in respect of the Novated Vehicle Lease shall become rights and obligations of the Employee were references in the Novated Vehicle Lease to the Employer were references to the Employee. On the Date of Termination the Employer shall cease to have the rights and obligations under the Novated Vehicle Lease other than any liability of the Employer for any unpaid lease payments or unpaid interest due and payable as at the Date of Termination.
6. **Vehicle Use and Employee's Obligation**
	1. Up to and including the Date of Termination the Employer shall make the Vehicle available to the Employee as part of the Employee's agreed salary package with the Employer and the Finance Company hereby consents to the Vehicle being made available to the Employee in this manner.
	2. The Employee shall have use of the Vehicle during the term of the Novated Vehicle Lease and furthermore, the Employee -
		1. shall keep the Vehicle under the Employee's possession and control and shall notify the Finance Company and the Employer of any change of the Employee's residential address;
		2. must not carry dangerous, hazardous or noxious substances in the Vehicle nor carry any load in excess of the manufacturer's recommended carrying load for the Vehicle;
		3. must not use the Vehicle in any race or other competition or as a taxi, hire car or otherwise offer the Vehicle for rental or hire;
		4. must not use the Vehicle in any way that would void any manufacturer's or supplier's warranty in respect of the Vehicle;
		5. shall be responsible for all maintenance and running costs in relation to the Vehicle (including registration fees, third party insurance premiums, repairs, replacement parts, oil and fuel) and shall keep the Vehicle in good condition and working order;
		6. shall maintain comprehensive insurance over the Vehicle of a type acceptable to the Finance Company and the Employer which shall reflect the interests of the Finance Company and the Employer in the Vehicle;
		7. shall not do anything in relation to the Vehicle which would result in the insurer refusing a claim under the insurance policy or which would otherwise void the insurance on the Vehicle.
7. **Indemnity**
	1. The Employee hereby indemnifies the Employer and shall keep indemnified and hold the Employer harmless against all claims, costs, demands, actions, charges, expenses, loss and damage whatsoever and howsoever arising (other than any rental payments and interest due under the Novated Vehicle Lease) which the Employer may sustain, incur or suffer whether directly or indirectly as a result of or in connection with the Employee failing, refusing or neglecting to duly and punctually perform its obligations under this Deed or in respect of any act or omission of the Employee in relation to the Vehicle.
	2. The Indemnity by the Employee under this Clause is a continuing obligation separate and independent from any other obligation under this Deed and may be enforced by the Employer before and without first incurring any expense or making any payment to any person.
8. **Notices**
	1. Any notice, approval, consent or other communication under this Deed:
		1. Must be in writing; and
		2. Must be left at the address of the addressee or sent by prepaid post or by facsimile to the address of the addressee specified in this Deed or if the addressee has notified another address or facsimile number then to that new address or facsimile number.
	2. A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
	3. A letter or facsimile is taken to be received:
		1. In the case of a posted letter, on the third business day after posting or in the case of international post, the seventh day; and
		2. In the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
9. **Waiver**
	1. The failure or omission of a party at any time to:
		1. enforce or require the strict observance of or compliance with any provision of this Deed; or
		2. exercise any election or discretion under this Deed;
		3. shall not operate as a waiver of them or of the rights of a party, whether expressed or implied arising under this Deed.
	2. A power or right given to a party under this Deed may only be waived in writing and executed by the party to be bound by the waiver.
10. **Assignment**
	1. The Employer shall not transfer or assign the Employer's rights under this Deed without the prior written consent of the Finance Company which consent shall not be unreasonably withheld and provided that the Finance Company may require that the Employer pay all fees and expenses that the Finance Company may incur or which may arise in connection with the proposed transfer or assignment and that any proposed transferee or assignee of the Employer's rights shall agree in writing with the Finance Company to observe and perform all of the terms, conditions and restrictions on the part of the Employer in this Deed, whether expressed or implied as if the proposed transferee or assignee were an original contracting party to this Deed.
11. **Variations**
	1. Provisions of this Deed may only be varied by further written agreement of the parties.
	2. No variation of the provisions of this Deed shall be expressed or inferred from a course of dealing.
12. **Governing Law and Jurisdiction**
	1. This Deed shall be governed by and construed in accordance with the Laws of the State or Territory in which this Deed is executed by the Finance Company and each party to this Deed agrees that the Courts of that State or Territory are to have jurisdiction to settle any claim or matter arising under this Deed and each party submits to the jurisdiction of the Courts of that State or Territory.
13. **Trustee Covenants**
	1. If any of the parties has entered into this Deed in the capacity as trustee of a trust, then that party warrants to each of the other parties as follows:
		1. That the party in its capacity as trustee is empowered by the trust deed (the "Trust Instrument") constituting the trust to execute this Deed and to do all things required by this Deed and all necessary meetings have been held, all necessary resolutions have been passed and all consents, approvals and other procedural matters have been obtained or attended to as are required under the Trust Instrument or otherwise.
		2. The party is the duly appointed Trustee of the Trust.
		3. The party in its capacity as Trustee will duly observe and perform its obligations as Trustee of the Trust.
		4. All warranties and covenants given by the party in its capacity as Trustee shall bind that party as Trustee of the Trust and all additional or substituted Trustees of that Trust.
		5. In executing and delivering this Deed and entering into the transactions contemplated by this Deed, it has properly complied with its obligations to the beneficiaries of the Trust and the execution and delivery of this Deed and the entry into the transactions contemplated by this Deed are for the benefit of the beneficiaries of the Trust and do not constitute a conflict of interest or duty or breach of trust.
		6. the party has a right to be indemnified out of all of the property of the Trust in relation to all of its obligations under this Deed;
14. the party has not released or disposed of its equitable lien over the property of the Trust which secures that indemnity; and
15. the party has not agreed to limit or exclude, and has not committed any breach of trust or done or omitted to do anything which has prejudiced or limited, its right of indemnity or equitable lien.
16. **Acknowledgments by Employee**
	1. The Employee by its execution of this Deed acknowledges the following:
		1. In entering into the Lease and this Deed the Employee has either sought financial, taxation and legal advice in relation to those documents or, if advice has not been sought, the Employee acknowledges that the Employee has a sufficient understanding of the relevant risks and issues to make such advice unnecessary;
		2. The Employee has not relied on any advice or other information provided by the Employer or the Finance Company in deciding whether to execute this Deed of Novation and acknowledges that the Employer has recommended that advice in relation to the Lease and the Deed be sought by the Employee.
		3. The Employer acknowledges that the Employee has not been required to enter into the Lease or the Deed but has entered into those agreements voluntarily.
	2. The Employee remains liable for the payment of any Residual Obligation under the Novated Vehicle Lease and acknowledges that such a payment may exceed the amount for which the Vehicle can be sold.
	3. The Employee acknowledges that the Employer has not given the Employee any assurance that the Employee's employment will continue until the termination of the term of the Novated Vehicle Lease.
17. **Inconsistencies between Deed and Novated Vehicle Lease**
	1. If there is any inconsistency between the terms of this Deed and the terms of the Novated Vehicle Lease then the terms of this Deed shall apply.

**EXECUTED AS A DEED:**

Signed and delivered by the Employee )

in the presence of: ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 ) **Signature of Employee**

Witness:

Witness name - Print

Signed, sealed and delivered by )

the Employer )

 ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 ) **Signed on behalf of Employer**

Witness:

Witness name - Print

Signed, sealed and delivered by the Finance )

Company ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 ) **Signed on behalf of Finance Company**

Witness:

Witness name - Print