

# Intrax Consulting Engineers Pty Ltd - Standard Terms of Novation

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## 1 Incorporation of terms

These Standard Terms of Novation are incorporated to the Novation Document pursuant to Clause D of the Novation Document.

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## 2 Definitions and interpretation

### 2.1 Definitions

Unless the contrary intention appears:

**Continuing Party** means Intrax Consulting Engineers Pty Ltd, or other company within the Intrax group as applicable.

**Effective Date** means the date that the last party signed the Novation Document.

**Novation Document** means the document titled "Novation of Contract" and signed by the Parties.

**Principal Document** means the contract between Intrax and the Outgoing Party referred to in Paragraph A of the Terms of Agreement to Novate.

Terms capitalised in this document but not otherwise defined have the meaning set out in the Novation Document.

### 2.2 Interpretation

- (a) A reference to:
  - (i) one gender includes every other gender;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a person includes a body corporate or unincorporate;
  - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
  - (v) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
    - (A) that Statutory Provision as amended or re-enacted from time to time;
    - (B) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
    - (C) another regulation or other statutory instrument made or issued under that Statutory Provision; and
  - (vi) money is to Australian dollars, unless otherwise stated.
- (b) The expression "this document" includes the Novation Document, together with deed, covenants, agreement, arrangement, understanding or transaction recorded in this document.
- (c) "Including" and similar expressions are not words of limitation.
- (d) A reference to a clause or schedule is a reference to a clause of or a schedule to this document.
- (e) A reference to a document (including, without

limitation, a reference to this document) is to that document as amended, novated or replaced.

- (f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (g) Headings and any table of contents or index are for convenience only and do not form part of this document or affect its interpretation.
- (h) A provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this document or the inclusion of the provision in this document.
- (i) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (j) All references to time are to Australian Eastern Standard time.

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## 3 Novation

### 3.1 Incoming Party

On and from the Effective Date, the Incoming Party:

- (a) agrees to perform all of the obligations of the Outgoing Party under the Principal Document which have not already been performed by the Outgoing Party; and
- (b) is bound by the Principal Document as if the Incoming Party was named in the Principal Document in place of the Outgoing Party.

### 3.2 Continuing Party

On and from the Effective Date, the Continuing Party:

- (a) releases the Outgoing Party from the Outgoing Party's future obligation to perform the Principal Document;
- (b) accepts the liability of the Incoming Party in place of the liability of the Outgoing Party in respect of the Principal Document; and
- (c) acknowledges and agrees that the Incoming Party is entitled to those rights as if the Incoming Party was named in the Principal Document in place of the Outgoing Party.

### 3.3 Outgoing Party

On and from the Effective Date, the Outgoing Party transfers to the Incoming Party all rights and benefits of the Outgoing Party under the Principal Document as if the Incoming Party was named in the Principal Document in place of the Outgoing Party.

The Outgoing Party remains liable for all payment for work performed by the Continuing Party to the date of this.

### 3.4 Agreement effective

The agreement recorded in this document takes effect despite any absence of formality or irregularity in the execution of this document.

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## 4 Warranties and representations

### 4.1 Mutual warranties and representations

Each party represents and warrants that:

- (a) (**power**) it has full legal capacity and power

- to:
- (i) own its property and to carry on its business; and
  - (ii) enter into this document and to carry out the transactions that it contemplates;
- (b) **(authority)** it has taken all action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(authorisations)** it holds each authorisation that is necessary or desirable to:
- (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
  - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
  - (iii) enable it to properly carry on its business as it is now being conducted,
- and it is complying with any conditions to which any of these authorisations is subject;
- (d) **(document effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) **(no contravention)** neither its execution of this document, nor the carrying out by it of the transactions that this document contemplates, does or will:
- (i) contravene any law to which it or any of its property is subject or any order of any government agency that is binding on it or any of its property,
  - (ii) contravene any authorisation,
  - (iii) contravene any agreement binding on it or any of its property or
  - (iv) if it is a body corporate, contravene its constitution or the powers or duties of its directors; and
- (f) **(commercial benefit)** the execution by it of this document, and the carrying out by it of the transactions that this document contemplates, is for its commercial benefit and interests.

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## 5 Notices

### 5.1 Form

Any notice, consent, approval, waiver and other communications to be given under or in connection with this document must be in writing, signed by the sender and marked for the attention as set out or referred to in the Details or, if the recipient has notified otherwise in writing, then marked for attention in the way last notified (**Notice**).

### 5.2 Delivery

A Notice must be:

- (a) sent by email to the email address set out or referred to in the Details; or
- (b) left at the address set out or referred to in the

Details; or

- (c) sent by prepaid post to the address set out or referred to in the Details.

However, if the intended recipient has notified a changed email address or changed postal address, then the communication must be to that email address or postal address.

### 5.3 When effective

A Notice takes effect from the time it is received unless a later time is specified in the Notice.

### 5.4 Receipt – email

If sent by email, a Notice is taken to be received at the time the email message is sent, unless the sender receives automated email notification that the email transmission has failed or has been delayed within 12 hours of sending the Notice.

### 5.5 Receipt – postal

If sent by post, a Notice is taken to be received 6 days after posting (or 10 days after posting if sent to or from a place outside Australia).

### 5.6 Receipt – general

Despite clauses 5.4 (Receipt - email) and 5.5 (Receipt - postal) and, if a Notice is received after 5pm in the place of receipt or on a non-Business Day, a Notice is taken to be received at 9am on the next Business Day.

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## 6 General

### 6.1 Amendments

An amendment or variation to this document is not effective unless it is in writing and signed by the parties.

### 6.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this document without the prior written consent of each other party.

### 6.3 Consents

Unless this document expressly provides otherwise, a consent under this document may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

### 6.4 Counterparts

- (a) This document may be entered into in any number of counterparts.
- (b) A party may execute this document by signing any counterpart.
- (c) All counterparts, taken together, constitute one document.

### 6.5 Electronic Signature

- (a) The parties consent to this document being signed by or on behalf of a party by an Electronic Signature.
- (b) Where this document is electronically signed by or on behalf of a party, the party warrants and agrees that the Electronic Signature has been used to identify the person signing and to indicate that the party intends to be bound by the Electronic Signature.
- (c) This document may be electronically signed in any number of counterparts which together will constitute the one document.

- (d) Each party consents to the exchange of counterparts of this document by delivery by email or such other electronic means as may be agreed in writing.
- (e) In this clause 6.5, **'Electronic Signature'** means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this document by electronic or mechanical means, and "electronically signed" has a corresponding meaning.

#### **6.6 Costs**

Each party will bear its own costs and disbursements of or incidental to the negotiation, preparation, execution, stamping and registration of this document, and all other matters and agreements referred to in this document.

#### **6.7 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this document.

#### **6.8 Waivers**

The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

#### **6.9 Severance**

- (a) If anything in this document is unenforceable, illegal or void then it is severed and the rest of this document remains in force, unless the severance would change the underlying principal commercial purpose or effect of this document.
- (b) If two or more provisions of this document are inconsistent or contradictory the numerical position of those provisions must not be a determinative factor in any decision, order or ruling that results in the severance of any conflicting provision.

#### **6.10 Exclusion of relationships**

The parties acknowledge and agree that this document and the performance of this document does not represent or imply a partnership, agency, fiduciary relationship, joint venture, distribution or any other category of commercial or personal relationship between the parties recognised at law or in equity as giving rise to forms of specific rights and obligations except as arises under the Principal Document.

#### **6.11 Affirmation of contract**

The Principal Document will be read and construed subject to this document, and in all other respects the provisions of the Principal Document are ratified and confirmed, and, subject to this document, the Principal Document will continue in full force and effect.

## **7.2 Jurisdiction**

The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

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## **7 Governing law and jurisdiction**

### **7.1 Governing law**

The laws of Victoria govern this document.