

Council

COMMUNITY RESOURCE CENTRE TRANSITION –  
NOVATION OF CONTRACT DEED

2015 Novation of Contract Deed – CRC

Meeting Date: 27 May 2025

Number of Pages: 11

# **Novation of Contract Deed**

**The Baptist Union of Western Australia Incorporated (Outgoing Party)**

ABN 59 739 180 494

**Shire of Plantagenet (Incoming Party)**

ABN 29 084 782 574

AND

**Department of Primary Industries and Regional Development**

**Industry and Economic Development, Core Programs**

**(Continuing Party)**

# CONTENTS

OPERATIVE PROVISIONS	3
<b>1 Interpretation</b>	<b>3</b>
1.1 Definitions	3
1.2 Rules for interpreting this Deed	4
1.3 Business Days	5
<b>2. Consideration</b>	<b>5</b>
<b>3. Novation</b>	<b>5</b>
3.1 Novation	5
3.2 No further rights and release from obligations	5
<b>4. Representations and Warranties</b>	<b>5</b>
4.1 Representations and warranties of each party	5
4.2 Repetition of representations and warranties	6
4.3 Reliance on representations and warranties	6
<b>5. Notices</b>	<b>7</b>
5.1 How to give a notice	7
5.2 When a notice is given	7
5.3 Address for notices	7
<b>6. General</b>	<b>7</b>
6.1 Governing law	8
6.2 Liability for expenses	8
6.3 Giving effect to this Deed	8
6.4 Amendment	8
6.5 Counterparts	8
6.6 Attorneys	8
<b>7. Trust Warranties</b>	<b>8</b>
<b>7.1 Generally</b>	<b>8</b>
<b>7.2 Trust Covenants</b>	<b>8</b>
EXECUTED as a Deed	10

# NOVATION OF CONTRACT DEED

**DATE:**

## **PARTIES**

The Baptist Union of Western Australia Incorporated, ABN 59 739 180 494 trading as Mount Barker Community Resource Centre having its registered office at 21 Rowe Ave, RIVERVALE WA 6103 (Outgoing Party)

Shire of Plantagenet ABN 29 084 782 574 having its registered office at 22-24 Lowood Road MOUNT BARKER WA 6324 (Incoming Party)

Department of Primary Industries and Regional Development, Industry and Economic Development, Core Programs Level 4, 1 Nash Street, Perth WA 6000 (Continuing Party) [for Agency Specific contracts]

## **RECITALS**

The Continuing Party and the Outgoing Party are parties to the Service Agreement.

The Incoming Party is to replace the Outgoing Party under the Service Agreement on the terms of this Deed.

## **OPERATIVE PROVISIONS**

### **1 Interpretation**

#### **1.1 Definitions**

The following definitions apply in this Deed.

**Authorisation** means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified time period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth.

**Deed** means this Novation of Contract Deed.

**Effective Date** means the date of this Deed.

**Government Agency** means a:

- (a) a government, government authority, government department or government body;
- (b) a governmental, semi - governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Service Agreement** means the service agreement contract formed by the Outgoing Party's offer under Request COMMUNITY SERVICES REQUEST DRDCS17001 FOR WESTERN AUSTRALIAN COMMUNITY RESOURCE NETWORK SERVICES and the Continuing Party's acceptance of that offer contained in the letter of advice of acceptance dated 14/07/2017, and any extension of that contract. The service agreement contract is for the supply of Government and Community services by the Mount Barker Community Resource Centre to the community of Mount Barker.

**Tax** means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a Government Agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income.

## 1.2 Rules for interpreting this Deed

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (iii) a party to this Deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal personality, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word is defined, another part of speech has a corresponding meaning.

(e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(f) The word **agreement** includes an undertaking, contract, warranty, representation or other binding arrangement or understanding, whether or not in writing.

### **1.3 Business Days**

If the day on or by which a person must do something under this Deed is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

## **2. Consideration**

Each party acknowledges that it has received valuable consideration for entering into this Deed.

## **3. Novation**

### **3.1 Novation**

With effect from the Effective Date, the parties novate the Service Agreement so that the:

- (a) Incoming Party replaces the Outgoing Party under the Service Agreement;
- (b) Incoming Party has and assumes all the rights, liabilities and obligations of the Outgoing Party under the Service Agreement including rights, liabilities and obligations that arise before the Effective Date;
- (c) Incoming Party and the Continuing Party are bound by and must comply with the Service Agreement; and
- (d) Continuing Party has and may enforce all its rights and remedies under the Service Agreement against the Incoming Party, including rights and remedies that arise before the Effective Date.

as if the Incoming Party were named as a party to the Service Agreement instead of the Outgoing Party.

### **3.2 No further rights and release from obligations**

With effect from the Effective Date, the Continuing Party and the Outgoing Party:

- (a) have no further rights against each other under the Service Agreement including rights that arise before the Effective Date; and
- (b) release each other from all obligations and liabilities under the Service Agreement including obligations and liabilities that arise before the Effective Date.

## **4. Representations and Warranties**

### **4.1 Representations and warranties of each party**

The Incoming Party and the Outgoing Party jointly and severally represent and warrant to each other and to the Continuing Party that:

- (a) **(Power)** they have/it has full legal capacity and power:

- (i) to own their/its property and to carry on their/its business; and
  - (ii) to enter into this Deed and to carry out the transactions that this Deed contemplates;
- (b) **(Corporate authority)** they have/it has taken all corporate action that is necessary or desirable to authorise their/its entry into this Deed and to carry out the transactions that this Deed contemplates;
- (c) **(Authorisations)** they hold/it holds each Authorisation that is necessary or desirable to:
- (i) enable them/it to properly execute this Deed and to carry out the transactions that this Deed contemplates; and
  - (ii) ensure that this Deed is legal, valid, binding and admissible in evidence,
- and they are/it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(Deed effective)** this Deed constitutes their/its legal, valid and binding obligations, enforceable against them/it in accordance with its terms;
- (e) **(No contravention)** neither their/its execution of this Deed, nor the carrying out by them/it of the transactions that this Deed contemplates, does or will:
- (i) contravene any law to which they/it or any of their/its property is subject or any order of any Government Agency that is binding on them/it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any law to which they/it or any of their/its property is subject or any order of any Government Agency that is binding on them/it or any of its property;
  - (iv) contravene any undertaking or instrument binding on it/them or any of its/their property; or
  - (v) contravene their/its constitution; and
- (f) **(No trust)** it is not entering into this Deed as trustee of any trust or settlement. [This clause must be deleted if a party notifies you that it acts as a trustee].
- (g) **(No Breach)** there is no unremedied default or breach of the Service Agreement.

#### 4.2 Repetition of representations and warranties

The representations and warranties in this clause 4 are taken to be repeated on the Effective Date on the basis of the facts and circumstances as at that date.

#### 4.3 Reliance on representations and warranties

Each party acknowledges that each other party has executed this Deed and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made or repeated in this clause 4.

## **5. Notices**

### **5.1 How to give a notice**

A notice, consent or other communication under this Deed is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (ii) sent by email with automatic receipt notification to that person's email address as notified by either party from time to time.

### **5.2 When a notice is given**

A notice, consent or other communication that complies with this clause 5 is regarded as given and received:

- (a) if it is delivered or sent by email:
  - (i) by 5 pm (local time in the place of receipt) on a Business Day - on that day; or
  - (ii) after 5 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail - on actual receipt.

### **5.3 Address for notices**

A person's address and email address are those set out below, or as the person notifies the sender:

#### **Outgoing Party**

Address: 21 Rowe Ave, RIVERVALE WA 6103  
Email address: michael.buckmaster@baptistwa.asn.au  
Attention: Head of Finance and Administration, Michael Buckmaster

#### **Incoming Party**

Address: 22-24 Lowood Road, MOUNT BARKER WA 6324  
Email address: ceo@sop.wa.gov.au  
Attention: Shire CEO, Julian Murphy

#### **Continuing Party**

Address: Level 4, 1 Nash Street, PERTH WA 6000  
Email address: crcsupport@dpird.wa.gov.au  
Attention: Manager, Rob Leicester



## **6. General**

### **6.1 Governing law**

This Deed is governed by the law in force in Western Australia.

### **6.2 Liability for expenses**

The Outgoing Party and Incoming Party must jointly pay all the Continuing Party's expenses incurred in negotiating, executing and (if applicable) stamping this Deed but otherwise the Outgoing Party and the Incoming Party will each pay its own expenses incurred in negotiating, executing and stamping this Deed.

### **6.3 Giving effect to this Deed**

Each party must do everything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Deed.

### **6.4 Amendment**

This Deed can only be amended, supplemented, replaced or novated by another agreement in writing signed by the parties.

### **6.5 Counterparts**

This Deed may be executed in counterparts.

### **6.6 Attorneys**

Each person who executes this Deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

## **7. Trust Warranties**

### **7.1 Generally**

Where the Incoming Party or any one or more of the parties so described as Incoming Party is or are now acting or in the future may act as trustee (hereinafter called "the Trustee"), the Incoming Party covenants with and warrants to the Continuing Party that the Trustee has or have or will have full powers pursuant to its constitution or memorandum and articles (if a company) and its deed of trust (hereinafter called "the Trust") under which it purports to act when entering into this Deed.

### **7.2 Trust Covenants**

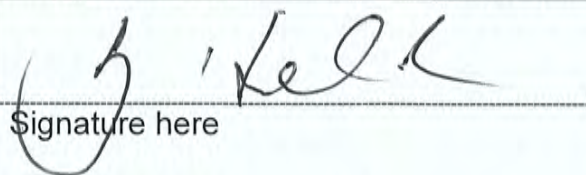
The Incoming Party covenants that:-

- a) the Trust is lawfully and validly constituted and all deeds and other instruments in respect thereof have been properly executed;
- b) the Trust is and throughout the term of the Service Agreement will remain unrevoked and not varied;

- c) the assets of the Trust as well as the assets of the Incoming Party will at all times be available to satisfy the obligations of the contractor under the Service Agreement ;
- d) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
- e) no one has taken or threatened, nor is or the Incoming Party aware of any one who is likely, to take action to have the Trust wound-up or otherwise administered by action brought in any Court of competent jurisdiction or to charge the Trustee or any person at any time connected with the Trustee or acting on behalf or purportedly on behalf of the Trustee with any breach of trust or misappropriation of trust moneys in connection with the Trust;
- f) no facts are known to the Incoming Party whereby the Trust might be wound-up voluntarily or otherwise or the Trustee changed or the assets of the Trust vested in any other person or that the Trust may cease to operate or be deprived of funds prior to the expiration of the Term of the Service Agreement.

## EXECUTED as a Deed

The Common Seal of the Baptist Union of Western Australia Incorporated (Outgoing Party) ABN 59 739 180 494 was affixed in accordance with its rules established under the *Associations Incorporation Act 2015* (WA) in the presence of:

  
Signature here



Common Seal here

GREGORY PAUL HOLLAND  
Name

SEAL HOLDER/  
HEAD OF FINANCE  
Position

The common seal of Shire of Plantagenet (Incoming Party) ABN 29 084 782 574 was affixed in accordance with section 9.49A of the *Local Government Act 1995* (WA) in the presence of:

Signature here

Common Seal here

Name

Position

EXECUTED by the Department of Primary Industries and Regional Development (DPIRD)

Signature here

Deputy Director General