

**VIQ Solutions Australia Pty Ltd**

**VIQ Solutions Pty Limited**

**Auscript Australasia Pty Ltd**

**FTR Group Pty Ltd**

**The Commonwealth of Australia represented by Federal Court of  
Australia**

**Novation Deed in respect of Contract  
PA-2020-0019 Provision of  
Transcription, Recording and AV  
Support and Maintenance Services**

**JOHNSON WINTER & SLATTERY**

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Liability limited by a scheme approved under Professional Standards Legislation

JOHNSON WINTER &amp; SLATTERY

**Novation Deed in respect of Contract PA-2020-0019 Provision of Transcription, Recording and AV Support and Maintenance Services**

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**Execution**

**9**

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Novation Deed in respect of Contract PA-2020-0019 Provision of Transcription, Recording and AV Support and Maintenance Services

## **Novation Deed in respect of Contract PA-2020-0019 Provision of Transcription, Recording and AV Support and Maintenance Services**

### **Date**

### **Parties**

- 1 VIQ Solutions Australia Pty Ltd (ACN 008 711 877) (Substitute Party)**  
Address: Level 15, 323 Castlereagh Street, Sydney NSW 2000  
Email: s 22 of the FOI Act  
Contact: Matthew Fowler
- 2 VIQ Solutions Pty Limited (ACN 007 916 056) (Substitute Guarantor)**  
Address: Level 15, 323 Castlereagh Street, Sydney NSW 2000  
Email: s 22 of the FOI Act  
Contact: Matthew Fowler
- 3 Auscript Australasia Pty Ltd (ACN 110 028 825) (Retiring Party)**  
Address: c/o Bison Capital, 233 Wilshire Boulevard, Suite 425, Santa Monica CA, United States 90401  
Email: s 22 of the FOI Act  
Contact: John Voge
- 4 FTR Group Pty Ltd (ACN 124 530 196) (Retiring Guarantor)**  
Address: Level 8, 123 Eagle Street, Brisbane QLD 4000  
Email: s 22 of the FOI Act  
Contact: Kurt Pilecki
- 5 The Commonwealth of Australia represented by Federal Court of Australia (49 110 847 399) (Continuing Party)**  
Address: Level 16, Law Courts Building, Queens Square, Sydney NSW 2000  
Email: s 22 of the FOI Act  
Contact: Sia Lagos

### **Recitals**

- A** The Retiring Party and the Continuing Party are parties to the Contract.
- B** The Retiring Guarantor and the Continuing Party are parties to the Performance Guarantee.
- C** The Retiring Party and the Substitute Party have entered into an Asset Purchase Agreement dated 9 October 2021, pursuant to which the Retiring Party has agreed to sell, and the Substitute Party has agreed to buy, certain business assets (**Asset Purchase Agreement**).
- D** The parties to this document have agreed to the novation of the Contract and the Performance Guarantee on the terms of this document.

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## Operative part

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### 1 Definitions and interpretation

#### 1.1 Definitions

The following definitions apply in this document, unless the context requires otherwise:

**Asset Purchase Agreement** has the meaning given to that term in the Recitals.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

**Closing** means closing of the sale and purchase pursuant to the Asset Purchase Agreement.

**Contract** means Contract No. PA-2020-0019 Provision of Transcription, Recording and AV Support and Maintenance Services between the Continuing Party and the Retiring Party dated 1 July 2020.

**Novation Date** means the date on which Closing occurs.

**Performance Guarantee** means the Deed of Guarantee between the Continuing Party and the Retiring Guarantor in the form of the document set out in Schedule 6 of the Contract, dated 30 October 2020

**Related Body Corporate** has the meaning it has in the *Corporations Act 2001* (Cth).

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### 2 Consideration

This document is entered into in consideration of the parties incurring obligations and giving rights under this document and the Contract and for other valuable consideration.

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### 3 Conditions Precedent

- (a) This document is subject to Closing occurring.
- (b) This document will automatically terminate if the Asset Purchase Agreement terminates before Closing.
- (c) Subject to clause 3(a), this document takes effect on and from the Novation Date.
- (d) The Retiring Party must promptly notify the Continuing Party of the Novation Date or termination (as the case may be) of the Asset Purchase Agreement.

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### 4 Novation

#### 4.1 Novation of Contract

In consideration of the mutual representations, warranties and covenants contained in this document, the mutual releases of the Continuing Party and the Retiring Party, and the mutual obligations assumed herein by the Continuing Party and the Substitute Party, it is agreed that with effect on and from the Novation Date, the parties agree to novate the Contract so that each of the following is the case:

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- (a) the Substitute Party replaces the Retiring Party under the Contract as if it was an original party to the Contract;
- (b) each reference to the Retiring Party in the Contract will be read as a reference to the Substitute Party;
- (c) notices to the Substitute Party must be provided using its details specified in the Parties section of this document,

and the parties agree that except to the extent novated, modified, amended and/or supplemented by this document, the existing arrangement in connection with the Contract shall continue in full force and effect in accordance with the provisions of the Contract.

**4.2 Novation of Performance Guarantee**

In consideration of the mutual representations, warranties and covenants contained in this document, the mutual releases of the Continuing Party and the Retiring Guarantor, and the mutual obligations assumed herein by the Continuing Party and the Substitute Guarantor, it is agreed that with effect on and from the Novation Date, the Continuing Party, the Retiring Guarantor and the Substitute Guarantor agree to novate the Performance Guarantee so that each of the following is the case:

- (a) the Substitute Guarantor replaces the Retiring Guarantor under the Performance Guarantee as if it was an original party to the Performance Guarantee;
- (b) each reference to the Retiring Guarantor in the Performance Guarantee will be read as a reference to the Substitute Guarantor;
- (c) notices to the Substitute Guarantor must be provided using its details specified in the Parties section of this document,

and the parties agree that except to the extent novated, modified, amended and/or supplemented by this document, the existing arrangement in connection with the Performance Guarantee shall continue in full force and effect in accordance with the provisions of the Performance Guarantee.

**4.3 Substitute Party's rights and benefits**

- (a) With effect on and from the Novation Date, the Substitute Party agrees with the Continuing Party and the Retiring Party that the Substitute Party:
  - (i) is bound by, and must comply with the Contract;
  - (ii) enjoys all the rights and benefits conferred on the Retiring Party under the Contract; and
  - (iii) assumes all duties, obligations and liabilities of the Retiring Party under or in respect of the Contract whether they are actual or contingent and which accrued or arose prior to, on or after the Novation Date.
- (b) On and from the Novation Date, the Continuing Party must comply with the Contract on the basis that the Substitute Party has replaced the Retiring Party under it in accordance with this document.
- (c) In addition to the Substitute Party's obligations to comply with the Contract, the Substitute Party agrees that it is bound by and must comply with the practices and procedures made under the Contract, as detailed in Annexure 1 to this document.

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#### **4.4 Substitute Guarantor's rights and benefits**

- (a) With effect on and from the Novation Date the Substitute Guarantor agrees with the Continuing Party and the Retiring Guarantor:
  - (i) the Substitute Guarantor is bound by, and must comply with any and all obligations of the Retiring Guarantor under the Performance Guarantee;
  - (ii) the Substitute Guarantor enjoys all the rights and benefits conferred on the Retiring Guarantor under the Performance Guarantee; and
  - (iii) assumes all duties, obligations and liabilities of the Retiring Guarantor under and in respect of the Performance Guarantee whether they are actual or contingent and which accrued or arose prior to, on or after the Novation Date.
- (b) On and from the Novation Date, the Continuing Party must comply with the Performance Guarantee on the basis that the Substitute Guarantor has replaced the Retiring Guarantor under it in accordance with this document.

#### **4.5 Release by the Continuing Party**

- (a) The Continuing Party releases the Retiring Party and the Retiring Guarantor from any Claim under or in respect of the Contract and the Performance Guarantee respectively.
- (b) The Continuing Party gives the release in clause 4.5(a) regardless of either of the following:
  - (i) when the Claim arises; or
  - (ii) whether or not it is now or in the future aware of the facts and circumstances relevant to any Claim.

#### **4.6 Release by the Retiring Party and the Retiring Guarantor**

- (a) The Retiring Party and the Retiring Guarantor releases the Continuing Party from any Claim under or in respect of the Contract and the Performance Guarantee respectively, arising or accruing before, on or after the Novation Date.
- (b) The Retiring Party gives the release in clause 4.6(a) regardless of either of the following:
  - (i) when the Claim arises; or
  - (ii) whether or not it is now or in the future aware of the facts and circumstances relevant to any Claim.

#### **4.7 Acknowledgement**

Each party acknowledges that nothing in this document or any of the transactions contemplated by this document constitutes:

- (a) a breach of any term of the Contract or the Performance Guarantee;
- (b) an event of default under the Contract or the Performance Guarantee; or

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- (c) any other event or circumstance which, with the giving of notice, lapse of time, or fulfilment of any condition, would cause the acceleration of any payment to be made under, or the termination or enforcement of, the Contract or the Performance Guarantee

#### 4.8 Asset Purchase Agreement

The Retiring Party and the Substitute Party agree that nothing in this document affects the terms of the Asset Purchase Agreement.

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## 5 Insurance

- (a) The Retiring Party must comply with all obligations under the Contract to procure and maintain insurance in relation to the period before the Novation Date.
- (b) The Substitute Party must comply with all obligations under the Contract to procure and maintain insurance in relation to the period on and from the Novation Date.

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## 6 Representations and warranties

### 6.1 Representations and warranties from each party

Each party represents and warrants to each other party that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any encumbrance or document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are, valid and binding and are enforceable against it in accordance with their terms; and
- (f) **(insolvency)** it is not insolvent.

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## 7 Confidentiality

### 7.1 Confidentiality

Each party agrees not to disclose information provided by another party except:



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- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under this document;
- (b) to officers, employees, legal and other advisers and auditors of any party;
- (c) to any party to this document or any Related Body Corporate of any party to this document, provided the recipient agrees to act consistently with this clause;
- (d) where the information is in the public domain otherwise than as a result of a breach of this document or any other obligation of confidence;
- (e) where the information is disclosed by the Continuing Party to the responsible Minister or in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- (f) where the information is authorised or required by law to be disclosed;
- (g) with the consent of the party who provided the information; or
- (h) as allowed by any law or stock exchange.

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**8 GST****8.1 Definitions and interpretation**

- (a) For the purposes of this clause 8, a term which has a defined meaning in the GST Act has the same meaning when used in this clause 8, unless the contrary intention appears; and
- (b) "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**8.2 GST to be added to amounts payable**

If GST is payable on any supply made under or in connection with this document, the party providing the consideration for that supply must also pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**"). No payment of the GST Amount is required until the supplier has provided a tax invoice or adjustment note to the recipient. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly stated to be GST inclusive. This clause does not apply to a supply made in connection with this document if that supply is governed by a provision in another agreement in respect of GST.

**8.3 Liability net of GST**

Any reference in the calculation of consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any input tax credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the amount must be provided.

**8.4 Survival**

Clause 8.1 to clause 8.3 inclusive do not merge on the rescission, termination or expiration of this document.

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## **9 Costs and stamp duty**

### **9.1 Costs**

The parties agree to pay their own costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 9.2.

### **9.2 Stamp duty and registration fees**

The Substitute Party agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts).

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## **10 Notices and other communications**

### **10.1 Notices**

Notices and other communications in connection with this document must be in writing. They must be sent to the address or email address referred to in the Parties section of this document and (except in the case of email) marked for the attention of the person referred to in the Parties section of this document. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

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## **11 General**

### **11.1 Variation and waiver**

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by all parties.

### **11.2 Consents, approvals or waivers**

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### **11.3 Discretion in exercising rights**

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

### **11.4 Partial exercising of rights**

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

### **11.5 Conflict of interest**

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

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**11.6 Remedies cumulative**

The rights, powers and remedies of a party in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

**11.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this document given by a party:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

**11.8 Inconsistent law**

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

**11.9 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**11.10 Counterparts**

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document

**11.11 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

**11.12 Entire agreement**

Without prejudice to the other documents entered into separately between the Substitute Party and the Retiring Party, which remain binding on them but not the Continuing Party, this document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject.

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**12 Governing law**

The law in force in Victoria, Australia governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

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Novation Deed in respect of Contract PA-2020-0019 Provision of Transcription, Recording and AV Support and Maintenance Services and Performance Guarantee

## Execution

**EXECUTED** as a deed

**Executed by VIQ Solutions Australia Pty Ltd**  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

s 22 of the FOI Act

Director signature

Matthew Fowler

Director full name  
(BLOCK LETTERS)

s 22 of the FOI Act

Director/Secretary signature

Sebastien Pare

Director/Secretary full name  
(BLOCK LETTERS)

**Executed by VIQ Solutions Pty Limited** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

s 22 of the FOI Act

Director signature

Matthew Fowler

Director full name  
(BLOCK LETTERS)

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Director/Secretary signature

Sebastien Pare

Director/Secretary full name  
(BLOCK LETTERS)

**Executed by Auscript Australasia Pty Ltd** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

s 22 of the FOI Act

Director signature

Kurtis Pilecki

Director full name  
(BLOCK LETTERS)

s 22 of the FOI Act

Director/Secretary signature

Anthony Douglass

Director/Secretary full name  
(BLOCK LETTERS)

JOHNSON WINTER & SLATTERY

Novation Deed in respect of Contract PA-2020-0019 Provision of Transcription, Recording and AV Support and Maintenance Services and Performance Guarantee

Executed by FTR Group Pty Ltd in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

s 22 of the FOI Act

Director signature

Kurtis Pilecki  
Director full name  
(BLOCK LETTERS)

s 22 of the FOI Act

Director/Secretary signature

Anthony Douglass  
Director/Secretary full name  
(BLOCK LETTERS)

Executed by The Commonwealth of  
Australia represented by Federal Court of  
Australia by its duly appointed officer in the  
presence of:

s 22 of the FOI Act

Witness signature

Melissa Charles                      Executive officer  
Witness full name  
(BLOCK LETTERS)

DocuSigned by:

Officer signature

Sia Lagos                                      SIA LAGOS CEO FCA  
Officer full name and title  
(BLOCK LETTERS)

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**Annexure 1 - Practices and Procedures**

1. Continuity of ComCourts dedicated email inquiry channel and continuity of ComCourts dedicated team
2. Courtfm portal: maintaining historical recordings for a minimum period of 12 months on the Courtfm portal.
3. Continuity of Reporting, including:
  - Weekly court monitor reporting
  - Existing reporting as agreed between the parties since Contract commencement
4. Completion of transition in obligations under the Contract, including rollout of new equipment
5. Impecunious Litigants Policy – October 2021
6. Impecunious Litigants Charges – October 2021
7. Native Title Procedure – February 2021
8. Acknowledge and agree to continue to finalise the following draft guidelines:
  - Criminal Jury Trial Style Guide
  - Revised Transcript Guide
  - Transcript in Confidence Guide
  - New Account Procedure
9. Compliance with requirements of approved AIPP.
10. Finalisation of relocation of monitor to in-courtroom in Adelaide Courtroom 1 & 2 including undertaking all work with respect to new recording system and monitoring peripherals.