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## Deed of Novation and Variation

VIQ Solutions Australia Pty Ltd  
ABN 29 008 711 877  
and

VIQ Solutions Pty Limited  
ABN 37 007 916 056  
and

VIQ Solutions Inc.  
and

The Commonwealth of Australia as represented by the Federal Court of Australia  
ABN 49 110 847 399

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**Dated 4 July 2024**

each a **Party** and together the **Parties**.

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## Background

- A. The Outgoing Party and the Continuing Party are parties to the Principal Contract.
- B. The Incoming Party and the Continuing Party are parties to the Performance Guarantee.
- C. The Parties have agreed that:
  - C.1 the Incoming Party will replace the Outgoing Party under the Principal Contract; and
  - C.2 the Incoming Guarantor will replace the Incoming Party under the Performance Guarantee,with effect on and from the Novation Effective Date.
- D. The Parties have also agreed to vary the terms of the Principal Contract, with effect on and from the Novation Effective Date.
- E. Accordingly, the Parties agree that:
  - E.1 the Principal Contract is novated and varied; and
  - E.2 the Performance Guarantee is novated,pursuant to the terms and conditions of this Deed.

### The Parties agree as follows

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#### 1. Definitions and Interpretation

##### Definitions

- 1.1 In this Deed the following abbreviations, words and phrases shall have the following meanings, unless the context requires otherwise:

**Deed** means this deed of novation and variation.

**Novation Effective Date** means 4 July 2024.

**Performance Guarantee** means the deed of guarantee between the Incoming Party and the Continuing Party in the form of the document set out in Schedule 6 of the Contract, dated 30 October 2020, as novated by the Novation Deed in respect of Contract PA-2020-0019 Provision of Transcription, Recording and AV Support and Maintenance Services and Performance Guarantee.

**Principal Contract** means the contract between the Outgoing Party and the Continuing Party entitled "PA-2020-0019 Contract – Provision of Transcription, Recording and AV Support and Maintenance Services" dated 1 July 2020, as novated by the Novation Deed in respect of Contract PA-2020-0019 Provision of Transcription, Recording and AV Support and Maintenance Services and Performance Guarantee.

- 1.2 Capitalised terms used but not defined in this Deed will have the meanings assigned to them in the Principal Contract.

## **Interpretation**

- 1.3 In this Deed, unless the context requires otherwise:
- 1.3.1 any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same will include a reference to the others;
  - 1.3.2 references to any legislation, statute or statutory provisions includes a reference to those provisions as amended or re enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision will include any subordinate legislation made from time to time under that provision;
  - 1.3.3 references to clause(s) and Attachment (s) are references to clause(s) and Attachment(s) of and to this Deed;
  - 1.3.4 references to any Party include its successors (whether by operation of applicable law or otherwise) and permitted assigns;
  - 1.3.5 any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression will be construed as illustrative only and will not be construed as limiting the generality of any preceding words;
  - 1.3.6 references to the singular include the plural and to the masculine include the feminine, and in each case vice versa; and
  - 1.3.7 a reference to '\$' or 'dollars' is a reference to Australian dollars.
- 1.4 The headings and sub-headings in this Deed are inserted for convenience only and will not affect the meaning of this Deed.

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## **2. Novation**

### **Novation of Principal Contract**

- 2.1 With effect on and from the Novation Effective Date:
- 2.1.1 the Incoming Party is taken to be a party to the Principal Contract instead of the Outgoing Party;
  - 2.1.2 all references to the Outgoing Party in the Principal Contract are to be read as references to the Incoming Party; and
  - 2.1.3 all notices under the Principal Contract must be provided to the Incoming Party at the Incoming Party's address set out above.
- 2.2 With effect on and from the Novation Effective Date, the Incoming Party:
- 2.2.1 undertakes to each of the Outgoing Party and the Continuing Party to perform the Principal Contract and be bound by its terms in every way as if the Incoming Party had originally been a party to the Principal Contract in place of the Outgoing Party, including performing the obligations of the Outgoing Party under the Principal Contract to the extent that they have not been performed as at the Novation Effective Date; and



- 2.2.2 enjoys under the Principal Contract all of the rights and benefits conferred on the Outgoing Party under the Principal Contract.

#### **Novation of Performance Guarantee**

- 2.3 With effect on and from the Novation Effective Date:
- 2.3.1 the Incoming Guarantor is taken to be a party to the Performance Guarantee instead of the Incoming Party;
  - 2.3.2 all references to the Incoming Party in the Performance Guarantee are to be read as references to the Incoming Guarantor; and
  - 2.3.3 all notices under the Performance Guarantee must be provided to the Incoming Guarantor at the Incoming Guarantor's address set out above.
- 2.4 With effect on and from the Novation Effective Date, the Incoming Guarantor:
- 2.4.1 undertakes to each of the Incoming Party and the Continuing Party to perform the Performance Guarantee and be bound by its terms in every way as if the Incoming Guarantor had originally been a party to the Performance Guarantee in place of the Incoming Party, including performing the obligations of the Incoming Party under the Performance Guarantee to the extent that they have not been performed as at the Novation Effective Date; and
  - 2.4.2 enjoys under the Performance Guarantee all of the rights and benefits conferred on the Incoming Party under the Performance Guarantee.

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### **3. Releases**

- 3.1 With effect from the Novation Effective Date:
- 3.1.1 the Continuing Party releases and discharges the Outgoing Party from all future demands, claims, actions and proceedings whatsoever in respect of the Principal Contract;
  - 3.1.2 the Incoming Party accepts any liability of the Outgoing Party in respect of the Principal Contract;
  - 3.1.3 the Outgoing Party releases and discharges the Continuing Party from all future demands, claims, actions and proceedings whatsoever in respect of the Principal Contract;
  - 3.1.4 the Continuing Party releases and discharges the Incoming Party from all future demands, claims, actions and proceedings whatsoever in respect of the Performance Guarantee;
  - 3.1.5 the Incoming Guarantor accepts any liability of the Incoming Party in respect of the Performance Guarantee; and
  - 3.1.6 the Incoming Party releases and discharges the Continuing Party from all future demands, claims, actions and proceedings whatsoever in respect of the Performance Guarantee,

except as provided in clauses 4 and 5 below.

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#### 4. Pre-Existing Claims

- 4.1 With respect to the Principal Contract, nothing in this Deed will affect or prejudice any demand, claim, action or proceeding whatsoever which either the Outgoing Party or the Continuing Party may have against the other relating to matters arising prior to the Novation Effective Date in relation to the Principal Contract.
- 4.2 With respect to the Performance Guarantee, nothing in this Deed will affect or prejudice any demand, claim, action or proceeding whatsoever which either the Incoming Party or the Continuing Party may have against the other relating to matters arising prior to the Novation Effective Date in relation to the Performance Guarantee.

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#### 5. Indemnities

- 5.1 The Outgoing Party will indemnify and hold harmless the Incoming Party against all losses, liabilities and costs (including legal expenses) sustained, incurred or suffered by the Incoming Party as a result of any act or omission of the Outgoing Party giving rise to or contributing to any breach or frustration of the Principal Contract or any demand, claim, action or proceeding in respect of the subject-matter of the Principal Contract.
- 5.2 The Incoming Party will indemnify and hold harmless the Outgoing Party against all losses, liabilities and costs (including legal expenses) sustained, incurred or suffered by the Outgoing Party as a result of any act or omission of the Incoming Party giving rise to or contributing to any breach or frustration of the Principal Contract or any demand, claim, action or proceeding in respect of the subject-matter of the Principal Contract.
- 5.3 The Incoming Party will indemnify and hold harmless the Incoming Guarantor against all losses, liabilities and costs (including legal expenses) sustained, incurred or suffered by the Incoming Guarantor as a result of any act or omission of the Incoming Party giving rise to or contributing to any breach or frustration of the Performance Guarantee or any demand, claim, action or proceeding in respect of the subject-matter of the Performance Guarantee.
- 5.4 The Incoming Guarantor will indemnify and hold harmless the Incoming Party against all losses, liabilities and costs (including legal expenses) sustained, incurred or suffered by the Incoming Party as a result of any act or omission of the Incoming Guarantor giving rise to or contributing to any breach or frustration of the Performance Guarantee or any demand, claim, action or proceeding in respect of the subject-matter of the Performance Guarantee.
- 5.5 The indemnities in this Deed are continuing obligations.

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#### 6. Variations to the Principal Contract

- 6.1 With effect on and from the Novation Effective Date, the Principal Contract is amended as set out in Schedule 1 (including Attachments 1 to 3 to Schedule 1) to this Deed.
- 6.2 The Parties:
- 6.2.1 acknowledge and agree that the Principal Contract is varied in accordance with this Deed, despite the parties not having followed the process outlined in clause 32.1 of the Principal Contract;
  - 6.2.2 agree, for the purpose of this Deed only, to waive any rights they may have against the other party for having failed to comply with the process outlined in clause 32.1 of the Principal Contract; and



- 6.2.3 agree that, notwithstanding clause 3.2.1(b) of Schedule 3 of the Principal Contract, the varied Charges and Payments specified in Attachments 1 – 3 of Schedule 1 of this Deed also reflect the agreed Charges and Payments for the first Option Period as specified in Attachments 1 – 3 of Schedule 1 of this Deed.

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**7. Principal Contract confirmed**

- 7.1 Save as varied by this Deed, the Principal Contract is confirmed and will remain in full force and effect.

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**8. Assignment**

- 8.1 No Party will assign, novate, transfer, sub-contract or otherwise dispose of any or all of its rights and/or obligations under this Deed without the prior written consent of each of the other Parties (which may be withheld in each such Party's absolute discretion).

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**9. Variations to this Deed**

- 9.1 No variation of this Deed will be effective unless agreed in writing and signed by each of the Parties.

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**10. Entire Agreement**

- 10.1 This Deed constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 10.2 Each Party acknowledges that it has not been induced to enter into this Deed by any representation or warranty other than those contained in this Deed and, having negotiated and freely entered into this Deed, agrees that it will have no remedy in respect of any other such representation or warranty except in the case of fraud.

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**11. Rights etc. Cumulative and Other Matters**

- 11.1 The rights, powers, privileges and remedies provided under any provision of this Deed are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this Deed or by applicable law or otherwise.
- 11.2 No failure to exercise nor any delay in exercising by any Party of any right, power, privilege or remedy under this Deed will impair or operate as a waiver thereof in whole or in part.
- 11.3 No single or partial exercise of any right, power privilege or remedy under this Deed will prevent any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.



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**12. Further Assurance**

- 12.1 At any time after the date hereof each of the Parties will, at the request and cost of the requesting Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring the full benefit of all the terms and conditions of this Deed.

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**13. Invalidity**

- 13.1 If any provision of this Deed is held to be illegal, void, invalid or unenforceable under the applicable laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Deed in that jurisdiction will not be affected, and the legality, validity and enforceability of the whole of this Deed in any other jurisdiction will not be affected.

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**14. Costs**

- 14.1 Subject to any express provision in this Deed to the contrary, each Party will pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Deed.

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**15. Counterparts**

- 15.1 This Deed may be executed in any number of counterparts, which will together constitute one Deed. Any Party may enter into this Deed by signing any such counterpart.

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**16. Relationship of the Parties**

- 16.1 Nothing in this Deed will constitute, or be deemed to constitute, a partnership between the Parties or any Party the agent or employee of the other Party for any purpose.

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**17. Governing Law and Jurisdiction**

- 17.1 This Deed will be governed by, and construed in accordance with, the laws of Victoria.
- 17.2 In relation to any legal action or proceedings to enforce this Deed or arising out of or in connection with this Deed (**Proceedings**) each of the Parties irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum.

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**18. Electronic execution**

- 18.1 A Party may sign this Deed, and any variations to it, by electronic means where permitted by law. Each other Party consents to that party signing by electronic means.
- 18.2 The Parties agree that if any party signs this Deed under clause 18.1, then:



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- 18.2.1 an electronic form of this Deed with that party's electronic signature(s) appearing will constitute an executed counterpart; and
- 18.2.2 a print-out of this Deed with that party's electronic signature(s) appearing will also constitute an executed counterpart.

**Executed by the Parties as a deed:**

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Executed for and on behalf of the Federal  
Court of Australia (ABN 49 110 847 399) by  
its authorised representative:

Signature of authorised representative

SIA WARD

Full name

16 July 2024

Date

)  
s 22 of the FOI Act

Signature of witness

Lola Baldwin

Full name

16 July 2024

Date



## Attachment 1 - Variations to the Principal Contract

The Principal Contract is varied by the following amendments:

### 1. Part 1 – Contract Details of the Principal Contract

Delete Items 6 and 7 in the Contract Details table at Part 1 of the Principal Contract and replace with:

7.	Service Provider	NAME VIQ Solutions Pty Ltd  ABN <b>37 007 916 056</b>  ADDRESS PO Box 13038, George St Post Shop, Brisbane QLD 4003
8.	Service Provider Representative	NAME Brad Davies  POSITION Vice President, Technology Operations  ADDRESS PO Box 13038, George St Post Shop, Brisbane QLD 4003  EMAIL <b>s 22 of the FOI Act</b>

### 2. Schedule 1 of the Principal Contract

2.1 Insert the following new clause 4.4A below clause 4.4 in Schedule 1 (Statement of Requirement) of the Principal Contract:

#### **4.4A Fair Use**

- a) *This clause 4.4A:*
  - i. *only applies to the Services specified in clauses 4.5.5 (Same Day Progressive Transcripts) and 4.5.6 (Same Day Transcripts) of this Schedule 1; and*
  - ii. *does not limit any of the Customer's rights or Service Provider's obligations under this Contract.*
- b) *The Customer agrees to use reasonable endeavours to ensure it (and its Personnel) only requests Same Day Progressive Transcripts and Same Day Transcripts if there is a legitimate requirement for the provision of a Same Day Progressive Transcript or Same Day Transcript.*
- c) *The parties acknowledge and agree that it is up to the Customer and its Personnel to determine whether there is a legitimate requirement for Same Day Progressive Transcripts and Same Day Transcripts including, for example, because they are required for the purposes of the proper, timely and efficient performance of the Customer's and its Personnel's duties and functions.*
- d) *The Service Provider must provide at the end of each month, a report to the Customer identifying the number of requests for the provision of Same Day Progressive Transcripts and Same Day Transcripts, any applicable trends in the number of such requests, and any other details as may be required by the Customer from time to time*

*(including to assist the Customer to educate its Personnel about managing requests for the provision of Same Day Progressive Transcripts or Same Day Transcripts).*

- e) *If the Service Provider considers that the number of requests for the provision of Same Day Progressive Transcripts or Same Day Transcripts is excessive, then the Service Provider and Customer may discuss in good faith any issues and potential options for reducing the number of requests for the provision of a Same Day Progressive Transcript or Same Day Transcript to an appropriate level (having regard to the proper, timely and efficient performance of the Customer's and its Personnel's duties and functions).*

### 3. Schedule 3 of the Principal Contract

- 3.1 Clause 3.1 in Schedule 3 (Charges and Payments) of the Principal Contract is deleted and replaced with the following:

#### **3.1 Charges and Payments for Initial Term and first Option Period**

##### ***Pricing Schedule 1 Federal Court of Australia (Attached)***

***The Charges for the FCA apply to proceedings heard by other courts, tribunals or judicial bodies in relation to which FCA judges and registrars perform duties (including the Australian Competition Tribunal, Copyright Tribunal of Australia and Defence Force Discipline Tribunal).***

##### ***Pricing Schedule 2 Family Court of Australia, Federal Circuit Court of Australia and all Other Users (other than FCA) (Attached)***

##### ***Pricing Schedule 3 AV Support and Maintenance Services (Attached)***

- 3.2 Clause 3.2 in Schedule 3 (Charges and Payments) of the Principal Contract is deleted and replaced with the following:

#### **3.2 Charges and Payments for the second Option Period**

- 3.2.1 *The Charges and Payment during the second Option Period will be in accordance with the Charges and Payments outlined in Schedule 3 clause 3.1, subject to a variation in accordance with this clause 3.2 as follows:*

- (a) the Charges and Payments in the second Option Period will take effect from the commencement of the second Option Period; and*
- (b) the basis for a variation in the Charges and Payments during the second Option Period shall be the Commonwealth Government Consumer Price Index ("weighted average for eight capital cities") for the previous four completed quarters each year.*

- 3.3 The following pricing schedules in the Principal Contract are deleted:

- 3.3.1 PA 2020-0019: Recording and Transcription Services - Pricing Schedule 3.1.1 - Federal Court of Australia;
- 3.3.2 PA 2020-0019: Recording and Transcription Services - Pricing Schedule 3.1.2 - FCoA, FCC and all Other Users (other than FCA);

- 3.3.3 PA 2020-0019: AV Support and Maintenance Services - Pricing Schedule 3.1.3 - All Jurisdictions FCA, FCoA and FCC;
- 3.3.4 PA 2020-0019: Recording and Transcription Services - Pricing Schedule 3.1.4: Transition Services; and
- 3.3.5 PA 2020-0019: Recording and Transcription Services - Pricing Schedule 3.1.5: Administrative Services: FCA, FCoA and FCC,

and replaced with the following attachments to this Schedule 1:

- 3.3.6 PA 2020-0019: Recording and Transcription Services - Pricing Schedule 1 - Federal Court of Australia (at Attachment 1 of Schedule 1 to this Deed), which comprises of the following schedules:
  - (a) Schedule 1: Recording Services;
  - (b) Schedule 2: In-Court Monitoring Services;
  - (c) Schedule 3: Transcription Services provided to the Federal Court;
  - (d) Schedule 4: Real Time Transcription Services;
  - (e) Schedule 5: Administrative Services; and
  - (f) Schedule 6: Transition Services;
- 3.3.7 PA 2020-0019: Recording and Transcription Services - Pricing Schedule 2 - FCoA, FCC and all Other Users (other than FCA) (at Attachment 2 of Schedule 1 to this Deed), which comprises of the following schedules:
  - (a) Schedule 1: Recording Services;
  - (b) Schedule 2: In-Court Monitoring Services (FCoA Appeals Division only);
  - (c) Schedule 3: Transcription Services;
  - (d) Schedule 4: Administrative Services; and
  - (e) Schedule 5: Transition Services; and
- 3.3.8 PA 2020-0019: AV Support and Maintenance Services - Pricing Schedule 3 - All Jurisdictions FCA, FCoA and FCC (at Attachment 3 of Schedule 1 to this Deed) , which comprises of the following schedules:
  - (a) Schedule 1: Maintenance Services; and
  - (b) Schedule 2: Transition Services for AV Support and Maintenance Services.

**Schedule 1 - Attachment 1 (PA 2020-0019: Recording and Transcription Services - Pricing  
Schedule 1 - Federal Court of Australia)**

See separate document titled *PA 2020-0019: Recording and Transcription Services - Pricing Schedule  
1 - Federal Court of Australia.xlsx*



**Schedule 1 - Attachment 2 (PA 2020-0019: Recording and Transcription Services - Pricing  
Schedule 2 - FCoA, FCC and all Other Users (other than FCA))**

See separate document titled *PA 2020-0019: Recording and Transcription Services - Pricing Schedule  
2 - FCoA, FCC and all Other Users (other than FCA).xlsx*

**Schedule 1 - Attachment 3 (PA 2020-0019: AV Support and Maintenance Services - Pricing  
Schedule 3 - All Jurisdictions FCA, FCoA and FCC**

See separate document titled *PA 2020-0019: AV Support and Maintenance Services - Pricing  
Schedule 3 - All Jurisdictions FCA, FCoA and FCC.xlsx*