

# *Master Agreement Terms*

## **Terms**

Part A – General Terms

Part B – Capital Funded Property Operating Terms

Part C – Authorisation Terms

Part D – Lease Terms

Part E – Service Funding Terms

## **Template Master Agreement Authorisation Deed Poll**



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# Part A – General Terms

## 1. Definitions and Interpretation

### Definitions

1.1. In a Funding Document, the following definitions apply unless they are otherwise defined in the Funding Document:

<b>Act</b>	means the <i>Housing Act 2003</i> (Qld).
<b>Agreement Particulars</b>	means the agreement particulars at the start of the Master Agreement.
<b>Auditors</b>	has the meaning given in clause 20 of the General Terms.
<b>Authorisation Terms</b>	mean the Master Agreement Authorisation Terms set out in Part C of the Master Agreement Terms.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or a public holiday in the place in which any relevant act is to be done or may be done.
<b>Capital Funded Master Agreement Project Deeds</b>	means Capital Funded Master Agreement Project Deeds, for the completion of a Capital Project, to which the State and the Provider are parties that: <ul style="list-style-type: none"> <li>(a) refer to this Master Agreement; and</li> <li>(b) contemplate the Capital Funded Property will be listed in Part 1 of Schedule 1 upon completion of the Capital Project.</li> </ul>
<b>Capital Funded Property Operating Arrangement</b>	means an arrangement between the State and the Provider in relation to a Capital Funded Property formed under clause 9 or under a Master Agreement Transition Deed. The Capital Funded Properties subject to such arrangements are listed in Part 1 of Schedule 1.
<b>Capital Funded Property Operating Terms</b>	means the Capital Funded Property Operating Terms in Part B of the Master Agreement Terms.

**Capital Funded Property**

means:

- (a) for the purpose of a Capital Funded Master Agreement Project Deed or Master Agreement Authorisation Deed Poll – the land or property that is subject to the deed or deed poll;
- (b) for the purpose of the Capital Funded Property Operating Terms – the properties listed in Part 1 of Schedule 1; and
- (c) otherwise – all properties referred to in (a) and (b) of this definition.

**Capital Project**

means:

- (a) redevelopment of existing Capital Funded Property;
- (b) construction of new Capital Funded Property;
- (c) purchase of new Capital Funded Property (including vacant land); or
- (d) any works on a Capital Funded Property (including maintenance) where the value of the works are more than 20% of the property's value immediately before the works.

**Claim**

includes any claim, action, proceeding, demand, liability, obligation, costs, loss, damages and expenses, including reasonable legal expenses.

**Community Housing Asset**

has the same meaning as in the Act.

**Due Diligence**

means a comprehensive investigation and analysis of a property's physical and financial aspects to ensure a suitable investment for social housing purposes and minimise potential risks. Due Diligence investigations must address the following criteria (**Project Type Criteria**):

*Purchase of vacant land*

- Zoning must be suitable for residential development.
- Site must be free of any contaminations.
- Site must not have any heritage overlays.
- Site must not have any overlays such as bushfire and flood.
- Site must not be constrained or have any encumbrances on title

- Site must not have any registered easements which could interfere with the future developability of the site or add significant cost to any future development.
- Site be well located to ensure positive outcomes for Tenants.

*Purchase of an existing property*

- All the Project Type Criteria for vacant land (where applicable).
- The Provider must obtain a building inspection report and pest inspection report.
- The property cannot be more than 25 years old.
- The property cannot have any structural issues.
- The property cannot have any significant maintenance issues which will be an immediate liability for the Provider.

*Purchase of a brand new home*

- All the Project Type Criteria for vacant land and the purchase of an existing dwelling (where applicable).
- The Provider and the Developer must sign a 'single transaction' contract of sale – meaning the contract includes a payment of a deposit and then all remaining funds payable at settlement.
- The contract of sale cannot include a separate contract for the land and another for the building.
- The builder must make design changes to ensure the property can meet minimum social housing design standards, with the property to meet minimum of Silver accessibility standard under the Livable Housing Design Guidelines and National Construction Code.

*Construction of brand new social housing*

- All the Project Type Criteria for vacant land, the purchase of an existing dwelling, and the purchase of a brand new home (where applicable).
- The proposed new dwelling must fully comply with Social Housing Design Guidelines and meet relevant accessibility requirements (eg gold standard as required or as outlined in funding program requirements)
- The building type must also be suitable for the proposed target cohort (no shared facilities)).

- Event of Insolvency** means the entity:
- (a) becomes insolvent or is unable to pay its debts as and when they fall due;
  - (b) enters into liquidation, or is subject to any proceedings being commenced for or in relation to its liquidation (unless those proceedings are dismissed or withdrawn within 20 Business Days);
  - (c) has a receiver or manager appointed or becomes subject to any form of external administration and such appointment is not terminated within 20 Business Days;
  - (d) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
  - (e) commences, or is subject to, any proceedings for its winding up (unless those proceedings are dismissed or withdrawn within 20 Business Days).
- Exempt Provider** has the meaning given in the Act.
- Financier** means a lender, approved by the State, from which the Provider will obtain a loan:
- (a) for a Capital Project; or
  - (b) to refinance an existing loan in respect of a Capital Funded Property.
- The Financier for a Capital Funded Property that is subject to a Capital Funded Property Operating Arrangement is listed in Part 1 of Schedule 1.
- Force Majeure Event** means:
- (a) acts of God;
  - (b) pandemic or epidemic;
  - (c) war, riot, insurrection, vandalism or sabotage;
  - (d) terrorism, act of war, invasion, act of public enemies, civil war, rebellion, revolution, insurrection, military or usurped power hostilities, whether war is declared or not;
  - (e) fire, except to the extent caused or contributed to by the effected party or its subcontractors; or
  - (f) strike, lockout, ban or other industrial disturbance which was not caused or contributed to by the effected party or its subcontractors,

to the extent that it is an unforeseeable event beyond the control of a party which occurs without fault or negligence of the affected party.

<b>Funded Services</b>	means services that the Provider must deliver for which Service Funding is provided under a Service Funding Arrangement.
<b>Funding</b>	has the meaning given in clause 6.1 of the General Terms.
<b>Funding Document</b>	means: <ul style="list-style-type: none"><li>(a) the Master Agreement;</li><li>(b) Leases;</li><li>(c) Capital Funded Property Operating Arrangements;</li><li>(d) Service Funding Arrangements;</li><li>(e) Capital Funded Master Agreement Project Deeds;</li><li>(f) Master Agreement Authorisation Deed Polls; and</li><li>(g) any document entered into under a Funding Document or that incorporates the Master Agreement Terms.</li></ul>
<b>General Terms</b>	means the General Terms in Part A of the Master Agreement Terms.
<b>Government Authority</b>	means the Commonwealth, the State of Queensland, a minister, a government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority and any agent or employee of any of the foregoing.
<b>GST</b>	has the same meaning as in the GST Act.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>GST Amount</b>	means the amount of GST on a Taxable Supply calculated at the rate of GST applicable at the time that the Taxable Supply is made.
<b>Housing Asset Intercreditor Deed</b>	means a deed between the Financier, the State and Provider on terms satisfactory to the State (in its absolute discretion).

The Housing Asset Intercreditor Deed in place for a Capital Funded Property that is subject to a Capital Funded Property Operating Arrangement is listed in Part 1 of Schedule 1.

<b>Housing Service</b>	has the same meaning as in the Act.
<b>Information Privacy Act</b>	means the <i>Information Privacy Act 2009</i> (Qld).
<b>Input Tax Credit</b>	has the same meaning as in the GST Act.
<b>Intellectual Property</b>	includes all copyright, trade mark, design, patents and other proprietary rights, and any rights to registration of such rights existing anywhere in the world.
<b>ITC Refund Date</b>	means the dates on which the State is refunded all or part of the Input Tax Credits claimed in respect of a GST Amount.
<b>Lease</b>	means a lease between the State and the Provider formed under clause 9 or under a Master Agreement Transition Deed. The Leases are listed in Part 2 of Schedule 1.
<b>Lease Property</b>	means a property leased to the Provider under a Lease.
<b>Lease Terms</b>	means the Lease Terms in Part D of the Master Agreement Terms.
<b>Leveraged Financier Contribution</b>	means the amount contributed by a third party financier in respect of a Capital Funded Property, secured by funded property or serviced using funded receipts and set out in Part 1 of Schedule 1 of the Master Agreement.
<b>Market Value</b>	of Capital Funded Property means the amount for which the property may reasonably be sold on the open market (including any applicable GST), determined in accordance with the International Valuation Standards (issued by the International Valuation Standards Council) by a licensed valuer appointed by the parties. Where the parties are unable to agree on a valuer within 10 Business Days, the valuer may be appointed by the President of the Queensland Division of the Australian Property Institute or their nominee at the request of either party.

<b>Master Agreement</b>	means the Master Agreement signed by the State and the Provider incorporating the Master Agreement Terms, including the Agreement Particulars and all schedules, annexures and appendices to the Master Agreement.
<b>Master Agreement Terms</b>	means these Master Agreement Terms.
<b>Master Agreement Authorisation Deed Poll</b>	means a Master Agreement Authorisation Deed Poll signed by the Provider for the completion of a Capital Project using Receipts that incorporate the Authorisation Terms. A Master Authorisation Deed Poll must be in the form of the relevant Template attached to the Master Agreement Terms and read together with the Authorisation Terms.
<b>Master Agreement Start Date</b>	the date that the Master Agreement is signed by the parties and if signed on different dates, the last of those dates.
<b>Master Agreement Transition Deed</b>	means a Master Agreement Transition Deed signed by the Provider and the State outlining terms for the transition of existing funding arrangements to the Master Agreement.
<b>Material Adverse Effect</b>	means a material adverse effect on the: <ul style="list-style-type: none"> <li>(a) ability of the Provider to perform its obligations under any Funding Document; or</li> <li>(b) business, assets or financial condition of the Provider.</li> </ul>
<b>Operation Date</b>	means, in respect of a Capital Funded Property, the 'Operation Date' specified in the Master Agreement Authorisation Deed Poll, Capital Funded Master Agreement Project Deed or Master Agreement Transition Deed.
<b>Personal Information</b>	has same meaning as in the <i>Information Privacy Act</i> .
<b>Policies</b>	means the policies, specifications, program requirements, guidelines, tools and templates published by the State from time to time for community housing providers, Registered Providers who provide ancillary services and providers of funded services.
<b>Proceeds of Sale</b>	means the proceeds of sale of a Capital Funded Property, calculated in accordance with the Capital Funded Property Operating Arrangement that applies to the property. Note:

	See the definition of 'Proceeds of Sale' in the Capital Funded Property Operating Terms and any relevant Special Conditions in respect of the Capital Funded Property. The Proceeds of Sale subject to the Master Agreement are set out in Part 1 of Schedule 1.
<b>Project Type Criteria</b>	has the meaning given in the definition of Due Diligence.
<b>Property</b>	means a Capital Funded Property or Lease Property.
<b>Provider Offset Percentage</b>	for a Capital Funded Property, means the amount specified in Part 1 of Schedule 1 of the Master Agreement.
<b>Public Records</b>	has the same meaning as in the <i>Public Records Act</i> .
<b>Public Records Act</b>	means the <i>Public Records Act 2023 (Qld)</i> .
<b>Queensland Procurement Policy</b>	means the Queensland Procurement Policy 2026.
<b>Receipts</b>	include 'national provider receipts' and 'state provider receipts' as defined in the Act and 'receipts' as defined the Regulation.
<b>Registered Provider</b>	has the meaning given in the Act.
<b>Registrar</b>	has the same meanings as 'registrar' and 'registrar of another participating jurisdiction' in the Act.
<b>Regulation</b>	means the <i>Housing Regulation 2015 (Qld)</i> .
<b>Reports</b>	means reports set out in Item 3 of the Agreement Particulars and any report required under a Policy, program specification, program requirements, or Funding Document.
<b>Right to Information Act</b>	means the <i>Right to Information Act 2009 (Qld)</i> .
<b>Service Users</b>	means users of services that are funded under a Service Funding Arrangement.

<b>Service Funding</b>	means funding provided under a Service Funding Arrangement.
<b>Service Funding Arrangement</b>	means a services funding arrangement formed between the State and the Provider in accordance with clause 9 or under a Master Agreement Transition Deed. The Service Funding Arrangements are listed in Part 3 of Schedule 1.
<b>Service Funding Terms</b>	means the Service Funding Terms in Part E of the Master Agreement Terms, which govern the Provider's use of Service Funding.
<b>Social Housing</b>	has the same meaning as in the Social Housing Policy.
<b>Social Housing Policy</b>	means the Policy issued by the State called the 'Social Housing Policy' and all other policies, specifications, guidelines, tools and templates prescribed within that policy, as updated by the State from time to time.
<b>Specified Policy Setting</b>	means the policy setting prescribed in Schedule 1 for a Property or Funded Service and described in the Social Housing Policy.
<b>State Funded Contribution</b>	for a Capital Funded Property that is subject to a Capital Funded Property Operating Arrangement, means the State Funding Contribution for the Capital Funded Property set out in Part 1 of Schedule 1.
<b>State Security</b>	means any State Security within the meaning of a Funding Document.
<b>Supplier Code of Conduct</b>	means the Queensland Government Supplier Code of Conduct as amended or updated from time to time.
<b>Tax Invoice</b>	has the same meaning as in the GST Act.
<b>Taxable Supply</b>	has the same meaning as in the GST Act.
<b>Template</b>	means the relevant template documents published by the State from time to time.

- Tenants** means the tenants of the Properties.
- Termination Event** means any of the following events:
- (a) all of the following conditions are met:
    - i. there is no Master Agreement Transition Deed in force between the State and the Provider;
    - ii. there are no Capital Funded Property Operating Arrangements in force;
    - iii. there are no properties or Proceeds of Sale listed in Schedule 1 Part 1;
    - iv. there are no Leases in force and no properties listed in Schedule 1 Part 2;
    - v. there are no Service Funding Arrangements in force and no details listed in Schedule 1 Part 3;
    - vi. all Capital Funded Master Agreement Project Deeds have been terminated or otherwise have come to an end; and
    - vii. all Master Agreement Authorisation Deed Polls have been terminated or otherwise have come to an end; or
  - (b) the Provider or an officer or employee of the Provider commits fraud in relation to the Funding or is convicted of a criminal offence in relation to the Funding; or
  - (c) the Provider ceases to be a Registered Provider or Exempt Provider; or
  - (d) the Provider's registration as a charity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth) is revoked; or
  - (e) the Provider ceases, or threatens to cease, to carry on all or a material part of its business for a continuous period of at least 20 Business Days; or
  - (f) an Event of Insolvency occurs in relation to the Provider.
- Transaction Document** in relation to a Capital Funded Property, means:
- (a) a Capital Funded Property Operating Arrangement;
  - (b) any Master Agreement Authorisation Deed Poll;
  - (c) any Capital Funded Master Agreement Property Project Deed;
  - (d) any State Security;
  - (e) any Housing Asset Intercreditor Deed

- (f) any Master Agreement Transition Deed;
- (g) any other document:
  - i. that the State and the Provider agree in writing to be a Transaction Document for the purposes of the Master Arrangement;
  - ii. between the State and the Provider under which the Provider owes or may owe any obligation or liability to the State in respect of a Capital Funded Property, or under which the Provider has granted any security interest in favour of the State to secure any such obligation or liability in connection with a Capital Funded Property (other than the State Security); or
  - iii. entered into at any time after the Master Agreement Start Date which has the effect of varying, novating, ratifying, replacing or restating, in any manner, any other document referred to in this definition.

### Interpretation

#### 1.2. In a Funding Document:

- (a) words importing a gender include any other gender and words in the singular include the plural and vice versa;
- (b) any monetary amounts refer to Australian currency unless otherwise specified;
- (c) a reference to legislation includes subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to policies, procedures, program requirements or specifications includes any policies, procedures, program requirements or specifications amending, consolidating or replacing them;
- (e) a reference to an individual or person includes a corporation or other legal entity;
- (f) a reference to a clause or schedule means a clause or schedule to the Funding Document;
- (g) if an expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (h) a reference to days or months means calendar days or months;
- (i) if the day on which any act or thing is to be done is not a Business Day in the place where the act or thing is to be done, the act or thing may be done on the next Business Day in that place;
- (j) an obligation on the part of two or more persons binds them jointly and each of them individually;
- (k) a reference to consent or approval means prior written consent unless otherwise specified;

- (l) a reference to a notice, request or proposal means a written notice, request or proposal;
  - (m) includes means includes without limitation; and
  - (n) a reference to an offer or acceptance means a written offer or acceptance signed by the party effecting the offer or acceptance.
- 1.3. In the event that a government department or agency mentioned in a Funding Document:
- (a) ceases to exist; or
  - (b) is reconstituted, renamed or replaced,
- and its powers or functions are transferred to another government department or agency, a reference to the government department or agency will include that other government department or agency.

#### Resolving any inconsistency

- 1.4. If there is any inconsistency between the Master Agreement and a term of another Funding Document, the following order of priority will apply:
- (a) any term of the other Funding Document that expressly states it applies despite the Master Agreement;
  - (b) the Master Agreement Terms; and
  - (c) the remaining terms of the other Funding Document.

## 2. Term

- 2.1. The Master Agreement commences on the Master Agreement Start Date and continues indefinitely.

## 3. 3-year review

- 3.1. Within 3 years after the introduction of the *Master Agreement* suite of documents, the State will consult about the operation of the suite with a view to identifying amendments to improve the effectiveness of the suite. Those amendments may be reflected in a variation to the suite negotiated between the parties.

## 4. Warranties of Provider

#### General warranties

- 4.1. The Provider warrants the following to the State:
- (a) **(Legally binding obligation)** That each Funding Document to which the Provider is a party constitutes its valid, legally binding and enforceable obligation.
  - (b) **(Entry into and performance)** That the entry into and performance of each Funding Document does not breach any law or any document to which it is a party or which is binding on it or any of its assets.
  - (c) **(Authorisations required by law)** That all authorisations required to enter into each Funding Document will be obtained before that Funding Document is entered into and are valid and subsisting, including any approval, resolution, licence, permission or registration required by law.

- (d) **(No litigation)** That there is no litigation or court or administrative proceedings, current, pending or threatened, which could have a Material Adverse Effect.
- (e) **(No Event of Default)** That there is no subsisting breach of a Funding Document.
- (f) **(Laws)** That it has complied with all laws.
- (g) **(Financial Liabilities)** That it is not in default in payment of any financial liability for a sum in excess of \$20,000.
- (h) **(Ranking)** That its payment obligations under Funding Documents rank no less than its unsecured and unsubordinated obligations, other than those preferred by law applying to companies generally or preferred under a Housing Asset Intercreditor Deed.
- (i) **(Power)** That it has the power to enter into the Funding Documents and perform the obligations under them and that this will not violate its constitutive documents.
- (j) **(Authority)** That it has taken all corporate action required to enter into the Funding Documents and perform the obligations under them.
- (k) **(Benefit)** That entry into and performance of the Funding Documents is in its best interests and for a proper purpose.

#### Repetition of warranties each day

- 4.2. The Provider repeats each warranty on each day that the Master Agreement is on foot in relation to the circumstances subsisting on each day.

## 5. General compliance

### General obligations

- 5.1. The Provider must:
- (a) be a Registered Provider or Exempt Provider;
  - (b) be registered as a charity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth);
  - (c) comply with the Act and the Regulation and all other relevant laws;
  - (d) comply with the Funding Documents;
  - (e) comply with the Social Housing Policy and other Policies;
  - (f) exercise due care and skill in carrying out its obligations under the Funding Documents; and
  - (g) act diligently, effectively and in a professional manner.

### Compliance with the Act and the Regulation

- 5.2. Without limiting clause 5.1(c), the Provider must comply with the Act and the Regulation as if:
- (a) the Property is a Community Housing Asset; and
  - (b) the Provider is a 'funded provider' as defined in the Act.

### Compliance with Policies

- 5.3. Without limiting clause 5.1(e), the Provider must:
- (a) let Property only to those persons who are eligible under the Policies;

- (b) comply with the specific requirements in the Policies for each Property or Funded Service specified in Schedule 1; and
- (c) calculate rent for each Property under the Policies.

**Changes to Policies**

- 5.4. The State may amend the Policies, including the Social Housing Policy. An amendment takes effect 3 months after the State gives the Provider a copy of, or link to, the amended Policy.

**Specified Policy Settings**

- 5.5. The Provider acknowledges that each Property will be categorised by a Specified Policy Setting in Schedule 1. The Provider must comply with the terms of the Social Housing Policy that apply to the Specified Policy Setting.

**Trustee provisions**

- 5.6. The Provider warrants to the State that either:
- (a) it has not entered into this Master Agreement as trustee; or
  - (b) if it has entered into this Master Agreement as trustee, then full details of the trust (including a copy of the trust deed) were disclosed to the State before execution of the Master Agreement.
- 5.7. If the Provider has entered into the Master Agreement as trustee, then:
- (a) the Provider is liable under the Master Agreement and all Funding documents as trustee of the relevant trust and in its own right;
  - (b) a reference in this Master Agreement or a Funding Document to:
    - (i) the Provider includes the Provider as trustee and in its own right;
    - (ii) the Provider's property or business includes property owned and the business carried on by the Provider as trustee and in its own right;
  - (c) the Provider represents and warrants to the State on a continuing basis for the duration of the Master Agreement that:
    - (i) it has the power as trustee of the relevant trust to execute and perform its obligations under the Master Agreement and the Funding Documents;
    - (ii) in executing the Master Agreement and the Funding Documents, it has properly performed its obligations to the beneficiaries of the trust;
    - (iii) all necessary action required by the trust deed to authorise the unconditional execution and delivery of, and compliance with, its obligations under the Master Agreement and Funding Documents has been taken;
    - (iv) it is the only trustee of the trust;
    - (v) in its personal capacity, it will not at any time hold any assets relevant to, required for or otherwise in connection with any Capital Project or Funding and all such assets will at all times be held by it as trustee; and
    - (vi) it has a right to be fully indemnified out of the assets of the trust in relation to all of its liabilities and obligations under the Master Agreement and the Funding Documents and the assets of the trust are sufficient to satisfy that liability when it falls due; and

- (d) the Provider must notify the State in writing of any change, or proposed change, to the trust that may impact the performance of the Provider's obligations under the Master Agreement.

## 6. Funding

### What is Funding?

6.1. 'Funding' includes the following:

- (a) Funding and Receipts as defined in the Act.
  - (i) The parties acknowledge that this includes income from Property and Proceeds of Sale.
  - (ii) The parties acknowledge that it does not include the Provider Offset Percentage of sale proceeds in respect of a Capital Funded Property (as reflected in the definition of Proceeds of Sale).
- (b) Funding under a Capital Funded Property Operating Arrangement, a Capital Funded Master Agreement Project Deed and Master Agreement Authorisation Deed Poll.
- (c) Funding paid under a Service Funding Arrangement.
- (d) Interest earned on Funding.

### General obligations about use of Funding

6.2. The Provider must use the Funding:

- (a) for the funded purpose under the Funding Documents, being the delivery of Housing Services or Funded Services;
- (b) to provide Housing Services in ways that best achieve the objects of the Act; and
- (c) in accordance with the Social Housing Policy or other relevant Policy as noted in Schedule 1.

### More specific obligations about use of Funding

6.3. The Provider must:

- (a) if a Funding Document requires a Property to be used for a particular purpose – use the Property for that purpose;
- (b) use Funding to deliver and maintain the Properties and for necessary tenancy management and running costs for the Properties as required by the Funding Documents; and
- (c) use Service Funding for the purpose specified in the Service Funding Arrangement for that Service Funding.

### Use of Proceeds of Sale

6.4. The Provider must:

- (a) use Proceeds of Sale from the sale of a Capital Funded Property to a third party in accordance with the Social Housing Policy, including by only using Proceeds of Sale for expenditure authorised under the Social Housing Policy; and
- (b) fully expend and acquit the Proceeds of Sale within five years of the end of the first financial reporting period following the settlement date of the sale of the Capital Funded Property (**Repayment Date**).

- 6.5. If the Provider does not comply with:
- (a) clause 6.4(a), then the Provider must pay to the State an amount equal to any part of the Proceeds of Sale that the State identifies as not having been used in accordance with the Social Housing Policy within 10 Business Days of receiving a written demand from the State; or
  - (b) clause 6.4(b) by fully expending and acquitting the Proceeds of Sale by the Repayment Date, then the Provider must pay to the State an amount equal to that part of the Proceeds of Sale that have not been expended and acquitted by the Provider in accordance with clause 6.4 within 10 Business Days after the Repayment Date.
- 6.6. Any amount owing by the Provider to the State under clause 6.5 is a debt to the State.
- 6.7. The Provider acknowledges that:
- (a) a failure to comply with clauses 6.4 and 6.5 constitutes a breach of the General Terms entitling the State to exercise its rights under clause 26; and
  - (b) a failure of the Provider to remedy a breach of clause 6.4 or clause 6.5 after receiving a notice from the State under clause 26.2, will constitute an event of default under the State Security, entitling the State to exercise its rights under a State Security in respect of one or more Capital Funded Properties.

#### **Acquittal of Funding**

- 6.8. The Provider must acquit the Funding on an annual basis in accordance with the Social Housing Policy.

#### **Funding paid if the Provider has performed its obligations**

- 6.9. The State is not required to pay Funding if at the time that the Funding is payable, the Provider has not performed its obligations under the Funding Documents to the reasonable satisfaction of the State, including if the Provider has failed to provide Reports under the Funding Documents.

## 7. Bank account and separate ledger accounts

#### **Bank account**

- 7.1. The Provider must keep the Funding, including Receipts, in a bank account.
- 7.2. The Provider must keep Proceeds of Sale in a separate bank account to other Funding.

#### **Ledger accounts**

- 7.3. The Provider must maintain separate and readily identifiable ledger accounts to record the Provider's receipt and expenditure of the Funding, including Receipts other than Proceeds of Sale.
- 7.4. The Provider must maintain separate and readily identifiable ledger accounts that record the Provider's receipt and expenditure of Proceeds of Sale.

## 8. Strategic Portfolio Statement

#### **Preparation**

- 8.1. The Provider must prepare a Strategic Portfolio Statement in accordance with the Social Housing Policy within the timeframe stipulated in that Policy.

- 8.2. The Strategic Portfolio Statement should reflect the requirements outlined in the Strategic Portfolio Statement Guide, published by the Department.

**Annual updates**

- 8.3. The Provider must update the Strategic Portfolio Statement annually as part of the Reports.

## 9. Agreement management

**Provider must use templates**

- 9.1. The Provider must use templates, plans, requests, guidelines, tools and reporting systems as required under the Master Agreement and the Policies, which may be amended by the State from time to time.

**Part 1 of Schedule 1 - Capital Funded Property Operating Arrangements**

- 9.2. The parties acknowledge and agree that, on and from the Operation Date under a Master Agreement Authorisation Deed Poll or a Capital Funded Master Agreement Project Deed for a Capital Funded Property:
- (a) the relevant deed will come to an end;
  - (b) Part 1 of Schedule 1 will be amended to include details of the Capital Funded Property as set out in the updated version of Schedule 1 signed by both parties; and
  - (c) a Capital Funded Property Operating Arrangement will be formed between the State and the Provider in respect of the Capital Funded Property, comprised of:
    - (i) the General Terms;
    - (ii) the Capital Funded Property Operating Terms; and
    - (iii) the details for the property stated in Part 1 of Schedule 1.
- 9.3. The parties acknowledge and agree that:
- (a) Part 1 of Schedule 1 may include special conditions that apply to a Capital Funded Property, including special conditions that modify the application of the General Terms or the Capital Funded Property Operating Terms to the property; and
  - (b) a Capital Funded Property Operating Arrangement, including any special conditions, may be varied by the parties signing an updated version of Schedule 1.
- 9.4. The Provider must give the State notice of completion of a Capital Project under a Capital Property Master Agreement Deed or Master Agreement Authorisation Deed using the relevant Template as soon as practicable, but not later than 14 days, after:
- (a) practical completion of a Capital Project that includes construction; or
  - (b) if subclause (a) does not apply, settlement of the purchase of the Capital Property.

**Part 2 of Schedule 1 - Leases**

- 9.5. The parties acknowledge that Part 2 of Schedule 1 sets out Leases that the parties have entered into.
- 9.6. The parties acknowledge and agree that:
- (a) upon the inclusion of a property in Part 2 of Schedule 1, a Lease will be formed between the State and the Provider in respect of the property, comprised of:
    - (i) the General Terms;

- (ii) the Lease Terms; and
- (iii) the details for the property stated in Part 2 of Schedule 1;
- (b) the parties will sign an updated version of Schedule 1 to include details of the Lease Property;
- (c) Part 2 of Schedule 1 may include special conditions that apply to a Lease Property, including special conditions that modify the application of the General Terms or Lease Terms to the property; and
- (d) a Lease, including any special conditions, may be varied by the parties signing an updated version of Schedule 1.

### **Part 3 of Schedule 1 – Service Funding Arrangements**

- 9.7. The parties acknowledge that Part 3 of Schedule 1 sets out Service Funding Arrangements that the parties have entered into.
- 9.8. The parties acknowledge and agree that:
- (a) upon the inclusion of a Funded Service in Part 3 of Schedule 1, a Service Funding Arrangement will be formed between the State and the Provider in respect of the Funded Service, comprised of:
    - (i) the General Terms;
    - (ii) the Service Funding Terms; and
    - (iii) the details for the Funded Service stated in Part 3 of Schedule 1;
  - (b) a Service Funding Arrangement may include special conditions that apply to the Funded Service, including special conditions that modify the application of the General Terms and Service Funding Terms to the Funded Service; and
  - (c) a Service Funding Arrangement, including any special conditions, may be varied by the parties signing an updated version of Schedule 1.

## **10. Capital Projects (Redevelopment Construction, Purchase)**

### **Use of Receipts for Capital Projects**

- 10.1. The Provider may only use Receipts (including Proceeds of Sale) to fund, in whole or in part, a Capital Project, if the Provider:
- (a) submits a Master Agreement Authorisation Deed Poll signed by the Provider; or
  - (b) enters into a Capital Funded Master Agreement Project Deed with the State.
- 10.2. The Provider agrees and acknowledges that when a property is purchased, constructed or redeveloped using Receipts (including Proceeds of Sale):
- (a) the property is deemed to be Capital Funded Property and a Community Housing Asset;
  - (b) upon completion of the Capital Project, the Provider must submit a notice of completion under clause 9.4 of the General Terms;
  - (c) particulars for the property and relevant contributions, including (without limitation) the State Funded Contribution (inclusive of Proceeds of Sale), will be included in Part

1 of Schedule 1 of the Master Agreement, including any adjustments, upon completion of the Capital Project;

- (d) where Funding or Receipts are used (including Proceeds of Sale), those amounts will form part of the State Funded Contribution for the Capital Funded Property; and
- (e) the Provider must grant a first priority mortgage in respect of the Capital Funded Property unless the State agrees otherwise and the parties enter into a Housing Asset Intercreditor Deed.

#### **Capital Projects for existing properties**

- 10.3. Clauses 10.4 to 10.9 apply where a Capital Project relates to an existing Capital Funded Property listed in Part 1 of Schedule 1.
- 10.4. If the Capital Funded Property will be uninhabitable (in whole or in part) during the Capital Project, the Provider must ensure that suitable accommodation arrangements are made for impacted Tenants to the satisfaction of the State, including by:
  - (a) assisting the Tenants to relocate to alternative accommodation; and
  - (b) funding all expenses associated with the relocation.
- 10.5. If the whole of the Capital Funded Property will be uninhabitable during the Capital Project, and no Tenants will remain in the Capital Funded Property, then the following clauses apply:
  - (a) the Capital Funded Property Operating Arrangement for the Capital Funded Property will be suspended while the Master Agreement Authorisation Deed Poll or Capital Funded Master Agreement Project Deed is in force; and
  - (b) on and from the Operation Date under the Master Agreement Authorisation Deed Poll or Capital Funded Master Agreement Project Deed the suspension of the Capital Funded Property Operating Arrangement will end.
- 10.6. If only part of the Capital Funded Property will be uninhabitable during the Capital Project, and some Tenants will remain in the Capital Funded Property, then the following clauses apply:
  - (a) the parties must sign an updated version of Schedule 1 of the Master Agreement to reflect that:
    - (i) the inhabitable part of the Capital Funded Property will be subject to the Capital Funded Property Operating Arrangement; and
    - (ii) the uninhabitable part of the Capital Funded Property will be subject to the Master Agreement Authorisation Deed Poll or Capital Funded Master Agreement Project Deed; and
  - (b) Part 1 of Schedule 1 of the Master Agreement will be further amended after completion of the Project in accordance with the Master Agreement Authorisation Deed Poll or Capital Funded Master Agreement Project Deed.
- 10.7. If new State funding is used for the Capital Project, the Right of First Refusal Period Start Date for the Capital Funded Property will reset on completion of the Capital Project and will be the Operation Date under the Capital Funded Master Agreement Project Deed.
- 10.8. If land forming part of an existing Capital Funded Property is used for a new Capital Project, the amount calculated as follows will form part of the State Funded Contribution for the Capital Funded Property:

- (a) Market Value of the land;  
less
  - (b) the Provider Offset Percentage multiplied by the Market Value of the Capital Funded Property.
- 10.9. Any changes to the details for a Capital Funded Property upon completion of the Capital Project will be formalised by the parties signing an updated version Schedule 1.

#### **Use of Master Agreement Authorisation Deed Poll**

- 10.10. A Master Agreement Authorisation Deed Poll may only be used where the Provider is using accumulated Receipts (including Proceeds of Sale) to carry out a Capital Project. It cannot be used:
- (a) where a Leveraged Financier Contribution is being used to fund the project;
  - (b) where a Specified Policy Setting other than the general social housing or default setting will be applied to the project;
  - (c) when new monetary funding is being provided by the State; or
  - (d) where a change of use of an existing Capital Funded Property is proposed.
- 10.11. Before signing and submitting a Master Agreement Authorisation Deed Poll for a Capital Project to the State, the Provider must undertake appropriate Due Diligence investigations to confirm the Capital Project, and the Capital Funded Property satisfy the Project Type Criteria. The Provider must give the State a copy of the Due Diligence reports when submitting the Master Agreement Authorisation Deed Poll.

## 11. Conduct

### **Dignity and independence of Service Users and Tenants**

- 11.1. The Provider must:
- (a) deliver the Housing Services and Funded Services without coercion and in a manner that promotes the privacy, dignity, self-esteem and independence of Service Users and Tenants; and
  - (b) provide Service Users and Tenants with access to and assistance with Housing Services and the Funded Services on the basis of need, but otherwise on a non-discriminatory basis, except where the Housing Services or Funded Services are delivered to meet the needs of specific Service Users and Tenants.

### **Collaboration with other organisations**

- 11.2. The Provider must collaborate and coordinate with other community organisations and government agencies within the service system in which the Provider is operating to the extent reasonably appropriate with a view to delivering the most effective Housing Services and Funded Services for the overall benefit of Service Users and Tenants.

### **Dispute resolution for disputes with Service Users and Tenants**

- 11.3. The Provider must:
- (a) have and comply with a dispute resolution procedure for disputes between the Provider and Service Users/Tenants concerning any of the Housing Services or Funded Services and the Provider must make the procedure available to all Service Users and Tenants;

- (b) keep and implement a document outlining the Provider's procedure for dealing with complaints that any person may make about any of the Housing Services or Funded Services and make it available for viewing by any person on request; and
  - (c) advise any person who makes a complaint to the Provider about any of the Housing Services or Funded Services that they may complain to the State or a complaints agency if they are not satisfied with the outcome of the complaint.
- 11.4. The Provider must not discontinue or reduce any of the Housing Services or Funded Services, or otherwise take recriminatory action, because a person makes a complaint to the Provider about any of the Housing Services or Funded Services, provided that this does not preclude the Provider from taking action as necessary to ensure safety and prevent harm to Service Users, Tenants and others.

#### **Fire safety**

- 11.5. Unless otherwise specified in a Funding Document, the Provider is responsible for ensuring that:
- (a) fire safety inspections; and
  - (b) evacuation training,
- are carried out in accordance with laws relating to fire safety, including the *Fire Services Act 1990* (Qld) and *Building Fire Safety Regulation 2008* (Qld).

#### **Requests and directions**

- 11.6. The Provider must comply with the State's reasonable requests, directions, and monitoring requirements to the State's reasonable satisfaction.

#### **Personnel**

- 11.7. All personnel that the Provider employs in any capacity are the Provider's responsibility. The Provider will be responsible for payment of all wages and entitlements to the Provider's employees.
- 11.8. The parties acknowledge that the State encourages the Provider to provide domestic and family violence leave to show leadership in supporting employees experiencing domestic and family violence.
- 11.9. The Provider must comply with all laws in relation to employment of the Provider's employees, including any requirements pertaining to domestic and family violence leave.

#### **Cultural accessibility**

- 11.10. The Provider must ensure that the Housing Services and the Funded Services are culturally accessible to Aboriginal and Torres Strait Islander peoples and to people from culturally and linguistically diverse backgrounds, recognising the diversity of needs of people, including specific needs, from urban, regional and remote areas.
- 11.11. Where the target group for the Housing Services or Funded Services is Aboriginal and Torres Strait Islander peoples, the Provider must, if the State requests, provide evidence to the State's satisfaction that individuals, families, cultural custodians, clan and language groups, community organisations, communities or representatives deemed appropriate by the community to which the Housing Services and Funded Services are being delivered, are engaged in the design, delivery and evaluation of programs and the Housing Services and Funded Services to ensure they are appropriate to local community and cultural needs.

**Modern slavery prevention**

- 11.12. The Provider must not, and must take reasonable steps to ensure that the Provider's supply chain does not, undertake acts which could constitute an offence involving slavery or human trafficking.

**Human rights**

- 11.13. The Provider acknowledges that if it is a public entity under the *Human Rights Act 2019* (Qld), it must ensure that it acts and make decisions in a way that is compatible with human rights and, in making a decision, gives proper consideration to a human right relevant to the decision.

**Supplier Code of Conduct**

- 11.14. The Provider must:
- (a) comply with the Supplier Code of Conduct; and
  - (b) take reasonable steps to ensure that its employees, subcontractors, and supply chain comply with the Supplier Code of Conduct.
- 11.15. Compliance with the Supplier Code of Conduct is a material obligation of a Funding Document, a breach of which may lead to the State exercising its rights under a Funding Document.
- 11.16. The Supplier Code of Conduct does not limit or replace any other obligations under a Funding Document, law, regulation or applicable standards.
- 11.17. The Provider must notify the State in writing within 10 Business Days if it becomes aware of any actual or potential non-compliance with the Supplier Code of Conduct. The State may require the Provider to provide a plan to remedy the non-compliance within a timeframe specified by the State.
- 11.18. The State may, at its discretion, require the Provider to provide evidence of compliance with the Supplier Code of Conduct.
- 11.19. The Queensland Government may, from time-to-time, update or amend the Supplier Code of Conduct. The Provider is solely responsible for informing themselves and ensuring compliance with any updates or amendments to the Supplier Code of Conduct. The State is under no obligation to inform the Provider of any updates or amendments to the Supplier Code of Conduct.

**Queensland Ombudsman**

- 11.20. The Provider acknowledges that the Queensland Ombudsman has the authority, under section 12A of the *Ombudsman Act 2001* (Qld), to investigate non-government entities that perform functions of a government agency. This includes actions taken by the Provider under the Funding Documents. The Provider must fully cooperate with any investigations or inquiries conducted by the Queensland Ombudsman in relation to the services provided under the Funding Documents under section 12A of the *Ombudsman Act 2001* (Qld).

## 12. Reporting to the State

**Provider must give reports**

- 12.1. The Provider must give the State the Reports.
- 12.2. The Provider must ensure that Reports:

- (a) are provided by the due dates and comply with the stated requirements for the Report;
- (b) are accurate, complete and not misleading; and
- (c) are signed and certified by the Provider if specified in the State's template for the Report.

**Provider must give further information**

- 12.3. The Provider must provide further information about any matter connected with a Report or resubmit a Report to the State, within 20 Business Days after the State's request.
- 12.4. The Provider must comply with a written notice from the State requiring the Provider to supply information to the State in any way concerning the Provider or the carrying out of the Provider's obligations under the Funding Documents. The notice need not be in any specified form but must state the information required and a reasonable time within which the Provider must supply the information.
- 12.5. The information that the State may require the Provider to provide to the State under clause 12.4 includes information about the eligibility of the Provider's tenants for housing assistance so that the State may ascertain whether the Provider is complying with its obligation under the Funding Documents to let the Property only to tenants who are eligible under the Social Housing Policy.

**Provider consents to Reports being given to the Registrar**

- 12.6. The Provider consents to:
- (a) the State disclosing information received by the State in connection with the Funding to the Registrar; and
  - (b) the Registrar disclosing any information relating to or connected with the Provider to the State.

**State may notify the Provider that Reports are not required**

- 12.7. If the State notifies the Provider that the Provider is not required to give a Report to the State because it corresponds with a Report that the Provider is required to give to the Registrar, the Provider:
- (a) is deemed to have provided the Report to the State under the Funding Documents at the time that the Provider gives the Report to the Registrar; and
  - (b) is not required to give the Report to the State if the Provider has given it to the Registrar.

**Reporting tools and templates**

- 12.8. The Provider must use the tools and templates in the Policies for reporting.
- 12.9. The State may:
- (a) develop a reporting dashboard system to enable the Provider and other Registered Providers and Exempt Providers to see how they are progressing over time and relative to other Registered Providers and Exempt Providers;
  - (b) display in that system a count of Capital Funded Property dwellings let or available for let in accordance with this Master Agreement, growth in that count and other information connected with Capital Funded Properties, Lease Properties and Service Funding that does not include Personal Information (any address information in that

system other than the address of the Provider would be displayed at a suburb level only); or

- (c) make the information referred to in clause 12.9(b) publicly available, by publishing it on a website or otherwise,

and the Provider agrees to these disclosures of information referred to in this clause.

#### **State may change information for Reports**

- 12.10. The State, acting reasonably, may change the information required to be contained in Reports by notice to the Provider. The Provider must ensure that Reports it submits after it receives notice of the change contain the information required under the notice.

## 13. Notice of emergencies and other matters

#### **Notice to the State as soon as practicable and within 24 hours**

- 13.1. The Provider must, as soon as practicable and, in any event, within 24 hours after becoming aware, give to the State notice of any of the following or reasonable suspicion of the following:
  - (a) event, circumstance or breach described in the definition of Termination Event;
  - (b) mismanagement or misappropriation of Funding, or misconduct or dishonesty in connection with the Funding, Housing Services or Funded Services;
  - (c) breach of the Act or Regulation;
  - (d) any incident or event connected with the Housing Services or Funded Services that has or is reasonably likely to attract press or media attention, whether positive or negative;
  - (e) a situation, event or circumstance which:
    - (i) involves an incident requiring an emergency response including fire, natural disaster, industrial action which may affect the delivery of Housing Services, bomb threat, hostage situation, death or serious injury of any person or any criminal activity requiring police response;
    - (ii) poses a serious risk to a Property, the health or safety of people, including tenants, or the environment; or
    - (iii) constitutes a breach of laws which needs urgent remedy or compliance;
  - (f) material adverse change in the Provider's financial position;
  - (g) notices which the Provider receives from any authority which will or could impact the Provider's ability to deliver Housing Services under the Funding Documents in a material way;
  - (h) any event for which the Provider is given notice by the Registrar of the national register of community housing providers for Queensland under the Act where that notice materially impacts Funding, a Funded Property or Funded Services.

#### **Notice to other authorities**

- 13.2. The Provider must notify the Queensland Police Service of any offence in connection with the Funding, as soon as practicable and, in any event, within 24 hours of the offence coming to the Provider's attention.

- 13.3. The Provider must immediately notify the relevant authority of a matter described in clause 13.1(e).
- 13.4. The Provider must maintain procedures for notifying the police or other relevant authorities of violence or activities that put tenants or households at risk.

**Notice about delays**

- 13.5. The Provider must promptly notify the State of any matters which will prevent or cause delays, or that the Provider expects will prevent or cause delays, to the Provider performing its obligations under the Funding Documents.

**Notice of change to constitution**

- 13.6. The Provider must notify the State of any change to the Provider's constitution that may impact on the performance of the Provider's obligations under the Funding Documents within 10 Business Days after the change.

**Notice about receiving other funds**

- 13.7. If the Provider receives other funds from either the Commonwealth Government, another State Government department or authority or any other entity providing funds for meeting the costs of any of the Funded Services, the Provider must notify the State of the amount and purpose of the additional funds received, unless the State notifies otherwise.

## 14. Announcements

**When the Provider must acknowledge Funding**

- 14.1. Except as required by law, the Provider must ensure that all of the Provider's public messaging relating to projects, property or programs that are partly or fully funded under Funding Documents must include an acknowledgement of the Funding.
- 14.2. Clause 14.1 applies to public messaging through:
- (a) press releases, public announcements, social media, website content, public communication by letter, newsletter or other means;
  - (b) printed collateral including brochures, flyers, posters and similar material; and
  - (c) any other medium.

**What the acknowledgement must say**

- 14.3. The acknowledgement must state 'Supported by the Queensland Government', unless otherwise approved by the State.

**Publicity and media at a Property or concerning Funded Services or obligations**

- 14.4. The Provider must obtain the State's prior permission before it commences any publicity of, or involvement with any media:
- (a) at a Property; or
  - (b) which in any way concerns:
    - (i) a Property;
    - (ii) the Funded Services; or
    - (iii) the Provider's obligations under the Funding Documents.

**State press releases**

- 14.5. The State may make any press release or public announcement as it deems fit in its entire discretion and does not require the consent of the Provider.

## 15. Right to information and privacy

**Right to information and publication of information about Funding**

- 15.1. The Provider acknowledges that the Funding Documents and information connected with the Funding Documents is potentially subject to disclosure to third parties under the Right to Information Act.
- 15.2. The State may publish or require the Provider to publish:
- (a) its name and address;
  - (b) a summary of the Provider's obligations under the Funding Documents and a summary of the Funding, including the number and nature of the Capital Funded Properties and Lease Properties and a description of Funded Services and the amount of Funding; and
  - (c) a description of any procurement method used to award the Funding to the Provider.

**Compliance with the Information Privacy Act**

- 15.3. If the Provider collects or has access to Personal Information in order to carry out the purposes of Funding, the Provider must:
- (a) comply with Parts 1 and 2 of Chapter 2 and section 41 of the *Information Privacy Act*, in relation to the discharge of its obligations under the Funding Documents as if the Provider was the State;
  - (b) not use the Personal Information other than for the purposes of the Funding Documents, unless required or authorised by law;
  - (c) not disclose the Personal Information without the State's prior written consent, unless required or authorised by law;
  - (d) not transfer or disclose the Personal Information outside of Australia without the State's prior written consent;
  - (e) ensure that access to the Personal Information is restricted to those of the Provider's employees, volunteer workers and officers who require access in order to perform their duties;
  - (f) ensure the Provider's employees, volunteer workers and officers do not access, use or disclose the Personal Information other than in the performance of their duties;
  - (g) ensure that the Provider's contractors who have access to the Personal Information comply with the obligations the same as those imposed on the Provider under this clause;
  - (h) fully co-operate with the State to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
  - (i) comply with such other privacy measures and other measures to secure such Personal Information as the State reasonably advises the Provider in writing from time to time.

- 15.4. The Provider must make available to individuals from whom it collects Personal Information, a privacy notice containing the information specified in Queensland Privacy Principle 5 in schedule 3 of the *Information Privacy Act*. The Provider must ensure that the privacy notice:
- (a) notifies individuals of the disclosure to the State of information about Service Users or Tenants for the purposes of the Provider reporting and providing information to the State under the Funding Documents, including information relevant to eligibility of tenants under the Social Housing Policy;
  - (b) is of a standard reasonably acceptable to the State and has been given to the State for the purposes of the State considering whether is of that standard.
- 15.5. The Provider must:
- (a) on request, obtain from its employees, volunteer workers, officers and contractors an executed deed of privacy in a form acceptable to the State;
  - (b) fully cooperate with the State to enable the State to take any action required under chapter 3A (Mandatory notification of data breaches) of the *Information Privacy Act*;
  - (c) immediately notify the State on becoming aware of any:
    - (i) breach of clause 15.3 or 15.4;
    - (ii) any unauthorised access, use, modification, disclosure or other misuse of Personal Information;
    - (iii) any loss of the Personal Information in circumstances where unauthorised access, use, modification, disclosure or other misuse of the Personal Information by a third party is likely to occur; or
    - (iv) anything that would constitute an eligible data breach (as defined in the *Information Privacy Act*) relating to the Personal Information; and
  - (d) annually notify the State that it complies with its obligations under the *Information Privacy Act* in this clause.

## 16. Intellectual Property rights

### Intellectual Property ownership and licences

- 16.1. If the State owns the Intellectual Property in material it provides to the Provider, the State will own any alterations or additions made to that material.
- 16.2. Subject to the interests reserved to the State in clause 16.1, where Intellectual Property exists in material created by the Provider from Funding, the Intellectual Property will be owned by the Provider. However, the Provider grants to the State an irrevocable, fee-free non-exclusive licence to use any such material as a resource for any purpose.
- 16.3. The State acknowledges that the licence granted by the Provider in the preceding clause does not extend to any Intellectual Property owned by, or jointly or severally owned with, any third party. However, the Provider will use best endeavours to obtain a licence on the same terms from that third party to the State for the use of such Intellectual Property used or incorporated into the intellectual property described at clause 16.2 for any purpose.
- 16.4. The Provider must ensure that:
- (a) licences under clauses 16.2 and 16.3 include rights sufficient to enable the State to complete any construction works if the Provider is unable to complete them; or

- (b) to the extent, if any, that those licences do not include those rights, the Provider grants and will use best endeavours to ensure that third parties grant to the State an irrevocable, fee-free non-exclusive licence sufficient to enable the State to complete the construction works.
- 16.5. The Provider warrants that it is entitled, or will be entitled at the required time, to deal with Intellectual Property in the manner provided in this clause 16.

**Cultural heritage material**

- 16.6. The Provider agrees that the Provider will:
- (a) respect the cultural and spiritual significance of Aboriginal and Torres Strait Islander people;
  - (b) refrain from incorporating any elements derived from Aboriginal and Torres Strait Islander cultural heritage into any material created under the Funding Documents without the informed and written consent of the cultural custodians, clan or language groups and community representatives deemed acceptable by each community; and
  - (c) inform the State in writing about any elements derived from Aboriginal and Torres Strait Islander cultural heritage which the Provider incorporates into any material which the Provider creates and delivers to the State under the Funding Documents, and of any consent which the Provider has obtained relating to the use of such elements.

## 17. Public records

**Application of this clause**

- 17.1. This clause applies to Public Records referred to in clause 17.2 held by or created by the Provider and any Public Records which the State provides to the Provider.

**Requirement to keep records**

- 17.2. The Provider must make and keep full and accurate records relating to the Funding Documents and the Funding and such records are made for the purposes of the State and are Public Records.

**Property in records**

- 17.3. Any Public Records which the State provides to the Provider remain the property of the State.
- 17.4. Ownership in a Public Record created by the Provider vests in the State when the Public Record is created.

**Compliance with the Public Records Act**

- 17.5. The Provider must comply with the *Public Records Act* as if it were the State in managing the Public Records including complying with any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records as amended or replaced from time to time, and any additional Queensland Government Information Standards relating to Public Records issued from time to time.

**Information access applications**

- 17.6. The Provider must fully co-operate with the State to enable the State to respond to applications for access to information under the *Right to Information Act* and *Information*

*Privacy Act*, including by giving the State access to the Provider's record keeping systems for the purposes of retrieving the relevant Public Records.

#### **Providing Public Records to the State**

- 17.7. The Provider must give the Public Records to the State within 20 Business Days after the termination of the Master Agreement.

## 18. Indemnity

### **Indemnity**

- 18.1. The Provider releases, discharges and indemnifies the State, to the full extent permitted by law, from and against any Claim that may be brought against or made upon or incurred by the State in connection with:
- (a) the carrying out of the Provider's obligations under the Funding Documents;
  - (b) anything occurring on, originating in, or coming from, a Leased Property;
  - (c) any wilful, negligent or unlawful act or omission of the Provider; or
  - (d) any breach of a Funding Document by the Provider,
- except to the extent that any negligent or unlawful act or omission by the State caused or contributed to the Claim.

### **Own risk**

- 18.2. The Provider performs its obligations under the Funding Documents entirely at its own risk and the State will not be liable for any Claim brought against or made on or incurred by the Provider in connection with the performance of its obligations, except to the extent that any negligent or unlawful act or omission by the State caused or contributed to the claim.

### **Compliance by subcontractors**

- 18.3. The Provider must ensure that:
- (a) any sub-contractor engaged by the Provider in connection with Funding Documents are suitably experienced, qualified, licenced and insured;
  - (b) any subcontract is consistent with the terms of the Funding Documents and impose obligations the same as those imposed on the Provider under the Funding Documents, including this clause;
  - (c) the services performed by subcontractors meet the requirements of the Funding Documents;
  - (d) all subcontractors comply with their subcontracts and the Funding Documents; and
  - (e) if requested by the State, enter into a deed in a form acceptable to the State which requires the sub-contractor to comply with obligations the same as those imposed on the Provider under this clause.
- 18.4. The Provider will remain liable under the Funding Documents for the acts or omissions of any past subcontractors as if they were current subcontractors.

## 19. Insurance

### **Insurer**

- 19.1. The Provider must maintain the insurance under this clause with a reputable insurance company licenced to conduct insurance business in Australia under the *Insurance Act 1973* (Cth).

**Provider must insure**

- 19.2. The Provider, at its own cost, must maintain effective insurance cover to the reasonable satisfaction of the State for the term of the Master Agreement, including:
- (a) the insurance required under the Funding Documents;
  - (b) workers' compensation insurance;
  - (c) public liability insurance of a minimum of \$20,000,000 per occurrence or any other amount reasonably required by the State;
  - (d) cover for damage to or destruction of other assets purchased through the Funding (except to the extent another person holds the insurable interest, for example a body corporate); and
  - (e) and any other policy which is required by law.
- 19.3. The public liability insurance must include liability in respect of the ownership, use or occupation of the Property. The Provider must punctually pay insurance premiums and comply with the terms of the insurance policies.
- 19.4. The Provider must use reasonable endeavours to ensure that the insurance includes clauses in which, where such cover is available and required, the insurer agrees that the term 'insured' applies to each person comprising the insured as if a separate policy had been issued to them and that any non-disclosure or act or omission of one insured does not prejudice the right of any other insured to claim under the insurance.

**Provider must give evidence of insurance**

- 19.5. The Provider must provide evidence to satisfy the State that it has the insurance required under clause 19.2 in place within 10 Business Days after receipt of the State's written request, including:
- (a) certificates of currency and receipts for payment of each premium; and
  - (b) any other documents relating to the insurance, including policy terms.

**State may insure if the Provider fails to insure**

- 19.6. If the Provider fails to take out or maintain insurance as required under the Funding Documents, the State may effect the necessary insurance and recover the amount of the insurance premium from the Provider as a debt due to the State.

**Application of insurance proceeds**

- 19.7. The Provider must apply proceeds of the insurance in the way specified in the Funding Documents or, if not specified:
- (a) to make good the relevant loss covered by the insurance; or
  - (b) in any other way approved in writing by the State.

## 20. Records and audit

**Provider must keep accounts**

- 20.1. The Provider must keep complete and accurate accounts in relation to the Funding and the performance of its obligations under the Funding Documents, including:

- (a) records of its receipt and expenditure of the Funding, including separate and readily identifiable ledger accounts to record the Provider's receipt and expenditure of the Funding and Receipts; and
- (b) records of the performance of its obligations under each Funding Document.

**Provider must have accounts audited**

- 20.2. The Provider must, if requested by the State:
- (a) have its accounts kept under clause 20.1 audited by an independent auditor, and provide a copy of the audited accounts to the State within three months after the end of each financial year; and
  - (b) produce any document, bank statement, invoice or receipt connected with the Funding or works within one month after the request.

**Audit by the State**

- 20.3. The Provider must, no later than one month after the State's request, permit and provide persons nominated by the State (**Auditors**) access to the Provider's employees, premises, books, records, documents, computer systems, equipment and other property to enable the Auditors to:
- (a) inspect and copy:
  - (b) accounts kept under clause 20.1; and
  - (c) documents related directly or indirectly to the receipt or expenditure of the Funding or the performance of the Provider's obligations under the Funding Documents; and
  - (d) discuss with the Provider, any matter pertaining to the Funding or funded activities or the Provider's compliance with its obligations under the Funding Documents.
- 20.4. The Auditors may make copies of books, records, documents and other materials, and the Provider must provide the Auditors with the necessary facilities to enable them to do so.

**Provider must give evidence of compliance with laws**

- 20.5. Within 5 Business Days after the State's request, the Provider must give the State evidence of its compliance with laws, including:
- (a) any licences and approvals; and
  - (b) copies of documents recording work health and safety management systems that the Provider implements to comply with applicable work health and safety laws.

## 21. Inspection and access

**Provider must allow access**

- 21.1. The Provider must allow, on reasonable notice and during business hours (except in the case of emergencies) persons nominated by the State to access premises or Property where obligations under the Funding Documents are carried on, including the Provider's office and the Properties.
- 21.2. During access to premises or Property under clause 21.1, the Provider must make its employees or contractors available to answer questions about the Provider's operations.
- 21.3. The rights of access to any premises or Property which is subject of a lease under the *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* are subject to the Service Users' and Tenant's rights and entry notices required by law. The Provider must take

all action necessary to allow the State to enter any premises or Property in accordance with this clause.

**Purpose of access**

- 21.4. The State may access premises or Property under this clause to:
- (a) see if the Provider is complying with the Funding Documents;
  - (b) exercise its rights under the Funding Documents;
  - (c) exercise its rights under the State Security;
  - (d) undertake a condition assessment of a Funded Property to determine if the property is being adequately repaired and maintained; or
  - (e) do anything that the State is required to do under law.

## 22. Conflicts of interest

**Warranty no conflict**

- 22.1. The Provider warrants that no conflict of interest exists or is likely to arise in connection with the performance of the Funding Documents.

**Notice of conflict**

- 22.2. The Provider must:
- (a) promptly notify the State if any conflict of interest arises or, in the reasonable opinion of the Provider, has the potential to arise; and
  - (b) promptly take all steps necessary to prevent that conflict or potential conflict.
- 22.3. The Provider must provide the notification and take the steps under clause 22.2 as promptly as possible and, in any event, within 72 hours.

**Policy**

- 22.4. The Provider must keep and implement a policy about Conflicts of Interest of its executive officers, employees and volunteers. The policy must include guiding principles and procedures for identifying, declaring and dealing with Conflicts of Interest.

**Record**

- 22.5. The Provider must keep a record of each instance of a Conflict of Interest arising in the in relation to the Funding or Funding Documents and how the matter was dealt with.

**What conflicts include**

- 22.6. Conflicts of interest include:
- (a) any interest, affiliation or relationship or obligation, whether personal, financial, professional or otherwise, which conflicts or may reasonably have the potential to conflict or may reasonably be perceived as conflicting, with the ability of the Provider or its officers or employees to perform its obligations under the Funding Documents fairly and objectively; and
  - (b) leasing to or from, or selling to or purchasing from, the Provider's officers or employees.

## 23. Force majeure

### Notice, mitigating effects and suspension of obligations

- 23.1. If the performance by a party of an obligation under the Funding Documents is affected by an unavoidable delay due to a Force Majeure Event:
- (a) the party must:
    - (i) promptly give notice of that fact to the other party; and
    - (ii) do all things necessary to mitigate or remove the effects of the Force Majeure Event; and
  - (b) that obligation is suspended to the extent that the performance of the obligation is affected by the Force Majeure Event as long as the Force Majeure Event continues.
- 23.2. Notice of a Force Majeure Event must include:
- (a) the full particulars of the Force Majeure Event;
  - (b) the effect of the Force Majeure Event on the affected party's performance of their obligations;
  - (c) the anticipated period for which the Force Majeure Event will continue; and
  - (d) any action the affected Party intends to take to mitigate or remove the effect of the Force Majeure Event.

### Termination by State if performance prevented for 6 months

- 23.3. If the Provider is prevented from or delayed in performing its obligations under a Funding Document because of a Force Majeure Event for at least 6 months the State may, in its entire discretion, by notice to the Provider, terminate the Funding Document relating to the particular Capital Funded Property, Lease Property or Funded Services which can no longer be used or provided in accordance with the Funding Documents. Clause 28 applies in respect of that termination.

## 24. GST

### Payer must pay GST Amount

- 24.1. Subject to clause 24.2, if the whole or any part of any payment is consideration for a supply for which the payee is liable, or notionally liable, to GST, the payer must pay to the payee as additional consideration an amount equal to the GST Amount as follows:
- (a) if the payer is the Provider, the earlier of:
    - (i) the date on which the State issues the Provider with a Tax Invoice in respect of the payment; or
    - (ii) concurrently with the payment; or
  - (b) if the payer is the State, within 10 days of any ITC Refund Date.
- 24.2. The liability of the State under clause 24.1(a) is limited to the amount of the benefit of any Input Tax Credit entitlement that the State receives and retains in respect of the Supply.
- 24.3. If, for whatever reason, the Commissioner of Taxation determines that the State is not entitled to or disallows any Input Tax Credits referable to any GST Amount the State has paid to the Provider, the Provider will repay to the State an equivalent amount within 10

Business Days of the State notifying the Provider in writing of the Commissioner of Taxation's determination.

- 24.4. The payee will provide to the payer a Tax Invoice at the time at which any payment is made under this clause.
- 24.5. Clauses 24.1 to 24.4 do not apply to the extent that the consideration for the Supply is expressly stated to be GST inclusive.

#### **Reimbursement net of Input Tax Credits**

- 24.6. Where any indemnity, reimbursement or similar payment under the Funding Documents is based on any cost, it will be reduced by any Input Tax Credit entitlement, or notional Input Tax Credit entitlement in relation to the relevant cost.

#### **Non-monetary consideration**

- 24.7. The State is responsible for:
- (a) determining the value of all non-monetary consideration being provided by either party pursuant to the Funding Documents; and
  - (b) providing the Provider with all documents, evidence and information reasonably required by the Provider to support the value so determined.

#### **Recipient created tax invoices**

- 24.8. The Parties agree that:
- (a) the State can issue Tax Invoices in respect of supplies made by the Provider under or in connection with the Funding Documents; and
  - (b) the Provider will not issue Tax Invoices in respect of these supplies.
- 24.9. The Provider acknowledges that it is registered for GST when it enters into the Funding Documents and that it will notify the State if it ceases to be so registered.

#### **GST groups**

- 24.10. If a person is a member of a GST group, references to GST for which the person is liable and to Input Tax Credits to which the person is entitled include GST for which the representative member of the GST group is liable and Input Tax Credits to which the representative member is entitled.

#### **Adjustments**

- 24.11. If, for any reason, including without limitation:
- (a) any amendment to the GST legislation;
  - (b) the issue of a ruling or advice by the Commissioner of Taxation;
  - (c) a refund to the State or to the Provider in respect of a supply made under the Funding Documents; or
  - (d) a decision of any tribunal or court,
- the amount of GST paid by a party differs from the amount of GST paid or payable by the other party to the Commissioner of Taxation, then the other party must issue an appropriate GST adjustment note and any difference must be paid by or to the other party as the case may be.

#### **Exchange of information**

- 24.12. The parties agree to exchange such information as is necessary to enable each party to accurately assess its rights and obligations under this clause.

## 25. Dispute resolution

### Procedure

- 25.1. The Provider and the State agree to follow the following procedure prior to the commencement of litigation or other external dispute resolution procedure:
- (a) If either party notifies the other in writing that a dispute exists, then the parties will meet within 5 Business Days after receipt of the notice at a mutually convenient time and place or by telephone conference and attempt to resolve the dispute.
  - (b) If, after 5 Business Days after meeting in accordance with clause 25.1(a), the parties cannot resolve the dispute to their satisfaction as agreed in writing, then either of them may give notice of the inability to resolve such dispute to their respective nominated executives. Within 10 Business Days after receipt of the notice, the executives will meet at a mutually convenient place or by telephone or video conference and attempt to resolve the dispute.
  - (c) If after 10 Business Days the executives have not resolved the dispute to their satisfaction as agreed in writing, then either party may proceed in accordance with its remedies at law.
  - (d) The parties may agree to escalate the dispute to any level at any time, or to attempt to resolve the dispute through mediation.

### Continued performance of obligations

- 25.2. Notwithstanding the existence of a dispute, each party will continue to perform its obligations under the Funding Documents.

### Application of clause

- 25.3. This clause does not apply to exercising a right or making a decision in relation to a condition precedent to providing Funding or in relation to terminating Funding Documents.
- 25.4. Nothing in this clause prevents either party from commencing court proceedings relating to any dispute arising from the Funding Documents at any time where that party seeks urgent interlocutory relief.

## 26. Termination by the State

- 26.1. If:
- (a) a Termination Event occurs; or
  - (b) the Provider fails to remedy a breach of the General Terms within the timeframe specified by State in a notice given under clause 26.2,
- then the State may do one or more of the following:
- (c) terminate this Master Agreement and all Funding Documents on one month's written notice to the Provider;
  - (d) exercise all or any of its powers under the State Security in respect of one or more Capital Funded Properties; and
  - (e) demand from the Provider any amount directly necessary to remedy the breach by the Provider, including reasonable legal costs.

- 26.2. The State may give the Provider a notice to remedy breach if the Provider breaches the General Terms. The notice must specify:
- (a) the nature of the breach; and
  - (b) a reasonable timeframe in which the Provider must remedy the breach.

## 27. Termination by the Provider

- 27.1. The Provider may terminate this Master Agreement on one month's written notice to the State if all of the following conditions are met:
- (a) there is no Master Agreement Transition Deed in force between the State and the Provider;
  - (b) there are no Capital Funded Properties listed in Schedule 1 Part 1;
  - (c) there are no properties and no Proceeds of Sale listed in Schedule 1 Part 1;
  - (d) there are no Proceeds of Sale that remain unspent or unacquitted;
  - (e) there are no Leased Properties listed in Schedule 1 Part 2;
  - (f) there is no Service Funding listed in Schedule 1 Part 3;
  - (g) all Capital Funded Master Agreement Project Deeds have been terminated or otherwise have come to an end; and
  - (h) all Master Agreement Authorisation Deed Polls have been terminated or otherwise have come to an end.

## 28. Consequences of termination

### Termination of individual Funding Documents

- 28.1. A Capital Funded Property Operating Arrangement, Lease or Service Funding Arrangement may be terminated in accordance with its terms, but such termination will not affect any other Funding Document.

### Consequences in Funding Documents apply

- 28.2. Upon termination all the consequences of termination set out in the Funding Documents apply.

### Payment of unspent Receipts

- 28.3. Upon termination of a Funding Document, unless otherwise specified in the Funding Document, the Provider must pay to the State the Receipts for the Housing Service that the Provider has not spent.
- 28.4. Upon termination of the Master Agreement the Provider must pay to the State all Receipts (including Proceeds of Sale) that the Provider has not spent in accordance with the Master Agreement.

### Amounts payable upon termination are debts

- 28.5. An amount payable by the Provider to the State under a clause in a Funding Document relating to termination is a debt due and owing to the State by the Provider.

### Arrangements for Service Users and Tenants and records

- 28.6. In connection with any termination of a Funding Document, the Provider must cooperate with the State in relation to:

- (a) the process the Provider will employ to cease providing the Housing Services;
- (b) the continuity of provision of housing and services to the Service Users and Tenants; and
- (c) handling of records and information connected with the terminated Funding Document.

**No liability**

28.7. If a Funding Document is terminated for any reason the State will not be liable to pay the Provider compensation for any loss of profit or benefits that the Provider would have received had the termination not occurred.

**Survival of rights and clauses**

28.8. Termination of a Funding Document will not affect any rights or remedies already accrued to either party under, or in respect of any breach of, a Funding Document and will not relieve either party of any obligation under the Funding Document that is expressed to continue after termination or expiry.

28.9. The following clauses will survive termination of the Funding Documents:

- (a) Clause 12 (Reporting to the State).
- (b) Clause 15 (Right to information and privacy).
- (c) Clause 16 (Intellectual Property rights).
- (d) Clause 17 (Public Records).
- (e) Clause 18 (Indemnity).
- (f) Clause 20 (Records and audit).
- (g) Clause 24 (GST).
- (h) Clause 26 (Termination by the State).
- (i) Clause 27 (Termination by the Provider).
- (j) Clause 28 (Consequences of Termination).

## 29. Notices

**Must be in writing and addressed as set out in Agreement Particulars**

29.1. All notices in connection with the Funding Documents must be in writing and must be delivered to the address of the party set out in the Agreement Particulars by hand or prepaid post or emailed to its email address.

**When deemed to be given**

29.2. A notice will be deemed to be given:

- (a) if posted – 2 Business Days after the date of posting;
- (b) if delivered by hand during a Business Day– on the date of delivery; or
- (c) if emailed – on the date of the email,

except that an email or delivery received after 5:00 pm will be deemed to be given on the next Business Day.

**Address changes**

- 29.3. The parties may from time to time change their respective addresses, telephone and email addresses by providing the other party with written notice.

## 30. General provisions

**Approvals**

- 30.1. Approval or comment by the State on something submitted under the Funding Documents does not constitute a waiver or relieve the Provider from any requirements to obtain approvals under relevant laws.

**Compliance with all laws**

- 30.2. Both parties must comply with all relevant laws in performing their obligations under the Funding Documents.

**Remedying non-compliance**

- 30.3. If the Provider breaches the Funding Documents, the State may, at its entire discretion, remedy the breach, in which case the Provider must pay all of the State's reasonable costs and outlays of and incidental to remedying the breach. Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.

**Costs**

- 30.4. Each party must pay its own legal costs of and incidental to the preparation, negotiation and execution of the Funding Documents.
- 30.5. The Provider must pay to the State on demand any costs (including legal fees on a full indemnity basis) incurred by the State in the enforcement of the Funding Documents, or as a result of any breach by the Provider of the Funding Documents.

**Entire agreement**

- 30.6. The Funding Documents constitutes the entire agreement between the parties in relation to the Properties and Funded Services and supersedes all prior negotiations, arrangements and agreements.

**Execution**

- 30.7. The Funding Documents may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument. The Funding Documents may be signed electronically.

**Further assistance**

- 30.8. Each party must do all things reasonably required to give effect to the Funding Documents.

**Governing law**

- 30.9. The Funding Documents will be construed according to the law of Queensland and the parties agree to submit to the jurisdiction of the courts of Queensland.

**No agency or partnership**

- 30.10. The Provider will not by virtue of the Funding Documents be or become an agent or partner of the State or a joint venturer with the State and must not represent itself or allow itself to be represented as the State's agent, partner or joint venturer.

**No assignment**

- 30.11. The Provider agrees that it will not assign, transfer, subcontract or novate in whole or part or create any security interest over or otherwise deal with in any way its interest in the Funding Documents, without the prior written consent of the State whose decision will be final.

**Severability**

- 30.12. If any part of the Funding Documents is determined to be invalid, unlawful or unenforceable for any reason then that part will be severed from the rest of the Funding Documents and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

**Stamp duty**

- 30.13. The Provider must pay all stamp duty on the Funding Documents and any transaction, event or occurrence that is effected under or in relation to the Funding Documents except to the extent the Funding Document otherwise prescribes.

**Variation**

- 30.14. Except as expressly provided under the Funding Documents, the Funding Documents may be varied by agreement signed by both parties.

**Waiver**

- 30.15. No provision of the Funding Documents will be deemed to be waived unless that waiver is in writing and signed by the waiving party. Any failure by a party at any time to enforce a clause of the Funding Documents, or any forbearance, delay or indulgence granted by a party to the other will not constitute a waiver of the party's rights. A waiver by a party of a breach of any provision of the Funding Documents will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.

# Part B – Capital Funded Property Operating Terms

## 31. Definitions and interpretation

### Definitions

- 31.1. The definitions in the General Terms apply unless the same term is defined in these Capital Funded Property Operating Terms, in which case the definition in these Capital Funded Property Operating Terms applies.
- 31.2. In these Capital Funded Property Operating Terms, the following definitions apply:

**Encumbrance** a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement, set-off or any other arrangement having the commercial effect as a grant of security.

**Funded Purpose** for a Capital Funded Property, means the Funded Purpose for the Capital Funded Property set out in Part 1 of Schedule 1 of the Master Agreement.

**Housing Register** means the register of eligible customers for community housing services maintained by the State.

**Proceeds of Sale** for a Capital Funded Property, means the amount calculated in accordance with the following formula:

$$\text{Proceeds of Sale} = (\text{SP} - \text{F}) - (\text{SP} \times \text{Provider Offset Percentage})$$

Where:

SP is the sale price for the sale of a Capital Funded Property

F is the amount the Financier requires to release its interest in the Capital Funded Property

For clarity, the Proceeds of Sale cannot be a negative amount and, if a negative will be equal to zero dollars.

**Provider Contribution** for a Capital Funded Property, means the amount contributed by the Provider set out in Part 1 of Schedule 1 of the Master Agreement. The Provider Contribution must not be Funding,

Receipts or funds borrowed by the Provider that are secured by Funding or funded assets or serviced using Funding or Receipts.

<b>Provider Offset Percentage</b>	means the percentage of the Total Project Costs contributed by the Provider as the Provider Contribution, as specified in Part 1 of Schedule 1 of the Master Agreement.
<b>Right of First Refusal Period</b>	for a Capital Funded Property, is the period of 20 years from the Right of First Refusal Period Start Date for the Capital Funded Property specified in Part 1 of Schedule 1 of the Master Agreement.
<b>Special Conditions</b>	means the terms identified as ‘Special Conditions’ in Part 1 of Schedule 1 of the Master Agreement.
<b>Start Date</b>	means the date a Capital Funded Property becomes subject to a Capital Funded Property Operating Arrangement.
<b>Total Project Costs</b>	for a Capital Funded Property, means the Total Project Costs for the Capital Funded Property set out in Part 1 of Schedule 1 of the Master Agreement. The Total Project Costs represent the total of all financial contributions (including the value of any land contributed), being the State Funded Contribution, the Leveraged Financier Contribution and the Provider Contribution.
<b>Utilities</b>	means those services to the Capital Funded Property provided by the local government or by an external provider, including electricity, water and gas.

### Special Conditions

- 31.3. The Special Conditions are terms of a Capital Funded Property Operating Arrangement.
- 31.4. If there is an inconsistency between the Special Conditions and the other terms of a Capital Funded Property Operating Arrangement, the Special Conditions prevail to the extent of the inconsistency.

## 32. Term

- 32.1. A Capital Funded Property Operating Arrangement commences on the Start Date and continues indefinitely.

## 33. Warranties of Provider

### Warranties

- 33.1. The Provider warrants the following to the State:

- (a) **(Title)** That the Provider has (or will have if the Provider does not yet own the Capital Funded Property and will be purchasing it) an indefeasible title to the Capital Funded Property free from the following unless it is expressly permitted by a Transaction Document or approved in writing by the State:
  - (i) Encumbrances.
  - (ii) leases, other than letting Capital Funded Property to Tenants in accordance with Funding Documents and Social Housing Policy.
  - (iii) Claims, interests, public rights of way, easements or rights to occupy (other than leases to Tenants referred to in (ii)).
- (b) **(Queensland Heritage Register)** That the Capital Funded Property is not entered on the Queensland Heritage Register at the Start Date, unless the State first consents otherwise.
- (c) **(No assignment of or Encumbrance over Income)** That no rents, profits, entitlements, money or other consideration or any rights to receive those things in relation to the Capital Funded Property have been assigned or Encumbered except as expressly permitted by a Transaction Document or approved in writing by the State.

#### **Repetition of warranties each day**

- 33.2. The Provider repeats each warranty on each day that a Capital Funded Property Operating Arrangement is on foot in relation to the circumstances subsisting on each day.

## 34. Community Housing Assets

- 34.1. The Provider acknowledges that the Capital Funded Properties are Community Housing Assets.

## 35. Capital Funded Property as security

- 35.1. The Provider must not use Capital Funded Property as security for a loan unless the State has given the Provider written approval to use the Capital Funded Property as security for the loan.
- 35.2. The Provider agrees and acknowledges that the State is entitled to a first priority mortgage in respect of the Capital Funded Property, unless the State agrees otherwise in writing and enters into a Housing Asset Intercreditor Deed with the Provider and a Financier.
- 35.3. The Provider must not use Capital Funded Property as security for a loan where the purpose of the loan is to finance the provision of housing services outside Queensland.

## 36. Acknowledgements in relation to Capital Funded Property

- 36.1. The Provider acknowledges and agrees that in respect of each Capital Funded Property, and anything owned by the State in or on such properties:
- (a) the State has not given any warranty as to:
    - (i) the condition, quality or suitability of the property for any purpose;
    - (ii) the condition, structural soundness or repair of the property;

- (iii) whether the property is safe and without risk to the health and safety of any user at any time;
  - (iv) whether the property contains asbestos materials at any time;
  - (v) whether consents and approvals required from any authority for the use of the property have been obtained or complied with at any time;
  - (vi) the lawfulness of any use which the Provider proposes to make of the property; or
  - (vii) any matter, circumstance or thing which is not expressly stated in a Capital Funded Property Operating Arrangement.
- (b) the Provider takes its interest the property 'as is where is', subject to any defect, dilapidation or want of repair;
  - (c) the Provider has relied entirely on the Provider's own enquiries relating to, and inspections of the property and the use to which it may be put;
  - (d) the Provider has not entered into, any transaction or agreement in respect of the property in reliance on any representation, promise, warranty, express or implied statement or document made or provided by the State or on its behalf in respect of any matter relating to a property; and
  - (e) the Provider may not make any Claim in respect of a property in connection with its suitability or non-suitability for the Provider's expected or proposed uses.

## 37. Property use and rights

### Must use for the Funded Purpose

- 37.1. The Provider must use Capital Funded Property for the Funded Purpose at all times, including the Specified Policy Setting except as otherwise agreed with the State from time to time.
- 37.2. The Provider acknowledges that clauses 5 and 6 of the General Terms set out requirements that the Provider must comply with in relation to the use of the Capital Funded Property.

### Statutory requirements

- 37.3. The Provider:
  - (a) must comply with the 'prescribed requirements' under the Act and Regulation that apply to the Provider in relation to the Capital Funded Properties; and
  - (b) acknowledges that community housing assets under the Act must be transferred under section 37H of the Act if the Provider intends to apply for cancellation of its registration under the Act or the registrar cancels the Provider's registration under section 37G(4) of the Act.

### Restrictions

- 37.4. The Provider must not, except where expressly permitted under a Transaction Document do any of the following:
  - (a) **(No Encumbrances)** grant any right or Encumbrance over a Capital Funded Property in favour of any other person, or do or fail to do anything that may cause another person to hold such a right or Encumbrance;
  - (b) **(No sale of lease)** sell, transfer, lease, licence, grant an easement or option or otherwise dispose of any interest in, or part with possession of, the whole or any

part of the Capital Funded Property, other than by letting Capital Funded Property to Tenants in accordance with Funding Documents and Social Housing Policy;

- (c) **(No subdivision)** subdivide or amalgamate the Capital Funded Property;
- (d) **(Not to remove fixtures)** remove from the Capital Funded Property any fixture or alter any fixture, other than for the purposes of maintaining or repairing the fixture or the Capital Funded Property, provided that the removal or alteration:
  - (i) does not result in a decrease in the amenity or quality of premises for the Provider's tenants;
  - (ii) it is not structural removal;
  - (iii) is a necessary part of doing the things required to comply with obligations under a Capital Funded Property Operating Arrangement to repair the Capital Funded Property; and
  - (iv) would not result in any decrease in the market value of the Capital Funded Property;
- (e) **(Not to sell or assign or otherwise dispose of fixtures)** sell or assign or otherwise dispose of any fixture other than a fixture removed in accordance with clause 37.4(d);
- (f) **(Not prejudice)** do or fail to do anything as a result of which:
  - (i) the Capital Funded Property becomes liable to surrender, forfeiture or cancellation or prejudiced in any manner; or
  - (ii) the value of the Capital Funded Property is materially lessened;
- (g) **(Surrenders)** accept any surrender of any lease or licence of any part of the Capital Funded Property, other than by accepting the surrender of the letting of any Capital Funded Property to Tenants in accordance with Funding Documents and Social Housing Policy; or
- (h) **(Take any steps)** take any steps towards doing any of these things.

#### **Compliance with requirements relating to the Capital Funded Property**

37.5. The Provider must:

- (a) comply with all covenants and easements to which the Capital Funded Property is subject;
- (b) punctually pay all taxes, rates, duties or charges payable in respect of the Capital Funded Property or its use; and
- (c) provide to the State any summons, process, notice, order or other document received by the Provider from any government authority relating to or affecting the Capital Funded Property if the document or a matter dealt with in the document has or could have a Material Adverse Effect.

#### **Utilities**

37.6. The Provider:

- (a) is responsible for the connection of all Utilities to the Capital Funded Properties;
- (b) must promptly pay all charges for the Utilities;
- (c) must pay all authority charges in relation to the Capital Funded Properties; and

- (d) must within 20 Business Days of a request from the State, give proof of any payment of Utilities or authority charges to the State,

except to the extent these obligations are the responsibility of a Tenant under a tenancy agreement, the Social Housing Policy or the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).

### **Naming the Capital Funded Property**

- 37.7. If the Provider proposes to name the housing constructed or located on the Capital Funded Property or to change any existing name of the housing, the Provider must seek the State's prior written consent to the proposed name.
- 37.8. The Provider must:
  - (a) propose names for the State's consideration no later than 6 months' prior to Practical Completion or otherwise before any proposed name change is implemented; and
  - (b) consult, where appropriate, with the traditional owners, and community and support services relevant to the Capital Funded Property regarding any proposed name before making a proposal to the State.

## 38. Property condition

### **Health and safety and other laws**

- 38.1. The Provider must:
  - (a) comply with all laws and regulations in relation to the health and safety of persons using, entering or renting the Capital Funded Properties, including in compliance with the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld); and
  - (b) comply with all building and safety laws, regulations and standards in relation to the maintenance and repairs of the Capital Funded Property.

### **Regulation requirements**

- 38.2. The Provider must comply with its obligations under the Regulation in respect of the Capital Funded Properties, including its obligations to keep and implement an asset management plan as required by section 12 of the Regulation.

### **Provider must keep in good and tenantable repair and condition**

- 38.3. The Provider must, at its own cost, carry out all maintenance and repairs and keep the Capital Funded Property in good and tenantable repair and condition.
- 38.4. The Provider must make any repairs, additions and alterations to the Capital Funded Property needed to:
  - (a) keep the Capital Funded Property in good and tenantable repair and condition, except to the extent that it is the responsibility of the body corporate, in which case the Provider must take all reasonable steps to ensure the body corporate fulfils the responsibility;
  - (b) comply with all laws and directions given under them, including the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld); and
  - (c) comply with any notice in writing from the State to repair any defect in the condition of the Capital Funded Property.

**Property inspections and condition appraisals**

- 38.5. The Provider must, at its own cost, conduct:
- (a) an entry condition inspection for the Capital Funded Property at the commencement of each tenancy;
  - (b) annual inspections of the Capital Funded Property; and
  - (c) a condition appraisal inspection at least once every three years for the Capital Funded Property,
- in accordance with the Social Housing Policy.
- 38.6. A condition appraisal inspection must be carried out by a suitably qualified, licenced and insured tradesperson.
- 38.7. The Provider must prepare reports of the inspections undertaken on Capital Funded Properties and provide a copy of those reports upon request by the State.
- 38.8. The Provider must not store or produce dangerous goods (as defined in the Social Housing Policy) within the Capital Funded Property.

**No alterations without notification**

- 38.9. The Provider must:
- (a) notify the department within 30 days of making or permitting alterations or additions to the Capital Funded Property; and
  - (b) include in that notification, any information required to update Part 1 of Schedule 1 of the Master Agreement, where the alterations or additions result in a variation:
    - (i) to the contributions made by either party; or
    - (ii) to the number of dwellings.

**Standard of work**

- 38.10. When the Provider carries out repairs, any broken items must be replaced with similar items of a similar standard.
- 38.11. Any repair, maintenance, alteration or addition works must:
- (a) be in accordance with any plans and specifications approved by the State and all laws;
  - (b) be completed in a timely manner and in a manner to minimise, as far as reasonably practicable, interruption to tenants;
  - (c) be carried out in a tradesperson-like and lawful manner and, where required by law, by a qualified licensed tradesperson with adequate insurance cover; and
  - (d) use good quality, durable, low maintenance materials to cater for high wear and tear.
- 38.12. The Provider must ensure that purchases made and work undertaken in relation to the Capital Funded Properties:
- (a) represent good value for money, that is, a good return and performance for the money being spent; and
  - (b) are completed by tradespersons selected through fair and equitable means in accordance with Queensland Procurement Policy requirements, free from any conflict of interest.

**Encroachments**

- 38.13. If an improvement on a Capital Funded Property encroaches on an adjoining property not owned by the Provider the Provider must:
- (a) notify the State; and
  - (b) rectify the encroachment or obtain an easement for the encroachment.
- 38.14. If an improvement on an adjoining property not owned by the Provider encroaches on the Capital Funded Property the Provider must notify the State and:
- (a) if reasonably required by the State, remove the encroachment; or
  - (b) with the State's prior written consent, grant an easement for the encroachment.

**Caveats**

- 38.15. The Provider must remove from the title to the Land any caveats or prejudicial notifications which:
- (a) prohibits the recording of any interest of the Provider or the State in the Capital Funded Property or affects that interest; or
  - (b) protects an interest not permitted by a Capital Funded Property Operating Arrangement.

**Body corporate**

- 38.16. The Provider must not sign or register a community management statement for a community titles scheme without the State's prior written consent.
- 38.17. If the Capital Funded Property is part of a community titles scheme:
- (a) the Provider must:
    - (i) comply with body corporate by-laws for the community titles scheme; and
    - (ii) give the State a copy of any notice or other document that it receives relating to the body corporate that has or could have a Material Adverse Effect; and
  - (b) during the period an Event of Default subsists, the Provider must, unless otherwise approved in writing by the State, agree to or vote on body corporate matters in the way the State directs.

## 39. Sale of Capital Funded Property – Right of first refusal

- 39.1. This clause applies in respect of a Capital Funded Property for the Right of First Refusal Period for the Capital Funded Property.

**Provider must make first offer to the State**

- 39.2. The Provider must not sell or agree to sell the Capital Funded Property to any third party, unless the Provider has first offered in writing to sell the Capital Funded Property to the State at the following price (Offer):
- (a) the Market Value of the Capital Funded Property, inclusive of GST (if applicable) multiplied by the Provider Offset Percentage.
- 39.3. The Offer must:
- (a) state it is an offer made under clause 39.2;

- (b) state the date of the Offer;
  - (c) state the period during which the State may accept the Offer under clause 39.4;
  - (d) include the market valuation used to calculate the Offer price; and
  - (e) be in the form of the relevant Template as published by the State from time to time.
- 39.4. The Offer may be accepted by the State at any time up to, and including, the day that is 45 days after the date of the Offer.
- 39.5. The Provider must pay the costs of the valuation under clause 39.2(a).

**Sale to the State**

- 39.6. If the State accepts the Offer, the Provider and the State must enter into an appropriate standard REIQ or equivalent contract within 21 days after acceptance in writing by the State of the Offer. The contract must provide for the following:
- (a) a due diligence clause on terms satisfactory to the State that makes the contract conditional upon the State being satisfied of the outcome of its due diligence investigations within 60 days of the contract date;
  - (b) a finance clause on terms satisfactory to the State that makes the contract conditional upon the State obtaining finance approval within 60 days of the contract date;
  - (c) that the settlement date will be 60 days from the date the contract of sale becomes unconditional;
  - (d) any other conditions that the State requires to obtain clear title to the Capital Funded Property.
- 39.7. If there is a dispute regarding which standard contract is appropriate the dispute will be determined, at the request of either party, by the President of the Queensland Law Society or their nominee. The costs of the determination will be shared equally by the parties.
- 39.8. Clause 39.6 does not apply if, within 14 days after acceptance of an Offer by the State, the Provider notifies the State in writing that it no longer wishes to sell the Capital Funded Property. For the avoidance of doubt, if the Provider gives notice under this clause 39.8, this clause 39 will continue to apply to the Capital Funded Property and the Provider must give a notice under clause 39.2 if it subsequently decides to sell the Capital Funded Property.

**Sale to Third Party**

- 39.9. The Provider may sell the Capital Funded Property to a third party only if the State does not accept the Offer under clause 39.2 within 45 days of the date the State receives the Offer.
- 39.10. Any sale to a third party under clause 39.9 must be entered into by the Provider and the third party within 90 days after the date the State receives the Offer, or such longer period as agreed in writing by the State. Otherwise, the Provider must restart the process set out in this clause 39.
- 39.11. The Provider acknowledges that the General Terms, including clauses 5, 6 and 10, apply in relation to the Provider's use of the Proceeds of Sale.

## 40. Release of State Mortgage

### On Capital Funded Property being sold

- 40.1. The State will release the Capital Funded Property from the State Security for the purposes of a sale of the Capital Funded Property under clause 39.9 if:
- (a) no Housing Asset Intercreditor Deed remains in force in respect of the Capital Funded Property or arrangements have been made for satisfaction of the Housing Asset Intercreditor Deed terms;
  - (b) the Provider is not in breach of the Capital Funded Property Operating Arrangement; and
  - (c) suitable arrangements have been made for tenants of the Capital Funded Property in accordance with clause 42.
- 40.2. The Provider acknowledges that it continues to be bound by the Master Agreement (including clauses 5, 6 and 10 of the General Terms) in relation to the Proceeds of Sale and other Funding despite the release of any State Security.

### On request for release for the purpose of removing the property from the Master Agreement

- 40.3. The State will release the Capital Funded Property from the State Security and the terms of the Capital Funded Property Operating Arrangement if:
- (a) no Housing Asset Intercreditor Deed remains in force in respect of the Capital Funded Property or arrangements have been made for satisfaction of the Housing Asset Intercreditor Deed terms;
  - (b) the Provider is not in breach of the Capital Funded Property Operating Arrangement in respect of the Capital Funded Property being sold;
  - (c) suitable arrangements have been made for tenants of the Capital Funded Property in accordance with clause 42; and
  - (d) the Provider pays to the State the:
    - (i) Market Value of the Capital Funded Property;  
less
    - (ii) the Provider Offset Percentage multiplied by the Market Value of the Capital Funded Property.

## 41. Removal of Capital Funded Property from Master Agreement

- 41.1. If the Capital Funded Property is sold under clause 39, then:
- (a) the Provider must give written notice to the State as soon as practicable after settlement in the form of the relevant Template;
  - (b) the parties must sign an updated version of Schedule 1 of the Master Agreement that removes the Capital Funded Property and adds the Proceeds of Sale to Part 1 of Schedule 1; and
  - (c) notwithstanding the removal of a Capital Funded Property from the Master Agreement, the Master Agreement will continue to apply to the Proceeds of Sale.

- 41.2. If the Capital Funded Property is released under clause 40.3 then:
- (a) the Provider must give written notice to the State as soon as practicable after registration of the release has occurred in the form of the relevant Template; and
  - (b) the parties must sign an updated version of Schedule 1 of the Master Agreement that removes the Capital Funded Property.

## 42. Relocation of Tenants

- 42.1. Upon termination of a Capital Funded Property Operating Arrangement, the sale of the Capital Funded Property or the release of a Capital Funded Property under clause 40.3, the Provider must ensure that suitable accommodation arrangements are made for tenants of the Capital Funded Property to the satisfaction of the State, including by:
- (a) assisting tenants in the Capital Funded Property to relocate to alternative accommodation; and
  - (b) funding all expenses associated with the relocation.

## 43. Insurance

### **Provider must insure**

- 43.1. The Provider, at its own cost, must maintain effective insurance cover to the reasonable satisfaction of the State for the term of a Capital Funded Property Operating Arrangement, including a buildings and property policy for the Capital Funded Property.
- 43.2. The insurance under clause 43.1 must:
- (a) note the interests of the State in respect of the Capital Funded Property;
  - (b) cover the Provider's insurable interest in the Capital Funded Property;
  - (c) include insurance against loss, theft, damage or destruction to the extent those risks are insurable; and
  - (d) cover loss of rent, income, capital or other revenue derived from that loss, theft, damage or destruction to the extent such risks are insurable,
- in each case to the extent as is commercially appropriate.
- 43.3. The insurance under clause 43.1 need not be maintained to the extent that the Capital Funded Property forms part of a community titles scheme established under the Body Corporate Act and such insurance is the responsibility of the body corporate, in which case the Provider must use its best endeavours to ensure that the body corporate maintains that insurance.

### **Application of insurance proceeds**

- 43.4. The Provider must apply proceeds of the insurance in or towards:
- (a) the replacement or repair of the Capital Funded Property insured;
  - (b) the relevant loss covered by the insurance; or
  - (c) in any other way approved in writing by the State.

## 44. Termination by the Provider

- 44.1. The Provider may terminate a Capital Funded Property Operating Arrangement by notice in writing to the State if every Capital Funded Property subject to the Arrangement has been released from the State Security under clause 40.3.

## 45. Termination by the State

- 45.1. The State may give the Provider a notice to remedy breach if the Provider breaches any term of a Capital Funded Property Operating Arrangement. The notice must specify:
- (a) the nature of the breach; and
  - (b) a reasonable timeframe in which the Provider must remedy the breach.
- 45.2. If the Provider fails to remedy a breach of a Capital Funded Property Operating Arrangement within the timeframe specified by the State in a notice given under clause 45.1 then the State may either:
- (a) terminate the Capital Funded Property Operating Arrangement by written notice to the Provider; or
  - (b) remedy the breach by the Provider and recover all costs and expenses incurred as a debt due and payable,
- by written notice to the Provider.
- 45.3. If a Capital Funded Property Operating Arrangement is terminated by the State under clause 45.2 or is terminated automatically under clause 46 then, subject to the provisions of any Housing Asset Intercreditor Deed, the State may do one or more of the following:
- (a) exercise all or any of its powers under the State Security in respect of the Capital Funded Property the subject of the termination;
  - (b) demand from the Provider payment of the amount calculated as follows in respect of the Capital Funded Property the subject of the termination:
    - (i) the Market Value of that Capital Funded Property (inclusive of GST) (if applicable); minus
    - (ii) the Provider Offset Percentage multiplied by the Market Value of that Capital Funded Property;
  - (c) demand from the Provider any other amount directly necessary to remedy the breach by the Provider including, for example, costs and expenses incurred in maintaining the Capital Funded Property to the extent that the Provider has failed to comply with its maintenance obligations and reasonable legal costs.
- 45.4. If a Capital Funded Property Operating Arrangement is terminated by the State under clause 45.2 or is terminated automatically under clause 46 and the Provider holds any unspent Funding relating to the Capital Funded Property the subject of the termination, the Provider must pay that unspent Funding to the State within 10 Business Days after the termination.

## 46. Automatic termination on termination of Master Agreement

- 46.1. A Capital Funded Property Operating Arrangement automatically terminates on termination of the Master Agreement.

## 47. Consequences of termination

- 47.1. The following clauses will survive termination of a Capital Funded Property Operating Arrangement:
- (a) Clause 42 (Relocation of Tenants).
  - (b) Clause 45 (Termination by the State).
  - (c) Clause 47 (Consequences of termination).
- 47.2. The parties must sign an updated version of Schedule 1 to remove a Capital Funded Property if a Capital Funded Property Operating Arrangement is terminated.

# Part C – Authorisation Terms

## 48. Definitions and interpretation

### Definitions

- 48.1. The definitions in the General Terms and the Capital Funded Property Operating Terms apply unless the same term is defined in these Authorisation Terms, in which case the definition in these Authorisation Terms apply.
- 48.2. In these Authorisation Terms, the following definitions apply:

<b>Capital Funded Property</b>	means the property identified in Item 3 of the Deed Particulars.
<b>Deed Particulars</b>	means the deed particulars at the start of a Master Agreement Authorisation Deed Poll.
<b>Delivery Kit</b>	means the delivery kit as at the Start Date, being the document titled 'Delivery of Capital Grant Funded Construction Projects' and attached in Attachment 1 of the Master Agreement Authorisation Deed Poll.
<b>Development Approval</b>	means approvals, assessments or designations required or issued for the Project under the <i>Planning Act 2016</i> (Qld).
<b>Event of Default</b>	means an event described in clause 61.1.
<b>Funding</b>	means the funding comprised of accrued Receipts held by the Provider and set out in Item 9 of the Deed Particulars.
<b>Improvements</b>	means the housing and other improvements on the Land.
<b>Instalment Date</b>	means the date for draw down of an Instalment of Funding specified in Item 14 of the Deed Particulars.
<b>Instalments</b>	means the instalments of Funding specified in Item 14 of the Deed Particulars.
<b>Land</b>	means the land for the Capital Funded Property specified in Item 3 of the Deed Particulars.

<b>Master Agreement</b>	means the agreement specified in Item 1 of the Deed Particulars.
<b>Master Agreement Authorisation Deed Poll</b>	means a Master Agreement Authorisation Deed Poll signed by the Provider that incorporates these Authorisation Terms, including the Deed Particulars, terms and schedules and annexures and attachments.
<b>Milestones and Milestone Dates</b>	means the milestones and milestone dates specified in Item 13 of the Deed Particulars.
<b>Operation Date</b>	has the meaning given in clause 51.1(b).
<b>Payment Notification</b>	means a written notification from the Provider to the State of a Milestone completion upon which the Provider will be authorised to draw down the Funding in the amount of the Instalment corresponding to the completed milestone.
<b>Practical Completion</b>	means the date upon which: <ul style="list-style-type: none"><li>(a) the dwellings for the Project are fit for use and occupation by the Provider and tenants with construction of those dwellings being complete except for minor omissions and minor defects that do not affect use and occupancy; and</li><li>(b) all relevant statutory requirements have been complied with and certificates for those requirements have been obtained by the Provider.</li></ul>
<b>Project</b>	means the Project to be carried out in respect of the Capital Funded Property by the Provider, as described in Item 4 and Item 5 of the Deed Particulars, in accordance with the Delivery Kit and this Master Agreement Authorisation Deed Poll.
<b>Project Budget</b>	means the budget for the Project in Attachment 3.
<b>Project Costs</b>	mean the costs specified in Item 8 of the Deed Particulars.
<b>Project Use</b>	means providing Social Housing to eligible persons from the Housing Register, using all the funded Social Housing dwellings acquired or constructed under this Deed at the community housing Specified Policy Setting.

<b>Provider Contribution</b>	means the amount of funding contributed by the Provider towards the Total Project Cost, being the amount specified as the Provider Contribution in Item 11 of the Deed Particulars.
<b>Provider Offset Percentage</b>	means the percentage of the Total Project Costs contributed by the Provider as the Provider Contribution, as specified in the Deed Particulars.
<b>RCTI</b>	means a recipient created Tax Invoice.
<b>Start Date</b>	the date in Item 2 of the Deed Particulars.
<b>State Security</b>	means the security in favour of the State specified in Item 7 of the Deed Particulars, a copy of which is found in Attachment 2 of the Master Agreement Deed Poll.
<b>Total Project Costs</b>	mean the actual Project Costs incurred in delivering the Project, which, at the Start Date, are anticipated to be the amount specified as Total Project Costs in Item 11 of the Deed Particulars.
<b>Transaction Document</b>	has the meaning in the General Terms.
<b>Transfer Documents</b>	means the form of transfer under the <i>Land Title Act 1994</i> (Qld) required to transfer title in the land to the Provider.

### Interpretation

- 48.3. In the event of any inconsistency between provisions in different parts of this Authorisation Deed the provisions will prevail in the following descending order of precedence:
- (a) these Authorisation Terms;
  - (b) the Capital Funded Property Operating Terms incorporated into these terms under clause 50;
  - (c) the General Terms;
  - (d) the Deed Particulars;
  - (e) the Schedules; and
  - (f) any Annexures.
- 48.4. For the avoidance of doubt, an inconsistency does not arise simply because provisions state different requirements in relation to the same matter. In that case, all stated requirements apply.

## 49. General Terms apply

- 49.1. The General Terms are incorporated into and form part of the Master Agreement Authorisation Deed Poll.

## 50. Capital Funded Property Operating Terms that apply

- 50.1. The following clauses of the Capital Funded Property Operating Terms apply as if set out in these Authorisation Terms in full and the words 'Capital Funded Property Operating Arrangement' in those clauses were replaced with 'Master Agreement Authorisation Deed Poll':
- (a) Clause 33 (Warranties of Provider).
  - (b) Clause 34 (Community Housing Assets).
  - (c) Clause 36 (Acknowledgements in relation to Capital Funded Property).
  - (d) Clause 37 (Property use and rights).
  - (e) Clause 38 (Property condition).

## 51. Term and amendment of Master Agreement Schedule 1

### Term

- 51.1. A Master Agreement Authorisation Deed Poll:
- (a) commences on the Start Date; and
  - (b) continues until the date notified by the State to the Provider (**Operation Date**) as the date upon which the State is satisfied that:
    - (i) all Milestones have been completed;
    - (ii) the Provider has given a notice of completion under clause 59;
    - (iii) both parties have signed an updated Schedule 1 of the Master Agreement to include information about the Capital Funded Property in accordance with clause 59; and
    - (iv) the Provider has complied with its acquittal obligations under clause 58 (other than a final acquittal under that clause).

### Transition of Capital Funded Property to Capital Funded Property Operating Arrangement on completion of Project

- 51.2. On and from the Operation Date:
- (a) a Master Agreement Authorisation Deed Poll ends, except to the extent provided in clause 64; and
  - (b) the Capital Funded Property becomes subject to a Capital Funded Property Operating Arrangement.

**Due Diligence**

- 51.3. The Provider warrants to the State that:
- (a) it has undertaken appropriate Due Diligence investigations in respect of the Capital Funded Property and the Project;
  - (b) the results of those investigations were satisfactory; and
  - (c) the Capital Funded Property and the Project satisfy the Project Type Criteria.

**Obtaining contributions**

- 51.4. If Item 11 of the Deed Particulars indicates that the Provider will obtain part of the Provider Contribution from another organisation, the Provider must ensure that it obtains that part.
- 51.5. The Provider remains liable for making the Provider Contribution and the State is not required to contribute any additional amount.

## 52. State Security

**State entitled to first priority**

- 52.1. The Provider agrees and acknowledges that the State is entitled to a first priority mortgage in respect of the Capital Funded Property.

**Delivery of State Security**

- 52.2. The Provider must:
- (a) execute and deliver to the State the State Security by the date specified in Item 7 of the Deed Particulars as the State Security delivery date; and
  - (b) take all necessary steps to ensure that the State Security and all of its associated rights are enforceable by the State and that the State Security has the priority specified in Item 7 of the Deed Particulars.

## 53. Drawdown of Funding

**Drawing on Funding**

- 53.1. The Provider must not draw on any Funding held by the Provider until the Provider issues as Payment Notification to the State providing details of the completion of the Milestone for the Instalment.
- 53.2. The Provider must provide any further information about completion of a Milestone requested by the State within a reasonable timeframe specified by the State.

**Funding is only for Project Costs**

- 53.3. The Provider must use the Funding only for paying the reasonable costs of carrying out the Project to the extent that those costs constitute Project Costs and in accordance with the terms of this Master Agreement Authorisation Deed Poll.

## 54. Future funding

**No future funding**

- 54.1. The Provider acknowledges that the State's contribution is capped at the amount of Funding specified in Item 9 of the Deed Particulars and the State will not contribute any additional amount. Any expenditure incurred by the Provider in excess of the Funding is the

responsibility of the Provider. The Provider must complete the Project despite any additional expenditure required.

#### **Payment does not constitute acceptance of performance**

- 54.2. Provision of Funding does not constitute acceptance by the State that the Provider has complied with its obligations with this Master Agreement Authorisation Deed Poll.

#### **Requests to expend additional receipts**

- 54.3. The Provider must notify the State if it requires additional Funding to take into account escalations in building costs and increased financing costs that are beyond the Provider's control. The State may approve or refuse that request in its entire discretion and may require the Provider to enter into a deed of variation as a condition of any approval. Any additional Funding will be in the form of Receipts and no new monetary funding will be provided by the State.

## 55. Purchase

#### **When this clause applies**

- 55.1. This clause 55 applies to the Capital Funded Property if the Deed Particulars indicate that the Project for the Capital Funded Property is or includes the purchase of the Capital Funded Property.

#### **Provider cannot use all Funding before settlement**

- 55.2. The Provider may use part of the Funding to pay a deposit under a contract of sale for the purchase of Capital Funded Property. The amount of the deposit must be reasonable having regard to standard commercial practice for the purchase of similar properties.
- 55.3. The balance of Funding may only be used by the Provider to pay the balance purchase price at settlement of the purchase of the Capital Funded Property.

#### **Information about contracts of sale**

- 55.4. The Provider must give the State a copy of the contracts of sale for the Provider's purchase of the Capital Funded Property. The Provider must promptly give the State any additional information about the contracts or the Capital Funded Property reasonably requested by the State, including notification of the settlement date, place and time.

#### **Maximum Funding**

- 55.5. Despite any other clause:
- (a) any Funding for the purchase of the Capital Funded Property must not exceed the Market Value of the Capital Funded Property; and
  - (b) the amount of Funding drawn down under clause 55.3 must not exceed the adjusted balance purchase price less the deposit.

#### **State will attend settlement**

- 55.6. The State will attend the settlement of the purchase of the Capital Funded Property to ensure the State's Security is registered on title.
- 55.7. Before the settlement of the purchase of the Capital Funded Property, the Provider must deliver to the State:
- (a) the State Security executed by the Provider; and

- (b) a receipt issued by, or on behalf of, the seller stating the amount of the deposit paid by the Provider under the contract of sale.
- 55.8. The Provider must:
- (a) collect, at settlement of the purchase of the Capital Funded Property:
    - (i) the Transfer Documents fully executed and stamped; and
    - (ii) a release of any mortgage, caveat or other encumbrance over the Capital Funded Property, other than any easement or other encumbrance that the State agrees in writing may remain; and
  - (b) after settlement, register the Transfer Documents, releases and the State's Security and provide a copy of the registration confirmation statement to the State promptly.
- 55.9. The Provider must:
- (a) promptly answer any requisition issued by the registrar of titles in respect of the lodgement for registration of the Transfer Documents and State Security; and
  - (b) pay any requisition fees in respect of those requisitions.

#### **What happens if settlement does not occur by the Milestone Date**

- 55.10. If settlement of the Provider's purchase of the Capital Funded Property does not occur by the Milestone Date for that settlement, then:
- (a) the Provider must promptly notify the State of the reason for the delay and the proposed new settlement timeframe;
  - (b) the State may, in its discretion, either:
    - (i) agree to extend the Milestone Date; or
    - (ii) terminate the Master Agreement Authorisation Deed Poll by written notice to the Provider, in which case clause 63 will apply.

## 56. Purchase of Vacant land

- 56.1. This clause applies if the Deed Particulars indicate that the Project for the Capital Funded Property includes the purchase of vacant land.
- 56.2. The Provider will have a maximum of three years from the date of settlement of vacant land purchased to have contracted the delivery of new social housing on the vacant land acquired.
- 56.3. If after three years, the Provider has not contracted the delivery of new social housing on the vacant land acquired, the Provider must immediately sell the land.
- 56.4. All proceeds of sale from the sale of the vacant land in accordance with clause 56.3 are deemed to be Proceeds of Sale as defined in the Capital Funded Property Operating Terms and must be reinvested into new social housing supply within 90 days of settlement of the sale of the vacant land and in accordance with the Social Housing Policy, unless otherwise agreed by the State.

## 57. Construction

### When this clause applies

- 57.1. This clause 57 applies if the Deed Particulars indicates that the Project for the Capital Funded Property is or includes construction.

### Provider must comply with the Delivery Kit

- 57.2. The Provider must comply with all obligations under the Delivery Kit. For the avoidance of doubt, if there is an inconsistency between the provisions in this Master Agreement Authorisation Deed Poll and provisions in the Delivery Kit, the provisions of this Master Agreement Authorisation Deed Poll will prevail to the extent of the inconsistency.

### Payment of Instalments

- 57.3. The Provider may draw down each Instalment of the Funding (other than an Instalment that has been drawn down under clause 55) to the Provider on the Instalment Date, subject to:
- (a) the Provider delivering a Payment Notification to the State of a Milestone completion; and
  - (b) the completion of any Milestone that is scheduled to be completed by the relevant Instalment Date and any Reports due before the Instalment is to be paid.

### Information for Payment Notification

- 57.4. A Payment Notification under clause 57.3 must include:
- (a) a brief report signed on behalf of the Provider setting out the Instalment number and Instalment date, the Milestones which have been completed for the relevant period and Reports due before the Instalment is to be paid;
  - (b) a description of each Milestone achieved for the relevant period and, if applicable, evidence of completion of the Milestone;
  - (c) the amount of total expenditure by the Provider on Project Costs to date and a statement itemising each item of expenditure of the Funding received by the Provider, including breakdowns of expenditure on each Improvement, project management costs and construction costs with a breakdown by trade;
  - (d) the total number of claims submitted by the Provider and the total amount already paid by the State up to the date of the claim;
  - (e) the amount of the budget remaining for the Project out of the Project Budget, excluding the amount of the claim; and
  - (f) in the absence of an RCTI – a Tax Invoice for the amount of the claim;
  - (g) if there is an RCTI agreement – a letter requesting the funds required for payment of the attached certified invoices;
  - (h) a copy of the contractor's claim and invoice;
  - (i) a copy of the Project Manager's certification;
  - (j) before and after photographs of construction milestones which have been achieved;
  - (k) confirmation that the Provider Contribution has been fully expended on Project Costs before accrued Receipts have been used;

- (l) a declaration signed on behalf of the Provider testifying that the information submitted in support of the claim is accurate; and
- (m) any other information and material reasonably requested by the State relating to the Project for which the Instalment is claimed.

**Request for early payment of Instalment**

57.5. The Provider may request approval from the State to draw down on an Instalment before the relevant Instalment Date and completion of the relevant Milestone in exceptional circumstances. The State may approve or not approve any such request in its absolute discretion.

**Requirements to carry out the Project**

- 57.6. The Provider must:
- (a) carry out the Project on the Capital Funded Property in accordance with the Master Agreement Authorisation Deed Poll, and the Delivery Kit;
  - (b) achieve Practical Completion of the Project by the Milestone Date for Practical Completion specified in Item 13 of the Deed Particulars;
  - (c) use its best endeavours to achieve all other Milestones by the Milestone Dates;
  - (d) give the State information about the progress of the Projects as required by the State;
  - (e) ensure that the Capital Funded Property is used for Housing Services in accordance with the General Terms and Capital Funded Property Operating Terms promptly after Practical Completion and, in any event, within one month after Practical Completion, unless otherwise approved by the State; and
  - (f) notify the State when the Capital Funded Property is first used for Housing Services within 5 Business Days after it is first used for Housing Services.
- 57.7. The Provider must ensure that purchases made for the Project and work carried out on the Project:
- (a) represent good value for money, that is, a good return and performance for the money being spent; and
  - (b) are completed by appropriately licensed contractors selected through fair and equitable means, free from any conflict of interest.
  - (c) The Provider must spend the Funding only on the reasonable costs of carrying out the Project incurred in accordance with the Project Budget.

**Failure to complete construction by Milestone Date for Practical Completion**

- 57.8. The Provider must complete construction of each Project by the Milestone Date for Practical Completion for that Project. If construction of the Project has not been completed by that date then, subject to clause 57.9, the State may terminate the Master Agreement Authorisation Deed Poll immediately by written notice to the Provider and clause 63 will apply.
- 57.9. If construction of the Project has not been completed by that date but the delay in the completion of construction was delayed through circumstances beyond the control of the Provider, then the State may give the Provider a notice to complete construction which states that:
- (a) this clause 57.9 applies; and

- (b) unless an alternative remedy is agreed in writing between the parties, the Provider must complete construction within 20 Business Days of receipt of the notice, or another date as approved in writing by the State.
- 57.10. If the Provider fails to complete construction by the date stipulated in the notice given under clause 57.9, the State may terminate the Master Agreement Authorisation Deed Poll by written notice to the Provider and clause 63 will apply. This clause applies despite clause 23 (Force Majeure) of the General Terms.

## 58. Acquittals

- 58.1. The Provider must prepare an acquittal for the Project as soon as practical:
- (a) in accordance with the Delivery Kit; or
  - (b) if the Delivery Kit does not apply, in accordance with the requirements notified by the State to the Provider.
- 58.2. If the final acquittal identifies that either:
- (a) the Contributions in Item 11 of the Deed Particulars exceed Total Project Costs; or
  - (b) the Total Project Costs are more than Contributions in Item 11 of the Deed Particulars,
- then the Provider must:
- (c) confirm the amount of unspent project funds or the amount the Total Project Costs exceed the Contributions in writing to the State; and
  - (d) the contributions outlined in Schedule 1 Part 1 of the Master Agreement will be adjusted accordingly by the parties signing an updated Schedule 1 of the Master Agreement in accordance with clause 59.
- 58.3. For the purpose of calculating actual costs in delivering the Project, Input Tax Credits that the Provider can claim are excluded.

## 59. Project Completion Process

- 59.1. The Provider must give the State notice of completion of the Capital Project in accordance with clause 9.4 of the General Terms.
- 59.2. Following submission of the notice of completion, the parties will:
- (a) identify and agree what, if any, changes to the information set out in Item 15 of the Deed Particulars are required following completion of the Capital Project, including in relation to property description, contributions and Provider Offset Percentage; and
  - (b) sign an updated version of Schedule 1 of the Master Agreement to include the information in Item 15 of the Deed Particulars with any agreed amendments.

## 60. State's step in rights

- 60.1. In addition to any other right or remedy of the State, if, at any time:
- (a) the Provider has been given a notice under clause 61.1(c) in respect of a Capital Funded Property and failed to remedy the breach within the time stipulated in the notice;

- (b) a Master Agreement Authorisation Deed Poll ends for any reason in full or in respect of the Capital Funded Property;
- (c) in the opinion of the State, the Provider has ceased to be capable of performing its obligations under a Master Agreement Authorisation Deed Poll,

then the State may, itself or through a nominee, do either or both of the following by notice to the Provider:

- (d) step-in and take control or management of the Capital Funded Property or part of it; and
  - (e) make any other arrangements considered necessary by the State to comply with the Master Agreement Authorisation Deed Poll.
- 60.2. The State may, by giving 5 Business Days' notice to the Provider, step-out and return control or management taken by the State or reverse arrangements made under this clause.
- 60.3. The State may recover all of its costs associated with exercising its rights under this clause as a debt due from the Provider.

## 61. Termination by the State

### Events of Default

- 61.1. Each of the following is an Event of Default whether or not the cause is beyond the control of the Provider or any other person:
- (a) **(Default under a Master Agreement)** Any event occurs that entitles the State to terminate the Master Agreement.
  - (b) **(Failure to pay)** The Provider does not pay any amount payable by it at or before the due time on the due date and in the manner specified in any Transaction Document unless its failure to pay is caused by a technical or administrative error by a bank or financial institution in the transmission of funds and payment is made within 2 Business Days of its occurrence.
  - (c) **(Failure to remedy default under Transaction Document)** The Provider defaults in performing or observing any provision of any Transaction Document (other than a provision requiring the payment of money as contemplated by clause 61.1(b) or any other provision specifically referred to in this clause 61), and if that default is capable of remedy it has not been remedied within 20 Business Days of its occurrence.
  - (d) **(Use of Capital Funded Property for other purposes)** The Provider uses a Capital Funded Property for purposes other than the purposes required under the Master Agreement Authorisation Deed Poll;
  - (e) **(Default under State Security)** Any event of default, howsoever described, occurs under the State Security.
  - (f) **(Untrue warranty)** Any representation, warranty or statement made in any Transaction Document or in any document issued under any Transaction Document is proved to be untrue in any material respect when made.
  - (g) **(Breach of undertaking)** The Provider breaches any undertaking given at any time to the State or fails to comply with any condition imposed by the State in agreeing to any matter (including any waiver).

- (h) **(Void or voidable)** Any Transaction Document is, becomes or is claimed by the Provider to be, partly or wholly, invalid, void, voidable, unenforceable or of limited force and effect.
- (i) **(State Security)** A State Security does not create the Encumbrance it purports to create or that Encumbrance ceases to have the priority it purports to have.
- (j) **(Repudiation)** The Provider repudiates or evinces an intention to repudiate, any Transaction Document.
- (k) **(Illegality)** At any time it is unlawful for the Provider to perform any of its obligations under any Transaction Document.
- (l) **(Reduction in capital)** The Provider takes action to reduce its share capital.

#### What the State may do on an Event of Default

61.2. If an Event of Default occurs in relation to a Capital Funded Property the State may terminate the relevant Master Agreement Authorisation Deed Poll by written notice to the Provider.

61.3. If:

- (a) an Event of Default occurs; or
- (b) a Master Agreement Authorisation Deed is terminated by the State under clauses 55.10, 57.8, 57.10 or 61.2, or automatically terminates under clause 62,

then the State may do one or more of the following:

- (c) exercise all or any of its powers under the State Security in respect of the Capital Funded Property subject to the Master Agreement Authorisation Deed Poll; and
- (d) demand from the Provider any amount directly necessary to remedy the breach by the Provider including, for example, costs and expenses incurred in maintaining the Capital Funded Property to the extent that the Provider has failed to comply with its maintenance obligations and reasonable legal costs.

## 62. Automatic termination on termination of Master Agreement

62.1. A Master Agreement Authorisation Deed Poll automatically terminates on termination of the Master Agreement, in which case, the Provider must immediately repay to the State an amount equal to the total Funding stated in Item 9.

## 63. Consequences of expiry or termination

63.1. This clause 63 applies if this Project Deed is terminated by the State under:

- (a) clauses 55.10, 57.8, 57.10 or 61.2 of the Authorisation Terms; or
- (b) clause 23.3 of the General Terms.

63.2. Amounts required to be repaid by the Provider to the State under this clause 63 are debts due to the State.

#### Receipts/Proceeds of Sale

63.3. If any Funding comprised of Receipts or Proceeds of Sale (as stated in Item 9 of the Deed Particulars) was used by the Provider to pay the purchase price of the Land, then within 60

days after termination of a Master Agreement Authorisation Deed Poll, the Provider must, at the Provider's option, either:

- (a) repay to the State the amount of Receipts or Proceeds of Sale used to pay the purchase price of the Land; or
- (b) transfer the Land to the State.

63.4. No amount is payable by the State to the Provider in respect of a transfer under clause 63.3(b).

63.5. Clauses 63.3 and 63.4 apply despite any other clause and apply even if the Provider is not in breach of the Master Agreement Authorisation Deed Poll.

63.6. The State will (in its absolute discretion) provide a written direction to the Provider, in respect of any part of the Funding comprised of Receipts or Proceeds of Sale (as stated in Item 9 of the Deed Particulars) to either:

- (a) retain and continue to manage the Receipts/Proceeds of Sale in accordance with the terms of the Master Agreement, in which case that part of the Funding will be subject to the terms of the Master Agreement as Receipts or Proceeds of Sale (as the case may be), including clauses 5, 6 and 10 of the General Terms; or
- (b) pay an amount equal to that part of the Funding comprised of Receipts/Proceeds of Sale to the State within 10 Business Days after the termination,

and the Provider must comply with the direction. The parties will, if necessary, sign an updated version of Schedule 1 of the Master Agreement.

63.7. Clause 63.6 does not apply to:

- (a) any amount of the Receipts or Proceeds of Sale that are referred to in clause 63.3(a); or
- (b) any amount of the Receipts or Proceeds of Sale that has been spent by the Provider in accordance with the Authorisation Deed before the date of termination, provided the Provider is not in breach of the Authorisation Deed at the date of termination.

#### **Funded Land**

63.8. If the Land was subject to a Capital Funded Property Operating Arrangement under the Master Agreement immediately before execution of the Master Agreement Authorisation Deed, then the State may (in its absolute discretion), by written notice to the Provider, elect to either:

- (a) require the Land to revert back to a Capital Funded Property Operating Arrangement under the Master Agreement, in which case:
  - (i) if clause 10.5 of the General Terms applied to the Capital Funded Property – on the date of termination, the suspension of the Capital Funded Property Operating Arrangement ends and the Land reverts to being a Capital Funded Property subject to a Capital Funded Property Operating Arrangement under the Master Agreement; or
  - (ii) if clause 10.6 of the General Terms applied to the Capital Funded Property – the parties must sign an updated version of Schedule 1 of the Master Agreement to reflect that, on the date of termination, the Land reverts to being part of the Capital Funded Property and is subject to Capital Funded Property Operating Arrangement under the Master Agreement; or

- (a) require the Provider to repay the amount calculated in accordance with the following formula, in which case, the Provider must pay the amount to the State within 10 Business Days after the termination:

Repayment amount = MV minus POP

Where:

MV = the Market Value of the funded land (as identified in Item 9 of the Deed Particulars)

POP = the Market value of the funded land multiplied by the Provider Offset Percentage

## 64. Survival of clauses

64.1. The following clauses will survive expiry or termination of a Master Agreement Authorisation Deed Poll:

- (a) Clause 49 (General Terms apply).
- (b) Clause 50.1 (Capital Funded Property Operating Terms that apply).
- (c) Clause 52 (State Security).
- (d) Clause (e) and (f) (use of Capital Funded Property).
- (e) Clause 58 (Acquittals).
- (f) Clause 60 (State's step in rights).
- (g) Clause 61 (Termination by the State).
- (h) Clause 63 (Consequences of expiry or termination).
- (i) Clause 15 of the Delivery Kit (Post Construction).
- (j) Clause 16 of the Delivery Kit (Insurance).

# Part D – Lease Terms

## 65. Definitions

### Definitions

65.1. The definitions in the General Terms apply unless the same term is defined in these Lease Terms, in which case the definition in these Lease Terms applies.

65.2. In these Lease Terms, the following definitions apply:

<b>Benchmark Condition</b>	has the meaning given in clause 73.2.
<b>Building</b>	means the building and all other improvements (other than the Provider's Property) on the Land and includes the Services.
<b>Commencement Date</b>	means the commencement date in Part 2 of Schedule 1 of the Master Agreement.
<b>Encumbrance</b>	a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement, set-off or any other arrangement having the commercial effect as a grant of security.
<b>End Date</b>	means the end date in Part 2 of Schedule 1 of the Master Agreement.
<b>Land</b>	means the land described in Part 2 of Schedule 1 of the Master Agreement.
<b>Non Standard Equipment</b>	means each of the following services and plant that are in the Premises at the Commencement Date: <ul style="list-style-type: none"> <li>(a) microwaves, range hoods, dishwashers, washing machines, clothes dryers, air-conditioning and televisions; and</li> <li>(b) any other item that is notified by the State to the Provider in writing before the Commencement Date.</li> </ul>
<b>Permitted Use</b>	means the provision of housing to tenants, through tenancy agreements, in accordance with the relevant Specified Policy Setting for the Premises stated in Part 2 of Schedule 1 of the Master Agreement.

<b>Premises</b>	means the premises described in Part 2 of Schedule 1 of the Master Agreement, including the Premises Improvements and, in absence of any provision to the contrary, references to the Premises include any part of the Premises.
<b>Premises Improvements</b>	means the State's Improvements and the Provider's Improvements.
<b>Provider's Employees</b>	means the Provider's employees, officers, consultants, agents, contractors, invitees, volunteers and anyone in or on the Premises because of the Provider's use of the Premises, or any of them.
<b>Provider's Improvements</b>	means all improvements, fixtures and fittings on the Premises, excluding the State's Improvements, improvements towards which the State has contributed Funding, improvements purchased or improved using Receipts and items owned by a third party. The Provider's Improvements do not include any structural alterations or improvements to the Premises.
<b>Provider's Property</b>	means all plant, equipment, furniture, furnishings, signs and other property in the Premises that is not the State's property or Services.
<b>Queensland Government Insurance Fund or QGIF</b>	means the Queensland Government self-insurance scheme.
<b>Rent</b>	means \$1.00 per annum.
<b>Services</b>	means the services to or in the Premises, supplied by any authority, the State or any person the State authorises and include gas, electricity, water, sewerage, drainage, lifts, escalators, telecommunications, fire control and Non Standard Equipment.
<b>Special Conditions</b>	means the special conditions in Part 2 of Schedule 1 of the Master Agreement.
<b>State's Improvements</b>	means all improvements, fixtures and fittings provided by the State to the Premises at the start of or during the Term.

**Statutory Charges**

means rates, charges and other levies payable to the local government or other authority, including:

- (a) rates and charges for the provision or reticulation of water, sewerage and drainage services;
- (b) rates, charges and other levies for the provision of rubbish removal; and
- (c) levies, contributions and other amounts for, or on account of fire protection services.

**Statutory Requirements**

means inspections, maintenance or repair work that is required by law, including in relation to:

- (a) prescribed fire safety installations within the meaning in Queensland Development Code (QDC) MP 6.1 – Commissioning and maintenance of fire safety installations (MP 6.1) where MP 6.1 applies for the maintenance of those installation, including:
  - i. Air Handling systems including Monoxide Detection and Ventilation Systems
  - ii. Emergency Lighting
  - iii. Emergency power supply
  - iv. Emergency warning and intercommunication systems
  - v. Exit signs
  - vi. Fire Detection and alarms systems
  - vii. Fire Doors
  - viii. Fire mains
  - ix. Fire Shutters
  - x. Fire extinguishers
  - xi. Fire hose reels and Fire Hydrants (including boosters)
  - xii. Smoke and heat venting systems, and Smoke exhausts systems
  - xiii. Fire and Smoke doors sets
  - xiv. Special automatic fire suppression systems
  - xv. Sprinklers
  - xvi. Stairwell pressurisation system;
- (b) thermostatic mixer valves;
- (c) backflow prevention valves;
- (d) grease traps;
- (e) sewer treatment systems;

- (f) heating, ventilation and air conditioning (HVAC) systems;
- (g) automatic door openers
- (h) pumping systems; and
- (i) lifts that must be registered with Workplace Health and Safety Queensland (WHSQ) under the *Work Health and Safety Regulation 2011* (Qld).

**Structural Work**

means structural repairs to address issues that directly impact the Building's ability to withstand loads and environmental factors, including:

- (a) foundation repair to address cracks, settling or shifting in a building foundation where such issues compromise the entire structure;
- (b) wall repair to fix structural cracks, bowing or leaning in load-bearing walls that are essential for support of the building (excluding cosmetic crack repairs);
- (c) roof repair to address structural issues of the roof structure, such as sagging, damaged trusses or compromised support systems;
- (d) concrete repair to address concrete deterioration, including spalling, cracking and corrosion that weaken the structure of the building (excluding paths and driveways).

Structural Work does not include general repairs and maintenance.

**Tenant**

means a person who resides within the Premises under a tenancy agreement from the Provider or otherwise with the permission of the Provider.

**Term**

means the period from the Commencement Date to the End Date.

**Utilities**

means those services to the Premises provided by the local government or by an external provider, including electricity, water and gas.

**Special Conditions**

- 65.3. The Special Conditions are terms of a Lease.
- 65.4. If there is an inconsistency between the Special Conditions and the other Lease Terms, the Special Conditions prevail to the extent of the inconsistency.

## 66. General Terms apply

66.1. The General Terms are incorporated into and form part of a Lease.

## 67. Lease

67.1. The State leases the Premises to the Provider for the Term under a Lease.

## 68. Permitted use

### Use of Premises

68.1. The Provider must not use, permit or allow the Premises to be used for any purpose other than for the Permitted Use.

### Approvals for Permitted Use

68.2. The Provider must obtain and renew as required, all approvals, consents and permissions required by law for the Provider to use and occupy the Premises for the Permitted Use.

### Restrictions on dealings

68.3. The Provider may sublet or license the Premises to Tenants for the Permitted Use.

68.4. The Provider must not assign, sublet, license or part with possession of the Premises, or deal with, or grant any Encumbrance over, its interest in, the Premises in any other way unless approved in writing by the State in the State's entire discretion.

68.5. When making a request for approval, the Provider must give full details of the proposed assignment, subletting, license or other proposal to the State, including:

- (a) the name of the proposed assignee, sublessee or licensee;
- (b) details of the business and financial position of the proposed assignee, sublessee or licensee;
- (c) evidence of the financial standing and good character of the proposed assignee, sublessee or licensee including:
  - (i) information about the financial standing and capability of the proposed assignee, sublessee or licensee, including audited financial statements for the past 3-5 years and bank references; and
  - (ii) information about the proposed assignee, sublessee or licensee's previous trading history and experience; and
- (d) any other information reasonably required by the State.

68.6. The approval may be on conditions determined by the State in its entire discretion and the Provider must comply with those conditions.

68.7. The Provider must ensure that tenancies entered into by the Provider with a Tenant:

- (a) expire before the end of the Lease Term; and
- (b) contain terms that are consistent with the Provider's obligations under this Lease.

## 69. Rent

69.1. The Provider must pay the Rent to the State if and when demanded.

## 70. Outgoings

### Provider must pay or reimburse

- 70.1. The Provider must pay all:
- (a) Statutory Charges for the Premises; and
  - (b) other statutory levies and charges payable by the occupier of the Premises.
- 70.2. If an amount under clause 70.1 is levied on the State, then the State must notify the Provider as soon as practicable and the Provider must:
- (a) reimburse the State for the amount, if the State provides the Provider with evidence of payment of the amount; or
  - (b) pay the amount at the State's direction, by the later of:
    - (i) the due date for payment by the State; and
    - (ii) the date which is 30 days after the Provider is called upon by the State to pay the amount.

### Pro-rata adjustment

- 70.3. If an amount referred to in clause 70.1 relates to more than the Premises, then a pro-rata adjustment, as bona fide determined by the State, must be made and the Provider will be responsible for its reasonable share of the amount calculated as the proportion that the Premises bears to the area to which the amount relates.

### Utilities

- 70.4. In respect of Utilities provided to the Premises, the Provider is responsible for:
- (a) establishing accounts in its own name wherever possible; and
  - (b) paying all fees and charges for the use of the Utilities.

## 71. Use of appurtenances

### Use of appurtenances only for purpose for which they were constructed

- 71.1. The Provider must not:
- (a) use the water closets, drains and other water apparatus and other appurtenances (appurtenances) in the Premises for any purposes other than those for which they were constructed; and
  - (b) place any sweepings, rubbish, rags, ashes or other deleterious substances in the appurtenances.

### No interference with appurtenances

- 71.2. Except as otherwise provided in this Lease (including to comply with the Provider's repair and maintenance obligations) the Provider must not interfere with any appurtenances, pipes, water supply, gas, electrical, plumbing or other services contained in or about the Premises without the prior consent of the State.

**No overloading electricity**

- 71.3. Without the prior consent of the State, the Provider must not install any electrical equipment on the Premises that overloads the cables, switchboards, or sub-boards through which electricity is conveyed to the Premises.

## 72. Acknowledgements in relation to Premises

- 72.1. The Provider acknowledges and agrees that in respect of the Premises, and anything owned by the State in or on the Premises:
- (a) the State has not given any warranty as to:
    - (i) the condition, quality or suitability of the Premises for any purpose;
    - (ii) the condition, structural soundness or repair of the Premises;
    - (iii) whether the Premises is safe and without risk to the health and safety of any user at any time;
    - (iv) whether the Premises contains asbestos materials at any time;
    - (v) whether consents and approvals required from any authority for the use of the Premises have been obtained or complied with at any time;
    - (vi) the lawfulness of any use which the Provider proposes to make of the Premises; or
    - (vii) any matter, circumstance or thing which is not expressly included in this Lease;
  - (b) the Provider takes its interest the Premises 'as is where is', subject to any defect, dilapidation or want of repair;
  - (c) the Provider has relied entirely on the Provider's own enquiries relating to, and inspections of the Premises and the use to which it may be put;
  - (d) the Provider has not entered into, any transaction or agreement in respect of the Premises in reliance on any representation, promise, warranty, express or implied statement or document made or provided by the State or on its behalf in respect of any matter relating to the Premises; and
  - (e) the Provider may not make any Claim in respect of the Premises in connection with its suitability or non-suitability for the Provider's expected or proposed uses.

## 73. Premises condition

**Obligations under the Regulation**

- 73.1. The Provider must comply with its obligations under the Regulation in respect of the Premises, including its obligations to keep and implement an asset management plan as required by section 12 of the Regulation.

**Condition benchmarking**

- 73.2. The State and the Provider acknowledge that, prior to creation of the Lease, they have:
- (a) conducted a joint inspection of the Premises to assess the condition of the Premises; and
  - (b) agreed, in writing, the assessed condition of the Premises and a benchmark for maintaining the Premises throughout the Lease Term by reference to the State's

Property Standard Index or such other standard specified by the State (**Benchmark Condition**).

If the parties have not undertaken the inspection and agreed the Benchmark Condition before the creation of the Lease, they must do so as soon as possible after the Lease is formed.

- 73.3. The Benchmark Condition for the Premises is recorded in Schedule 1.
- 73.4. The State, in consultation with the Provider, will conduct a condition appraisal inspection every three years, or as required to amend the Benchmark Condition when works have been undertaken to improve the condition of the Premises, to confirm that the Premises meet the Benchmark Condition.
- 73.5. Upon expiry or termination of the Lease:
- (a) the Provider must return the Premises to the Benchmark Condition, except for fair wear and tear; and
  - (b) the parties will conduct a final condition appraisal inspection to evaluate the condition of the Premises as compared to the Benchmark Condition.

#### **Standards**

- 73.6. When the Provider carries out repairs, any broken items must be replaced with similar items of a similar standard.
- 73.7. Maintenance undertaken by the Provider must be carried out in a tradesperson-like and lawful manner and should be from good quality, durable, low maintenance materials to cater for high wear and tear.

#### **Health and safety and other laws**

- 73.8. The Provider must comply with all laws and regulations in relation to the health and safety of persons using, entering or renting the Premises, including in compliance with the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).

#### **Purchases**

- 73.9. The Provider must ensure that purchases made and work undertaken in relation to the Premises:
- (a) represent good value for money, that is, a good return and performance for the money being spent;
  - (b) are completed by tradespersons selected through fair and equitable means in accordance with Queensland Procurement Policy requirements, free from any conflict of interest;
  - (c) where required by law, are completed by a qualified licensed tradesperson with adequate insurance cover;
  - (d) use good quality, durable, low maintenance materials to cater for high wear and tear; and
  - (e) are completed in a timely manner.

#### **Condition Reports**

- 73.10. The Provider must, at its own cost, conduct:
- (a) an entry condition inspection for the Premises at the commencement of each tenancy;

- (b) annual inspections of the Premises; and
  - (c) a condition appraisal inspection at least once every three years for the Premises, in accordance with the Social Housing Policy.
- 73.11. A condition appraisal inspection must be carried out by a suitably trained employee or contractor of the Provider.
- 73.12. The Provider must prepare reports of the inspections undertaken on Premises and provide a copy of those reports upon request by the State.

## 74. Insurance

### **Provider not required to insure Premises**

- 74.1. The Provider is not required to hold building insurance for the Premises under the General Terms or this clause 74.
- 74.2. The Provider acknowledges that QGIF is a self-insurance scheme and the QGIF premium is paid by one part of the State, being the State acting through the department in which the Act is administered, to another part of the State, being the State acting through Queensland Treasury, and the Provider is not insured by QGIF and is not entitled to make any claim against QGIF.

### **Not to make insurance voidable**

- 74.3. Other than in respect of carrying on the Permitted Use, the Provider must not knowingly do, or permit anything to be done on the Premises, or bring or keep anything in the Premises that may in any way:
- (a) make void or voidable any policy or policies of insurance, including the QGIF policies, applicable to the Premises;
  - (b) conflict with any laws, or regulations, or with any insurance policy applicable to the Premises; or
  - (c) result in the amount of premium payable in respect of any insurance policy applicable to the building on the Premises or the Premises being increased.

## 75. Damage and destruction

### **Provider must notify State of damage**

- 75.1. The Provider must notify the State immediately of any damage to the Premises.

### **Provider must pay for damage if cost less than the QGIF excess**

- 75.2. The Provider is responsible for the costs to repair any damage to the Premises if those costs are less than the QGIF excess as at the time of the claim.

### **State pays if costs equal to or more than the QGIF excess and not caused by the Provider's negligent wilful act or omission**

- 75.3. The State is responsible for the costs to repair any damage to the Premises, if those costs are equal to or exceed the QGIF excess as at the time of the claim.
- 75.4. Where the State is responsible for the costs to repair any damage, the State will, at the State's option:
- (a) repair the damage; or

(b) pay the Provider to have the damage repaired.

75.5. Clause 75.3 does not apply to the extent the damage was caused or contributed to by the negligent or wilful act or omission of the Provider.

**Provider responsible for its negligent wilful act or omission**

75.6. The Provider is responsible for the costs to repair any damage to the Premises to the extent that the damage was caused or contributed to by the negligent or wilful act or omission of the Provider.

**Provider responsible for QGIF excess**

75.7. The Provider is responsible for reimbursing the State for the QGIF excess, at the time of the claim, in any case where the State makes a claim under the State's QGIF insurance in respect of damage to the Premises. The State will notify the Provider in writing of any amount payable under this clause and the Provider must reimburse the State within 7 days.

75.8. Clause 75.7 does not apply if the claim is for damage to the Premises caused by natural disasters declared under the *Disaster Management Act 2003*, including flood, severe storm or bush fire.

**If the Provider is responsible it must repair**

75.9. Where the Provider is responsible for the costs to repair any damage the Provider must have the damage repaired.

75.10. The Provider must ensure that the repair works required are promptly carried out by a qualified licensed tradesperson with adequate insurance cover.

**Where Premises destroyed**

75.11. If during the Term, the Premises are damaged or destroyed so that they are unfit, either wholly or partially, for the Provider to occupy and use then, despite any other clause, within 1 month after the destruction or damage occurs, either party may give to the other party a notice terminating this Lease only to the extent that it relates to the Premises damaged or destroyed, effective on a date that is at least 1 month after the date of the notice.

**State will notify change to QGIF excess**

75.12. The State will notify the Provider if the QGIF excess changes.

75.13. The QGIF excess, as at the date of this Lease is \$10,000.00.

## 76. Nuisance

**No nuisance**

76.1. The Provider:

- (a) must conduct its operations on the Premises in an orderly and respectable manner; and
- (b) must not do, or allow to be done, anything in, upon, or about the Premises which:
  - (i) is illegal or a nuisance;
  - (ii) may contaminate or pollute the Premises;
  - (iii) exceeds maximum load weights throughout the Premises; or

- (iv) may result in the State being in breach of any law in connection with the Premises.

**No damage**

76.2. The Provider must not:

- (a) use any method of heating, cooling or lighting , except within the normal case of the Permitted Use that is not approved by the State;
- (b) without the State's consent, keep or use inflammable, volatile or explosive materials on the Premises except as may be required within the normal case of the Permitted Use; or
- (c) damage or destroy anything on the Premises.

**Vegetation**

76.3. The Provider must not destroy any trees or vegetation on the Premises unless in accordance with the *Vegetation Management Act 1999* or the *Planning Act 2016*. The Provider must consult with the State in regard to any proposed destruction.

**Notices from statutory authorities**

76.4. The Provider must promptly give the State a copy of any notice from any statutory authority that the Provider receives in connection with the Premises which has or could have a material adverse effect on the:

- (a) ability of the Provider to perform its obligations under the Lease; or
- (b) business, assets or financial condition of the Provider.

## 77. Maintenance and upgrades

**What the State must do**

77.1. The State is responsible for carrying out:

- (a) Statutory Requirements; and
- (b) any Structural Work necessary to ensure the Premises are maintained in a safe condition and in good and substantial repair.

77.2. The Provider must immediately:

- (a) notify the State upon becoming aware that any Statutory Requirements or Structural Work are required to be undertaken; and
- (b) take necessary precautions and make arrangements to ensure the Premises are safe until any required works are undertaken by the State.

77.3. The State will only be obliged to carry out the work it is responsible for under this clause within a reasonable time after being made aware by the Provider of the need for the State to carry out that work.

77.4. The State is entitled to recover from the Provider:

- (a) costs associated with Statutory Requirements or Structural Work required to be undertaken as a result of damage caused by a Tenant where those costs do not exceed the QGIF excess at the time of the repair; and

- (b) the QGIF excess, at the time of the claim, where the State makes a claim under the State's QGIF insurance in respect of any Statutory Requirements or Structural Work required to be undertaken.
- 77.5. The State will notify the Provider in writing of any amount payable under clause 77.4 and the Provider must reimburse the State within 7 days.
- 77.6. Where a fire management plan or asbestos management plan is required for the Premises, the State will prepare the plan and provide a copy to the Provider before the Commencement Date. The Provider will be responsible for maintaining and updating any applicable fire management plan or asbestos management plan as required.

#### **What the Provider must do**

- 77.7. The Provider must, at the Provider's cost, carry out all inspections, repairs and maintenance on the Premises (except those that are the responsibility of the State under clause 77.1) to:
- (a) keep and maintain the Premises fit for purpose, in a safe and good condition, operationally and aesthetically; and
  - (b) ensure the Premises meet the Benchmark Condition and the minimum housing standard under the *Residential Tenancies and Rooming Accommodation Act 2008*.
- 77.8. The Provider is responsible for the maintenance and repair of the Non Standard Equipment and for ensuring they operate in accordance with their relevant design parameters. If in the Provider's reasonable opinion it is no longer economical to repair any of the Non Standard Equipment the Provider will advise the State who may (at its cost) then elect to remove the relevant piece of equipment and make good any damage.

## 78. State may give notice to repair

- 78.1. The State may give the Provider a 'notice to repair' requiring the Provider to remedy any breach of clause 77 within a reasonable time. The time specified must not be less than 2 Business Days, except in case of emergency, where there is to be no minimum time. The Provider must comply with the notice.

## 79. Infectious diseases

- 79.1. If any infectious disease occurs on the Premises and which requires notification under any statute, regulation or ordinance, the Provider:
- (a) must give all the necessary notices and any other information which may be required, to the proper authorities;
  - (b) must give a copy of the notification to the State; and
  - (c) must thoroughly fumigate and disinfect the Premises, at its own expense.

## 80. Alterations

#### **No alterations without State's consent**

- 80.1. The Provider must not:
- (a) construct any new improvements on the Premises; or
  - (b) attach fixtures or make any structural changes or additions to the Premises (unless otherwise agreed by the State), (**'Alterations'**)

unless:

- (c) the Provider first submits full details of the following matters and obtains the consent of the State (which must not be unreasonably withheld):
  - (i) the proposed alterations, additions or improvements, including detailed drawings;
  - (ii) particulars of the materials proposed to be used;
  - (iii) details of contractor, approvals needed and obtained and compliance with laws and the requirements of authorities;
  - (iv) details in respect of the impact the works will have on the Premises;
  - (v) details of the permanent impact on the Premises and their operation and use;
  - (vi) details of the Provider's consideration of and minimisation of potential adverse impacts on tenants and neighbouring properties;
  - (vii) if Tenants are required to relocate upon commencement of work, details of assistance with relocation; and
  - (viii) any other information reasonably required by the State; or
- (d) permitted under the Social Housing Policy for the purpose of improving the Tenant's safety, security, accessibility or energy use.

80.2. Any structural alterations or improvements to the Premises made by the Provider under this clause 80 form part of the State's Improvements.

**State may impose conditions on consent**

- 80.3. The State may impose conditions on its consent under clause 80.1(c), for example, requirements to:
- (a) enter into a tripartite deed;
  - (b) carry out the works under the supervision of the State's architect; or
  - (c) enter into a funding agreement with the State.

**Provider must pay costs**

80.4. The Provider must pay to the State immediately on demand all reasonable costs and expenses incurred by the State in respect of a submission made under clause 80.1(c), including architect's and other consultants' fees payable by the State, whether consent is granted or not.

**Provider is principal contractor**

- 80.5. Unless otherwise agreed in writing by the State, if the Provider carries out, or commissions to be carried out, any works on the Premises that constitute a construction project within the meaning of the Work Health and Safety Regulation 2011 (Qld), the Provider acknowledges and agrees that for the purposes of that Regulation, the Provider:
- (a) has management and control of the Premises and the works;
  - (b) will be the principal contractor for the works and must comply with the obligations imposed on a principal contractor; and
  - (c) must ensure that other persons comply with relevant work health and safety requirements at all times.

**Exceptions for Tenant Alterations**

- 80.6. For the avoidance of doubt, clause 80 does not apply to anything done by a Tenant to the Premises where the Tenant is permitted to take the action under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) without the lessor's consent.
- 80.7. If the Provider receives a request for lessor's consent from the Tenant, the Provider must promptly provide that request to the State and the State will promptly (having regard to the statutory timeframes) notify the Provider whether consent is given. The State will not unreasonably withhold or delay its consent.

## 81. Inspection

**Provider must inspect annually**

- 81.1. Without limiting any other clause of this Lease, the Provider must do the following:
- (a) Inspect the Premises on an annual basis to ensure that it is being kept in accordance with the Provider's obligations under this Lease. The first inspection must occur within one month after the Commencement Date and each subsequent inspection must occur within 12 months after the previous inspection. The inspection must comply with the property inspection guidelines published by the State from time to time.
  - (b) Maintain records of it inspecting the Premises under this clause and provide evidence of the inspections to the State in accordance with the General Terms and upon request.

**Provider's Property**

- 81.2. The Provider must keep the Provider's Property and the Provider's Improvements in good repair and condition.

**Compliance with laws**

- 81.3. The Provider must comply with the requirements of authorities and all laws in connection with its use of the Premises.

## 82. Quiet enjoyment

- 82.1. If the Provider pays the Rent and observes and performs its obligations under this Lease, the Provider will be entitled to quiet enjoyment of the Premises without interruption or disturbance by the State, or any person claiming under or through the State.

## 83. Interruption of services and emergency

**State not liable**

- 83.1. Despite any implication or rule of law to the contrary, the State will not be liable to the Provider for any loss or damage suffered by the Provider for:
- (a) any malfunction, failure to function or interruption of, or to, the water, gas or electricity services, or any of the appurtenances in the Premises; or
  - (b) the blockage of any sewers, wastes, drains, gutters, downpipes or storm water drains,
  - (c) except to the extent caused or contributed to by the State.

**State may prohibit access**

- 83.2. In an emergency the State may, for as long as is reasonably necessary in the circumstances and to the extent permitted by law, prevent or prohibit the Provider, the Provider's Employees and Tenants, and any invitees of the Tenants from entering the Premises and the State is not liable to the Provider for doing so.

## 84. Right to deal with land

**State may subdivide and grant rights**

- 84.1. The State may subdivide the Land and grant easements and other rights over it if this does not substantially and permanently adversely affect the Provider's or a Tenant's use or occupation of the Premises.

**State may deal with land and interest**

- 84.2. The State may deal with the Land and assign its interest in the Lease in its entire discretion including by the grant of any concurrent lease, provided that, where this Lease is not registered on title to the Land, the State must either:
- (a) first register this Lease; or
  - (b) procure a deed of covenant from the proposed assignee, transferee or lessee that it will observe and be bound by the terms of this Lease as if it were the State.
- 84.3. The parties must execute a copy of this Lease that is in registrable form if the State is required to register the Lease under clause 84.2.

## 85. Removal of improvements

**Provider may remove or leave**

- 85.1. No later than 3 months after the expiry or sooner termination of the Lease Term, the Provider may:
- (a) remove any of the Provider's Improvements and its other property, other than structural improvements, and must make good and repair any damage caused by the removal of the Provider's Improvements; or
  - (b) leave the Provider's Improvements on the Premises, provided that the Provider's Improvements are left in a good and tenable condition.
- 85.2. Any of the Provider's Improvements which have not been removed in accordance with clause 85.1(a) will become the property of the State.

**Provider must return Premises in good repair and condition**

- 85.3. On the expiry or sooner termination of the Lease Term the Provider must ensure that the Premises is returned to the State in good repair and condition consistent with the Benchmark Condition and free from rubbish.

## 86. Holding over

- 86.1. If the State has not granted the Provider a new lease of the Premises and the Provider continues to occupy the Premises after the expiry of the Term with the State's consent, the Provider occupies the Premises under a monthly tenancy that:
- (a) either party may terminate on 1 month's notice ending on any day; and

- (b) is on the same terms as this Lease, with any changes appropriate to a monthly tenancy.

## 87. Termination by the Provider

### Provider may request to terminate

- 87.1. The Provider may make a written request to the State for this Lease to be terminated in accordance with this clause 87.
- 87.2. A written request by the Provider under this clause 87 must nominate an effective date for termination of this Lease which must be at least 6 months after the date of the notice.

### State may approve request

- 87.3. The State may, acting reasonably, approve a request under clause 87.1. If the State does not approve the request, it must give reasons.

### Consequences of termination

- 87.4. If the State approves the termination under clause 87.3, the parties will sign an updated version of Schedule 1 of the Master Agreement and the Provider must:
  - (a) if applicable, execute a Form 8 Surrender of Lease for this Lease within 5 Business Days after the State's request; and
  - (b) comply with:
    - (i) its obligation regarding the condition of the Premises and removal of Provider's Improvements under this Lease; and
    - (ii) any conditions imposed by the State on its approval.
- 87.5. Termination of a Lease under this clause 87 does not affect the Provider's obligations regarding use of Receipts.

## 88. Termination by the State

### Breach and termination

- 88.1. The State may give the Provider a notice to remedy breach if the Provider breaches any term of a Lease. The notice must specify:
  - (a) the nature of the breach; and
  - (b) a reasonable timeframe in which the Provider must remedy the breach.
- 88.2. If the Provider fails to remedy a breach of a Lease within the timeframe specified by the State in a notice given under clause 88.1 then the State may either:
  - (a) terminate this Agreement by written notice to the Provider; or
  - (b) remedy the breach by the Provider and recover all costs and expenses incurred as a debt due and payable.

### Consequences of termination

- 88.3. If a Lease is terminated by the State under clause 88.2 or automatically terminates under clause 89, then:
  - (a) the Provider must immediately repay all or part of the Funding which has not been spent by the Provider;

- (b) the State may demand from the Provider any other amount directly necessary to remedy the breach by the Provider including, for example, costs and expenses incurred in maintaining the Premises to the extent that the Provider has failed to comply with its maintenance obligations and reasonable legal costs and the Provider must pay the amount demanded;
  - (c) if applicable, execute a Form 8 Surrender of Lease for the Lease within 5 Business Days after the State's request; and
  - (d) comply with its obligation regarding the condition of the Premises and removal of Provider's Improvements under the Lease.
- 88.4. Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.
- 88.5. Termination of a Lease under this clause 88 does not affect the Provider's obligations regarding use of Receipts.

## 89. Automatic termination on termination of Master Agreement

- 89.1. A Lease automatically terminates on termination of the Master Agreement.

## 90. General provisions

### **Where the Lease says the Provider must not do something**

- 90.1. If these Lease Terms say that the Provider must not do something in respect of the Premises, then the Provider must not do anything that could result in that thing happening.

### **Provider must ensure that Provider's Employees and Tenants comply**

- 90.2. The Provider must ensure that the Provider's Employees and Tenants comply, where appropriate, with the Provider's obligations under this Lease in respect of the Premises.

### **Waiver of legislation changing rights or obligations**

- 90.3. If any legislation changes the Provider's rights or obligations under this Lease in respect of the Premises so that the State's rights or obligations are adversely affected, the Provider waives its rights under that legislation to the extent that the waiver is not prohibited or made ineffective by law.

### **State may appoint agents**

- 90.4. The State may appoint agents or others to exercise any of its rights or comply with any of its obligations under this Lease.

### **State may exclude persons**

- 90.5. The State may exclude or remove any person from the Premises other than the Provider or the Provider's Employees and Tenants.

### **State may change Premises name**

- 90.6. The State may name or change the name of the Premises, adopt or change a logo or erect signs or change signs on or in the Premises.

### **Lessee to pay costs**

- 90.7. The Lessee must pay:

- (a) its own costs of and incidental to the preparation, execution, and registration of a Lease; and
- (b) the registration fees, survey fees and stamp duty (if any) for a Lease.

## 91. Property Law Act exclusions

- 91.1. The covenants, powers and provisions implied in leases by section 139 of the *Property Law Act 2023* (Qld) do not apply to this Lease.

# Part E – Service Funding Terms

## 92. Definitions and Interpretation

### Definitions

- 92.1. The definitions in the General Terms apply unless the same term is defined in these Service Funding Terms, in which case the definition in these Service Funding Terms applies.
- 92.2. In these Service Funding Terms, the following definitions apply:

<b>Deliverable</b>	means the deliverables, outputs, outcomes, results or quantities of, or for, the Funded Services, specified in the Service Particulars.
<b>Funded Personal Property</b>	means a motor vehicle, item of plant or equipment or stationery acquired or created wholly or partly with any Funding and includes personal property purchased to replace such personal property.
<b>Geographic Catchment Area</b>	means the area or areas where the Services are to be delivered, as described in the Service Particulars.
<b>Service End Date</b>	means the service end date in the Service Particulars.
<b>Service Start Date</b>	means the service start date in the Service Particulars.
<b>Service Funding Requirements</b>	means the service funding requirements for the Funded Service specified in the Service Particulars. It includes the program specific service delivery requirements for the Funded Service.
<b>Service Particulars</b>	means the particulars for the Funded Service set out in Part 3 of Schedule 1 of the Master Agreement.
<b>Special Conditions</b>	means the special conditions for the Funded Services, specified in the Service Particulars.
<b>Specific Funded Personal Property</b>	means a 'security agreement' under the <i>Personal Properties Securities Act 2009</i> (Cth) in relation to the State's interest in Funded Personal Property, as amended or replaced from time to time, in such form as the State may notify the Provider.

## Security Agreement

### Special Conditions

- 92.3. The Special Conditions are terms of a Service Funding Arrangement.
- 92.4. If there is an inconsistency between the Special Conditions and the other Service Funding Terms, the Special Conditions prevail to the extent of the inconsistency.

## 93. Term

- 93.1. A Service Funding Arrangement commences on the Service Start Date and expires on the Service End Date.

## 94. Service Funding start and end

- 94.1. The State's obligation to provide the Service Funding will start at the Service Start Date and will stop at the earlier of:
  - (a) the Service End Date; or
  - (b) termination of the Service Funding Arrangement.
- 94.2. When a Service Funding Arrangement expires:
  - (a) the Provider must promptly inform the State of the expiry; and
  - (b) the parties will sign an updated version of Schedule 1 of the Master Agreement to remove the Service Funding.
- 94.3. The expiry or termination of a Service Funding Arrangement will not affect any right of action or remedy that has accrued as at the date of expiry or termination.

## 95. Funded Services commencement and delivery

- 95.1. The Provider must:
  - (a) start delivering the Funded Services by no later than the Service Start Date, except where otherwise agreed or notified by the State;
  - (b) continue delivering the Funded Services until the Service End Date;
  - (c) comply with the Service Funding Requirements in the Policy or program guidelines applicable to the Service Funding as specified in the Service Particulars;
  - (d) deliver or achieve the Deliverables; and
  - (e) ensure the Funded Services are delivered in accordance with the program specific service delivery requirements in the applicable Policy, or program guideline as specified in the Service Particulars.
- 95.2. The Provider must not cease or change any of the Services without the State's prior written approval.
- 95.3. Where the Service Particulars contain service outlet details for delivery of the Funded Services, the Provider must not change the service outlet address or name without the State's prior written approval, which approval may be granted subject to conditions.

- 95.4. The Provider must advise the State in writing within 14 days of any change in the Provider's service outlet details or the Services (e.g., contact person or position, street, postal and email addresses and telephone number) (including a change approved under clause 95.2 above).

## 96. Quality standards

- 96.1. The Provider must comply with any quality standards in relation to the Funded Services specified in the Service Particulars, where applicable.

## 97. Payment of Service Funding

### **Payment of Service Funding by instalments**

- 97.1. The State will provide the Service Funding to the Provider by instalments in accordance with the Service Particulars.
- 97.2. The parties acknowledge that the Service Funding may be comprised of per-annum, one-off and other funding amounts.
- 97.3. Unless otherwise specified in the Service Particulars, payments of Service Funding will be two payments per annum in advance in July and January of each year.
- 97.4. The State may withhold any instalment of the Service Funding if the Provider has not complied with any obligation under the Service Funding Arrangement.

### **State may vary timing of instalments**

- 97.5. The State may vary:
- (a) the timing of instalments in relation to the Service Funding (and therefore the timing and amount of each subsequent instalment of the Service Funding); or
  - (b) the periods and dates stated in the Service Funding Arrangement, either generally or in relation to particular Service Funding.
- 97.6. The State will give the Provider 7 Business Days' notice of any such variation.

### **Provider may request instalment in advance**

- 97.7. In the case of an emergency, the Provider may make a written request for an instalment of the Service Funding in advance.
- 97.8. The State may request any additional information from the Provider before deciding whether to advance an instalment of the Service Funding to the Provider under clause 97.7.
- 97.9. The Provider acknowledges and agree that the State is under no obligation to provide the Service Funding to the Provider beyond the expiration or termination of the Service Funding Arrangement.

### **Direction to Pay**

- 97.10. The Provider acknowledges and agree that, despite anything to the contrary in the General Terms or Service Funding Terms, any payment of Service Funding in accordance with a written direction given by the Provider will be deemed a payment of Service Funding made to the Provider under the relevant Service Funding Arrangement.

### **Variation to Services or Service Funding**

- 97.11. The parties acknowledge that:

- (a) the Service Particulars, may be varied by the parties signing an updated version of Schedule 1 of the Master Agreement; and
- (b) a variation which reduces or increases the scope of the Funded Services may result in a reduction of or increase in (as the case may be) the amount of, or any future instalment of, the Service Funding.

### **Increase in Service Funding**

97.12. The State may increase the Service Funding from time to time without a variation to the Service Funding Arrangement, provided that:

- (a) the State will notify the Provider about any such increase and the Agreement Particulars will be deemed varied in accordance with the notice; and
- (b) the parties will sign an updated version of Schedule 1 of the Master Agreement.

## 98. Administration and expenditure of Service Funding

### **Use of Service Funding**

98.1. The Provider must use the Service Funding only:

- (a) to deliver the Funded Service specified in the Service Particulars, unless otherwise approved by the State in writing;
- (b) in accordance with the Service Particulars; and
- (c) within any time period stipulated in the Service Particulars.

98.2. The Provider must not, without the State's approval, use the Service Funding to:

- (a) provide security for any purpose;
- (b) make a loan or gift for any purpose;
- (c) pay sitting fees to directors, management committee members, members of the Provider organisation or any other person; or
- (d) make payments that are inconsistent with the Funded Services specified in the Service Particulars.

98.3. If the Provider uses the Service Funding to provide cash cheques or cash advances the Provider must keep a record of the date, amount, recipient and purpose of any cash cheque that the Provider issues or cash advance that the Provider makes.

98.4. Where the Provider receives the Service Funding, wholly or partly, to employ staff and is bound by a registered industrial instrument requiring the payment of termination or redundancy payments in appropriate circumstances, the Service Funding may only be used for termination or redundancy payments if:

- (a) the Service Funding is stopped due to circumstances stated in clause 100.1; or
- (b) the Provider has obtained the State's approval.

98.5. The Service Funding may be used to obtain and maintain permits, registrations and licenses required to be taken out in connection with the Provider's performance of the Funded Services specified in the Service Particulars.

**Use of money earned by the Provider from the operation of the Funded Services**

- 98.6. The Provider must use and deal with any money earned by the Provider from the operation of the Funded Services, for example fees, rent, board, service charges, as if the money earned was part of the Service Funding.

**Use of unspent Service Funding**

- 98.7. If the Provider provides a report or other information in accordance with the General Terms which shows that any part of the Service Funding for the previous period is unspent by the Provider, then the State may:
- (a) authorise the Provider to retain the unspent Service Funding and to expend some or all of it for an approved purpose, on terms and conditions specified by the State;
  - (b) reduce a future payment or instalment of the Service Funding to take account of the unspent Service Funding; or
  - (c) notify the Provider that the Provider are required to repay the unspent Service Funding to the State, within the period stated in the notice, which will be not less than 20 Business Days.
- 98.8. If, at the Service End Date, any of the Service Funding has not been spent by the Provider, the State may:
- (a) notify the Provider that the Provider is required to repay the unspent Service Funding to the State, within the period stated in the notice, which will be not less than 20 Business Days; or
  - (b) authorise the Provider to retain the unspent Service Funding and to expend some or all of it for an approved purpose, on terms and conditions specified by the State.
- 98.9. Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.

## 99. Funded Personal Property

**Use of Funded Personal Property**

- 99.1. The Provider must, unless otherwise approved by the State:
- (a) if the acquisition of the Funded Personal Property was funded under a Service Funding Arrangement – only use the Funded Personal Property for delivering the Funded Services specified in the Service Funding Arrangement; or
  - (b) in any other case – only use the Funded Personal Property for delivering Housing Services or Funded Services.

**Obligations about keeping Funded Personal Property**

- 99.2. The Provider must:
- (a) keep the receipts evidencing the expenditure of Service Funding to purchase Funded Personal Property and provide a copy of any such receipts to the State upon request;
  - (b) be the legal and beneficial owner of Funded Personal Property;
  - (c) not encumber, use as a security, dispose or deal with Funded Personal Property other than in accordance with the Service Funding Arrangement, unless the State approve otherwise in writing;

- (d) hold Funded Personal Property securely and put in place reasonable safeguards against theft, loss, damage or unauthorised use;
- (e) maintain Funded Personal Property in good working order;
- (f) if required, maintain registration and licensing of Funded Personal Property;
- (g) comply with any request from the State concerning Funded Personal Property, including in relation to any registration of the State's interest in it under a Specific Funded Personal Property Security Agreement, if required by the State;
- (h) comply with any direction that the State give the Provider about the transfer or disposal of Funded Personal Property; and
- (i) be fully responsible for, and bear all risks relating to, the purchase, use or disposal of Funded Personal Property.

**State may require a Specific Funded Personal Property Security Agreement**

- 99.3. In relation to any Funded Personal Property, the State may require a Specific Funded Personal Property Security Agreement to be signed by the Provider as a condition of the relevant Service Funding.
- 99.4. If the State require a Specific Funded Personal Property Security Agreement to be signed:
- (a) the State will provide to the Provider two copies of the Specific Funded Personal Property Security Agreement;
  - (b) the Provider must sign the Specific Funded Personal Property Security Agreement that the State provides and return a signed original copy of it to the State; and
  - (c) the State will be entitled to register the Specific Funded Personal Property Security Agreement and, if the State does so, the State will pay any registration fees.

**Requirement if value is more than \$5,000 or useful life is greater than one year**

- 99.5. In relation to any Funded Personal Property that has:
- (a) a purchase price or market value of more than \$5,000 (or such higher amount notified by the State to the Provider in writing); and
  - (b) a useful life greater than one year,
- the Provider must:
- (c) record the following information about the Funded Personal Property in a register:
  - (d) the Housing Services or Funded Services it will be used to deliver;
  - (e) a description of it, including model and engine number (if a vehicle);
  - (f) the date of purchase and the name of the supplier;
  - (g) the purchase or acquisition price;
  - (h) the depreciation rate (prime cost or diminishing value) as provided under relevant sections of the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth);
  - (i) its effective or useful life;
  - (j) its written down or book value; and
  - (k) not sell, lease, mortgage, destroy, part with possession of or give it away, without the State's prior consent, before the Service End Date, provided that this clause 99.5(k)

will not apply to any Funded Personal Property that is the subject of a Specific Funded Personal Property Security Agreement.

- 99.6. If the Provider breaches clause 99.5(k), then the greater of:
- (a) the amount of any proceeds that the Provider received; and
  - (b) the value of the Funded Personal Property at the time of the breach,
  - (c) will be a debt due and owing to the State.

#### **When Funded Personal Property is sold**

- 99.7. If a Funded Personal Property is sold, the Provider must use the Provider's best endeavours to achieve a fair market value for the sale and, if directed by the State, either:
- (a) apply sale proceeds only for the Housing Services or Funded Services that the Funded Personal Property was used to deliver; or
  - (b) pay the proceeds of the sale to the State.

## 100. Reduction of Service Funding in particular circumstances

### **Reduction of Service Funding or termination of Service Funding Arrangement**

- 100.1. The State can reduce the amount of the Service Funding or terminate a Service Funding Arrangement:
- (a) by giving the Provider at least 3 months prior notice if the State determines, that:
    - (i) changes to the State budget or any guidelines or policies of the State or Commonwealth government impact on the continued provision of the Service Funding to the Provider or recipients of similar funding generally; or
    - (ii) the needs of the Service Users no longer justify the Service Funding, or that other persons are in greater need than those Service Users; or
  - (b) by giving the Provider at least 6 months prior notice if the State determines that it is appropriate for the State to re-test the market for the delivery of the Funded Services.

### **No show cause process but notice to contain reasons**

- 100.2. The State can take action under clauses 100.1(a) or 100.1(b) without following any notice to remedy or show cause process, but the State's notice to the Provider will contain the reasons for the State's decision.

### **Steps the Provider must take**

- 100.3. If the State reduces the Service Funding under clauses 100.1(a) or 100.1(b):
- (a) the State will review the scope of the Funded Services;
  - (b) the Provider must:
    - (i) do everything the Provider can to mitigate and lessen all losses, costs and expenses that the Provider may suffer in relation to the reduction;
    - (ii) repay to the State any unexpended part of the Service Funding that the State notifies the Provider is required to be repaid as a result of the reduction, within the period stated in the notice, which will be not less than 20 Business

Days after the date the reduction takes effect in accordance with clauses 100.1(a) or 100.1(b) (as applicable). That amount will be a debt due to the State by the Provider; and

- (iii) comply with any reasonable request made by the State in relation to the reduction of the Service Funding; and
- (c) the State will notify the Provider about the reduced amount of the Service Funding and any changed scope of the Funded Services and the Service Funding Arrangement will be deemed varied in accordance with the notice; and
- (d) the parties will sign an updated version of Schedule 1 of the Master Agreement.

#### **Service Funding Arrangement is terminated**

100.4. If a Service Funding Agreement is terminated under clause 100.1, the Service Funding Agreement will be immediately severed from the Master Agreement and clause 103 will apply. The parties will sign an updated version of Schedule 1 of the Master Agreement.

#### **State will consider paying reasonable costs**

100.5. If the State:

- (a) reduces any Service Funding; or
- (b) terminates a Service Funding Arrangement under clause or 100.1,

the State will consider paying the Provider reasonable costs, including transitional arrangement costs for affected Service Users, that the Provider incur as a direct result of the reduction or termination, subject to the Provider providing the State with written evidence of the costs claimed and the State approving those costs.

## 101. Termination by the Provider

- 101.1. The Provider may terminate a Service Funding Arrangement by giving the State at least 3 months' notice, in which case all Service Funding payable under the Service Funding Arrangement will stop.
- 101.2. If a Service Funding Arrangement is terminated by the Provider under clause 101.1, then the Provider must repay all or part of the relevant Service Funding which has not been spent by the Provider within 10 Business Days after the termination.

## 102. Termination by the State

#### **Termination or suspension**

- 102.1. The State may give the Provider a notice to remedy breach if the Provider breaches any term of a Service Funding Arrangement. The notice must specify:
  - (a) the nature of the breach; and
  - (b) a reasonable timeframe in which the Provider must remedy the breach.
- 102.2. If the Provider fails to remedy a breach of the Service Funding Arrangement within the timeframe specified by the State in a notice given under clause 102.1, then the State may either:
  - (a) terminate the Service Funding Arrangement by written notice to the Provider;
  - (b) suspend Service Funding for a period of time on specified conditions; or

- (c) remedy the breach by the Provider and recover all costs and expenses incurred as a debt due and payable,  
by written notice to the Provider.

#### **Automatic termination on termination of Master Agreement**

102.3. A Service Funding Arrangement automatically terminates on termination of the Master Agreement.

#### **Consequences of termination by the State**

- 102.4. If a Service Funding Arrangement is terminated by the State, then:
- (a) the relevant Service Funding will immediately stop as at the date of termination;
  - (b) the Provider must immediately repay all or part of the Service Funding which has not been spent by the Provider; and
  - (c) the State may demand from the Provider any amount directly necessary to remedy the breach by the Provider and reasonable legal costs and the Provider must pay the amount demanded.
- 102.5. Clause 103 applies in relation to any termination under clause 102.

## 103. Consequences of expiry or termination

- 103.1. If any of the Funded Services are to cease to be delivered, including because a Service Funding Arrangement expires or is terminated, the Provider must:
- (a) cooperate with the State, if the State requires, in relation to:
  - (b) the process that the Provider will employ to cease the Funded Services;
  - (c) the continuity of Funded Services to the Service Users; and
  - (d) handling of records and information in relation to those Funded Services; and
  - (e) comply with any notice that the State gives the Provider about the transfer or disposal of any Funded Personal Capital Funded Property.
- 103.2. The following clauses will survive termination or expiry of this Agreement:
- (a) Clause 102 (Termination by the State).
  - (b) Clause 103 (Consequences of termination).

# Template Master Agreement Authorisation Deed Poll

Note: The Provider must use this template. The State may update the template from time to time by issuing a revised Template.

# Master Agreement Authorisation Deed Poll

**SIGNED BY:**            *[Provider name and ACN/ABN/ICN]*

**(Provider)**

**IN FAVOUR OF:**    *STATE OF QUEENSLAND through the Department of Housing and Public Works*

**(State)**

*[Provider name and ACN/ABN/ICN]*

- A    The State and the Provider are parties to the Master Agreement, which sets out the standard terms for the State's provision of Funding to the Provider in relation to capital funded property.
- B    This Master Agreement Authorisation Deed Poll:
- i)   incorporates the Master Agreement Authorisation Terms in the Master Agreement, which set out the conditions on which the Provider may use Receipts to carry out the Project; and
  - ii)  sets out the particulars of the Project.
- C    Upon successful completion of the Project, the Property will become subject to a Capital Funded Property Operating Agreement in accordance with clause 9.2 of the General Terms.
- D    The Provider agrees to use the Funding and carry out the Project in accordance with this Master Agreement Authorisation Deed Poll and the Master Agreement Authorisation Terms in the Master Agreement.
- E    The Provider acknowledges that the Master Agreement Authorisation Deed Poll may only be used where the Provider is using accumulated Receipts to carry out a new capital project and cannot be used:
- i)   where leveraged finance is being used to fund the project;
  - ii)  where a Specified Policy Setting other than the general social housing or default setting will be applied to the project;
  - iii) when new monetary funding is being provided by the State; or
  - iv)  where a change of use of an existing funded property is proposed.

# Deed Particulars

## Item 1 *Master Agreement*

The *Master Agreement* between the State and the Provider dated [Click or tap here to enter date.](#)

## Item 2 *Start Date*

The date this executed Master Agreement Authorisation Deed Poll is delivered to the State.

## Item 3 *Land / Capital Funded Property*

Address	Lot on plan	Title reference
[Insert]	[Insert]	[Insert]

## Item 4 *Project Type*

Choose an item.

## Item 5 *Project*

[Insert description as appropriate for the project type. Examples are provided below]

**Purchase and construction**

A project for the acquisition of the Land and construction of 40 new Social Housing dwellings.

The new units will include:

- XX x 1-bedroom units
- XX x 2-bedroom units.

XX units must be built to Platinum Standard with the remaining XX units built to the Gold Standard under the industry adopted Social Housing Design Guidelines, including the Technical Summary Sheets and Indicative Floor Plans, unless otherwise agreed in writing by the State.

**Purchase only**

<p>A project for the acquisition of the Capital Funded Property, which comprises:</p> <ul style="list-style-type: none"> <li>• XX x 1-bedroom units</li> <li>• XX x 2-bedroom units.</li> </ul> <p>All units in the Capital Funded Property are to be used as Social Housing dwellings</p> <p><b>Construction only</b></p> <p>A project for the construction of XX new Social Housing dwellings.</p> <p>The new units will include:</p> <ul style="list-style-type: none"> <li>• XX x 1-bedroom units</li> <li>• XX x 2-bedroom units.</li> </ul> <p>XX units must be built to Platinum Standard with the remaining XX units built to the Gold Standard under the industry adopted Social Housing Design Guidelines, including the Technical Summary Sheets and Indicative Floor Plans, unless otherwise agreed in writing by the State.</p>
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## Item 6 Reports

<p><b>Monthly progress report</b>                  Note: If Item 5 states that the Project is ‘Purchase only’, then the Provider is not required to provide these reports.</p>	
Submit to:	SAHGCHDContractManagement@housing.qld.gov.au
Period:	Each month
Due date:	5 <sup>th</sup> Business Day of the following month, unless otherwise agreed in writing by the State
Contents:	Progress reports on the works to be carried out under this Master Agreement Authorisation Deed Poll in the template form provided by the State from time to time. The template form at the Start Date is the form in Appendix 1 of the Delivery Kit.
<p><b>Reports required under the Delivery Kit, including the tender report, reports on any proposed variations and Project acquittal</b>                  Note: Item 5 states that the Project is ‘Purchase only’, then the Provider is not required to provide these reports.</p>	
Submit to:	SAHGCHDContractManagement@housing.qld.gov.au
Period:	As required by the Delivery Kit

Due date:	As required by the Delivery Kit
Contents:	As required by the Delivery Kit

Item 7 *State Security and State Security delivery date*

State Security:	A registered mortgage on terms set out in Attachment 2 that will rank first in priority
State Security delivery date:	Insert, for example 'To be provided on execution of this Master Agreement Authorisation Deed Poll'

Item 8 *Project Costs*

<p>[Insert depending on type of project, for example:</p> <p><b>Purchase only projects</b></p> <p>The purchase price of the Land less the amount of any input tax credits to which the Provider is entitled in respect of the purchase.</p> <p>For the avoidance of doubt, 'Project Costs' exclude:</p> <ul style="list-style-type: none"> <li>• salary and entitlement costs for the Provider's officers and employees;</li> <li>• the cost of any subdivision of the Land or creation of any community titles scheme in respect of the Land; and</li> <li>• any stamp duty, titles registry fees, valuer's fees and solicitor's fees.</li> </ul> <p><b>Construction only projects</b></p> <p>The total costs reasonably incurred by the Provider to carry out the Project being:</p> <ul style="list-style-type: none"> <li>• costs of obtaining Development Approvals;</li> <li>• costs of demolishing existing structures;</li> <li>• design and building costs;</li> <li>• costs of project management services; and</li> <li>• costs of inspections and certifications.</li> </ul> <p>For the avoidance of doubt, 'Project Costs' exclude:</p> <ul style="list-style-type: none"> <li>• salary and entitlement costs for the Provider's officers and employees, [other than project management services included in the Project Budget under Special Condition XX];</li> <li>• the cost of any subdivision of the Land or creation of any community titles scheme in respect of the Land; and</li> <li>• any stamp duty, titles registry fees, valuer's fees and solicitor's fees other than those listed above.</li> </ul>
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For the avoidance of doubt, the Provider is not entitled to Funding towards, or to make a Payment Claim in respect of the Provider Contribution, including the Provider Contribution of Land.

**Purchase and Construction projects**

The total costs reasonably incurred by the Provider to carry out the Project being:

- the purchase price of the Land, less the amount of any input tax credits to which the Provider is entitled in respect of the purchase;
- costs of obtaining Development Approvals;
- costs of demolishing existing structures;
- design and building costs;
- costs of project management services; and
- costs of inspections and certifications.

For the avoidance of doubt, 'Project Costs' exclude:

- salary and entitlement costs for the Provider's officers and employees, [other than project management services included in the Project Budget under Special Condition XX];
- the cost of any subdivision of the Land or creation of any community titles scheme in respect of the Land;
- any stamp duty, titles registry fees, valuer's fees, and solicitor's fees; and

legal and other third party service provider costs in respect of the settlement of the Land and the entry into construction arrangements for the Project.

Item 9 *Funding*

The following contribution by the State towards the Project:	
Type	Amount (inclusive of GST)
<b>Funded Receipts (other than Proceeds of Sale)</b>	[\$[Insert]]
<b>Proceeds of Sale held under Master Agreement</b>	[\$[Insert]]
<b>Funded Land</b> (This amount reflects the Market Value of any existing capital funded property being used for the Project, reduced by an amount equal to the Market Value multiplied by the Provider Offset Percentage. Refer to clause 10.8 of the General Terms in the Master Agreement.)	[\$[Insert]]
<b>Total</b>	[\$[Insert]]

Item 10 *GST Amount (if applicable)*

Not applicable

Item 11 *Contributions*

Type	Amount (inclusive of GST)
<b>Provider Monetary Contribution</b>	\$[Insert]
<b>Provider Land Contribution</b> (This amount reflects the total of (i) the Market Value of any new property provided by the Provider for the Project and (ii) the Market Value of any existing capital funded property owned by the Provider that is being used for the project multiplied by the Provider Offset Percentage. Refer to clause 10.8 of the General Terms in the Master Agreement.)	\$[Insert]
<b>State Funded Contribution (Item 9 total)</b>	\$[Insert]
<b>Anticipated Total Project Cost (All of the above totalled)</b>	\$[Insert]

Item 12 *Provider Offset Percentage*

Click or tap here to enter text.%  
 (Provider monetary contribution + Provider Land Contribution) / Total Project Costs

Item 13 *Milestones and Milestone Dates*

	Milestone	Milestone Date
<b>Construction only [delete this row and next five rows if not applicable]</b>		
1.	Execution of this Master Agreement Authorisation Deed Poll and delivery to the State	Not applicable
2.	Development Approval	The date X months from the date of delivery of this executed Master Agreement Authorisation Deed Poll to the State.

3.	Building contract signed	The date X months after the Development Approval has been obtained
4.	Construction commencement	The date X months after the building contract has been signed
5.	Practical Completion of all units to be constructed under the Project	Within XX months from construction commencement
<b>Purchase only [delete this row and next two rows if not applicable]</b>		
1.	Execution of this Master Agreement Authorisation Deed Poll and delivery to the State	Not applicable
2.	Execution of contract for purchase of Capital Funded Property and payment of deposit	Not applicable
3.	Settlement of the Provider’s purchase of the Capital Funded Property	[insert date]
<b>Purchase and construction [delete this row and next six rows if not applicable]</b>		
1.	Execution of this Master Agreement Authorisation Deed Poll	Not applicable
2.	Execution of contract for purchase of Capital Funded Property and payment of deposit	Not applicable
3.	Settlement of the Provider’s purchase of the Capital Funded Property	[insert date]
4.	Development Approval	The date X months from the satisfaction of Milestone 3.
5.	Building contract signed	The date X months after the Development Approval has been obtained
6.	Construction commencement	The date X months after the building contract has been signed

7.	Practical Completion of all units to be constructed under the Project	Within XX months from construction commencement
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## Item 14 *Instalments of Funding*

No	Instalment Date	Milestone due before instalment is to be paid	Percentage	Amount of instalment (GST exclusive)
<b>Construction only [delete this row and next six rows if not applicable]</b>				
1.	[Insert, for example: Date this Authorisation Deed is executed]	Milestone 1	[Insert]% of Funding	\$[Insert]  \$[Insert]
2.	Date a copy of an approved Development Approval is provided to the State	Milestone 2	[Insert]% of Funding	\$[Insert]
3.	Date a copy of the executed building contract is provided to the State	Milestone 3	[Insert]% of Funding	\$[Insert]
4.	Foundations and ground floor slab completed	Milestone 4	[Insert]% of Funding	\$[Insert]
5.	Construction lock-up achieved	Milestone 4	[Insert]% of Funding	\$[Insert]
6.	Practical Completion of all dwellings to be constructed through the Project.	Milestone 5	[Insert]% of Funding	\$[Insert]

<b>Purchase only [delete this row and next row if not applicable]</b>				
1.	Payment of deposit	Milestones 1 and 2	[Insert]% of Funding	\$(Insert)
2.	Settlement of the Provider's Purchase of the Capital Funded Property	Milestones 1, 2 and 3	[Insert]% of Funding	\$(Insert) ]
<b>Purchase and construction [delete this row and next six rows if not applicable]</b>				
1.	Payment of deposit	Milestones 1 and 2	[Insert]% of Funding	\$(Insert)
2.	Settlement of the Provider's Purchase of the Capital Funded Property	Milestones 1, 2 and 3	[Insert]% of Funding	\$(Insert)
3.	Date a copy of an approved Development Approval is provided to the State	Milestone 3	[Insert]% of Funding	\$(Insert)
4.	Date a copy of the executed building contract is provided to the State	Milestone 4	[Insert]% of Funding	\$(Insert)
5.	Foundations and ground floor slab completed	Milestone 5	[Insert]% of Funding	\$(Insert)
6.	Construction lock-up achieved	Milestone 5	[Insert]% of Funding	\$(Insert)

7.	Practical Completion of all dwellings to be constructed through the Project.	Milestone 6	[Insert]% of Funding	\${[Insert]}
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Item 15 *Addition to Part 1 of Schedule 1 of the Master Agreement*

The additional row set out in Attachment 4.

Item 16 *List of Attachments*

Attachment 1 – Delivery Kit  
 Attachment 2 – State Security  
 Attachment 3 – Project Budget  
 Attachment 4 – Addition to Part 1 of Schedule 1 of the Master Agreement

# Attachment 1 – Delivery Kit (for construction projects only)

# Attachment 2 – State Security

## Attachment 3 – Project Budget

### Purchase only

<b>Total Project Budget: \$[Insert] (GST exclusive)</b>		
<b>Department of Housing and Public Works</b>	<b>Funding</b>	<b>\$(Insert)</b>
<b>[Provider]</b>		<b>\$(Insert)</b>
<b>Budget item</b>	<b>Total amount (GST exclusive)</b>	
<b>Land</b>		<b>\$(Insert)</b>
	<b>Total</b>	<b>\$(Insert)</b>

### Construction Only

<b>Total Project Budget: \$[Insert] (GST exclusive)</b>		
<b>Department of Housing and Public Works</b>	<b>Funding</b>	<b>\$(Insert)</b>
<b>[Provider]</b>	<b>Land</b>	<b>\$(Insert)</b>
<b>Budget item</b>	<b>Total amount (GST exclusive)</b>	
<b>Development</b>		<b>\$(Insert)</b>
<b>Approvals and infrastructure</b>		<b>\$(Insert)</b>
<b>Consultants</b>		<b>\$(Insert)</b>

<b>Project management services</b>	\$[Insert]
<b>Construction</b>	\$[Insert]
<b>Landscaping, pathways, fencing</b>	\$[Insert]
<b>Total</b>	\$[Insert]

## Purchase & Construction

<b>Total Project Budget: \$[Insert] (GST exclusive)</b>		
<b>Department of Housing and Public Works</b>	<b>Funding</b>	\$[Insert]
<b>[Provider]</b>		\$[Insert]
<b>Budget item</b>	<b>Total amount (GST exclusive)</b>	
<b>Land</b>	\$[Insert]	
<b>Development</b>	\$[Insert]	
<b>Approvals and infrastructure</b>	\$[Insert]	
<b>Consultants</b>	\$[Insert]	
<b>Project management services</b>	\$[Insert]	
<b>Construction</b>	\$[Insert]	
<b>Landscaping, pathways, fencing</b>	\$[Insert]	
<b>Total</b>	\$[Insert]	

Attachment 4 – Addition to Part 1 of Schedule 1 of the Master Agreement

State Reference ID #	Right of First Refusal Period Start Date	Address	Lot Plan	CT Reference	State Funded Contribution (includes Funded receipts)	Provider Contribution	Provider Offset Percentage	Mortgage Reference ID	SH Dwelling Count	Specified Policy Setting	Funded Purpose (Project Use)	Total Project Cost
										Social Housing setting		

## Execution

**EXECUTED** by Click or tap here to enter text. as a Deed Poll in accordance with s 127 of the Corporations Act 2001 (Cth) by:

*(print name of director)*

*(signature of director)*

*(print name of director/ secretary)*

*(signature of director/ secretary)*

..... / ..... / .....

*(date)*

Confidential draft for Consultation Purposes Not Government Policy