

# Capital Funding Agreement

[Property name]

[PROVIDER NAME]

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# Capital Funding Agreement

**BETWEEN:** STATE OF QUEENSLAND through the Department of Housing  
(the State)

**AND:** [INSERT]  
ABN [INSERT]  
(the Provider)

## Background

The State provides funding for Social Housing under the Act.

The Provider is a charity and a Registered Provider or Exempt Provider.

This Agreement sets out the terms on which the State provides capital funding for Provider-owned Social Housing properties under the Act.

A single Master Agreement for registered community housing providers is in development and this Agreement has been designed to be compatible with that Master Agreement. It is intended that all future funding of Social Housing would be made available solely through the Master Agreement and that providers will transition funding and property from this Agreement to the Master Agreement when it becomes available.

## Agreed terms

The agreed terms are set out in the Agreement Particulars, Terms and Schedules.

## Agreement Particulars

<b>Item 1</b>	<b>State Contact</b>	Attention:	Name:	Kelly Mangan
			Position:	Executive Director, Community Housing Delivery (CHD) Team
		Telephone:	(07) 3007 4463	
		Address:	Level 19, 1 William Street, Brisbane QLD 4000	
		Postal address:	Att: Community Housing Delivery Team Social and Affordable Housing Growth Department of Housing GPO Box 690, Brisbane QLD 4001	
		Email:	SAHGCHDContractManagement@housing.qld.gov.au	
<b>Item 2</b>	<b>Provider Contact</b>	Attention:	Name:	[Insert]
			Position:	[Insert]
		Telephone:	[Insert]	
		Address:	[Insert]	
		Email:	[Insert]	
<b>Item 3</b>	<b>Start Date</b>	The date this Agreement is signed by the last party to sign this Agreement.		
<b>Item 4</b>	<b>Land / Property</b>	<b>Address</b>	<b>Lot on plan</b>	<b>Title reference</b>
		[Insert]	[Insert]	[Insert]
		The Land is/is not Excluded Land.  [Note: Land will only be Excluded Land if the Provider supplies the full value of the Land as part of its contribution in accordance with the definition of 'Excluded Land' in clause 1.1. In other words, the Land is wholly owned by the Provider and is to be contributed by the Provider without leveraging funded property or Receipts]		
<b>Item 5</b>	<b>Program</b>	Long Term Community Housing Program, Social Housing Program Specifications		
<b>Item 6</b>	<b>Project</b>	[Insert description as appropriate for the project type. Examples are provided below]		

		<p><b>Purchase and construction</b></p> <p>A project for the acquisition of the Land and construction of 40 new social housing dwellings, under the QuickStarts Queensland.</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 Liveable Housing Design Guidelines, unless otherwise agreed in writing by the State.</p> <p><b>Purchase only</b></p> <p>A project for the acquisition of the 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 Property are to be used as social housing dwellings under QuickStarts Qld.</p> <p><b>Construction only</b></p> <p>A project for the construction of XX new social housing dwellings, under QuickStarts Qld.</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 Liveable Housing Design Guidelines, unless otherwise agreed in writing by the State.</p>						
<p><b>Item 7 Reports</b></p>		<p><b>Monthly progress report</b></p> <p>Note: If Item 6 states that the Project is ‘Purchase only’, then the Provider is not required to provide these reports.</p> <table border="1" data-bbox="550 1702 1463 1966"> <tr> <td data-bbox="550 1702 718 1780">Submit to:</td> <td data-bbox="718 1702 1463 1780">SAHGCHDContractManagement@housing.qld.gov.au</td> </tr> <tr> <td data-bbox="550 1780 718 1859">Period:</td> <td data-bbox="718 1780 1463 1859">Each month</td> </tr> <tr> <td data-bbox="550 1859 718 1966">Due date:</td> <td data-bbox="718 1859 1463 1966">5<sup>th</sup> Business Day of the following month, unless otherwise agreed in writing by the State</td> </tr> </table>	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
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 Agreement 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.
		<b>Reports required under the Delivery Kit, including the tender report, reports on any proposed variations and Project acquittal</b> Note: If Item 6 states that the Project is 'Purchase only', then the Provider is not required to provide these reports.	
		Submit to:	SAHGCHDContractManagement@housing.qld.gov.au
		Period:	As required by the Deliver Kit
		Due date:	As required by the Deliver Kit
		Contents:	As required by the Deliver Kit
		<b>Community Housing Annual Financial Returns</b>	
		Submit to:	<a href="mailto:HHSPROGRAMSFINANCIALANALYSIS@HOUSING.QLD.GOV.AU">HHSPROGRAMSFINANCIALANALYSIS@HOUSING.QLD.GOV.AU</a>
		Period:	Each Financial Year
		Due date:	31 October, following the end of each financial year
		Contents:	Information about social housing in the template form provided by the State from time to time.
		<b>Financial acquittals</b>	
		Submit to:	<a href="mailto:CHREPORTING@HOUSING.QLD.GOV.AU">CHREPORTING@HOUSING.QLD.GOV.AU</a>
		Period:	Each Financial Year
		Due date:	31 October, following the end of each financial year
		Contents:	A statement itemising Funding receipts and expenditure in the template form provided by the State from time to time. Note: This is in addition to the Project acquittal required under the Delivery Kit.
		<b>Audit Report and Audited Financial Statements</b>	
		Submit to:	<a href="mailto:CHREPORTING@HOUSING.QLD.GOV.AU">CHREPORTING@HOUSING.QLD.GOV.AU</a>

		Period:	Each Financial Year
		Due date:	31 October, following the end of each financial year
		Contents:	<p>Audited annual statement prepared in accordance with the Australian Accounting Standards comprising the following documents:</p> <ul style="list-style-type: none"> <li>a. Statement of profit and loss and other comprehensive income</li> <li>b. Statement of financial position</li> <li>c. Statement of changes in equity</li> <li>d. Statement of cashflows</li> <li>e. Notes to and forming part of the financial statement</li> <li>f. Directors' statement/declaration</li> <li>g. Independent audit report, and</li> <li>h. Asset register in relation to Funded Personal Property (where applicable).</li> </ul>
		<b>Australian Institute of Health and Welfare: Community Housing National Data Collection Survey</b>	
		Submit to:	Address specified in the survey.
		Period:	Each Financial Year
		Due date:	By 31 July, following the end of each financial year
		Contents:	Survey in the format provided by the Australian Institute of Health and Welfare.
<b>Item 8</b>	<b>Condition Precedent</b>	To be negotiated with the department and subject to the project particulars.	
<b>Item 9</b>	<b>Condition Precedent Date</b>	[Insert, for example: 'The date 3 months after the date of this Agreement or such later date that the parties agree in writing.']	
<b>Item 10</b>	<b>State's Security</b>	<b>State's Security</b>	<b>State's Security delivery date</b>
		A registered mortgage on terms set out in Schedule 2 that will rank first in priority unless otherwise agreed by the State in a Tripartite Deed.	[Insert, for example 'To be provided on execution of this Agreement']
<b>Item 11</b>	<b>Total Project Costs</b>	[Insert depending on type of project, for example:	



***Purchase only projects***

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.

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

- salary and entitlement costs for the Provider's officers and employees;
- the cost of any subdivision of the Land or creation of any community titles scheme in respect of the Land; and
- any stamp duty, titles registry fees, valuer's fees and solicitor's fees.

***Construction only projects***

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

- 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, 'Total 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; and
- any stamp duty, titles registry fees, valuer's fees and solicitor's fees other than those listed above.

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.

		<p>For the avoidance of doubt, 'Total 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;</li> <li>• any stamp duty, titles registry fees, valuer's fees, and solicitor's fees; and</li> <li>• 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.</li> </ul>		
<b>Item 12</b>	<b>Funding</b>	The following contribution by the State towards the Project:		
		<b>Type</b>	<b>Amount (exclusive of GST)</b>	
		Accrued State's surplus under existing capital funding agreements	\$(Insert)	
		Land	\$(insert)	
		New monetary funding	\$(Insert)	
		<b>Total</b>	\$(Insert)	
<b>Item 13</b>	<b>GST Amount</b>	\$(Insert)		
<b>Item 14</b>	<b>Contributions</b>	<b>Type</b>	<b>Amount (exclusive of GST)</b>	
		Provider monetary contribution	\$(Insert)	
		Provider land contribution (Land contributed by the Provider that is included in the reinvestment requirement calculations)	\$(Insert)	
		Excluded Provider Land Contribution (Land contributed by the Provider that is excluded from reinvestment requirement calculations)	\$(Insert)	
		Financier Contribution	\$(Insert)	
		<b>Total State Funding Contribution</b>	\$(Insert)	
		<b>Total Project Cost</b>	\$(Insert)	
		<b>Item 15</b>	<b>Milestones and Milestone Dates</b>	<b>No</b>
<i>Construction only [delete this row and next five rows if not applicable]</i>				

		1.	Execution of this Agreement	Not applicable
		2.	Development Approval	The date X months from the date of this Agreement.
		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><i>Purchase only [delete this row and next two rows if not applicable]</i></b>				
		1.	Execution of this Agreement	Not applicable
		2.	Settlement of the Provider's purchase of the Property	[insert date]
<b><i>Purchase and construction [delete this row and next six rows if not applicable]</i></b>				
		1.	Execution of this Agreement	Not applicable
		2.	Settlement of the Provider's purchase of the Property	[insert date]
		3.	Development Approval	The date X months from the satisfaction of Milestone 2.
		4.	Building Contract signed	The date X months after the Development Approval has been obtained
		5.	Construction Commencement	The date X months after the Building Contract has been signed

		6.	Practical Completion of all units to be constructed under the Project	Within XX months from Construction Commencement		
Item 16	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 Agreement is executed]	Milestone 1	[Insert, for example: [Insert]% of Surplus Funding, and [Insert]% of Monetary Funding	\$[Insert]  \$[Insert]
		2.	Date a copy of an approved Development Approval is provided to the State	Milestone 2	[Insert]% of Monetary Funding	\$[Insert]
		3.	Date a copy of the executed Building Contract is provided to the State	Milestone 3	[Insert]% of Monetary Funding	\$[Insert]
		4.	Foundations and ground floor slab completed	Milestone 4	[Insert]% of Monetary Funding	\$[Insert]
		5.	Construction lock-up achieved	Milestone 4	[Insert]% of Monetary Funding	\$[Insert]
		6.	Practical Completion of all dwellings to be constructed through the Project.	Milestone 5	[Insert]% of Monetary Funding	\$[Insert]

<b>Purchase only [delete this row and next row if not applicable]</b>				
1.	Settlement of the Provider's Purchase of the Property	Milestones 1 and 2	[Insert]% of Surplus Funding, and  [Insert]% of Monetary Funding	\$[Insert]  \$[Insert]
<b>Purchase and construction [delete this row and next six rows if not applicable]</b>				
1.	Settlement of the Provider's Purchase of the Property	Milestones 1 and 2	[Insert, for example: [Insert]% of Surplus Funding, and  [Insert]% of Monetary Funding	\$[Insert]  \$[Insert]
2.	Date a copy of an approved Development Approval is provided to the State	Milestone 3	[Insert]% of Monetary Funding	\$[Insert]
3.	Date a copy of the executed Building Contract is provided to the State	Milestone 4	[Insert]% of Monetary Funding	\$[Insert]
4.	Foundations and ground floor slab completed	Milestone 5	[Insert]% of Monetary Funding	\$[Insert]
5.	Construction lock-up achieved	Milestone 5	[Insert]% of Monetary Funding	\$[Insert]
6.	Practical Completion of all dwellings to be	Milestone 6	[Insert]% of Monetary Funding	\$[Insert]

		constructed through the Project.			
		Quantity Surveyor certification of Payment Claims [is/is not] required.			
<b>Item 17</b>	<b>Project Use</b>	[Insert, for example: Providing Social Housing to the Target Group, using the allocated number of Social Housing and Affordable Housing dwellings set out in Attachment 1			
<b>Item 18</b>	<b>Target Group</b>	<p>[Insert. The following is an example.]</p> <p>The Target groups for the XX units are as follows (in order of priority):</p> <p>(a) Public housing tenants over the age of 55 years seeking to downsize their accommodation in the Ipswich area.</p> <p>(a) Other public housing tenants over the age of 55 years from other areas in Queensland, where the tenants are seeking to downsize their accommodation.</p> <p>(b) Eligible community housing tenants managed by the Provider who are seeking to downsize their accommodation.</p> <p>(c) If no suitable tenant can be located from the above target groups, then the Provider must allocate the units to persons over the age of 55 years who are from the Housing Register.</p> <p>For the purposes of this Special Condition, the term:</p> <p><b>Senior</b> means a person that is 55 years or older; and</p> <p><b>Public Housing</b> has the meaning given to that term in the <i>Housing Act 2003</i>.</p> <p><b>Housing Register</b> has the same definition of 'Housing Register' in clause 1.1.</p>			
<b>Item 19</b>	<b>List of Attachments</b>	Attachment 1 – Allocated number of Social Housing and Affordable Housing dwellings Attachment 2 – Project Budget			
<b>Item 20</b>	<b>Special Conditions</b>	Dependent on Project – to be negotiated with the department.			

# Terms

## 1. INTERPRETATION

### 1.1 In this Agreement:

- (a) the definitions in the Agreement Particulars apply;
- (b) Community Housing Asset, Exempt Provider and Registered Provider have the meanings given in the Act;
- (c) GST, Input Tax Credit, Tax Invoice, Taxable Supply have the meanings given in the GST Act; and
- (d) the following additional definitions apply:

**Act** means the *Housing Act 2003* (Qld).

**Affordable Housing** has the same meaning as in the applicable Policy, as amended or replaced from time to time;

**Agreement Particulars** means the agreement particulars at the start of this Agreement;

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

**Claim** includes any claim, action, proceeding, demand, liability, obligation, costs, loss, damages and expenses, including legal expenses;

**Conditions Precedent** mean the conditions specified in respect of the Property in the Agreement Particulars;

**Conditions Precedent Date** means the conditions date specified in respect of the Property in the Agreement Particulars;

**Delivery Kit** means delivery kit in the Policies, being, as at the date of this Agreement, the document titled 'Delivery of Capital Grant Funded Construction Projects' and attached in Schedule 1;

**Department** means the Department of Housing;

**Development Approval** means approvals, assessments or designations required or issued for the Project under the *Planning Act 2016*;

**Excluded Land** means Land:

- (a) wholly owned by the Provider; and
- (b) contributed by the Provider without leveraging the property or anything other property funded by the State under other capital funding agreements or using Receipts from properties funded by the State; and
- (c) that both parties agree is to be recorded as Excluded Land in Items 4 and 14 of the Agreement Particulars and is to be omitted from the Total Project Costs and any calculation of the Reinvestment Amount;

**Financier** means a lender, approved by the State under clause 6 or clause 8.1, from which the Provider will obtain a loan:

- (a) for purchase or improvement of the Property; or
- (b) to refinance an existing loan in respect of the Property;

**Financier Contribution** means the amount specified in the Agreement Particulars, being the monetary contribution made by the Provider to the Total Project Costs using funds from finance arrangements, including without limitation, such arrangements entered into by the Provider and any Financier, where:

- (a) debt is secured by the Property or any other property funded by the State under other capital funding agreements; and/or
- (b) Receipts are used to service or pay down the debt;

**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;
- (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;

**Funding** means the funding in respect of the Property set out in the Agreement Particulars;

Note: Funding must only be used for the Project under clause 9. There are also requirements about Receipts, for example, under clause 4.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**GST Amount** 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;

**Housing Register** means the register of eligible customers for community housing services maintained by the Department of Housing;

**Improvements** means the housing and other improvements on the Land;

**Instalments** means, in respect of a Project, the instalments of Funding specified in respect of the Project in the Agreement Particulars;

**Instalment Date** means, in respect of a Project, the date for payment of an Instalment of Funding specified in respect of the Project in the Agreement Particulars;

**Intellectual Property** includes all copyright, trade mark, design, patents and other proprietary rights, and any rights to registration of such rights existing anywhere in the world;

**ITC Refund Date** means the dates on which the State is refunded all or part of the Input Tax Credits claimed in respect of a GST Amount;

**Land** means the land for the Property specified in the Agreement Particulars;

**Market Value** of property means the amount for which the property may reasonably be sold on the open market, determined in accordance with the International Valuation Standards (issued by the International Valuation Standards Council) by a licensed valuer appointed by the President of the Queensland Division of the Australian Property Institute;



**Master Agreement** means the master funding agreement proposed to be entered into by the parties referred to in the background section of this Agreement;

**Milestones** and **Milestone Dates** means the milestones and milestone dates specified in the Agreement Particulars;

**Payment Claim** means a claim for payment of an Instalment of Funding that includes the information and material set out in clause 13.3;

**Personal Information** has same meaning as in the *Information Privacy Act 2009* (Qld);

**Policies** means the policies, guidelines, tools and templates published or notified by the State from time to time for community housing providers. As at the date of this Agreement the Policies include those published at:

- <https://www.business.qld.gov.au/industries/service-industries-professionals/housing-accommodation/community/policies-guidelines>;
- <https://www.forgov.qld.gov.au/finance-and-procurement/procurement/procurement-resources/procurement-policies-and-frameworks/queensland-government-supplier-code-of-conduct>; and
- <https://www.business.qld.gov.au/industries/service-industries-professionals/housing-accommodation/design-product-standards>.

The Policies include:

- the program specifications, being, as at the date of this Agreement, the State's 'Social Housing Program Specifications For funded providers delivering crisis accommodation and/or community housing services'; and
- the Delivery Kit being, as at the date of this Agreement, the document titled 'Delivery of Capital Grant Funded Construction Projects' and attached in Schedule 1.

**Priority Limit** means the amount the State is prepared to allow the Financier first priority under a Tripartite Deed, as notified by the State in its entire direction;

**Practical Completion** means the date upon which:

- (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
- (b) all relevant statutory requirements have been complied with and certificates for those requirements have been obtained by the Provider;

**Project** means the Project to be carried out in respect of the Property by the Provider, as described in the Agreement Particulars, in accordance with the Delivery Kit and this Agreement;

**Project Budget** means the budget for the Project in Attachment 2;

**Project Use** means the project use specified in the Agreement Particulars;

**Property** means the property identified in the Agreement Particulars;

**Provider Contribution** means the amount of funding contributed by the Provider towards the Total Project Cost, excluding any Financier Contribution;

**Quantity Surveyor** means a quantity surveyor engaged by the Provider or the State who is a member of the Australian Institute of Quantity Surveyors;

**Public Records** has the same meaning as in the *Public Records Act 2002* (Qld);

**RCTI** means a recipient created Tax Invoice;

**Receipts** has the meaning given in the Regulation;

**Registrar** has the same meanings as 'registrar' and 'registrar of another participating jurisdiction' in the Act;

**Regulation** means the *Housing Regulation 2015*;

**Reinvestment Amount** for a Property, means the amount determined by the State under clause 28;

**Replacement Property** has the meaning given in clause 28.1(a);

**Report** means the reports set out in the Agreement Particulars;

**Secured Term** means:

- (a) where the Project includes purchase of the Property only – a period of 20 years from settlement of the purchase of the Property; or
- (b) where the Project includes purchase and construction or construction only of the Property – a period of 20 years from Practical Completion of the Project;

**Social Housing** means the provision of housing to an individual for residential use under the Policies;

**Special Conditions** means the special conditions in the Agreement Particulars;

**State's Security** means the State's security specified in the Agreement Particulars;

**Surplus** has the meaning given in the applicable Policy, being, as at the date of this Agreement, the State's 'Allowable Expenditure Policy for Funded Community Housing and Crisis Accommodation Program Providers'. For the avoidance of doubt, the Provider does not have an entitlement to a surplus balance under section 6 of the Policy;

**Target Group** means the target group specified in the Agreement Particulars. For clarity, any person in the Target Group must be an eligible persons from the Housing Register;

**Terms** means these terms;

**Total Project Costs** mean the total project costs specified in the Agreement Particulars;

**Transfer Documents** means the form of transfer under the *Land Title Act 1994* (Qld) required to transfer title in the land to the Provider;

**Tripartite Deed** means a deed between the Financier, the State and the Provider on terms satisfactory to the State (in its absolute discretion); and

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

1.2 In this Agreement:

- (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 or specifications includes any policies, procedures 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 this Agreement;
- (g) the index, headings and notes and the are included for convenience of reference only and are not intended to affect the meaning of this Agreement;
- (h) if an expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (i) a reference to days or months means calendar days or months;
- (j) if the day on which any act or thing is to be done under this Agreement is a Saturday, Sunday or public holiday 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;
- (k) an obligation on the part of two or more persons binds them jointly and each of them individually;
- (l) a reference to consent or approval means prior written consent;
- (m) a reference to a notice, request or proposal means a written notice, request or proposal; and
- (n) includes means includes without limitation.

1.3 In the event that a government department or agency mentioned in this Agreement:

- (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.

1.4 In the event of any inconsistency between provisions in different parts of this Agreement the provisions will prevail in the following descending order of precedence:

- (a) Terms;
- (b) Agreement Particulars; and
- (c) Schedules.

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## **2. TERM**

2.1 This Agreement will commence on the Start Date and continue indefinitely unless terminated under clauses 40 or 41.

2.2 The parties acknowledge that it is intended that the parties will enter into good faith negotiations to incorporate this Agreement into a Master Agreement to be entered into by the parties.

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## **3. GENERAL COMPLIANCE**

3.1 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 all relevant laws;
- (d) exercise due care and skill in carrying out its obligations under this Agreement; and

- (e) act diligently, effectively and in a professional manner.
- 3.2 The Provider must use the Funding and each Property only for the purpose of delivering Social Housing and for any Project Use stated in the Agreement Particulars.
- 3.3 The Provider must comply with the Policies, including by:
  - (a) letting dwellings on the Property only to those tenants who are eligible under those Policies;
  - (b) complying with the program specific requirements for each Property in the Policies for the program stipulated for the Property in the Agreement Particulars ; and
  - (c) calculating rent in respect of the accommodation it provides in the Property in accordance with the applicable Policy, being, as at the date of this Agreement, the State's 'Community Housing Rent Policy', unless otherwise approved by the State.
- 3.4 The State may amend the Policies. An amendment to a Policy takes effect 3 months after the State gives the Provider a copy of, or link to, the amended Policy.

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#### **4. RECEIPTS AND SURPLUS**

- 4.1 The Provider must only use Receipts for:
  - (a) expenditure described as 'allowable expenditure' in the applicable Policy, being, as at the date of this Agreement, the State's 'Allowable Expenditure Policy for Funded Community Housing and Crisis Accommodation Program Providers'; or
  - (b) to pay down the Provider's outstanding debt to the Financier in respect of the Property; or
  - (c) with the State's prior written agreement, to pay down the Provider's outstanding debt to a financier in respect of a different property funded by the State under another capital funding agreement that requires the property to be used for Social Housing. Any property for which Receipts are used to pay down debt must be used for social housing or if agreed in writing by the state, Affordable Housing.
- 4.2 The Provider may only use Receipts for the purpose in clause 4.1(b) if there are Receipts remaining after expenditure of the allowable expenditure required to comply with this Agreement, including all expenditure required to:
  - (a) keep the premises in good order and repair under clause 17.2; and
  - (b) make any necessary provisions for estimated future expenditure on maintenance and repair.
- 4.3 The Provider must obtain the State's approval for the use of the Receipts for any purpose other than that set out in clause 4.1.
- 4.4 For the avoidance of doubt, the Provider must not use Receipts for paying an amount owing to the State, other than when the Provider is returning the Surplus to the State under clause 4.6.
- 4.5 The Provider must:
  - (a) calculate the Surplus (if any) annually using the Provider's accounts used to prepare its annual audited financial statements; and
  - (b) identify the Surplus in its books of account.
- 4.6 The Provider must immediately return all of the Surplus (inclusive of GST) to the State if this Agreement is terminated.
- 4.7 The Provider must return to the State within 30 days after the State's request, all of the Receipts not:
  - (a) spent on or reasonably committed for allowable expenditure under clause 4.1(a);

- (b) used under clause 4.1(b);
- (c) reasonably committed for future social housing development as approved by the State; or
- (d) approved to be used for another purpose under clause 4.3.

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## 5. CONDITIONS PRECEDENT

- 5.1 This clause **Error! Reference source not found.** applies if Item 8 of the Agreement Particulars includes Conditions Precedent.
- 5.2 The Provision of Funding in respect of the Property is subject to, and conditional upon, the satisfaction of the Conditions Precedent by the Conditions Precedent Date.
- 5.3 The Provider must exercise diligence and use best endeavours to satisfy the Conditions Precedent by the Conditions Precedent Date, including, where a Condition Precedent relates to finance or borrowing, taking reasonable steps to obtain approval for a loan on terms and from a lender acceptable to the State.
- 5.4 The Provider must provide evidence to the State of the satisfaction of the Conditions Precedent by the Conditions Precedent Date. The State must notify the Provider of the date on which the State is satisfied that the Conditions Precedent have been met within 3 Business Days after it is satisfied that the Conditions Precedent have been met.
- 5.5 If the Conditions Precedent in respect of the Property are not satisfied by the Conditions Precedent Date, then:
  - (a) either party may terminate this Agreement to the extent that it relates to the provision of Funding in respect of the Property by notice to the other party; and
  - (b) upon termination, neither party will have any obligations under this Agreement or any Claim against the other in respect of the provision of that Funding, except as provided for in clause 5.6.; and
  - (c) after termination, if this Agreement applies in respect of multiple Properties, the State will issue revised Agreement Particulars and Schedules to the Provider, signed on behalf of the State, to reflect the termination and the continuation of this Agreement in respect of the other properties.
- 5.6 If the Conditions Precedent in respect of the Property are not satisfied by the Conditions Precedent Date and the State has paid any Funding in respect of the Property to the Provider before satisfaction of the Conditions Precedent, then the following applies:
  - (a) If the Provider is in breach of this Agreement, the Provider must immediately repay to the State all amounts of that Funding.
  - (b) If the Provider is not in breach of this Agreement, the Provider must immediately repay to the State that part of the Funding which has not been spent by the Provider in accordance with this Agreement.
  - (c) Amounts required to be repaid by the Provider to the State under this clause 5.6 are debts due to the State.
- 5.7 The Provider may, on or before a Condition Precedent Date, request an extension of a Condition Precedent Date. The request must set out the reasons for any delay and the extension request.
- 5.8 The State may extend a Condition Precedent Date by notice to the Provider.

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## 6. FINANCE

- 6.1 This clause 6 applies if:

- (a) the Conditions Precedent include obtaining approval for a loan from a lender acceptable to the State or otherwise relate to any borrowing from a lender; or
  - (b) at any time during the Term, the Provider seeks approval from the State under clause 8.1 to grant any security over the Property to a third party.
- 6.2 The Conditions Precedent and the requirement to obtain the State's approval under clause 8.1 are deemed to include a requirement that:
- (a) the State approve the proposed financier in accordance with this clause;
  - (b) the State approve the terms of the proposed borrowing and financier's security;
  - (c) the proposed financier, the State and the Provider enter into a Tripartite Deed on terms satisfactory to the State; and
  - (d) the State is provided with a copy of the signed Tripartite Deed.
- 6.3 The Provider must give the State the name of the proposed lender and information about the loan promptly after entering into this Agreement, including the letter of offer from the lender and terms of the loan. The Provider must give the State any additional information about the proposed lender or loan reasonably requested by the State.
- 6.4 The lender will be acceptable to the State if it is Housing Australia.
- 6.5 If the lender is not Housing Australia, the State must notify the Provider whether it approves or refuses to approve the proposed lender within 14 days after receiving the information under clause 6.3. The State will not act unreasonably in approving a lender that is an authorised deposit-taking institution under the *Banking Act 1959* (Cth) or a corporation formed under a law of a State or Territory to carry on the business of banking in Australia.
- 6.6 If the State refuses to approve the proposed lender and Item 14 of the Agreement Particulars includes a Financier Contribution, then the Provider must provide an alternative lender under clause 6.3. For clarity, the approval of the lender under this clause does not constitute approval of the Provider's proposed borrowing or the lender's proposed security.
- 6.7 The State must also approve the terms of the proposed borrowing and security. The State may approve or refuse to approve the proposed borrowing or security in its entire discretion.

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## **7. STATE'S SECURITY**

- 7.1 The Provider acknowledges and agrees that the State is entitled to a first priority mortgage in respect of the Property, unless the State agrees otherwise in writing and enters into a Tripartite Deed with the Provider and a Financier.
- 7.2 The Provider must:
- (a) execute and deliver to the State the State's Security by the date specified in the Agreement Particulars as the State's Security delivery date; and
  - (b) take all necessary steps to ensure that the State's Security and all of its associated rights are enforceable by the State and that the State's Security has the priority specified in the Agreement Particulars.

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## **8. FINANCIER SECURITY**

- 8.1 The Provider must obtain the State's written approval prior to giving any security over the Property to any third party. The State may, in its sole discretion, approve or reject the Provider's request under this clause 8.1.

- 8.2 If the State approves a grant of security to a third party, the Provider may grant the security in accordance with the approval only if:
- (a) the Director-General of the Department has given any approval to the security required under the Regulation, including section 10 of the Regulation if applicable; and
  - (b) the conditions in clause 6 have been satisfied.

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## **9. PAYMENT AND USE OF FUNDING**

- 9.1 The State will provide the Funding subject to satisfactory completion of the Milestones and compliance with the terms of this Agreement in accordance with clauses 12 and 13, as applicable.
- 9.2 If the Agreement Particulars indicates that the Provider may draw on any Funding constituted by the accrued State's surplus under an existing capital funding agreement, the Provider may draw on that accrued State's surplus subject to the following:
- (a) The Provider may not draw on any Funding constituted by the accrued State's surplus until the State has notified the Provider that Funding may be drawn on as Funding under this Agreement.
  - (b) If required by the State, any new monetary Funding will only be paid after the Provider has fully expended any Funding constituted by the accrued State's surplus.
- 9.3 The Provider must use the Funding only for paying the reasonable costs of carrying out the Project to the extent that those costs constitute Total Project Costs and in accordance with the terms of this Agreement.
- 9.4 Without limiting clause 9.1, the Provider must use the Funding in respect of the Property only for the following purposes:
- (a) If the Agreement Particulars indicate that the Project for the Property is the purchase of the Property – only for the purpose of purchasing the Property.
  - (b) If the Agreement Particulars indicate that the Project for the Property is for construction on the Property – only for the purpose of the construction on the Property.
  - (c) If the Agreement Particulars indicate that the Project for the Property is for purchase of the Property and the construction on the Property – only for the purpose of the purchase of the Property and the construction on the Property.

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## **10. PROVIDER CONTRIBUTION**

- 10.1 The Provider must:
- (a) contribute the Provider Contribution and the Financier Contribution towards the Project;
  - (b) use Funding for the Project only after the Provider Contribution has been exhausted; and
  - (c) keep itemised records of the Provider Contribution and Financier Contribution and show those records to the State if requested by the State.
- 10.2 The Provider may use the Financier Contribution after using the Funding.
- 10.3 If the Contribution item in the Agreement Particulars indicates that the Provider will obtain part of the Provider Contribution from another organisation, the Provider must ensure that it obtains that part. The Provider must ensure it obtains the Financier Contribution from the Financier. The Provider remains liable for making the Provider Contribution and the Financier Contribution and the State is not required to contribute any additional amount, even if the Provider does not obtain those contributions from any third party.

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## 11. FUTURE FUNDING

- 11.1 Despite any other clause in this Agreement, this Agreement does not commit the State to provide the Provider with any future or additional Funding for any purpose.
- 11.2 The Provider acknowledges that the State's contribution is capped at the amount of Funding specified in the Agreement Particulars and the State is not obliged to 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.
- 11.3 Provision of Funding does not constitute acceptance by the State that the Provider has complied with its obligations with this Agreement.
- 11.4 The Provider may request 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.

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## 12. PURCHASE

- 12.1 This clause 12 applies to the Property if the Agreement Particulars indicates that the Project for the Property is or includes the purchase of the Property.
- 12.2 The State may in its entire discretion decide whether or not to advance amounts of new monetary Funding for the purchase of the Property prior to settlement of the purchase. Despite any other clause, the State reserves the right not to pay any amount of Funding for the purchase of a Property until settlement of the purchase of the Property.
- 12.3 The Provider must give the State a copy of the contracts of sale for the Provider's purchase of the Property. The Provider must promptly give the State any additional information about the contracts or the Property reasonably requested by the State, including notification of the settlement date, place and time.
- 12.4 The State will attend the settlement of the purchase of the Property and provide at settlement a bank cheque payable to, or at the direction of the seller of the Property, for the amount of the relevant Instalment of Funding. Alternatively, the State may, in its sole discretion, transfer the relevant Instalment of Funding to:
- (a) the Provider or the Provider's lawyers; or
  - (b) to the seller of the Property or its lawyers,
- for the sole purpose of making payments at settlement.
- 12.5 Despite any other clause;
- (a) any Funding for the purchase of the Property must not exceed the Market Value of the Property; and
  - (b) the amount payable under clause 12.4 must not exceed the adjusted balance purchase price less the deposit.
- 12.6 Before the settlement of the purchase of the Property, the Provider must deliver to the State:
- (a) the State's Security executed by the Provider;
  - (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; and
  - (c) if applicable, the Tripartite Deed.



- 12.7 At the settlement of the purchase of the Property:
- (a) the Provider must deliver to the State, in a form capable of immediate registration:
    - (i) the Transfer Documents fully executed and stamped;
    - (ii) a release of any mortgage, caveat or other encumbrance over the Property, other than any easement or other encumbrance that the State agrees in writing may remain; and
  - (b) a bank cheque payable to Queensland Titles Registry Pty Ltd or such other entity or person as directed by the State for any registration fees for registration of the Transfer Documents and releases.
- 12.8 After settlement, the State will lodge the Transfer Documents, State's Security and any releases for registration and provide a copy of the registration confirmation statement to the Provider. The Provider authorises the State to complete any information missing from the Transfer Documents or State's Security which is required to enable registration to give effect to this Agreement.
- 12.9 The Provider must:
- (a) promptly assist the State to answer any requisition issued by the registrar of titles in respect of the lodgement for registration of the Transfer Documents and State's Security; and
  - (b) pay to the State any requisition fees in respect of those requisitions within 7 days after the State's request.
- 12.10 Any amount payable by the Provider under this clause 12 is a debt due to the State.
- 12.11 Clauses 12.7 to 12.10 are subject to any direction by the State about settlement and lodgement arrangements with a Financier and the Provider must comply with any direction given by the State to provide documents, bank cheques, authorisation, assistance and payment under clauses 12.7 to 12.10 to the Financier instead of the State.
- 12.12 If settlement of the Provider's purchase of the Property does not occur by the Milestone Date for that settlement, the State may by notice to the Provider immediately terminate this Agreement to the extent that it relates to Funding for the Property and clauses 5.6(a) to 5.6(c) are deemed to apply as if they were set out in this clause and the cross-reference in clause 5.6 were to clause 12.12. The State will issue revised Agreement Particulars and Schedules to the Provider, signed on behalf of the State, to reflect any termination under this clause 12.12.
- 12.13 If settlement of the Provider's purchase of the Property occurs by means of an electronic settlement, facilitated by an Electronic Lodgement Network Operator capable of facilitating financial settlement and electronic lodgement in Queensland, then reference to 'bank cheque' in clauses 12.4, 12.7(b) and 12.11 are deemed to mean electronic payment.

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## 13. CONSTRUCTION

- 13.1 This clause 13 applies if the Agreement Particulars indicates that the Project for the Property is or includes construction.
- 13.2 The State will pay each Instalment of the Funding (other than an Instalment that has been paid under clause 12) to the Provider on the Instalment Date, subject to:
- (a) 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; and
  - (b) the Provider providing a Payment Claim to the State.
- 13.3 The Provider must ensure that the Payment Claim includes the following information and material:

- (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) total expenditure by the Provider on Total 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 and any sale proceeds and accrued State’s Surplus has been fully expended on Total Project Costs before Funding has been used;
- (l) a declaration signed on behalf of the Provider testifying that the information submitted in support of the claim is accurate;
- (m) for Instalments required under Item 16 in the Agreement Particulars to be certified by a Quantity Surveyor – a certification from the Quantity Surveyor that:
  - (i) the building work for the dwellings to be constructed through the Project has been satisfactorily carried out;
  - (ii) sets out the Quantity Surveyor’s determination of the building costs for the relevant period; and
  - (iii) includes, if requested by the State, documents setting out all of the calculations of the building costs for the relevant period; and
- (n) any other information and material reasonably requested by the State relating to the Project for which the Instalment is claimed;

13.4 The Provider must engage the Quantity Surveyor to provide the certification under clause 13.3(m) unless the State notifies the Provider that the Quantity Surveyor will be engaged by the State.

13.5 The Provider may request the State to pay an Instalment before the relevant Instalment Date. The State may agree to or refuse to agree to that request in its sole discretion and the State is not required to pay any Instalment before the relevant Instalment Date.

13.6 Under this clause 13.3.6, the State may withhold Funding where the Provider has not spent some or all of the Funding previously paid by the State. The State may, in its absolute discretion, reduce payment of an Instalment of Funding if a Payment Claim reveals that the Provider has unspent

Funding, by an amount up to the amount of the unspent Funding. The State will pay the reduced amount within a reasonable time after it receives from the Provider evidence that it has spent the unspent Funding under this Agreement.

- 13.7 The Provider must comply with all obligations under the Delivery Kit, unless otherwise agreed in writing by the State. For the avoidance of doubt, if there is an inconsistency between the provisions in this Agreement and provisions in the Delivery Kit, the provisions of this Agreement, including about payment of Funding, prevail to the extent of the inconsistency.
- 13.8 The Provider must:
- (a) carry out the Project on the Property in accordance with this Agreement, and the Delivery Kit;
  - (b) achieve Practical Completion of the Project by the Milestone Date for Practical Completion specified in the Agreement Particulars for the Project;
  - (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 Property is used for Social Housing in accordance with clause 3 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 Property is first used for Social Housing within 5 Business Days after it is first used for Social Housing.
- 13.9 The Provider must prepare an acquittal for the Project:
- (a) in accordance with clause 15.3 of the Delivery Kit; or
  - (b) if the Delivery Kit does not apply, in accordance with the requirements notified by the State to the Provider.
- 13.10 If the final acquittal identifies that the Contributions exceed actual Total Project Costs, the Provider must:
- (a) pay that amount to the State; or
  - (b) seek the State's approval to credit that amount towards the Provider's next project or other existing project.
- 13.11 If the Provider repays the amount under clause 13.10 the State Funding Contribution will be adjusted accordingly and the State will give the Provider a reviewed Agreement Particulars with the revised State Funding Contribution.
- 13.12 If the final acquittal identifies that the actual Total Project Costs are more than Contributions, then the Provider Contribution will be adjusted accordingly and the State will give the Provider a reviewed Agreement Particulars with the revised Provider Contribution.
- 13.13 An amount required to be repaid by the Provider to the State under clause 13.10 is a debt due to the State.
- 13.14 For the purpose of calculating actual costs in delivering the Project, Input Tax Credits that the Provider can claim are excluded.
- 13.15 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.

13.16 The Provider must spend the Funding only on the reasonable costs of carrying out the Project incurred:

- (a) on or after the Conditions Precedent Date (unless otherwise approved by the State); and
- (b) in accordance with the Project Budget.

13.17 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 13.18, the State may terminate this Agreement immediately by written notice to the Provider and clauses 41.7 and 41.8 will apply.

13.18 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 13.18 applies; and
- (b) the Provider must complete construction within 20 Business Days of receipt of the notice.

13.19 If the Provider fails to complete construction by the date stipulated in the notice given under clause 13.18, the State may terminate this Agreement by written notice to the Provider and clauses 41.7 and 41.8 will apply.

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#### **14. EXTENSION OF MILESTONE DATES**

14.1 The Provider may, on or before the Milestone Date, request an extension of a Milestone Date. The request must set out the reasons for any delay and the extension request.

14.2 The State may extend a Milestone Date by notice to the Provider.

14.3 The State will not unreasonably withhold its agreement to an extension provided that the extension will not result in the extension of any Milestone Date to a date later than 12 months after the Milestone Date provided for in this Agreement prior to any extensions under this clause. If an extension is requested to a date that is later than 12 months after that original Milestone Date, the State may agree or refuse to agree to the extension in its entire discretion.

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#### **15. PROPERTY**

15.1 The Provider must not grant any right or encumbrance over the 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, except where:

- (a) permitted under this Agreement; or
- (b) the right or encumbrance is a residential occupancy right granted as permitted under this Agreement.

15.2 The Provider:

- (a) must comply with the 'prescribed requirements' under the Act and Regulation in relation to the Property; and
- (b) acknowledges that Community Housing Assets must be transferred under s 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 s 37G(4) of the Act.

15.3 The Provider:

- (a) is responsible for the connection of all Utilities to the Property;
  - (b) must promptly pay all charges for the Utilities;
  - (c) must pay all authority charges in relation to the Property; 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.
- 15.4 If the Provider proposes to name the housing constructed or located on the Property or to change any existing name of the housing, the Provider must seek the State's prior written consent to the proposed name.
- 15.5 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 with the traditional owners, and community and support services relevant to the Property regarding any proposed name before making a proposal to the State.

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## **16. ACKNOWLEDGEMENTS IN RELATION TO PROPERTY**

- 16.1 The Provider acknowledges and agrees that in respect of the Property, and anything owned by the State in or on the property:
- (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 included in this Agreement;
  - (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 the Property; and
  - (e) the Provider may not make any Claim in respect of the Property in connection with its suitability or non-suitability for the Provider's expected or proposed uses.

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## **17. MAINTENANCE**

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

- 17.2 The Provider must keep the Property in good order and repair and fit for a tenant to use.
- 17.3 When the Provider carries out repairs, any broken items must be replaced with similar items of a similar standard.
- 17.4 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.
- 17.5 The Provider must comply with all laws and regulations in relation to the health and safety of persons using, entering or renting the Property, including compliance with the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).
- 17.6 Purchases made and work undertaken in relation to the Property must:
- (a) represent good value for money, that is, a good return and performance for the money being spent;
  - (b) be completed by tradespersons selected through fair and equitable means, free from any conflict of interest;
  - (c) where required by law, be completed by a qualified licensed tradesperson with adequate insurance cover; and
  - (d) be completed in a timely manner.

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## **18. INSURANCE**

- 18.1 The Provider, at its own cost, must maintain effective insurance cover to the reasonable satisfaction of the State for the term of the Agreement, including:
- (a) workers' compensation insurance;
  - (b) public liability insurance of a minimum of \$20,000,000 per event giving rise to a Claim, or any other amount reasonably required by the State;
  - (c) a buildings and property policy to cover the full value of the improvements on the Property;
  - (d) compulsory, comprehensive or replacement cover insurance for other assets purchased through the Funding;
  - (e) works insurance in accordance with the Delivery Kit; and
  - (f) and any other policy which is required by law.
- 18.2 The Provider must provide evidence to satisfy the State that it has the insurance coverage listed above in place within 10 Business Days after receipt of the State's written request for evidence of such insurances.
- 18.3 If the Provider fails to take out or cause to be maintained insurance as required by clause 18.1, 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.

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## **19. CONDUCT**

- 19.1 The Provider must:
- (a) deliver the Social Housing without coercion and in a manner that promotes the privacy, dignity, self-esteem and independence of tenants; and

- (b) provide tenants with access to and assistance with Social Housing on the basis of need, but otherwise on a non-discriminatory basis, except where the Social Housing is delivered to meet the needs of specific tenants.
- 19.2 The Provider must collaborate and coordinate with other community organisations and government agencies within the service system in which the Provider is operating with a view to delivering the most effective Social Housing for the overall benefit of tenants.
- 19.3 The Provider must:
- (a) have and comply with a dispute resolution procedure for disputes between the Provider and tenants concerning any of the Social Housing and the Provider must make the procedure available to all 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 Social Housing and make it available for viewing by any person on request; and
  - (c) advise any person who makes a complaint about any of the Social Housing that they may complain to the State or a complaints agency if they are not satisfied with the outcome of the complaint.
- 19.4 The Provider must not discontinue or reduce any of the Social Housing, or otherwise take retaliatory action, because a person makes a complaint to the Provider about any of the Social Housing, provided that this does not preclude the Provider from taking action as necessary to ensure safety and prevent harm to tenants and others that may come to the Provider's notice through the lodgement of the complaint.
- 19.5 The Provider must comply with the State's reasonable and lawful requests, directions, and monitoring requirements to the State's satisfaction.
- 19.6 All personnel that the Provider employ 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.
- 19.7 The Provider must ensure that the Social Housing is 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.
- 19.8 Where the Target Group for the Social Housing 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 Social Housing are being delivered, are engaged in the design, delivery and evaluation of programs and the Social Housing to ensure they are appropriate to local community and cultural needs.
- 19.9 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.
- 19.10 The Provider acknowledges that if it is a public entity under the *Human Rights Act 2019*, 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.

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## 20. BANK ACCOUNT

- 20.1 The Provider must keep the Funding and Receipts in a bank account. The Provider must maintain separate and readily identifiable ledger accounts to record the Provider's receipt and expenditure of the Funding and Receipts.
- 20.2 The Provider must maintain separate and readily identifiable ledger accounts to record the Provider's receipt and expenditure of the Funding and Receipts for the Project until the repayment date under clause 13.9.
- 20.3 Any interest earned on the Funding forms part of the Funding.

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## 21. REPORTS

- 21.1 The Provider must use the tools and templates in the Policies for reporting.
- 21.2 The Provider must give the State the Reports set out in the Agreement Particulars. The Provider must ensure that Reports:
- (a) are provided by the due dates and comply with the requirements set out in the Agreement Particulars;
  - (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.
- 21.3 The Provider must provide further information about any matter connected with a Report or resubmit a Report to the State, within 10 Business Days after the State's request.
- 21.4 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.
- 21.5 In addition to any requirements to provide information or reports under this Agreement, 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 this Agreement. 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. For the avoidance of doubt, the information that the State may require the Provider to provide to the State under this clause 21.5 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 this Agreement to let the Property only to tenants who are eligible under the Policies.
- 21.6 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.
- 21.7 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 this Agreement 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.



21.8 The Provider must:

- (a) notify the State of any use of Receipts to pay down debt in respect of anything other than the Property; and
- (b) provide reports to the State on the Provider's compliance with clause 4:
  - (i) containing the information; and
  - (ii) provided at the frequency,
- (c) requested by the State.

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## **22. NOTICE OF EMERGENCIES, DELAYS AND OTHER MATTERS**

22.1 The Provider must, as soon as practicable and, in any event, within 24 hours, give to the State notice of any of the following or reasonable suspicion of the following:

- (a) event, circumstance or breach described in clause 41.1;
- (b) mismanagement or misappropriation of Funding, or misconduct or dishonesty in connection with the Funding or housing services;
- (c) breach of the Act or Regulation;
- (d) any incident or event connected with the Social Housing 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 the 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 this Agreement 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; or
- (i) the Provider having a reasonable suspicion of any of the matters in clauses 22.1(a) to (h).

22.2 The Provider must immediately notify the relevant authority of a matter described in clause 22.1(e).

22.3 The Provider must notify the Queensland Police Service of any offence or reasonable suspicion of an offence in connection with the Funding, as soon as practicable and, in any event, within 12 hours of the offence or reasonable suspicion coming to the Provider's attention.

22.4 The Provider must maintain procedures for notifying the police or other relevant Authorities of violence or activities that put tenants or households at risk.

22.5 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 this Agreement.

22.6 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 this Agreement within 10 Business Days after the change.

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## 23. RECORDS AND AUDIT

23.1 The Provider must keep complete and accurate accounts in relation to the Funding and the performance of its obligations under this Agreement, including:

- (a) records of its receipt and expenditure of the Funding; and
- (b) records of the performance of its obligations under this Agreement.

23.2 The Provider must, if requested by the State:

- (a) have its accounts kept under clause 23.1 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.

23.3 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:
  - (i) accounts kept under clause 23.1; and
  - (ii) documents related directly or indirectly to the receipt or expenditure of the Funding or the performance of the Provider's obligations under this Agreement; and
- (b) discuss with the Provider, any matter pertaining to the Funding or funded activities or the Provider's compliance with its obligations under this Agreement.

23.4 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.

23.5 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.

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## 24. INSPECTION AND ACCESS

24.1 The Provider must allow persons nominated by the State to access premises where obligations under this Agreement are carried on, including the Provider's office and the Property.

24.2 The State may access premises under this clause to:

- (a) see if the Provider is complying with this Agreement;
- (b) exercise its rights under clause 23; or
- (c) do anything that the State is required to do under law.

24.3 The State must give the Provider reasonable notice before accessing premises under this clause 24, except in the case of an emergency. The minimum period of notice for access any part of premises occupied by a residential tenant is the minimum period required by law plus 2 Business Days.

- 24.4 The State may enter premises at any time without notice and remain in them for as long as necessary if there is an emergency.
- 24.5 During access to premises under clause 24.2(a), the Provider must make its employees or contractors available to answer questions about the Provider's operations.
- 24.6 The Provider must take all action necessary to allow the State to enter any premises in accordance with this clause 24.

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## **25. CURE PLAN**

- 25.1 The State, or any person nominated by the State, may conduct a review of the Provider's:
- (a) compliance with its obligations under this Agreement, at any time, by giving the Provider at least 10 Business Days' prior notice; and
  - (b) financial position and capability to continue performing its obligations under this Agreement.
- 25.2 The State may conduct:
- (a) a review of any of the Social Housing to assess service or program effectiveness or supporting improvements in delivery; or
  - (b) a performance review of any aspect of the Provider's delivery of the Social Housing.
- 25.3 The State may exercise its rights under clauses 23 and 24 for the purposes of any review under this clause 25.
- 25.4 Without limiting any other right of the State, if at any time the State forms the view that:
- (a) the Provider has breached any term of this Agreement;
  - (b) a breach of the Agreement is reasonably likely to occur and the State has told the Provider about this but appropriate steps have not been promptly taken by the Provider; or
  - (c) it is necessary or appropriate to address an issue, the Provider has been informed about but has not remedied, that was identified during the course of a review under this clause 25 to:
    - (i) better ensure the performance of the Provider's obligations under this Agreement to a high standard; or
    - (ii) address a performance-related concern,
- the State may, by notice to the Provider, require the Provider to provide the State with a proposed cure plan, which must comply with clause 25.5. The Provider must prepare and provide the cure plan to the State within 10 Business Days after the State's notice to the Provider under this clause.
- 25.5 The Provider may request an extension to the 10 Business Day period under clause 25.4. The State may extend that period by notice to the Provider. The State will not unreasonably withhold its agreement to an extension to a date no later than 20 Business Days from the receipt of the notice under clause 25.4 but may withhold agreement to any longer extension in its entire discretion.
- 25.6 The Provider must ensure that the cure plan describes in reasonable detail:
- (a) each measure that the Provider proposes to take to permanently cure the occurrences described in the State's notice under clause 25.4;
  - (b) each measure that the Provider proposes to alleviate the adverse effect of those occurrences; and
  - (c) the timing within which the Provider will take those measures.

25.7 If the State:

- (a) approves a cure plan - the Provider must immediately implement and pursue diligently the cure plan with a view to curing the occurrences described in the State's notice under clause 25.4; or
- (b) rejects a cure plan - the State may specify required amendments to the cure plan, or alternative measures to be included in the cure plan, and to be implemented by the Provider, in which case the Provider must amend the cure plan or include the alternative measure in its cure plan and then immediately implement and pursue diligently the cure plan with a view to curing the occurrences described in the State's notice under clause 25.4.

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## 26. ANNOUNCEMENTS

- 26.1 For the term of this Agreement, except as required by law, all press releases and other public announcements in connection with this Agreement must be in terms agreed by the State prior to their release or announcement. This clause 26.1 only applies until:
- (a) if the Agreement Particulars indicates that the Project for the Property is the purchase of the Property – 6 months after settlement of the purchase of the Property; or
  - (b) if the Agreement Particulars indicates that the Project for the Property is for construction on the Property or for the purchase of the Property and construction on the Property – the Provider has submitted all final acquittal reports in accordance with the Delivery Kit and this Agreement to the State's satisfaction.
- 26.2 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.
- 26.3 The Provider must acknowledge the Funding received from the State in:
- (a) any annual report that the Provider produces; and
  - (b) in promotional material relating to activities of the Provider which include activities funded by the State.
- 26.4 The Provider must obtain the State's prior permission before it commences any publicity of, or involvement with any media at, the Property or which in any way concerns the Property or the Provider's obligations under this Agreement.

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## 27. SALE OF PROPERTY

- 27.1 If the Security has not been released under clause 29.2, the Provider must not sell or agree to sell the Property to any third party, unless the Provider has first offered in writing to sell the Property to the State at the following price (**Offer**):
- (a) the Market Value of the Property, inclusive of GST (if applicable) determined by a licensed valuer appointed by the President of the Queensland Division of the Australian Property Institute; minus
  - (b) the Reinvestment Amount.
- 27.2 The Provider must pay the costs of the valuation under 27.1.
- 27.3 The State will notify the Provider within 7 days after receiving the Notice referred to in clause 28.5 (Notice to the State) of the Reinvestment Amount calculated in accordance with clause 28.

### *Sale to the State*

- 27.4 If the State accepts the Offer, the Provider and the State must enter into an appropriate standard REIQ or equivalent contract within 14 days after acceptance in writing by the State of the Offer. The contract must provide for the following:
- (a) that the settlement date will be 60 days from the date the contract of sale is entered into;

(b) any other conditions that the State requires to obtain clear title to the Property.

27.5 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. The costs of the determination will be shared equally by the parties.

#### *Sale to Third Party*

27.6 The Provider may sell the Property to a third party within 90 days of the date the State receives the Offer if:

(a) the State does not accept the Offer under clause 27.1 within 45 days of the date the State receives the Offer; and

(b) the Provider complies with clause 28.

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## **28. RE-INVESTMENT REQUIREMENTS**

28.1 On any Sale of the Property the Provider must:

(a) reinvest the Reinvestment Amount calculated under clause 28.4 in a replacement property to be used for Social Housing by the Provider and be subject to the terms of this Agreement (**Replacement Property**); and

(b) ensure that there is no net loss of Social Housing as a result of the sale of the Property and purchase of the Replacement Property.

28.2 For clarity, this clause 28 applies both before and after expiry of the Secured Term and regardless of whether the State's Security is registered over the Property.

28.3 For the purposes of clause 28.1, no net loss of Social Housing means that there must be no overall reduction of the capacity of the Provider's funded Social Housing portfolio or Social Housing outcomes.

#### *Calculation of Reinvestment Amount*

28.4 The Reinvestment Amount will be calculated as follows:

$$((A \div B) + (C \div B)) \times (D - C)$$

Where:

**A** = **State Funding Contribution**, the State's original capital contribution to the Total Project Cost;

**B** = **Original Total Project Cost**, the final Total Project Cost;

**C** = **Outstanding Debt**, that part of the Financier Contribution that is still owed to the financier immediately prior to settlement of the sale transaction;

**D** = **Proceeds of Sale**, the amount received upon settlement of the sale of the Property minus the Market Value of any Excluded Land. For the avoidance of doubt, Proceeds of Sale include any funds required to settle third party debts.

#### *Notice to the State*

28.5 The Provider must notify the State of the Provider's proposed sale of the Property and purchase of a Replacement Property by the earlier of:

(a) the date it gives an offer to the State under clause 27.1; and

(b) two months before selling or agreeing to sell the Property.

28.6 The notice under clause 28.5 must:

- (a) identify the Property to be sold and include an estimate of expected sale proceeds; and
- (b) identify potential Replacement Properties and demonstrate to the State through its rolling growth plan under the proposed Master Agreement or otherwise, how the property will be replaced so there is no overall reduction of the capacity of its funded social housing portfolio or social housing outcomes.

28.7 The notice under clause 28.5 need not identify the particular property to be purchased but must set a timeframe within which the Provider will complete the purchase of a Replacement Property. The timeframe must not be more than 6 months after the date of the sale.

28.8 For the avoidance of doubt, the Provider may not sell or agree to sell the Property unless it has provided the notice under clause 28.5 and complied with the other requirements of this clause 28.

#### *Arrangements for tenants*

28.9 The Provider must ensure that prior to any sale of the Property, suitable accommodation arrangements are made for tenants of the Property to the satisfaction of the State.

#### *Holding sale proceeds pending purchase*

28.10 If the State, within one month after receiving the notice under clause 28.5, notifies the Provider that this clause 28.10 applies, the Provider must ensure that the amount required to be spent on the Replacement Property under clause 28.1 is, on settlement of the sale of the Property:

- (a) paid to the State to be held by the State for the purposes of the purchase (and development, if applicable) of the Replacement Property and then returned to the Provider on completion of the purchase of the Replacement Property; or
- (b) held in the Provider's solicitor's trust account until completion of the purchase of the Replacement Property,

subject to release of funds approved by the State (acting reasonably) for costs towards the Replacement Property, including deposit.

#### *Timeframe for purchase*

28.11 The Provider must complete the purchase of the Replacement Property within the timeframe set in the notice given under clause 28.5.

#### *Security over Replacement Property*

28.12 The Provider must:

- (a) execute and deliver to the State a security over the Replacement Property containing terms required by the State equivalent to the State's Security over the Property, on or before settlement of the purchase of the Replacement Property; and
- (b) take all necessary steps to ensure that security over the Replacement Property and all of its associated rights are enforceable by the State.

#### *Information about sale and purchase*

28.13 The Provider must keep the State informed about the sale and purchase, including by giving the State:

- (a) a copy of the contracts for the sale and purchase to the State;
- (b) information evidencing that the criteria in clause 28.13 have been met, including the use to be made of each part of the Replacement Property; and

- (c) other information regarding the sale of the Property and purchase of the Replacement Property requested by the State.

*Agreement applies to Replacement Property*

28.14 After any sale and purchase under this clause, the State will give the Provider a revised Agreement Particulars to reflect the sale and purchase, including changes to 'State Funding Contribution', 'Provider Contribution' and 'Financier Contribution' to reflect the actual contributions to the Replacement Property.

28.15 For the avoidance of doubt:

- (a) the Provider acknowledges that the State, through allowing the use of the proceeds of the sale of the Property to be used to buy the Replacement Property, provides funding under the Act, and that the Replacement Property is a Community Housing Asset;
- (b) the Provider must continue to use the Replacement Property for Social Housing in accordance with clause 3; and
- (c) all provisions of this Agreement, including clause 15.2 and this clause 28, apply to the Replacement Property and the Replacement Property is deemed to constitute the 'Property'.

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## **29. RELEASE OF STATE MORTGAGE**

29.1 The Provider acknowledges that the State's Security will remain over the Property for at least the Secured Term.

29.2 The State will release the Property from the Security only if:

- (a) the Secured Term has expired;
- (b) no Tripartite Deed remains in force in respect of the Property;
- (c) the Provider is not in breach of this Agreement;
- (d) the Provider has requested the release; and
- (e) the Property has been used by the Provider for the purpose of Social Housing in accordance with this Agreement for the Secured Term.

29.3 The Provider acknowledges that despite the release of the Property from the Security:

- (a) the Provider must continue to use the Property for Social Housing in accordance with clause 3 and other provisions of this Agreement; and
- (b) clauses 27, 28 and all other provisions of this Agreement continue to apply.

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## **30. RELOCATION OF TENANTS**

30.1 Upon termination of this Agreement or the sale of the Property, the Provider must ensure that suitable accommodation arrangements are made for tenants of the Property to the satisfaction of the State, including by:

- (a) assisting tenants in the Property to relocate to alternative accommodation; and
- (b) funding all expenses associated with the relocation.

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## **31. RIGHT TO INFORMATION AND PRIVACY**

31.1 The Provider acknowledges that this Agreement and information connected with it is potentially subject to disclosure to third parties under the *Right to Information Act 2009* (Qld).

- 31.2 The State may publish or require the Provider to publish:
- (a) its name and address;
  - (b) a summary of the Provider's obligations under this Agreement and the Funding, including the number and nature of the Property and the amount of Funding; and
  - (c) a description of any procurement method used to award the Funding to the Provider.
- 31.3 If the Provider collects or has access to Personal Information in order to carry out the purposes of Funding, the Provider must comply with:
- (a) Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld), in relation to the discharge of its obligations under this Agreement as if the Provider was the State; and
  - (b) 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.
- 31.4 The Provider must make available to individuals from whom it collects Personal Information, a privacy notice containing the information specified in Information Privacy Principle 2(3) in schedule 3 of the *Information Privacy Act 2009* (Qld). The Provider must ensure that the privacy notice notifies tenants of the disclosure to the State of information about tenants for the purposes of the Provider reporting and providing information to the State under this Agreement, including information relevant to eligibility of tenants under the Policies. The privacy notice must be of a standard reasonably acceptable to the State.
- 31.5 The Provider must immediately notify the State on becoming aware of any breach of this clause 30.

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## **32. INTELLECTUAL PROPERTY RIGHTS**

- 32.1 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.
- 32.2 Subject to the interests reserved to the State in clause 32.1, 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 the purposes of service delivery under housing programs.
- 32.3 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 solely for housing program delivery purposes.
- 32.4 The Provider must ensure that licences under clauses 32.2 and 32.3 include rights sufficient to enable the State to complete any construction works if the Provider is unable to complete them.
- 32.5 The Provider agrees that, in providing the Social Housing 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 this Agreement 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 this Agreement, and of any consent which the Provider has obtained relating to the use of such elements.

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### **33. PUBLIC RECORDS**

- 33.1 This clause applies to Public Records referred to in clause 33.2 held by or created by the Provider and any Public Records which the State provides to the Provider.
- 33.2 The Provider must make and keep full and accurate records relating to the Agreement and the Funding and such records are made for the purposes of the State and are Public Records.
- 33.3 Any Public Records which the State provides to the Provider remain the property of the State. Ownership in a Public Record created by the Provider vests in the State when the Public Record is created.
- 33.4 The Provider must comply with the *Public Records Act 2002* (Qld) 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.
- 33.5 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 2009* (Qld) and *Information Privacy Act 2009* (Qld), including by giving the State access to the Provider's recordkeeping systems for the purposes of retrieving the relevant Public Records.
- 33.6 The Provider must give the Public Records to the State within 5 Business Days after the expiry or termination of the Agreement.
- 33.7 The Provider must ensure that sub-contractors engaged by the Provider in connection with the Agreement:
- (a) comply with obligations the same as those imposed on the Provider under this clause; and
  - (b) 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.

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### **34. INDEMNITY**

- 34.1 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 this Agreement;
  - (b) any wilful, negligent or unlawful act or omission of the Provider; or
  - (c) a breach of this Agreement by the Provider,
- except to the extent that any act or omission by the State caused or contributed to the Claim.
- 34.2 The Provider performs its obligations under this Agreement 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.

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## **35. DISPUTE RESOLUTION**

- 35.1 The Provider and the State agree to follow the following procedure prior to the commencement of litigation or other external dispute resolution procedure.
- 35.2 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.
- 35.3 If, after 5 Business Days after meeting in accordance with clause 35.2, 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 conference and attempt to resolve the dispute.
- 35.4 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.
- 35.5 The parties may agree to escalate the dispute to any level at any time, or to attempt to resolve the dispute through mediation.
- 35.6 Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this Agreement.
- 35.7 Nothing in this clause prevents either party from commencing court proceedings relating to any dispute arising from this Agreement at any time where that party seeks urgent interlocutory relief or prevents the State exercising rights under clauses 25, 39 or 41.

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## **36. CONFLICTS OF INTEREST**

- 36.1 The Provider warrants that no conflict of interest exists or is likely to arise in connection with the performance of this Agreement.
- 36.2 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.
- 36.3 The Provider must provide the notification and take the steps under clause 36.2 as promptly as possible and, in any event, within 72 hours.
- 36.4 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 this Agreement fairly and objectively; and
  - (b) leasing to or from, or selling to or purchasing from, the Provider's officers or employees.

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## **37. FORCE MAJEURE**

- 37.1 If the performance by a party of an obligation under this Agreement 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 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.

37.2 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.

37.3 If the Provider is prevented from or delayed in performing its obligations because of a Force Majeure Event for at least 6 months the State may, in its entire discretion, by notice to the Provider, terminate this Agreement only in relation to obligations regarding any particular Property which can no longer be used or provided in accordance with this Agreement. Clauses 41.3 to 41.8 apply in respect of that termination.

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## **38. GST**

38.1 Subject to clause 38.2, 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.

38.2 The liability of the State under paragraph 38.1 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.

38.3 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.

38.4 The payee will provide to the payer a Tax Invoice at the time at which any payment is made under this clause.

38.5 Clauses 38.1 to 38.4 do not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive.

38.6 Where any cost calculation or indemnity, reimbursement or similar payment under this Agreement 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.

38.7 The State is responsible for:

- (a) determining the value of all non-monetary consideration being provided by either party pursuant to this Agreement; and
- (b) providing the Provider with information to support the value so determined.

- 38.8 The Parties agree that:
- (a) the State can issue Tax Invoices in respect of supplies made by the Provider under or in connection with this Agreement; and
  - (b) the Provider will not issue Tax Invoices in respect of these supplies.
- 38.9 The Provider acknowledges that it is registered for GST when it enters into this Agreement and that it will notify the State if it ceases to be so registered.
- 38.10 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.
- 38.11 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 this Agreement; 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.
- 38.12 The parties agree to exchange such information as is necessary to enable each party to accurately assess its rights and obligations under this clause.

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## **39. FUNDING AND BREACH**

- 39.1 The State is not required to pay Funding if at the time that the Funding is payable, the Provider has not performed the Agreement to the reasonable satisfaction of the State, including if the Provider has failed to provide Reports under clause 21 or if a Payment Claim is unsatisfactory to the State.
- 39.2 If the Provider breaches this Agreement, 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.
- 39.3 If, at any time, the State forms the reasonable opinion or otherwise becomes aware that:
- (a) any part of the Funding or Receipts has been used, spent or committed by the Provider other than in accordance with this Agreement; or
  - (b) the State has made payments of the Funding, or otherwise, to which the Provider is not, in whole or part, entitled,
- the State may by written notice to the Provider require the Provider to repay that part of the Funding or Receipts, and the Provider must repay to the State the amount set out in the notice within 20 Business Days of receipt of the notice.
- 39.4 Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.
- 39.5 Despite any other provision of the Agreement, the State is not required to release the State's Security under clause 29 if the Provider is in breach of this Agreement or any debt remains outstanding to the State under this Agreement.

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#### 40. TERMINATION OF THIS AGREEMENT BY PROVIDER

- 40.1 The Provider may make a written request to the State for this Agreement to be terminated in accordance with this clause 40.
- 40.2 A written request by the Provider under this clause 40 must:
- (a) nominate an effective date for termination of this Agreement which must be at least 6 months after the date of the notice;
  - (b) confirm whether any part of the Financier Contribution that is still owed to the Financier will be repaid by the Provider; and
  - (c) outline whether the proposed termination is connected with the sale of the Property and, if so, contain information regarding the accommodation arrangements that will be made for tenants of the Property.
- 40.3 The State may, in its discretion (acting reasonably), approve the termination of this Agreement subject to the Provider paying to the State, by bank cheque on or before the effective date of termination, an amount equal to:
- $$\left[ \left( \frac{\text{State Funding Contribution}}{\text{Original Total Project Cost}} + \frac{\text{Outstanding Debt}}{\text{Original Total Project Cost}} \right) \times \text{MV} \right]$$
- Where:
- State Funding Contribution** means the State's original capital contribution to the Total Project Cost;
- Original Total Project Cost** means the final Total Project Cost;
- Outstanding Debt** means that part of the Financier Contribution that is still owed to the Financier immediately prior to the effective date of termination and which is proposed to be repaid by the Provider to the Financier upon termination of this Agreement; and
- MV** means the Market Value of the Property minus the Market Value of any Excluded Land.
- 40.4 The Provider must pay the costs of the valuation under clause 40.1.
- 40.5 The Provider must ensure that if termination involves any sale of the Property, that suitable accommodation arrangements are made for tenants of the Property to the satisfaction of the State.
- 40.6 Promptly after termination under clause 40.1, the State must release the relevant Property from the Security.
- 40.7 Any amount payable by the Provider under this clause 40 is a debt due to the State.
- 40.8 Termination of this Agreement under this clause 40 does not affect the Provider's obligations regarding use of Receipts and repayment of the Surplus. For the avoidance of doubt, upon any termination under this clause, the Provider must:
- (a) not use any Receipts to pay down any debt in relation to the Property after the effective date of termination; and
  - (b) immediately repay any Surplus to the State.

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#### 41. TERMINATION BY THE STATE

- 41.1 The State may terminate this Agreement or any part of this Agreement by written notice to the Provider if the Provider:

- (a) is in breach of this Agreement and fails to remedy the breach within 20 Business Days after the State gives the Provider a notice to remedy the breach;
- (b) commits a breach of this Agreement that is incapable of remedy;
- (c) commits a serious breach of this Agreement, including use of Property for purposes other than for the provision of Social Housing;
- (d) has breached any other funding agreement between the State and the Provider and that other funding agreement has been terminated for that breach;
- (e) ceases to be a Registered Provider or Exempt Provider;
- (f) ceases to carry on business for a continuous period of at least 20 Business Days;
- (g) becomes insolvent or is unable to pay its debts as and when they fall due;
- (h) 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);
- (i) has a receiver or manager appointed or becomes subject to any form of external administration in relation to the Land (whether or not other assets are affected) and such appointment is not terminated within 20 Business Days;
- (j) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
- (k) commences, or is subject to, any proceedings for its winding up (unless those proceedings are dismissed or withdrawn within 20 Business Days).

41.2 If this Agreement or part of this Agreement is terminated by the State under clause 41.1 then, subject to the provisions of any Tripartite Deed, the Provider must immediately repay all or part of the Funding which has not been spent by the Provider and the State may do one or more of the following:

- (a) exercise all or any of its powers under the Security in respect of the Property;
- (b) demand from the Provider payment of the amount calculated as follows in respect of the Property:
  - (i) the Market Value of the Property (inclusive of GST) (if applicable), minus the current Market Value of the Excluded Land (assessed as if the Excluded Land was vacant land without the Improvements) **minus**
  - (ii) the Provider Contribution;
- (c) require the Provider to immediately repay all or part of the Funding which has not been spent by the Provider;
- (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 Property to the extent that the Provider has failed to comply with its maintenance obligations and reasonable legal costs.

41.3 If this Agreement or part of this Agreement is terminated by the State under clause 41.1 and the Provider holds any unspent Funding, the Provider must pay that unspent Funding to the State within 10 Business Days of the termination.

41.4 Termination of part of this Agreement under clause 41.1 means termination of this Agreement only in respect of a particular Property or particular Funding. If the State terminates part of this

Agreement it will include in the notice of termination under clause 41.1, revised Agreement Particulars and Schedules identifying which parts remain on foot.

- 41.5 Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.
- 41.6 Termination of this Agreement will not affect any rights or remedies already accrued to either party under, or in respect of any breach of, this Agreement and will not relieve either party of any obligation under this Agreement that is expressed to continue after termination or expiry.
- 41.7 In connection with any termination or the cessation of any part of the Funding, the Provider must:
- (a) cooperate with the State in relation to:
    - (i) the process that the Provider will employ to cease providing Social Housing;
    - (ii) the continuity of provision of Social Housing to the tenants; and
    - (iii) handling of records and information in connection with the Funding and this Agreement; and
  - (b) comply with any notice that the State gives the Provider about the transfer or disposal of any Funded Personal Property.
- 41.8 If this Agreement is terminated or part of this Agreement 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.
- 41.9 For the avoidance of doubt, the State may exercise its rights under this clause in its entire discretion in relation to the whole of this Agreement despite the breach relating to only one particular Property or particular Funding. This discretion is not limited in any way, whether under any implied obligation term or duty or otherwise.
- 41.10 The following clauses will survive termination or expiry of this Agreement:
- (a) Clause 4 (Receipts and Surplus).
  - (b) Clause 21 (Reports).
  - (c) Clause 23 (Records and audit).
  - (d) Clause 30 (Right to information and privacy).
  - (e) Clause 32 (Intellectual Property rights).
  - (f) Clause 33 (Public Records).
  - (g) Clause 34 (Indemnity).
  - (h) Clause 38 (GST).
  - (i) Clause 40 (Termination by the Provider)
  - (j) Clause 41 (Termination by the State).

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## **42. SPECIAL CONDITIONS**

- 42.1 The Special Conditions are terms of this Agreement.
- 42.2 If there is an inconsistency between the Special Conditions and the other terms of this Agreement, the Special Conditions prevail to the extent of the inconsistency.

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#### 43. NOTICES

- 43.1 All notices in connection with this Agreement 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 by email to its email address.
- 43.2 A notice will be deemed to be given:
- (a) if posted – 2 Business Days after the date of posting;
  - (a) if delivered by hand during a Business Day– on the date of delivery; or
  - (b) 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.
- 43.3 The parties may from time to time change their respective addresses, telephone and email addresses by providing the other party with written notice.

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#### 44. AGREEMENT MANAGEMENT

- 44.1 The State may notify the Provider that it must use a web or app-accessible contract management or workflow system provided by the State. The Provider must use the system notified.
- 44.2 The Provider must use templates for notices, plans, requests and the provision of information under this Agreement set out in any notice from the State to the Provider requesting the use of the templates under this clause 44.2 and attaching the templates.

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#### 45. GENERAL PROVISIONS

- 45.1 **Costs** - Each party must pay its own legal costs of and incidental to the preparation, negotiation and execution of this Agreement. 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 this Agreement, or as a result of any breach by the Provider of this Agreement.
- 45.2 **Stamp duty** - The Provider must pay all stamp duty on this Agreement and any transaction, event or occurrence that is effected under or in relation to this Agreement.
- 45.3 **Entire agreement** - This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements.
- 45.4 **Waiver** - No provision of this Agreement 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 this Agreement, 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 this Agreement will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.
- 45.5 **Approvals** - Approval or comment by the State on something submitted under this Agreement does not constitute a waiver or relieve the Provider from any requirements to obtain approvals under relevant laws.
- 45.6 **Governing law** - This Agreement will be construed according to the law of Queensland and the parties agree to submit to the jurisdiction of the courts of Queensland.
- 45.7 **Compliance with all laws** - Both parties must comply with all relevant laws in performing their obligations under this Agreement.



- 45.8 **Severability** - If any part of this Agreement is determined to be invalid, unlawful or unenforceable for any reason then that part will be severed from the rest of the Agreement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.
- 45.9 **Further assistance** – Each party must do all things reasonably required to give effect to this Agreement.
- 45.10 **No assignment** - 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 this Agreement, without the prior written consent of the State whose decision will be final.
- 45.11 **Variation** - Except as expressly provided under this Agreement, this Agreement may be varied by agreement signed by both parties.
- 45.12 **Execution** - This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.
- 45.13 **No agency or partnership** - The Provider will not by virtue of this Agreement 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 venture.

Review copy - subject to change

## Attachment 1 – Social Housing and Affordable Housing rent models

<b>[insert] social housing units</b>	Social housing under the Long Term Community Housing Program with rents assessed in accordance with the Community Housing Rent Policy.
<b>[insert] affordable housing units</b>	Affordable housing under the Affordable Housing Program with rents assessed using the Affordable Housing rent model in accordance with the Community Housing Rent Policy.

## Attachment 2 – Project Budget

<b>Total Project Budget: \$[Insert] (GST exclusive)</b>		
<b>Department of Housing</b>	<b>Capital grant</b>	<b>\$(Insert)</b>
<b>[Provider]</b>	<b>Land</b>	<b>\$(Insert)</b>
<b>Third party financier</b>	<b>Financing</b>	<b>\$(Insert)</b>
<b>Budget item</b>	<b>Total amount (GST exclusive)</b>	
<b>Land</b>	<b>\$(Insert)</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>	<b>\$(Insert)</b>	
<b>Construction</b>	<b>\$(Insert)</b>	
<b>Landscaping, pathways, fencing</b>	<b>\$(Insert)</b>	
<b>Total</b>	<b>\$(Insert)</b>	

## Schedule 1 – Delivery Kit

Review copy - subject to change

## Schedule 2 – State’s Security

Review copy - subject to change

**EXECUTED AS AN AGREEMENT by the parties on the dates set out below**

**EXECUTED** on behalf of the **STATE OF QUEENSLAND THROUGH THE DEPARTMENT OF HOUSING** by:

.....  
(full name)

.....  
(designation)

a duly authorised person

in the presence of:

.....  
(print name of witness)

.....  
(signature of witness)

**[INSERT APPROPRIATE EXECUTION CLAUSE FOR PROVIDER, FOR EXAMPLE:] EXECUTED by [INSERT NAME] ABN [INSERT ABN]** in accordance with s 127 of the *Corporations Act 2001* (Cth) by:

.....  
(print name of director)

.....  
(print name of director secretary)

.....  
(signature)

..... / ..... / .....  
(date)

.....  
(signature of director)

.....  
(signature of director/ secretary)

..... / ..... / .....  
(date)