

# Contract for Houses and Residential Land

Fifteenth Edition

*This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.*

**The Seller and Buyer agree to sell and buy the Property under this contract.**

## REFERENCE SCHEDULE

Contract Date: \_\_\_\_\_

### SELLER'S AGENT

|                |   |                |  |
|----------------|---|----------------|--|
| NAME:          | Nutrien Ag Solutions Ltd in Conjunction with Bellaru Chinchilla Pty Ltd |                |  |
| ABN:           | 73 008 743 21, 73 622 084 511   | LICENCE NO:    | 3712367, 2007310                       |
| ADDRESS:       | 84 - 86 Warrego Highway   |                |  |
| SUBURB:        | Chinchilla  | STATE:         | Qld POSTCODE: 4413                     |
| PHONE:         | MOBILE:   | FAX:           | EMAIL:                                 |
| (07) 4662 7806 | 0429 893 099  | (07) 4662 7482 | warren.barker@landmarkharcourts.com.au |

### SELLER

|                |   |                |                         |                |
|----------------|---|----------------|-------------------------|----------------|
| NAME:          | Sweetapple Company Pty Ltd (Receivers and Managers Appointed) |                | ABN:                    | 72 095 039 446 |
| ADDRESS:       | c/- Deloitte Financial Advisory Pty Ltd                       |                |                         |                |
|                | Riverside Centre, 123 Eagle Street                            |                |                         |                |
| SUBURB:        | Brisbane  | STATE:         | Qld                     | POSTCODE: 4000 |
| PHONE:         | MOBILE:   | FAX:           | EMAIL:                  |                |
| (07) 3308 7477 |   | (07) 3308 7002 | sadwyer@deloitte.com.au |                |

|          |         |        |        |           |
|----------|---------|--------|--------|-----------|
| NAME:    |         |        | ABN:   |           |
| ADDRESS: |         |        |        |           |
| SUBURB:  |         | STATE: |        | POSTCODE: |
| PHONE:   | MOBILE: | FAX:   | EMAIL: |           |
|          |         |        |        |           |

### SELLER'S SOLICITOR

■ or any other solicitor notified to the Buyer

|                |  |                |                        |
|----------------|--|----------------|------------------------|
| NAME:          | King & Wood Mallesons                      |                |                        |
| REF:           | 607-0048342                                | CONTACT:       | Cameron Mew            |
| ADDRESS:       | Level 33, Waterfront Place, 1 Eagle Street |                |                        |
| SUBURB:        | Brisbane                                   | STATE:         | Qld POSTCODE: 4000     |
| PHONE:         | MOBILE:                                    | FAX:           | EMAIL:                 |
| (07) 3244 8148 |  | (07) 3244 8999 | cameron.mew@au.kwm.com |

INITIALS (Note: Initials not required if signed with Electronic Signature)

**BUYER**

|          |         |      |           |      |  |
|----------|---------|------|-----------|------|--|
| NAME:    |         |      |           | ABN: |  |
| ADDRESS: |         |      |           |      |  |
| SUBURB:  | STATE:  |      | POSTCODE: |      |  |
| PHONE:   | MOBILE: | FAX: | EMAIL:    |      |  |

|          |         |      |           |      |  |
|----------|---------|------|-----------|------|--|
| NAME:    |         |      |           | ABN: |  |
| ADDRESS: |         |      |           |      |  |
| SUBURB:  | STATE:  |      | POSTCODE: |      |  |
| PHONE:   | MOBILE: | FAX: | EMAIL:    |      |  |

**BUYER'S AGENT** *(if applicable)*

|          |         |             |           |
|----------|---------|-------------|-----------|
| NAME:    |         |             |           |
| ABN:     |         | LICENCE NO: |           |
| ADDRESS: |         |             |           |
| SUBURB:  | STATE:  |             | POSTCODE: |
| PHONE:   | MOBILE: | FAX:        | EMAIL:    |

**BUYER'S SOLICITOR**■ *or any other solicitor notified to the Seller*

|          |          |      |           |
|----------|----------|------|-----------|
| NAME:    |          |      |           |
| REF:     | CONTACT: |      |           |
| ADDRESS: |          |      |           |
| SUBURB:  | STATE:   |      | POSTCODE: |
| PHONE:   | MOBILE:  | FAX: | EMAIL:    |

**PROPERTY**

|                         |  |                                   |  |  |                                    |
|-------------------------|--|-----------------------------------|--|--|------------------------------------|
| <b>Land:</b>            | ADDRESS:   | Vowles Street                     |  |  |                                    |
|                         | SUBURB:  | Miles                             | STATE:                                     | Qld  | POSTCODE: 4415                     |
|                         |  | <input type="checkbox"/> Built On | <input checked="" type="checkbox"/> Vacant |  |                                    |
| Description:            |  |                                   |  |  |                                    |
| Title Reference:        |  |                                   |  |  |                                    |
| Area:                   | 12.49 Ha   | ■ <i>more or less</i>             | Land sold as:                              | <input checked="" type="checkbox"/> Freehold | <input type="checkbox"/> Leasehold |
|                         | ■ <i>if neither is selected, the land is treated as being Freehold</i> |                                   |  |  |                                    |
| <b>Present Use:</b>     | Vacant Land  |                                   |  |  |                                    |
| <b>Local Government</b> |  |                                   |  |  |                                    |

INITIALS (Note: Initials not required if signed with Electronic Signature)

Excluded Fixtures:

Included Chattels:

**PRICE**

Deposit Holder:

Nutrien Ag Solutions Limited

Deposit Holder's Trust Account:

Bank:

BSB:

Account No:

Purchase Price:

\$

■ Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

Deposit:

\$ 10% of Purchase Price

Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below.

Default Interest Rate:

\$

%

Balance Deposit (if any) payable on:

■ If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc will apply.

**FINANCE**

Finance Amount:

\$

■ Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply.

Financier:

Finance Date:

**BUILDING AND/OR PEST INSPECTION DATE**

Inspection Date:

■ If "Inspection Date" is not completed, the contract is not subject to an inspection report and clause 4.1 does not apply.

**MATTERS AFFECTING PROPERTY**

**Title Encumbrances:**

Is the Property sold subject to any Encumbrances?  No  Yes, listed below:

■ **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

**Tenancies:**

TENANTS NAME: Nil

■ If the property is sold with vacant possession from settlement, insert 'Nil'. Otherwise complete details from Residential Tenancy Agreement.

TERM AND OPTIONS:

STARTING DATE OF TERM:

ENDING DATE OF TERM:

RENT:

BOND:

\$

\$

INITIALS (Note: Initials not required if signed with Electronic Signature)

**Managing Agent:**

AGENCY NAME:

PROPERTY MANAGER:

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

**POOL SAFETY****Q1.** Is there a pool on the Land or on an adjacent land used in association with the Land?

- Yes
- No Clause 4.2 of this contract does not apply

■ **WARNING TO SELLER:** Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.

**Q2.** If the answer to Q1 is Yes, is there a Compliance or Exemption Certificate for the pool at the time of contract?

- Yes Clause 5.3(1)(f) applies
- No Clause 4.2 applies (except for auction and some other excluded sales)

■ **WARNING TO BUYER:** If there is no Compliance or Exemption Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a Pool Safety Certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.

**Q3.** If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?

- Yes
- No

■ If there is a pool on the Land and Q2 is not completed then clause 4.2 applies.

■ Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.

**POOL SAFETY INSPECTOR**

Pool Safety Inspector:

Pool Safety Inspection Date:

■ The Pool Safety Inspector must be licensed under the Building Act 1975 and Building Regulation 2006.

■ Clause 4.2(2) applies except where this contract is formed on a sale by auction and some other excluded sales.

**ELECTRICAL SAFETY SWITCH AND SMOKE ALARM***This section must be completed unless the Land is vacant.*

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:

*(select whichever is applicable)*

- Installed in the residence
- Not installed in the residence

■ **WARNING:** By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

*(select whichever is applicable)*

- Installed in the residence
- Not installed in the residence

■ **WARNING:** Failure to install a Compliant Smoke Alarm is an offence under the Fire and Emergency Services Act 1990.

INITIALS (Note: Initials not required if signed with Electronic Signature)

The Seller gives notice to the Buyer in accordance with Section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* that the Land:  
(select whichever is applicable)

- is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land or
- is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

■ **WARNING:** Failure to comply with s83 *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

**GST WITHHOLDING OBLIGATIONS**

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?  
(select whichever is applicable)

- Yes
- No

[Note: An example of an acquisition for a creditable purpose would be the purchase of the Land by a building contractor, who is registered for GST, for the purposes of building a house on the Land and selling it in the ordinary course of its business.]

The Seller gives notice to the Buyer in accordance with section 14-255(1)(a) of the Withholding Law that:  
(select whichever is applicable)

|                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | the Buyer is not required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property  |
| <input type="checkbox"/>            | the Buyer is required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property. Under section 14-255(1) of the Withholding Law, the Seller is required to give further details prior to settlement. |

■ **WARNING:** the Buyer warrants in clause 2.5(6) that this information is true and correct.

■ **WARNING:** All sellers of residential premises or potential residential land are required to complete this notice. Section 14-250 of the Withholding Law applies to the sale of 'new residential premises' or 'potential residential land' (subject to some exceptions) and requires an amount to be withheld from the Purchase Price and paid to the ATO. The Seller should seek legal advice if unsure about completing this section.

**SPECIAL CONDITIONS**

See Annexure A

**SETTLEMENT**

|                              |                                |  |
|------------------------------|--------------------------------|--|
| <b>SETTLEMENT DATE:</b>      | 30 days from the Contract Date | ■ <i>or the next Business Day if that is not a Business Day in the Place for Settlement.</i> |
| <b>PLACE FOR SETTLEMENT:</b> | Brisbane                       | ■ <i>If Brisbane is inserted, this is a reference to Brisbane CBD.</i>                       |

**SIGNATURES**

The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling-off period. It is recommended the Buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.

**BUYER:** \_\_\_\_\_ **WITNESS:** \_\_\_\_\_

**BUYER:** \_\_\_\_\_ **WITNESS:** \_\_\_\_\_  
 By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign. [Note: No witness is required if the Buyer signs using an Electronic Signature]

**SELLER:** \_\_\_\_\_ **WITNESS:** \_\_\_\_\_

**SELLER:** RICHARD JOHN HUGHES and TIM JOSEPH HEENAN, joint and several receivers and managers of Sweetapple Company Pty Ltd (Receivers and Managers Appointed) \_\_\_\_\_ **WITNESS:** \_\_\_\_\_  
 By placing my signature above I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign. [Note: No witness is required if the Seller signs using an Electronic Signature]

**DEPOSIT HOLDER:** \_\_\_\_\_ ■ *Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.*

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# TERMS OF CONTRACT

## FOR HOUSES AND RESIDENTIAL LAND

### 1. DEFINITIONS

#### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
  - (a) **“Approved Safety Switch”** means a residual current device as defined in the *Electrical Safety Regulation 2013*;
  - (b) **“ATO”** means the Australian Taxation Office;
  - (c) **“ATO Clearance Certificate”** means a certificate issued under s14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
  - (d) **“Balance Purchase Price”** means the Purchase Price, less the Deposit, adjusted under clause 2.6;
  - (e) **“Bank”** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)*;
  - (f) **“Bond”** means a bond under the Residential Tenancies and Rooming Accommodation Act 2008;
  - (g) **“Building Inspector”** means a person licensed to carry out completed residential building inspections under the *Queensland Building and Construction Commission Regulations 2003*;
  - (h) **“Business Day”** means a day other than:
    - (i) a Saturday or Sunday;
    - (ii) a public holiday in the Place for Settlement; and
    - (iii) a day in the period 27 to 31 December (inclusive);
  - (i) **“CGT Withholding Amount”** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235;
  - (j) **“Compliance or Exemption Certificate”** means:
    - (i) a Pool Safety Certificate; or
    - (ii) a building certificate that may be used instead of a Pool Safety Certificate under section 246AN(2) of the *Building Act 1975*; or
    - (iii) an exemption from compliance on the grounds of impracticality under section 245B of the *Building Act 1975*;
  - (k) **“Compliant Smoke Alarm”** means a smoke alarm complying with the requirements for smoke alarms in domestic dwellings under the *Fire and Emergency Services Act 1990*;
  - (l) **“Contract Date”** or **“Date of Contract”** means the date inserted in the Reference Schedule;
  - (m) **“Court”** includes any tribunal established under statute.
  - (n) **“Electronic Signature”** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
  - (o) **“Encumbrances”** includes:
    - (i) unregistered encumbrances;
    - (ii) statutory encumbrances; and
    - (iii) Security Interests.
  - (p) **“Essential Term”** includes, in the case of breach by:
    - (i) the Buyer: clauses 2.2, 2.5(1), 2.5(5), 5.1 and 6.1; and
    - (ii) the Seller: clauses 2.5(5), 5.1, 5.3(1)(a)-(d), 5.3(1)(e)(ii) & (iii), 5.3(1)(f), 5.5 and 6.1;but nothing in this definition precludes a Court from finding other terms to be essential.
  - (q) **“Financial Institution”** means a Bank, building society or credit union;
  - (r) **“General Purpose Socket Outlet”** means an electrical socket outlet as defined in the *Electrical Safety Regulations 2013*;
  - (s) **“GST”** means the goods and services tax under the GST Act;
  - (t) **“GST Act”** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (u) **“GST Withholding Amount”** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation.
  - (v) **“Improvements”** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
  - (w) **“Keys”** means keys, codes or devices in the Seller’s possession or control for all locks or security systems on the Property or necessary to access the Property;
  - (x) **“Notice of no pool safety certificate”** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;
  - (y) **“Notice of nonconformity”** means a Form 26 under the *Building Regulation 2006* advising how the pool does not comply with the relevant pool safety standard;
  - (z) **“Outgoings”** means rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies) but excludes land tax;
  - (aa) **“Pest Inspector”** means a person licensed to undertake termite inspections on completed buildings under the *Queensland Building and Construction Commission Regulations 2003*;
  - (bb) **“Pool Safety Certificate”** has the meaning in section 231C(a) of the *Building Act 1975*;
  - (cc) **“Pool Safety Inspection Date”** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
    - (i) the Inspection Date for the Building and/or Pest Inspection; or
    - (ii) 2 Business Days before the Settlement Date
  - (dd) **“Pool Safety Requirements”** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
  - (ee) **“Pool Safety Inspector”** means a person authorised to give a Pool Safety Certificate;
  - (ff) **“PPSR”** means the Personal Property Securities Register established under *Personal Property Securities Act 2009 (Cth)*;
  - (gg) **“Property”** means:
    - (i) the Land;
    - (ii) the Improvements; and
    - (iii) the Included Chattels;
  - (hh) **“Rent”** means any periodic amount payable under the Tenancies;
  - (ii) **“Reserved Items”** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
  - (jj) **“Security Interests”** means all security interests registered on the PPSR over Included Chattels and Improvements;
  - (kk) **“Transfer Documents”** means:
    - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
    - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;

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- (ll) **“Transport Infrastructure”** has the meaning defined in the *Transport Infrastructure Act 1994*; and
- (mm) **“Withholding Law”** means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.

## 2. PURCHASE PRICE

### 2.1 GST

- (1) Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.
- (2) If a party is required to make any other payment or reimbursement under this contract, that payment or reimbursement will be reduced by the amount of any input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled.

### 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

### 2.3 Investment of Deposit

- If:
- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

### 2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

### 2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by bank cheque as the Seller or the Seller's Solicitor directs.
- (2) Despite any other provision of this contract, a reference to a "bank cheque" in clause 2.5:
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;

and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.
- (3) If both the following apply:
  - (a) the sale is not an excluded transaction under s14-215 of the Withholding Law; and
  - (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
    - (i) an ATO Clearance Certificate; or
    - (ii) a variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
  - (d) the Buyer must lodge a Foreign Resident Capital Gains Withholding Purchaser Notification Form with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
  - (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
  - (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.
- (4) For clause 2.5(3) and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:
- (a) the Property includes items in addition to the Land and Improvements; and
  - (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,
- in which case the market value of the Land and Improvements will be as stated in the valuation.
- (5) If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:
- (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
  - (b) prior to settlement the Buyer must lodge with the ATO:
    - (i) a *GST Property Settlement Withholding Notification* form ("Form 1"); and
    - (ii) a *GST Property Settlement Date Confirmation* form ("Form 2");
  - (c) on or before settlement, the Buyer must give the Seller copies of:
    - (i) the Form 1;
    - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
    - (iii) confirmation from the ATO that the Form 2 has been lodged; and
    - (iv) a completed ATO payment slip for the Withholding Amount;
  - (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
  - (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- (6) The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

### 2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(5) and 2.6(14), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or



- (ii) if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
    - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
    - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
  - (4) The Seller is liable for land tax assessed on the Land for the financial year current at the Settlement Date. If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue.
  - (5) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
  - (6) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
  - (7) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
  - (8) Unpaid Rent for the rental period including both the Settlement Date and the following day ("Current Period") is not adjusted until it is paid.
  - (9) Rent already paid for the Current Period or beyond must be adjusted at settlement.
  - (10) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(7), 2.6(8) and 2.6(9).
  - (11) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
  - (12) The cost of Bank cheques payable at settlement:
    - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
    - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.
  - (13) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.
  - (14) Upon written request by the Buyer, the Seller will, prior to Settlement, give the Buyer a written statement, supported by reasonable evidence, of –
    - (a) all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and
    - (b) any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.6.

If the Seller becomes aware of a change to the information provided the Seller will as soon as practicably provide the updated information to the Buyer.

### 3. FINANCE

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
  - (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 3.2.

### 4. BUILDING AND PEST INSPECTION REPORTS AND POOL SAFETY

#### 4.1 Building and Pest Inspection

- (1) This contract is conditional upon the Buyer obtaining a written building report from a Building Inspector and a written pest report from a Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- (2) The Buyer must give notice to the Seller that:
  - (a) a satisfactory Inspector's report under clause 4.1(1) has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (b) clause 4.1(1) has been either satisfied or waived by the Buyer.
- (3) If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- (4) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.1(2) by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- (5) The Seller's right under clause 4.1(4) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 4.1(2).

#### 4.2 Pool Safety

- (1) This clause 4.2 applies if:
  - (a) the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
  - (b) this contract is not a contract of a type referred to in section 160(1)(b) of the *Property Occupations Act 2014*.
- (2) This contract is conditional upon:
  - (a) the issue of a Pool Safety Certificate; or
  - (b) a Pool Safety Inspector issuing a Notice of nonconformity stating the works required before a Pool Safety Certificate can be issued,

by the Pool Safety Inspection Date.
- (3) The Buyer is responsible for arranging an inspection by a Pool Safety Inspector at the Buyer's cost. The Seller authorises:
  - (a) the Buyer to arrange the inspection; and
  - (b) the Pool Safety Inspector to advise the Buyer of the results of the inspection and to give the Buyer a copy of any notice issued.
- (4) If a Pool Safety Certificate has not issued by the Pool Safety Inspection Date, the Buyer may give notice to the Seller that the Buyer:
  - (a) terminates this contract; or
  - (b) waives the benefit of this clause 4.2;

The Buyer must act reasonably.
- (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2(4) by 5pm on the Pool Safety Inspection Date.
- (6) The Seller's right under clause 4.2(5) is subject to the Buyer's continuing right to give written notice to the Seller of termination or waiver pursuant to clause 4.2(4).

- (7) The right of a party to terminate under this clause 4.2, ceases upon receipt by that party of a copy of a current Pool Safety Certificate.
- (8) If the Buyer terminates this contract under clause 4.2(4)(a), and the Seller has not obtained a copy of the Notice of nonconformity issued by the Pool Safety Inspector, the Seller may request a copy and the Buyer must provide this to the Seller without delay.

## 5. SETTLEMENT

### 5.1 Time and Date

- (1) Settlement must occur between 9am and 4pm AEST on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) any instrument of title for the Land required to register the transfer to the Buyer; and
  - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
  - (c) any instrument necessary to release any Encumbrance over the Property in compliance with the Seller's obligation in clause 7.2; and
  - (d) if requested by the Buyer not less than 2 clear Business Days before the Settlement Date, the Keys; and
  - (e) if there are Tenancies:
    - (i) the Seller's copy of any Tenancy agreements;
    - (ii) a notice to each tenant advising of the sale in the form required by law; and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and
  - (f) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Compliance or Exemption Certificate, if not already provided to the Buyer.
- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(d), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
- (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
- (3) manufacturers' warranties regarding the Included Chattels; and
- (4) builders' warranties on the Improvements; to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

### 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before settlement.

- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

### 5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

## 6. TIME

### 6.1 Time of the Essence

Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### 6.2 Suspension of Time

- (1) This clause 6.2 applies if a party is unable to perform a Settlement Obligation solely as a consequence of a Natural Disaster but does not apply where the inability is attributable to:
  - (a) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
  - (b) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.
- (2) Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.
- (3) An Affected Party must take reasonable steps to minimise the effect of the Natural Disaster on its ability to perform its Settlement Obligations.
- (4) When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Natural Disaster, the Affected Party must give the other party a notice of that fact, promptly.
- (5) When the Suspension Period ends, whether notice under clause 6.2(4) has been given or not, either party may give the other party a Notice to Settle.
- (6) A Notice to Settle must be in writing and state:
  - (a) that the Suspension Period has ended;
  - (b) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date; and
  - (c) that time is of the essence.
- (7) When Notice to Settle is given, time is again of the essence of the contract.
- (8) In this clause 6.2:
  - (a) "**Affected Party**" means a party referred to in clause 6.2(1);
  - (b) "**Natural Disaster**" means a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
  - (c) "**Settlement Obligations**" means, in the case of the Buyer, its obligations under clauses 2.5(1) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a) – (e) and 5.5;
  - (d) "**Suspension Period**" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Natural Disaster.

## 7. MATTERS AFFECTING THE PROPERTY

### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

## 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

## 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

## 7.4 Seller's Warranties

- (1) The Seller warrants that, except as disclosed in this contract at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied judgment, order (except for an order referred to in clause 7.6(1)(b)) or writ affecting the Property.
- (2) The Seller warrants that, except as disclosed in this contract at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3)(a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
  - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3), the Buyer may:
  - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
  - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If the Seller breaches a warranty in clause 7.4(1) or clause 7.4(2), the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

## 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
  - (a) an error in the boundaries or area of the Land;
  - (b) an encroachment by structures onto or from the Land; or
  - (c) a mistake or omission in describing the Property or the Seller's title to it;which is:
  - (d) immaterial; or
  - (e) material, but the Buyer elects to complete this contract;the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).
- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

## 7.6 Requirements of Authorities

- (1) Subject to clause 7.6(5), any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("Work or Expenditure") must be fully complied with:
  - (a) if issued before the Contract Date, by the Seller before the Settlement Date;
  - (b) if issued on or after the Contract Date, by the Buyer.

- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* that affects the Property.
- (5) Clause 7.6(1) does not apply to orders disclosed under section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

## 7.7 Property Adversely Affected

- (1) If at the Contract Date:
  - (a) the Present Use is not lawful under the relevant town planning scheme;
  - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - (c) access or any service to the Land passes unlawfully through other land;
  - (d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
  - (e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or omission in the Seller's title under clause 7.5(2)(c);
  - (f) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
  - (g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
  - (h) there is a charge against the Land under s104 of the *Foreign Acquisitions and Takeovers Act 1975*, and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

## 7.8 Dividing Fences

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT

### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement; and
- (4) once to value the Property before settlement.

### 8.3 Seller's Obligations After Contract Date

- (1) The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or

Tenancies that may significantly alter them or result in later expense for the Buyer.

- (2) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work on the Property, give a copy to the Buyer.
- (3) Without limiting clause 8.3(1), the Seller must not without the prior written consent of the Buyer, give any notice or seek or consent to any order that affects the Property or make any agreement affecting the Property that binds the Buyer to perform.

#### 8.4 Information Regarding the Property

Upon written request of the Buyer but in any event before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement;
- (3) sufficient details (including the date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR; and
- (4) further copies or details if those previously given cease to be complete and accurate.

#### 8.5 Possession Before Settlement

If possession is given before settlement:

- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - (a) create a relationship of landlord and tenant; or
  - (b) waive the Buyer's rights under this contract;
- (3) the Buyer must insure the Property to the Seller's satisfaction; and
- (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

### 9. PARTIES' DEFAULT

#### 9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

#### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

#### 9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

#### 9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- (1) resume possession of the Property;
- (2) forfeit the Deposit and any interest earned;
- (3) sue the Buyer for damages;
- (4) resell the Property.

#### 9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

#### 9.6 Seller's Resale

(1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:

- (a) any deficiency in price on a resale; and
  - (b) its expenses connected with any repossession, any failed attempt to resell, and the resale;
- provided the resale settles within 2 years of termination of this contract.

(2) Any profit on a resale belongs to the Seller.

#### 9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

#### 9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

#### 9.9 Interest on Late Payments

- (1) The Buyer must pay interest at the Default Rate:
  - (a) on any amount payable under this contract which is not paid when due; and
  - (b) on any judgement for money payable under this contract.
- (2) Interest continues to accrue:
  - (a) under clause 9.9(1)(a), from the date it is due until paid; and
  - (b) under clause 9.9(1)(b), from the date of judgement until paid.
- (3) Any amount payable under clause 9.9(1)(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.
- (4) Nothing in this clause affects any other rights of the Seller under this contract or at law.

### 10. GENERAL

#### 10.1 Seller's Agent

The Seller's Agent is appointed as the Seller's agent to introduce a buyer.

#### 10.2 Foreign Buyer Approval

The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

#### 10.3 Duty

The Buyer must pay all duty on this contract.

#### 10.4 Notices

- (1) Notices under this contract must be in writing.
- (2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.
- (3) Notices under this contract or required to be given by law may be given by:
  - (a) delivering or posting to the other party or its solicitor; or
  - (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
  - (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).
- (4) Subject to clause 10.4(5), a notice given after this contract is entered into in accordance with clause 10.4(3) will be treated as given:
  - (a) 5 Business Days after posting;
  - (b) if sent by facsimile, at the time indicated on a clear transmission report; and
  - (c) if sent by email, at the time it is sent.
- (5) Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.
- (6) If two or more notices are treated as given at the same time under clause 10.4(5), they will be treated as given in the order in which they were sent or delivered.
- (7) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.
- (8) For the purposes of clause 10.4(3)(c) and clause 12.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

## 10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

## 10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

## 10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

## 10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

## 10.9 Interpretation

### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.

## 10.10 Counterparts

- (1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.
- (2) A counterpart may be electronic and signed using an Electronic Signature.

## 11. ELECTRONIC SETTLEMENT

### 11.1 Application of Clause

- (1) Clause 11 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement and overrides any other provision of this contract to the extent of any inconsistency.
- (2) Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 11.1(1).
- (3) Clause 11 (except clause 11.5(2)) ceases to apply if either party gives notice under clause 11.5 that settlement will not be an Electronic Settlement.

### 11.2 Completion of Electronic Workspace

- (1) The parties must:
  - (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
  - (b) do everything else required in the Electronic Workspace to enable settlement to occur on the Settlement Date.
- (2) If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- (3) If any part of the Purchase Price is to be paid to discharge an Outgoing:
  - (a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;

- (b) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.

- (4) If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
  - (a) the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
  - (b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 11.2(4)(a);
  - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract;
  - (d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

### 11.3 Electronic Settlement

- (1) Clauses 5.1(2) and 5.2 do not apply.
- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.5(1) and 2.5(3)(f).
- (3) The Seller and Buyer will be taken to have complied with:
  - (a) clause 2.5(3)(c),(e) and (f); and
  - (b) clause 2.5(5)(d) and (e),(as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.
- (4) The Seller will be taken to have complied with clauses 5.3(1)(b) and (c) if, at settlement, the Electronic Workspace contains Transfer Documents and (if applicable) releases of the Encumbrances (other than releases of Encumbrances referred to in clause 11.3(5)) for Electronic Lodgement in the Land Registry.
- (5) The Seller will be taken to have complied with clause 5.3(1)(c), (d), (e) and (f) if the Seller's Solicitor:
  - (a) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys (if requested under clause 5.3(1)(d)) in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
  - (b) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
  - (c) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- (6) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- (7) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

### 11.4 Computer System Unavailable

- (1) If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or PEXA is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.
- (2) A party is not required to settle if Electronic Lodgement is not available. If the parties agree to Financial Settlement without Electronic Lodgement, settlement is deemed to occur at the time of Financial Settlement.

### 11.5 Withdrawal from Electronic Settlement

- (1) Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- (2) A notice under clause 11.5(1) may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
  - (a) the transaction is not a Qualifying Conveyancing Transaction; or

- (b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to PEXA; or
  - (c) the Buyer's or Seller's Financial Institution is unable to settle using PEXA.
- (3) If clause 11.5(2) applies:
- (a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and
  - (b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

#### 11.6 Costs

Each party must pay its own fees and charges of using PEXA for Electronic Settlement.

#### 11.7 Definitions for clause 11

In clause 11:

“**Digitally Sign**” and “**Digital Signature**” have the meaning in the ECNL.

“**ECNL**” means the Electronic Conveyancing National Law (Queensland).

“**Electronic Conveyancing Documents**” has the meaning in the *Land Title Act 1994*.

“**Electronic Lodgement**” means lodgement of a document in the Land Registry in accordance with the ECNL.

“**Electronic Settlement**” means settlement facilitated by PEXA.

“**Electronic Workspace**” means a shared electronic workspace within PEXA that allows the Buyer and Seller to affect Electronic Lodgement and Financial Settlement.

“**Financial Settlement**” means the exchange of value between Financial Institutions in accordance with the Financial Settlement Schedule.

“**Financial Settlement Schedule**” means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.

“**PEXA**” means the system operated by Property Exchange Australia Ltd for settlement of conveyancing transactions and lodgement of Land Registry documents.

“**Qualifying Conveyancing Transaction**” means a transaction that is not excluded for Electronic Settlement by the rules issued by PEXA, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction.

## 12. ELECTRONIC CONTRACT AND DISCLOSURE

### 12.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

### 12.2 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.

# Annexure A – Special Conditions

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## 1 Definitions and interpretation

### 1.1 Terms of contract

Words and expressions defined in the Terms of contract apply to these special conditions, except to the extent of any inconsistency. Clause 10.9 of the Terms of contract applies in the interpretation of these special conditions except to the extent of any inconsistency.

### 1.2 Definitions

In this contract, unless the context otherwise requires:

**Authority** means any government or any governmental, semi-governmental, local government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, minister, statutory body, official or entity.

**Claim** means a claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this contract.

**Contamination** has the meaning given to that term in the *Environmental Protection Act 1994* (Qld).

**Controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers.

**Deed of Novation** means the deed of novation in the form set out in Annexure C.

**Disclosure Material** means all information and materials relating in any way to the Property which were at any time provided or made available to the Buyer, its employees, advisers, agents or solicitors.

**Due Diligence** means the Buyer's due diligence searches, investigations and enquiries about, or in relation to, the Property.

**Encroachments** means any encroachment, including those encroachments:

- (a) on the Property by another property or structure on another property;
- (b) by the Property or a structure on the Property on another property;
- (c) resulting from an incorrect alignment of a structure on the Property or another property; or
- (d) by a structure on the Property onto any easement or other reserve on the Property.

**Encumbrance** means, for the purpose of special condition 4 any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, Security Interest, lien, pledge, trust, power, title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or

- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**Environment** includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas;
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraphs (a), (b), (c) or (d).

**Environmental Harm** has the meaning given to that term in the *Environmental Protection Act 1994* (Qld).

**Environmental Law** means a law relating to the Environment, including:

- (a) a law relating to land use, planning, environmental assessment, heritage, water catchments, pollution of air or waters, noise, soil or water contamination, chemicals and hazardous substances, the ozone layer, waste, dangerous goods, building regulation, occupation of buildings and fire safety, public health, occupational health and safety, noxious trades and any aspect of the protection of the Environment, or the enforcement or administration of any of those laws; and
- (b) a cause of action at common law, in nuisance, negligence, trespass or otherwise or which gives rise or may give rise to equitable relief or which results or may result in an award of damages, costs or compensation, where any aspect of the cause of action concerns directly or indirectly the Environment or the health or safety of persons.

**Environmental Liability** means any liability which arises directly or indirectly in connection with any contamination caused by any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Property unsafe or unfit for habitation or occupation by humans or otherwise environmentally degraded, including the following:

- (a) all Costs associated with undertaking any remediation of the Property whether or not ordered or required by any Authority;
- (b) any compensation or other monies that an Authority requires to be paid to any person under any Environmental Law for any reason;
- (c) all Costs incurred in complying with any Environmental Law; and
- (d) any Claim made in connection with any contamination of the Property.

**Environmental Management Register** and **Contaminated Land Register** have the same meanings as in the *Environmental Protection Act 1994* (Qld).

**FATA** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**Guarantee and Indemnity** means the guarantee and indemnity in the form set out in Annexure B.



**Guarantor** means the person or people named as guarantor in the Guarantee and Indemnity.

**Hazardous Contaminant** has the meaning given to that term in the *Environmental Protection Act 1994* (Qld).

A person is or becomes **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has a Controller (as defined in the Corporations Act) appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Seller); or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Seller reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or

something having a substantially similar effect to (a) to (g) happens in connection with that person under the Law of any jurisdiction.

**Law** includes common law, principles of equity and Laws made by parliament (and Laws made by parliament include State, Territory and Commonwealth Laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

**Loss** means any loss, damage, cost, charge, expense, payment or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Receivers** mean Justin Denis Walsh and Samuel John Freeman in their capacity as joint and several receivers and managers of the Seller and any replacement for either of them.

**Seller's Associates** means:

- (a) the Receivers;
- (b) the Seller's Agent;
- (c) the Seller's Solicitors; and
- (d) the officers, employees, advisors, consultants and agents of the Seller, the Receivers, the Seller's Agent and the Seller's Solicitors.

**Sunset Date** means the date that is 6 months after the Settlement Date.

**Terms of contract** means the REIQ Standard Terms of contract for Houses and Residential Land (Fifteenth Edition).

### 1.3 Interpretation

Unless the contrary intention appears, in this contract:

- (a) if there is any inconsistency between the Terms of contract and these attached special conditions, these special conditions prevail;
- (b) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this contract;
- (c) a reference to a document (including this contract) includes any variation or replacement of it;
- (d) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) the singular includes the plural and vice versa;
- (g) a reference to any thing (including any right) includes a part of that thing and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (h) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association and an Authority;
- (i) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (j) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (k) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (l) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (m) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (n) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (o) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (p) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- (q) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (r) if an act under this contract to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (s) a reference to time is the time in Brisbane, Queensland; and
- (t) headings are for convenience of reference only and do not affect interpretation of this contract.

#### **1.4 Inconsistency with printed form**

If there is inconsistency between these additional special conditions and the clauses in the printed form of contract, these special conditions prevail.

#### **1.5 Definitions in Terms of contract**

Words and expressions defined in the Terms of contract apply to these special conditions, except to the extent of any inconsistency.

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## **2 General**

### **2.1 Annexures**

The Seller does not warrant the accuracy or completeness of any document annexed or exhibited to this contract.

### **2.2 Caveats**

If at settlement a caveat affects the title to the Property (other than a caveat referred to in special condition 2.3), the Buyer may not require the Seller to have the caveat withdrawn but, subject to special conditions 15.1 and 15.2, must accept a withdrawal of the caveat so far as it affects the Property, if it is in the prescribed form and the Seller pays the lodgement fees to the Buyer.

### **2.3 Buyer's caveat**

If a caveat lodged by the Buyer or by any person claiming through the Buyer affects the title to the Property at settlement, then the Buyer may not require the Seller to have that caveat withdrawn or give a withdrawal of caveat, and must complete this contract despite the caveat.

### **2.4 Service**

Despite any other clauses in this contract, any document under or relating to this contract to be served on the Seller must be delivered to the Seller at its solicitor's address set out in the Reference Schedule.

### **2.5 Entire agreement**

This contract constitutes the entire agreement of the parties about the sale of the Property and supersedes all previous agreements, understandings and negotiations in relation to the sale of the Property. The Buyer agrees that in entering into this contract it has not relied on any representation or warranty about its subject matter (including the development potential of, or future profits from, the Property) except those included in this contract.

### **2.6 Indemnity**

The Buyer indemnifies the Seller and the Receivers against any liability or loss arising from, and any Costs incurred in connection with:

- (a) the Buyer's default under this contract or the Buyer's breach of warranty, including legal Costs on whichever is the higher of a full indemnity basis or solicitor and own client basis; and
- (b) any GST payable by the Seller or the Receivers in connection with the deposit if the deposit is forfeited because of the Buyer's default.

## **2.7 Indemnities continue**

The indemnities in this contract are continuing obligations, independent of the other obligations of the indemnifying party and continue after settlement or termination. The other party need not incur expense or make payment before enforcing a right of indemnity under this contract.

A party giving an indemnity agrees to pay amounts due under that indemnity on demand from the indemnified party.

## **2.8 Additional rights of rescission**

If the Buyer (or if the Buyer consists of two or more persons, any of those persons) is a body corporate and is Insolvent, then the Seller may rescind this contract by serving a notice on the Buyer's solicitor.

## **2.9 No merger**

The warranties (except those implied by law) and agreements in this contract do not merge at settlement.

## **2.10 Agent**

The Buyer represents and warrants that it has not been introduced to the sale of the Property directly or indirectly by any agent other than the Seller's Agent.

## **2.11 No abstract or requisitions**

- (a) The Buyer is not entitled to an abstract of title.
- (b) The Buyer may not issue any objection to, or requisitions on, the title to the Property and waives any right it may have to do so.

## **2.12 Duties**

The Buyer:

- (a) must pay all duties, fees, taxes and charges (including fines and penalties) payable on this contract, on any instruments entered into under this contract, and in respect of any transaction evidenced by this contract; and
- (b) indemnifies on demand the Seller and the Receivers against any liability for those duties, fees, taxes and charges (including fines and penalties).

## **2.13 Further steps**

Each party must, at its own expense, at the request of the other party, do everything reasonably necessary to give effect to this contract and the transactions provided for by it (including the execution of documents) and use all reasonable endeavours to cause relevant third parties to do likewise.

## **2.14 Waiver and variation**

A provision of or a right created under this contract may not be:

- (a) waived, except in writing signed by the party granting the waiver; or
- (b) varied, except in writing signed by the parties.

## **2.15 Governing law and jurisdiction**

- (a) The governing law of this contract is Queensland, and this contract is to be construed in accordance with the laws of Queensland.
- (b) Each party submits to the non-exclusive jurisdiction of the courts in Queensland, and the courts of appeal from them, and waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

## **2.16 Inconsistent law**

To the extent permitted by law, this contract prevails to the extent it is inconsistent with any law.

## **2.17 Counterparts**

If this contract is executed in any number of counterparts, including counterparts exchanged electronically, all counterparts when taken together are to be taken to constitute one instrument.

## **2.18 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This special condition has no effect if the severance alters the basic nature of this document or is contrary to public policy.

## **2.19 No assignment**

The Buyer acknowledges that this contract is personal to it and the Buyer cannot assign its interest under this contract without the prior written approval of the Seller (which the Seller may give or withhold in its absolute discretion).

## **2.20 If the Buyer is an individual**

If the Buyer (or if the Buyer consists of two or more persons, any of those persons):

- (a) dies; or
- (b) becomes so intellectually, physically or psychologically disabled as to be, in the reasonable opinion of the Seller, unable to complete this contract on time,

then the Seller may rescind this contract by notice to the Buyer's Solicitor.

## **2.21 Consent under the Electronic Transactions (Queensland) Act 2001**

For the purposes of sections 11 and 12 of the *Electronic Transactions (Queensland) Act 2001* (Qld), the Seller and the Buyer consent to information being given by electronic communication.

## **2.22 Indemnity payments**

A party giving an indemnity under this contract must pay amounts due under that indemnity on demand from the indemnified party.

## **2.23 Construction**

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

## **2.24 Remedies cumulative**

The rights and remedies provided in this contract are in addition to other rights and remedies given by Law independently of this contract.

## **2.25 PPSA**

The Buyer acknowledges that the Seller is under no obligation to provide or procure the provision of, a letter or deed poll confirming the release of the Property from a Security Interest at settlement and the Seller is discharged from the obligation to provide the Property free from any Security Interest and the Seller may require settlement without providing such a letter or deed poll. The Buyer agrees that it will not delay settlement or take any other action in respect of such matters.

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# **3 Excluded and amended conditions**

## **3.1 Exclusions**

Clauses 2.3, 2.4(2), 2.4(4), 2.6(13) and (14), 3, 4, 5.3(1)(c) to (f) (inclusive), 5.3(3), 5.4, 5.5, 5.6, 5.7, 7.2, 7.4(1) to (4) (inclusive), 7.5(2) to (4) (inclusive), 7.6, 7.7, 8.2, 8.3, 8.4, 8.5 and 11 of the Terms of contract do not apply to this contract.

## **3.2 Amendments**

- (a) Clause 2.6(4) of the Terms of contract is amended by deleting the words "*The Seller is liable for land tax assessed on the Land for the financial year current at the Settlement Date.*" and replacing it with:

*"Land tax shall be apportioned on the basis that, as at midnight on the previous 30 June, the Seller owned no land other than the Seller's interest in the Land."*

- (b) Clause 9.6(1) of the Terms of contract is amended by deleting the words "*provided the resale settles within 2 years of termination of this contract*".

## **3.3 Requirements of Authorities**

Subject to settlement, the Buyer must, at its expense, comply with any valid notice or order issued before, on or after the Contract Date, pursuant to any Law or by any Authority necessitating the doing of work or the expenditure of money on or in relation to the Property or any path or road adjoining the Land. The Buyer agrees to indemnify the Seller and the Receivers in respect of the doing of work or the expenditure of money to comply with the notice or order.

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## **4 Condition of Property - As is, where is sale**

### **4.1 As is, where is**

The Buyer has entered into and proceeded with this contract on the basis that it has inspected and reviewed the Property and carried out, or had reasonable opportunity to carry out its Due Diligence of the Property and accepts the Property "as is, where is" in their present condition and subject to any legal and physical defects (whether latent or patent) and any matter referred to in this contract or the Disclosure Material.

### **4.2 No action in relation to condition of Property**

The Buyer may not make a claim or requisition, delay settlement, rescind or terminate because of anything in connection with:

- (a) any Encumbrance affecting or not affecting the Property; or
- (b) the presence in or on the Property of asbestos or other hazardous substances; or
- (c) the condition or existence or non-existence of services; or
- (d) the condition, quality or state of repair of the Property, including any dilapidation, infestation or defect (patent or latent) which may affect the Property; or
- (e) the use and purposes for which the Property can be put; or
- (f) the suitability or fitness of the Property for any purpose; or
- (g) whether the Property complies with any laws and requirements of any Authority affecting the Property (including any use) and any non-compliance; or
- (h) the existence or otherwise of any requirements of any Authority in connection with the Property; or
- (i) the benefits and obligations relating to the Property; or
- (j) the financial return or income to be derived at any time from the Property and expenses that may be incurred in connection with the Property; or
- (k) the means or adequacy of access to the Property; or
- (l) the zoning of the Property; or
- (m) the description or area or measurements of the Property; or
- (n) the title to the Property; or
- (o) any Encroachments; or
- (p) compliance with any Environmental Law; or
- (q) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property; or
- (r) the existence of any claim affecting the Property under the Native Title Act 1993 (Cth) or any other native title law; or

- (s) the existence of easements or other rights in respect of a service for the Property (including air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water) which is a joint service or which passes through another property, or any service for another property which passes through the Property; or
- (t) the presence of asbestos or hazardous substances or contamination in, on or under the Property or which affects the Property in any way; or
- (u) the condition, existence (or non-existence) or availability of services; or
- (v) the roof or surface water drainage from the Property being connected to a sewerage service; or
- (w) the existence of, or the contents of, any certificate from an Authority in connection with the Property; or
- (x) any fixtures or their ownership; or
- (y) the existence of any Approval or order, or application for an Approval or order, under any law and any non-compliance with any Approval or order; or
- (z) the Buyer's entitlement (if any) to claim income tax deductions in connection with those items included in the sale which are depreciating assets (as that term is defined in section 40-30 of the Tax Act), or in connection with the cost of capital works which form part of the Property; or
- (aa) whether the Property is prone to flood, fire or natural disaster; or
- (bb) if the title to the Property is leasehold, the terms and conditions of the relevant lease and any non-compliance with those terms and conditions; or
- (cc) whether the Property is listed on any heritage register; or
- (dd) any party wall; or
- (ee) the ownership or location of any fuel storage tank or facility; or
- (ff) any manhole or vent on the Property; or
- (gg) any agreement relating to the supply of electricity to the Property;
- (hh) any tenant or other person or thing in occupation of the Property and the terms or validity of any lease or other agreement in respect of the Property; or
- (ii) any thing in connection with the Property which is disclosed in this contract or the Disclosure Material.

### **4.3 Independent due diligence enquiries**

The Buyer acknowledges and agrees that:

- (a) it has not been induced to enter into this contract by, and does not rely on any written or oral representations, warranties, undertakings, covenants, agreements or information provided or statements about any matter which affects the Property made by or on behalf of, the Seller or any of the Seller's Associates; and
- (b) it has been given the opportunity to inspect and view the Disclosure Material and undertake a full Due Diligence on the Property, and it has satisfied itself in connection with the matters arising from its Due Diligence; and
- (c) it is satisfied that the description or particulars of the Property and title are correct; and



- (d) neither the Seller nor any of the Seller's Associates, warrants the accuracy, currency, reliability or completeness of any of the Disclosure Material; and
- (e) neither the Seller, nor any of the Seller's Associates, assume liability for any material contained in the Disclosure Material; and
- (f) it has satisfied itself as to the correctness of the information in the Disclosure Material by independent investigations and it has not relied on any material contained in the Disclosure Material as a statement or representation of fact or as to any further matter; and
- (g) when entering into this contract the Buyer relied exclusively on the following matters independently of any statements, inducements or representations made by or on behalf of the Seller or any of the Seller's Associates:
  - (i) the investigations relating to the Property made on by or behalf of the Buyer, including any dilapidation, infestation or defect (patent or latent) which may affect the Property;
  - (ii) the skill and judgment of the Buyer, its consultants and representatives; and
  - (iii) the opinions or advice obtained by the Buyer independently of the Seller or any of the Seller's Associates; and
- (h) the Buyer has made its own independent investigations or assessments about, and has relied upon the Buyer's own judgment in respect of those investigations or assessments about, each of the matters referred to, disclosed or described in special condition 4.2.

#### **4.4 Buyer's indemnity about Environmental Laws**

Subject to settlement, the Buyer releases the Seller and the Receivers from any Claim or Loss arising from or incurred in connection with, and the Buyer accepts full responsibility for:

- (a) any direction, notice, order or the like given under any Environmental Laws or Laws relating to heritage, asbestos or Native Title or any Environmental Liability; or
- (b) requirements under, compliance with or a breach of Environmental Laws or the Laws relating to heritage, asbestos or Native Title including any requirement to remedy or remediate or investigate the remediation of the Land; or
- (c) a Claim by a third party relating to any Contamination or any Hazardous Contaminant on or emanating from the Property; or
- (d) anything in connection with any other matter referred to in this special condition 4,

whether or not arising prior to or after the date of this contract or from any act, omission, negligence or default of the Seller or the Receivers or any other owner or occupier of the Property.

#### **4.5 Buyer accepts Environmental Liability**

From the contract date, the Buyer, to the fullest extent permitted by law:

- (a) accepts all Environmental Liability relating to or arising from the Property; and
- (b) must not, at any time, take any action or make any Claim against the Seller or the Receivers for any Environmental Liability; and
- (c) unconditionally releases and forever discharges the Seller and the Receivers from any Environmental Liability relating to or arising from the Property; and

- (d) indemnifies the Seller and the Receivers against all Loss the Seller or the Receivers suffer or incur in respect of any Environmental Liability relating to or arising from the Property (including legal Costs on whichever is the higher of a full indemnity basis or solicitor and own client basis).

#### **4.6 Building and planning Laws**

Without in any way limiting the balance of this special condition 4, the Buyer acknowledges that any Improvements constructed on the Land may have been constructed without permissions, consents or approvals of the relevant Local Government or other body or Authority having jurisdiction having been obtained, or, if such permissions, consents or approvals were obtained, without complying with those permissions, consents and approvals in all respects.

#### **4.7 Deterioration**

Despite any rule of Law to the contrary:

- (a) the Seller will not be liable to the Buyer for any deterioration of the Property or for any waste which alters the nature of the Property whether permissive, voluntary, ameliorating or otherwise between the Contract Date and settlement; and
- (b) the Buyer will not be entitled to raise, take or make any objection, requisition or Claim for Loss or other relief in relation to any such deterioration of the Property or in relation to any waste occurring in respect of the Property.

#### **4.8 Removal of rubbish**

The Buyer cannot rescind this contract nor take, make or raise any objection or requisition or Claim for Loss or other relief if:

- (a) prior to, at or following settlement of this contract, any junk or rubbish is on, in, about or attached to the Property, nor can the Buyer require the Seller to remove such items; or
- (b) any fixtures (to the extent they do not form part of the Property), fittings, furnishings or chattels are left on, in, about or attached to the Property as at or following settlement.

#### **4.9 No representations or warranties by Seller and the Receivers**

The Seller and the Receivers:

- (a) do not make any representations, statements or warranties about the quality or condition of the Property or the suitability or fitness of the Property for any purpose, or in relation to any other matter, other than as set out in this contract; and
- (b) do not warrant or represent that:
  - (i) any use or activity or range of uses or activities may be allowed by Law or permitted by any Authority or pursuant to the Sustainable Planning Act 2009 (Qld) or any relevant planning instruments or draft planning instruments, development control plans or draft development control plans or any relevant codes or other Law; or
  - (ii) any approvals or other requirements of any Authorities have been obtained, will be obtained or have been complied with in terms of development consent or use of the Property; or
  - (iii) the Property complies with any past, present or future Laws or codes.

Without in any way limiting the balance of this special condition 4, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and negated and the Seller and the Receivers disclaim all Claims and Loss in relation to these, to the maximum extent permitted by Law.

#### **4.10 No reliance representations or warranties by Buyer**

The Buyer:

- (a) does not rely on any representations, warranties or information provided or statements about the Property made by, or on behalf of, the Seller, the Seller's Associates or the Receivers, other than as set out in this contract;
- (b) acknowledges that it has not been induced to enter into this contract by the Seller, the Receivers or persons acting for or on behalf of the Seller, the Seller's Associates or the Receivers; and
- (c) has satisfied itself that the Property complies with all past, present or future Laws including as to the purposes for which the Property may be used under the Sustainable Planning Act 2009 (Qld) and relevant planning instruments or draft planning instruments, master plan or draft master plan, development control plans or draft development control plans or any relevant codes or any other Law.

#### **4.11 No claims by Buyer**

The Buyer cannot make any Claim for damages or compensation for breach of this contract, make any requisition, deduct or retain any amount, rescind or terminate this contract, delay settlement or make any other Claim against the Seller, the Receivers, the Seller's Associates or their respective employees and agents because of any matter referred to in this special condition 4.

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## **5 Buyer's warranties and acknowledgements**

### **5.1 Buyer's warranties**

The Buyer makes the following representations and warranties to the Seller on the contract date and again at settlement:

- (a) the Buyer:
  - (i) has the power to enter into this contract and perform all its obligations under it; and
  - (ii) has properly executed this contract; and
  - (iii) is a body corporate incorporated under the Laws of the place of its incorporation; and
  - (iv) has the power to acquire the Property; and
- (b) this contract is:
  - (i) a legal, valid and binding agreement of the Buyer; and
  - (ii) enforceable against the Buyer in accordance with its terms; and
- (c) the execution, delivery and performance by the Buyer of this contract does not contravene the constituent documents of the Buyer; and

- (d) the execution, delivery and performance by the Buyer of this contract:
  - (i) does not contravene any Law by which the Buyer is bound or to which any of the assets of the Buyer are subject; and
  - (ii) does not cause a limitation on its powers or the powers of its directors to be exceeded; and
  - (iii) does not constitute default under any agreement or undertaking by which the Buyer is bound or a material breach of any obligation (including any statutory, contractual or fiduciary obligation); and
- (e) the Buyer is not Insolvent.

## **5.2 Buyer is trustee**

If there is a trust name stated for the Buyer in the Reference Schedule, then the Buyer discloses to the Seller that it enters into this contract in its capacity as trustee of that trust ("**Buyer Trust**").

## **5.3 Trustee representations and warranties**

If the Buyer enters into this contract in its capacity as trustee of the Buyer Trust, the Buyer represents and warrants to the Seller on the contract date and again at settlement:

- (a) it is the only trustee of the Buyer Trust and no action has been taken or is proposed to remove it as trustee of the Buyer Trust; and
- (b) true copies of the Buyer Trust deed and other documents relating to the Buyer Trust have been provided to the Seller and disclose all the terms of the Buyer Trust; and
- (c) it has the power under the terms of the Buyer Trust to enter into and comply with its obligations under this contract including the power to purchase the Property; and
- (d) it has carefully considered the purpose of this contract and considers that entry into this contract is for the benefit of the beneficiaries of the Buyer Trust, whose consents (if necessary) have been obtained, and that the terms of this contract are fair and reasonable; and
- (e) it has a right to be fully indemnified out of the Buyer Trust assets in respect of obligations incurred by it under this contract, and the assets of the Buyer Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Buyer has a right to be indemnified out of the Buyer Trust assets; and
- (f) it is not in default under the terms of the Buyer Trust; and
- (g) no action has been taken or is proposed to terminate the Buyer Trust.

## **5.4 Restrictions**

Until all obligations under this contract are discharged, the Buyer must not, without the consent of the Seller, do anything which could restrict the Buyer's right of indemnity from the Buyer Trust assets in respect of obligations incurred under this contract.

## **5.5 No offer of finance**

The Buyer warrants that it has not received any promise from the Seller, the Seller's Associates or the Receivers (or any other person acting on behalf of the Seller or the Receivers) in relation to obtaining a loan for the purchase of the Property.

## **5.6 Terms excluded**

The Buyer acknowledges and agrees that, subject to any law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and that the Seller and the Receivers disclaim all liability in connection with these to the maximum extent permitted by law.

---

# **6 Deposit**

## **6.1 Payment of deposit**

The Buyer must pay the deposit on or before the Contract Date by way of:

- (a) a cheque or cheques drawn on a bank in favour of the Deposit Holder's trust account; or
- (b) electronic transfer of cleared funds to the Deposit Holder's trust account,  
to be held by the Deposit Holder on and subject to the terms of this contract.

## **6.2 Direction to Deposit Holder**

The Buyer irrevocably authorises the Seller to direct the Deposit Holder:

- (a) to lodge the deposit as soon as possible after the Contract Date with a bank nominated by the Seller in an interest bearing trust account at call in the Deposit Holder's name as stakeholder; and
- (b) to withdraw the deposit and pay the interest earned in accordance with this special condition 6.

## **6.3 If contract completed**

If this contract is completed, or is rescinded under a right to rescind given expressly by this contract and neither party is in default, then the Seller is entitled to all interest earned on the deposit.

## **6.4 Termination by Seller**

If the Seller terminates this contract because of the Buyer's default, then the Seller is entitled to all interest earned on the deposit.

## **6.5 Termination by Buyer**

If the Buyer terminates this contract because of the Seller's default or rescinds it (except in the circumstances set out in special condition 6.3), then the Buyer is entitled to all interest earned on the deposit.

## **6.6 Bank charges**

All bank charges, financial institutions duty, bank debit tax and similar taxes in connection with the investment of the deposit are to be deducted from the total interest on the deposit before the interest is paid under this special condition 6.

## **6.7 Risk of deposit**

The deposit is invested at the risk of the party who becomes entitled to it.

## 6.8 Tax file numbers

- (a) The parties must each give the Seller's Agent their respective tax file numbers on or before the date the deposit is invested.
- (b) The parties acknowledge that if a party does not provide its tax file number to the Seller's Agent before the deposit is invested, then tax may be deducted from its share of interest on the deposit.

## 6.9 Non-payment of deposit

If the deposit is not paid as required by special condition 6.1, the Buyer is in breach of the Buyer's obligations under this contract and the Seller may terminate this contract by notice to the Buyer without prejudice to any other right or remedy available to the Seller.

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## 7 Receivers' liability

- (a) The Buyer acknowledges that:
  - (i) the Receivers have been appointed as receivers and managers of the Property;
  - (ii) all actions of the Receivers in respect of this contract are taken on behalf of the Seller in the Receivers' capacity as agents of the Seller, and not in their personal capacity;
  - (iii) the Buyer enters into this contract with the Seller and not with the Receivers personally; and
  - (iv) the Receivers do not make any representations or give any warranties in relation to any aspect of the Property or its sale.
- (b) Neither the Receivers nor any of the officers, partners, directors, managers or employees of the Receivers
  - (i) incur any personal liability on any account whatsoever under, pursuant to, or in connection with this contract or any other document or instrument entered into in connection with this contract; or
  - (ii) are obliged to satisfy any liability under this contract or any document or instrument entered into in connection with this contract.
- (c) The Buyer releases the Receivers from all Claims it may have or claim to have or, but for this release, might have had against the Receivers connected with or arising out of this contract or any other document or instrument entered into in connection with this contract.
- (d) The Buyer agrees with the Receivers that it will not sue the Receivers personally, commence or permit to be commenced in the Buyer's name or continue any proceedings of any nature whatsoever or in any way related to any matter or thing arising under this contract against the Receivers.
- (e) Any agreement, representation, warranty or indemnity in favour of the Receivers is for the joint and several benefit of the Receivers.
- (f) The releases and rights given in this contract in favour of the Receivers are intended to be, and are, directly enforceable by the Receivers, and this contract operates as a deed poll in favour of the Receivers and the Receivers will have the benefit of the release or right given.

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## **8 Interest**

### **8.1 Completion after the Settlement Date**

If this contract does not settle on or before the Settlement Date due to the default of the Buyer, then on settlement the Buyer must pay to the Seller interest on:

- (a) the balance of the Purchase Price; and
- (b) any other amount payable by the Buyer to the Seller under this contract; and
- (c) half of the Deposit,

from the Settlement Date to and including the date of settlement at the Interest Rate.

### **8.2 Default interest**

If the Buyer need not otherwise pay interest under this contract on an amount payable to the Seller, then it must pay interest at the Interest Rate on that amount from when it becomes due for payment, during the period that it remains unpaid, calculated on daily balances. The Buyer agrees to pay interest under this special condition 8.2 on demand.

### **8.3 Essential term**

Payment of interest in accordance with this special condition 8 is an essential term of this contract.

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## **9 Confidentiality and use of Information**

### **9.1 Confidentiality definitions**

In this special condition 9, the expression “**Confidential Information**” means:

- (a) the terms of this contract; and
- (b) the transactions contemplated by, or given effect to by, this contract; and
- (c) the facts, matters and circumstances surrounding the terms of this contract and the transactions contemplated by or given effect to by this contract; and
- (d) all information disclosed by the Seller to the Buyer (whether before or after the contract date) in connection with any of the matters referred to in this special condition 9.

### **9.2 Obligations to keep confidential**

The parties must so far as reasonably practicable keep the Confidential Information confidential and must not in any way disclose, or cause to be disclosed, or permit to be disclosed where disclosure could be prevented, the Confidential Information to any person, except:

- (a) in the case of the Seller, for the purpose of the Receivers reporting to a creditor or creditors of the Seller;
- (b) with the consent of the other party in writing;
- (c) any disclosure the disclosing party reasonably believes is required by law or required by any stock exchange (except that this paragraph does not permit a party to disclose any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies);
- (d) where necessarily required as the subject of legal proceedings;

- (e) if the information is generally and publicly available other than by reason of breach of this special condition 9 by the disclosing party; or
- (f) for the purpose of obtaining finance or equity, or financial or legal advice.

### **9.3 Preserve confidentiality**

Where disclosure is permitted, the disclosing party must use all reasonable endeavours to:

- (a) preserve the confidentiality of the Confidential Information; and
- (b) ensure that the person to whom the Confidential Information is disclosed retains the confidentiality of the Confidential Information.

### **9.4 Press releases**

Without limiting the generality of special conditions 9.2 and 9.3, no party may issue a press release or statement to the media without the agreement in writing of the other party to the content of that release or statement unless and to the extent that the party is required to make the announcement or release by law or by a stock exchange.

### **9.5 Obligations survive termination or settlement**

This special condition 9 survives settlement or termination (for whatever reason) of this contract.

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## **10 Property destroyed or damaged before risk passes**

If the Property is destroyed or damaged so as to be substantially unusable before risk in the Property passes to the Buyer:

- (a) the Seller must give notice to the Buyer as soon as reasonably practicable; and
- (b) the Seller may terminate this contract by notice to the Buyer given not later than 10 Business Days after the date on which the Seller has given notice to the Buyer under special condition 10(a) and if the Seller does so:
  - (i) neither the Seller nor the Buyer has any liability to the other, except in relation to antecedent breaches; and
  - (ii) the Seller must repay to the Buyer the deposit together with any accrued interest and all other money paid by the Buyer to the Seller under this contract.

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## **11 FATA**

### **11.1 Warranty**

Without limiting special condition 11.2, the Buyer warrants to the Seller that it does not require the consent of the Treasurer under the FATA to acquire the Property.

### **11.2 Indemnity**

The Buyer indemnifies the Seller and the Receivers against any Claim or Loss arising from or incurred in connection with:

- (a) a breach of the warranty referred to in special condition 11.1; and
- (b) any act or omission by the Buyer or its agents or employees in respect of the Property which contravenes the FATA.



### **11.3 Rescission**

If the Buyer breaches:

- (a) the warranty referred to in special condition 11.1; or
- (b) fails to comply with any aspect of the FATA,

the Seller may terminate this contract by notice to the Buyer and clause 2.4(1)(c) of the Terms of contract will apply.

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## **12 Foreign resident capital gains withholding**

### **12.1 Application of foreign resident capital gains withholding**

Special conditions 12.3 to 12.9 (inclusive) do not apply if:

- (a) the sale of the Property is a transaction that is excluded under section 14-215(1); or
- (b) the Seller gives a Clearance Certificate to the Buyer, on or before the date that is 5 Business Days before settlement.

### **12.2 Clearance Certificate given by Seller**

If special condition 12.1(a) or 12.1(b) applies, the Buyer acknowledges and agrees that:

- (a) the Buyer is not required to pay a Withholding Amount; and
- (b) the Buyer may not withhold a Withholding Amount from the amount payable at settlement to the Seller.

### **12.3 Buyer entitled to withhold**

If the Buyer is required to pay an amount to the Commissioner under section 14-200, the Buyer is entitled to withhold from the price payable at settlement an amount equal to the Withholding Amount.

### **12.4 Buyer's obligation to notify intention to withhold**

If the Buyer considers that it is entitled to withhold an amount under special condition 12.3, the Buyer must give notice to the Seller, at least 5 Business Days before settlement, of the Buyer's intention to withhold an amount. The Buyer's notice must contain:

- (a) an estimate of the Withholding Amount, together with reasonable details as to how the amount has been calculated; and
- (b) details of the Seller and the Property that the Buyer proposes to include in the Purchaser Payment Notification Form.

If requested by the Seller no later than 2 Business Days before settlement, the Buyer must include amended details of the Seller and the Property in the Purchaser Payment Notification Form it lodges with the Commissioner.

### **12.5 Purchaser Payment Notification Form**

The Buyer must give the Seller a copy of:

- (a) any Purchaser Payment Notification Form lodged by the Buyer with the Commissioner, within 1 Business Day after the Buyer lodges the form; and

- (b) any response from the Commissioner to the Purchaser Payment Notification Form, within 1 Business Day after the Buyer receives the response.

## **12.6 Obligation to pay Withholding Amount to the Commissioner**

At settlement, the Buyer must either:

- (a) give to the Seller a copy of a receipt showing that the Withholding Amount has been paid to the Commissioner before settlement; or
- (b) produce a cheque, drawn on a bank, payable to the Commissioner for an amount equal to the Withholding Amount.

## **12.7 Payment of the Withholding Amount after settlement**

If special condition 12.6(b) applies, the Buyer must:

- (a) pay the Withholding Amount to the Commissioner before the end of the Business Day on which settlement occurs; and
- (b) provide to the Seller within 2 Business Days after settlement, evidence showing that the Withholding Amount has been paid to the Commissioner.

## **12.8 Discharge of liability**

On the payment of the Withholding Amount to the Commissioner, the Buyer is discharged from all liability to pay the Withholding Amount to the Seller.

## **12.9 Clearance Certificate given by Seller**

The Buyer acknowledges and agrees that:

- (a) the Seller has given to the Buyer a Clearance Certificate on or before the Contract Date;
- (b) the Buyer is not required to pay a Withholding Amount; and
- (c) the Buyer may not withhold a Withholding Amount from the amount payable on settlement to the Seller.

## **12.10 Definitions and interpretation**

For the purposes of this special condition 12:

- (a) all section references are to those provisions of Schedule 1 to the Taxation Administration Act 1953 (Cth);
- (b) Clearance Certificate means a certificate issued by the Commissioner under section 14-220 that applies to the Seller and is for a period covering the time the Seller gives the certificate to the Buyer;
- (c) Commissioner means the Commissioner of Taxation of Australia;
- (d) Purchaser Payment Notification Form means the 'Foreign Resident Capital Gains Withholding Purchaser Payment Notification Form' concerning the Property and the Withholding Amount; and
- (e) Withholding Amount means an amount that the Buyer is required to pay to the Commissioner, determined in accordance with section 14-200(3).

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## **13 Guarantee where Buyer is a company**

### **13.1 Execution of guarantee where Buyer is a company**

If the Buyer is or includes a company or enters into this contract in its capacity as trustee of a trust, then the Buyer must:

- (a) procure the execution of a Guarantee and Indemnity from:
  - (i) the directors of the Buyer (whose names appear in Annexure B) or an entity acceptable to the Seller in its absolute discretion (whose details appear in Annexure B); or
  - (ii) the beneficiaries of the Trust,as the circumstances require; and
- (b) deliver the duly executed Guarantee and Indemnity to the Seller with this contract.

### **13.2 Fundamental terms**

The obligations in special condition 13.1 are fundamental terms of this contract.

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## **14 Seller's right to rescind**

### **14.1 Seller unable to settle**

At the Settlement Date, if the Seller is for any reason unable to:

- (a) provide the Buyer with a transfer of the Property that is capable of immediate registration (including, without limitation, due to the existence of a caveat or writ of execution on the title to the Property);
- (b) deliver vacant possession of the Property; or
- (c) perform any of its obligations under this contract,

then the Seller may, by notice in writing to the Buyer:

- (d) terminate this contract; or
- (e) extend the Settlement Date until 2 Business Days after the Seller notifies the Buyer that the Seller is able to provide a transfer capable of immediate registration, deliver vacant possession of the Property or perform its obligations under this contract.

A notice under special condition 14.1(e) can be given more than once.

Despite special condition 14.1(e), this contract will automatically terminate if settlement is not effected on or before the Sunset Date.

### **14.2 No claims by Buyer**

The Buyer cannot make any claim for damages or compensation for breach of this contract, make any requisition, deduct or retain any amount, rescind or terminate this contract, delay settlement or make any other claim against the Seller or any of the Seller's Associates for breach of this contract because of any extension to the Settlement Date under special condition 14.1(e).

### 14.3 Seller prevented from settling

If the Seller is restrained or prevented from settling this contract by:

- (a) an injunction or other order of any court of competent jurisdiction;
- (b) any caveat or writ of execution forbidding the registration of the dealings affecting the Property;
- (c) any circumstances beyond the control of the Seller; or
- (d) any other claim for compensation, costs, loss, damages, extension of time, objection or requisition,

then the Seller may terminate this contract by notice in writing to the Buyer.

### 14.4 Rights on termination

If this contract is terminated (or otherwise comes to an end) in accordance with special condition 14.1 ("Seller unable to settle") or 14.3 ("Seller prevented from settling"):

- (a) neither the Buyer nor the Seller will have any further claim against the other arising out of this contract; and
- (b) the Seller will not be liable to the Buyer for damages, compensation, costs or any other monies or otherwise arising from such termination.

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## 15 Mortgagee exercise of power of sale

### 15.1 Execution of transfer by Mortgagee

- (a) The Buyer acknowledges and agrees that if, at any time prior to settlement, the Seller, in its absolute discretion, considers that it will not, or may not, for any reason be able to deliver title to the Buyer in accordance with the terms of this contract, then the Seller may deliver to the Buyer at settlement Transfer Documents showing the Mortgagee as the transferor and executed by the Mortgagee (exercising its power of sale as mortgagee under the Mortgage or the Property Law Act 1974 (Qld)).
- (b) If the Seller delivers to the Buyer at settlement Transfer Documents showing the Mortgagee as the transferor and executed by the Mortgagee:
  - (i) the Seller must deliver with the Transfer Documents statutory declarations of service of notice of exercise of power of sale and continuing default under the Mortgage, so that the Transfer Documents executed by the Mortgagee are capable of immediate registration' and
  - (ii) the Seller is not obliged to provide the Buyer with releases of any mortgage, caveat or other security over the Property (other than for any mortgage, caveat or security that has priority over the Mortgage).

### 15.2 Novation to Mortgagee

- (a) The Buyer acknowledges and agrees that if, at any time prior to settlement, the Seller, in its absolute discretion, considers that it will not, or may not, for any reason be able to effect settlement when due or deliver title to the Buyer in accordance with the terms of this contract, then the Seller may, at any time after the Contract Date and prior to settlement, give the Buyer a notice ("**Novation Notice**") requiring the Buyer and any Guarantor to enter into a Deed of Novation with:

- (i) the Mortgagee (exercising its power of sale as mortgagee under the Mortgage or the Property Law Act 1974 (Qld)); or
  - (ii) an agent for the Mortgagee,
- (the “**Substituting Party**”).
- (b) Any Novation Notice must be accompanied by a Deed of Novation executed by the Seller and the Substituting Party. The Deed of Novation must provide for a “Novation Date” of not less than 3 Business Days after the date of the Novation Notice.
  - (c) Upon the Seller giving the Buyer a Novation Notice in accordance with special conditions 15.2(a) and 15.2(b) of this contract, the Buyer and any Guarantor must execute the Deed of Novation accompanying the Novation Notice and return it to the Seller no later than 3 Business Days from the date of the Novation Notice.
  - (d) Upon delivery of the Deed of Novation to the Seller in accordance with special condition 15.2(c), this contract is discharged and the Deed of Novation is binding on the parties to it.

### **15.3 Seller is under no obligation**

The parties acknowledge and agree that nothing in this special condition 15 or this contract obliges the Seller to deliver Transfer Documents executed by the Mortgagee under special condition 15.1 or to give a Novation Notice under special condition 15.2.

### **15.4 Definitions**

For the purposes of this special condition 15:

**Mortgage** means registered mortgage number 715162171.

**Mortgagee** means Suncorp-Metway Limited (ABN 66 010 831 722).

# Annexure B - Guarantee and indemnity

To: the Seller ("**Seller**") named in the annexed contract of sale.

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**Guarantor**      Name  
                         Address  
                         Telephone  
                         Fax

**Guarantor**      Name  
                         Address  
                         Telephone  
                         Fax

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Each Guarantor, for valuable consideration, including the Seller ("**Seller**") named in the annexed contract of sale ("**contract**") having agreed at the request of each Guarantor (acknowledged by this Guarantee and Indemnity) to enter into the contract between the Seller and the Buyer named in the contract ("**Buyer**"), agrees as follows

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## 1      **Guarantee and Indemnity**

### 1.1      **Interpretation**

Unless the contrary intention appears, in this Guarantee and Indemnity:

- (a)      words and expressions defined in the contract apply to this Guarantee and Indemnity;
- (b)      a reference to the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (c)      a reference to Guarantor is a reference to all persons named as Guarantor jointly and to each of them individually.

### 1.2      **Consideration**

The Guarantor acknowledges that the Seller:

- (a)      enters into the contract at the request of the Guarantor; and
- (b)      is acting in reliance on the Guarantor incurring obligations and giving rights under this Guarantee and Indemnity.

### 1.3      **Guarantee**

The Guarantor unconditionally and irrevocably guarantees to the Seller the Buyer's compliance with the Buyer's obligations in connection with the contract, including each obligation to pay money.

If the Buyer does not comply with those obligations on time and in accordance with the contract, then the Guarantor agrees to comply with those obligations on demand from the Seller. A demand may be made whether or not the Seller has made demand on the Buyer.

## **1.4 Indemnity**

The Guarantor indemnifies the Seller against any liability or loss arising from, and any costs it incurs if:

- (a) the Buyer does not, or is unable to, perform an obligation it has (including an obligation to pay money) in connection with the contract; or
- (b) an obligation the Buyer would otherwise have under the contract (including an obligation to pay money) is found to be void, voidable or unenforceable; or
- (c) an obligation the Guarantor would otherwise have under clause 1.3 ("Guarantee") is found to be void, voidable or unenforceable; or
- (d) a representation or warranty by the Buyer in the contract is found to have been incorrect or misleading when made or taken to be made; or
- (e) a liquidator disclaims the contract; or
- (f) the Buyer becomes Insolvent.

The Guarantor agrees to pay amounts due under this clause 1.4 on demand from the Seller.

The Seller need not incur expense or make payment before enforcing this right of indemnity.

## **1.5 Extent of Guarantee and Indemnity**

Each of the guarantee in clause 1.3 ("Guarantee") and the indemnity in clause 1.4 ("Indemnity") is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Buyer's obligations in connection with the contract. The Guarantor waives any right it has of first requiring the Seller to make demand, commence proceedings or enforce any other right against the Buyer or any other person before claiming from the Guarantor under this Guarantee and Indemnity.

## **1.6 Acknowledgment**

The Guarantor acknowledges that before signing the contract, and incurring obligations and giving rights under this Guarantee and Indemnity, it:

- (a) was given a copy of the contract (and all documents giving rise to an obligation of the Buyer in connection with the contract) and had full opportunity to consider their provisions; and
- (b) made itself aware of the financial position of the Buyer and any other person who guarantees any of the Buyer's obligations in connection with the contract.

## **1.7 No merger**

This Guarantee and Indemnity does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any other guarantee, indemnity, mortgage, charge or other encumbrance, or other right or remedy to which the Seller is entitled; or
- (b) a judgment which the Seller obtains against the Guarantor, the Buyer or any other person in connection with the contract.

The Seller may still exercise its rights under this Guarantee and Indemnity as well as under the judgment, mortgage, charge or other encumbrance or the right or remedy.

## **1.8 Rights of the Seller are protected**

Rights given to the Seller under this Guarantee and Indemnity, and the Guarantor's liabilities under it, are not affected by any act or omission or any other thing which might otherwise affect them under Law or otherwise. For example, those rights and liabilities are not affected by:

- (a) any act or omission:
  - (i) varying or replacing in any way and for any reason any agreement or arrangement under which the obligations guaranteed under clause 1.3 ("Guarantee") are expressed to be owing;
  - (ii) releasing the Buyer or giving the Buyer a concession (such as more time to pay);
  - (iii) releasing any person who gives a guarantee or indemnity in connection with any of the Buyer's obligations;
  - (iv) by which a person becomes a Guarantor after the date of the contract;
  - (v) by which the obligations of any person who guarantees any of the Buyer's obligations (including obligations under this Guarantee and Indemnity) may become unenforceable;
  - (vi) by which any person who was intended to guarantee any of the Buyer's obligations does not do so, or does not do so effectively;
  - (vii) by which a person who is co-surety or co-indemnifier is discharged under an agreement or by operation of Law;
- (b) a person dealing in any way with the contract, including this Guarantee and Indemnity;
- (c) the death, mental or physical disability, or liquidation, administration or Insolvency of any person including the Guarantor or the Buyer;
- (d) changes in the membership, name or business of any person;
- (e) acquiescence or delay by the Seller or any other person; or
- (f) a liquidator disclaiming the contract.

## **1.9 Guarantor's rights are suspended**

As long as any obligation is required, or may be required, to be complied with in connection with the contract, the Guarantor may not, without the Seller's consent:

- (a) reduce its liability under this Guarantee and Indemnity by claiming that it or the Buyer or any other person has a right of set-off or counterclaim against the Seller; or
- (b) exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance given in connection with the contract or any other amount payable under this Guarantee and Indemnity; or
- (c) claim an amount from the Buyer, or another guarantor (including a person who has signed the contract as a "Guarantor"), under a right of indemnity or contribution; or
- (d) claim an amount in the liquidation, administration or insolvency of the Buyer or of another guarantor of any of the Buyer's obligations (including a person who has signed the contract as a "Guarantor").

This clause 1.9 continues after the guarantee and indemnity in this Guarantee and Indemnity ends.



### **1.10 Reinstatement of rights**

Under Law relating to Insolvency, a person may claim that a transaction (including a payment) in connection with the contract (including this Guarantee and Indemnity) is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) the Seller is immediately entitled as against the Guarantor to the rights in connection with the contract (including this Guarantee and Indemnity) to which it was entitled immediately before the transaction; and
- (b) on request from the Seller, the Guarantor agrees to do anything (including signing any document) to restore to the Seller any mortgage, charge or other encumbrance (including this Guarantee and Indemnity) held by it from the Guarantor immediately before the transaction.

The Guarantor's obligations under this clause 1.10 are continuing obligations, independent of the Guarantor's other obligations under this Guarantee and Indemnity and continue after this Guarantee and Indemnity ends.

### **1.11 Dealing with interests**

The Seller may assign or otherwise deal with its rights under this Guarantee and Indemnity in any way it considers appropriate. If the Seller does this, the Guarantor may not claim against any assignee (or any other person who has an interest in this Guarantee and Indemnity) any right of set-off or other rights the Guarantor has against the Seller.

### **1.12 Costs**

The Guarantor agrees to pay or reimburse the Seller on demand for:

- (a) the Seller's costs in making, enforcing and doing anything in connection with this Guarantee and Indemnity including legal costs on whichever is the higher of a full indemnity basis or solicitor and own client basis; and
- (b) all duties, fees, taxes and charges which are payable in connection with this Guarantee and Indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Seller by the Guarantor must be applied first against payment of Costs under this clause 1.12, then against other obligations under this Guarantee and Indemnity in any way the Seller considers appropriate.

### **1.13 Obligation to pay interest**

The Guarantor agrees to pay interest on any amount under this Guarantee and Indemnity which:

- (a) is not paid on the due date for payment; and
- (b) is not otherwise incurring interest.

The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.

The Guarantor agrees to pay interest under this clause on demand from the Seller.

### **1.14 Rate of interest**

The rate of interest applying from (and including) the due date for payment is the rate 4% per annum above the 60 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or if that rate has not been published, another rate set by the Seller in good faith).

**1.15 Compounding**

Interest payable under clause 1.13 ("Obligation to pay interest") which is not paid when due for payment may be added to the overdue amount by the Seller at intervals which the Seller determines from time to time or, if no determination is made, every 30 days. Interest is payable on the increased overdue amount at the rate set out in clause 1.14 ("Rate of interest") and in the manner set out in clause 1.13.

**1.16 Payments**

The Guarantor agrees to make payments under this Guarantee and Indemnity to the Seller (or to a person nominated by the Seller in a notice to the Guarantor):

- (a) in full without set-off or counterclaim, and without any deduction; and
- (b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

**1.17 Essential term**

The Guarantor's compliance with its obligations under this Guarantee and Indemnity is an essential term of the contract.

**1.18 Guarantor to sign contract**

The Buyer must ensure that the Guarantor signs the contract as Guarantor. The Buyer's obligation under this clause 1.18 is an essential term of the contract.

|  |   |                        |
|--|---|------------------------|
| <b>SIGNED, SEALED AND DELIVERED</b> by | ) |                        |
| .....                                  | ) |                        |
| in the presence of:                    | ) |                        |
| .....                                  | ) |                        |
| Signature of witness                   | ) | .....                  |
| .....                                  | ) | Signature of Guarantor |
| Name of witness (block letters)        | ) | .....                  |
|  | ) | Name of Guarantor      |

|  |   |                        |
|--|---|------------------------|
| <b>SIGNED, SEALED AND DELIVERED</b> by | ) |                        |
| .....                                  | ) |                        |
| in the presence of:                    | ) |                        |
| .....                                  | ) |                        |
| Signature of witness                   | ) | .....                  |
| .....                                  | ) | Signature of Guarantor |
| Name of witness (block letters)        | ) | .....                  |
|  | ) | Name of Guarantor      |

**EXECUTED** as a deed

# Annexure C – Deed of Novation

## Details

**Interpretation** – definitions are listed under Clause 1 of the General terms

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|                |   |  |
|----------------|---|--|
| <b>Parties</b> | Incoming Party, Outgoing Party, and Consenting Party(ies) |  |
|----------------|---|--|

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|                       |           |   |
|-----------------------|-----------|---|
| <b>Incoming Party</b> | Name      | <b>[#Substituting Party details to be inserted]</b> |
|                       | Address   |   |
|                       | Fax       |   |
|                       | Attention |   |

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|                       |           |   |
|-----------------------|-----------|---|
| <b>Outgoing Party</b> | Name      | <b>Sweetapple Company Pty Ltd (Receiver and Managers Appointed) (ACN 095 039 446)</b> |
|                       | Address   | c/- Deloitte Financial Advisory Pty Ltd<br>Riverside Centre, 123 Eagle Street         |
|                       | Telephone | (07) 3308 7477  |
|                       | Fax       |   |
|                       | Attention | Sarah Dwyer   |

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|                           |           |                |
|---------------------------|-----------|----------------|
| <b>Consenting Parties</b> | Name      | <b>[Buyer]</b> |
|                           | ACN       |                |
|                           | Address   |                |
|                           | Telephone |                |
|                           | Fax       |                |
|                           | Attention |                |

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|  |           |                    |
|--|-----------|--------------------|
|  | Name      | <b>[Guarantor]</b> |
|  | ACN       |                    |
|  | Address   |                    |
|  | Telephone |                    |
|  | Fax       |                    |
|  | Attention |                    |

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|                 |          |   |
|-----------------|----------|---|
| <b>Recitals</b> | <b>A</b> | The Outgoing Party and Consenting Party are parties to the Contract.                            |
|                 | <b>B</b> | The parties to this deed have agreed to the novation of the Contract on the terms of this deed. |

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|                 |  |
|-----------------|--|
| <b>Contract</b> | Contract for Sale of Houses and Residential Land dated [insert] between the Outgoing Party and the Consenting Party. |
|-----------------|--|

---

|                      |  |
|----------------------|--|
| <b>Novation Date</b> | <b><i>[#Insert a date not less than [3] Business Days after the date of the Novation Notice]</i></b> |
|----------------------|--|

---

|                      |            |
|----------------------|------------|
| <b>Governing law</b> | Queensland |
|----------------------|------------|

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|                     |  |
|---------------------|--|
| <b>Date of deed</b> |  |
|---------------------|--|

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# General terms

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## 1 Definitions

These meanings apply unless the contrary intention appears:

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

**Contract** means the contract referred to in the Details.

**Details** means the section of this deed headed Details.

**GST Act** means the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)*.

**Mortgage** means registered mortgage no. 715162171.

**New Contract** means the new contract formed under clause 3.

**Novation Date** means the date specified in the Details.

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

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## 2 Consideration

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

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## 3 Novation

### 3.1 Novation

With effect on and from the Novation Date, the parties agree that the Contract is discharged and the New Contract is created on the same terms and conditions as the Contract except that:

- (a) the Incoming Party is substituted for the Outgoing Party;
- (b) each reference to the Outgoing Party will be read as a reference to the Incoming Party in the New Contract;
- (c) notices to the Incoming Party must be provided using its details specified in the Details; and
- (d) each party agrees that if the Incoming Party is exercising its power of sale as mortgagee, the Incoming Party is not obliged to provide the Buyer with releases of any mortgage, caveat or other security over the Property (other than for any mortgage, caveat or security that has priority over the Mortgage).

### 3.2 Rights and benefits

With effect on and from the Novation Date, the Incoming Party:

- (a) (a) is bound by the New Contract as the Contract relates to the Outgoing Party; and
- (b) (b) enjoys under the New Contract all the rights and benefits conferred on the Outgoing Party under the Contract before it was discharged.

### **3.3 Deposit**

With effect on and from the Novation Date, the deposit paid by the Buyer under the Contract is taken to have been paid by the Buyer under the New Contract and the Outgoing Party and the Consenting Party must direct the deposit holder under the Contract to account to the Incoming Party in respect of the deposit in accordance with the terms of the New Contract.

---

## **4 Acknowledgment**

The Consenting Party acknowledges that nothing in this deed or any of the transactions contemplated by this deed constitutes:

- (a) a breach of any term, or a repudiation, of the Contract; or
- (b) any other event or circumstance which of itself, or with giving notice, lapse of time, satisfaction of some other condition, or any combination of these, causes or enables the acceleration of any payment to be made under, or the enforcement of, the Contract.

---

## **5 Releases and liability**

### **5.1 Release by Consenting Party**

On and from the Novation Date, the Consenting Party releases the Outgoing Party from:

- (a) any obligation or liability under or in respect of the Contract, including any obligation under the Contract to be performed on or after the Novation Date; and
- (b) any Claim which it may have or but for this release might have had against the Outgoing Party connected with the Contract.

### **5.2 Release unconditional**

The Consenting Party gives the releases in clause 5.1 regardless of:

- (a) when the obligation, liability or Claim arises; and
- (b) whether or not it is now or in the future aware of the facts and circumstances relevant to any obligation, liability or Claim.

### **5.3 Liability on or before Novation Date of Consenting Party**

The Consenting Party is liable to the Outgoing Party in respect of any Claim, damage, loss, cost, charge, expense, outgoing or payment which the Outgoing Party pays, suffers, incurs or is liable for in respect of the Contract, which occurred, or which arises out of or is caused by any act or omission by the Consenting Party which occurred on or before the Novation Date.

---

## **6 Indemnities**

### **6.1 Indemnity from Incoming Party**

The Incoming Party indemnifies the Outgoing Party on demand against any Claim, damage, loss, cost, charge, expense, outgoing or payment which the Outgoing Party pays, suffers, incurs or is liable for in respect of any act or omission by the Incoming Party in respect of the Contract which occurs on or after the Novation Date.

## 6.2 Indemnity from Outgoing Party

The Outgoing Party indemnifies the Incoming Party on demand against any Claim, damage, loss, cost, charge, expense, outgoing or payment which the Incoming Party pays, suffers, incurs or is liable for in respect of any act or omission by the Outgoing Party in respect of the Contract which occurs on or before the Novation Date.

## 6.3 Legal costs

The indemnities in clauses 6.1 and 6.2 extend to all legal costs and expenses incurred by the party on the higher of a solicitor and own client basis and a full indemnity basis.

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# 7 Representations and warranties

## 7.1 General representations and warranties

Each party other than the Outgoing Party, represents and warrants to each other party that:

- (a) **(incorporation and existence)** if it is a body corporate, it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into and comply with its obligations under this deed;
- (c) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into and comply with its obligations and exercise its rights under this deed and, for Incoming Party and each Consenting Party, the New Contract, and to allow them to be enforced; and
- (d) **(validity of obligations)** its obligations under this deed and, for Incoming Party and each Consenting Party, the New Contract, are valid and binding and are enforceable against it in accordance with their terms.

## 7.2 Survival and repetition

The representations and warranties given in clause 7.1:

- (a) survive the execution of this deed and the occurrence of the novation contained in this deed; and
- (b) are regarded as repeated on the Novation Date with respect to the facts and circumstances then subsisting.

---

# 8 Costs, stamp duty and GST

## 8.1 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation execution and settlement of this deed and other related documentation except for stamp duty.

## 8.2 Stamp duty

The Consenting Parties agree to pay all stamp duty (including fines and penalties) payable and assessed by legislation or by any revenue office on this deed, on any instruments entered into under this deed, and in respect of a transaction evidenced by this deed.

### **8.3 Recovery of GST**

If GST is imposed on any supply made under this deed by one party (**the supplying party**) to another party (**the receiving party**) and the consideration payable or to be provided for the supply under any other clause in this deed is not expressed to be inclusive of GST, the receiving party must pay, in addition to and at the same time as any GST exclusive consideration is payable or to be provided for the supply, an amount calculated by multiplying the value of that GST exclusive consideration (without deduction or set-off) by the prevailing GST rate.

### **8.4 Tax Invoice**

The supplying party must provide a Tax Invoice to the receiving party for any Taxable Supply made by the supplying party under this deed.

### **8.5 Adjustment of consideration**

If the amount of GST recovered by the supplying party from the receiving party differs from the amount of GST payable at law by the supplying party (or an entity grouped with the supplying party for GST purposes) in respect of the supply, the amount of the difference must be paid by, or refunded to the receiving party, as the case may be.

### **8.6 Indemnity or reimbursement payments**

Where this deed requires one party (**Payer**) to indemnify or reimburse another party (**Payee**) for any cost, loss or expense incurred by the Payee, the required payment does not include any part of such cost, loss or expense that the Payee (or an entity grouped with the Payee for GST purposes) is entitled to claim as an Input Tax Credit, but will be grossed up under clause 8.3 if the payment constitutes consideration for a Taxable Supply made by the Payee to the Payer.

### **8.7 Interpretation for this clause**

For the purposes of this clause 8, a term which has a defined meaning in the GST Act has the same meaning when used in this clause.

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## **9 Counterparts**

This deed may be executed in counterparts. All counterparts when taken together constitute one document.

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## **10 When deed takes effect**

This deed takes effect:

- (a) if counterparts of the deed are not used, when all parties have executed the deed; or
- (b) if counterparts of the deed are executed, upon exchange.

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## **11 Governing law**

This deed is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

**EXECUTED** as a deed