

Draft - Not binding until signed

This is a draft document only and is subject to change by the Department.

The provision of this draft document by the Department:

1. is not an offer capable of acceptance;
2. does not bind the Department to the terms of the document; and
3. does not indicate an intention to enter into a legally binding arrangement.

THE FIRST SCHEDULE

[insert property description]

To be attached to the 15th Edition REIQ Contract for Houses and Residential Land

These are the Special Conditions referred to in the Contract of Sale between [insert name of seller] as Seller and THE STATE OF QUEENSLAND (REPRESENTED BY DEPARTMENT OF HOUSING AND PUBLIC WORKS) as Buyer.

1. Definitions

“**Authorised Persons**” means a party’s employees, agents, contractors subcontractors of those contractors and the employees of those contractors and subcontractors.

“**Building Approval**” means all necessary building approvals in respect of the Works in accordance with Building Act 1975 from the relevant authority.

“**Building Approval Application**” means the application by the Seller for the Building Approval.

“**Building Approval Application Date**” means the date that is [insert required number in words and figures] Business Days from the Contract Date

“**Building Approval Date**” means the date that is thirty (30) Business Days from the Contract Date.

“**Buyer’s Variations**” means a variation to the Works requested by the Buyer in accordance with Special Condition 17.

“**Claim**” means any and all actual or threatened claims, demands or causes of action, notices, proceedings, judgments, damages, payments, losses, liabilities, costs, compensation or expenses (including legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher), however arising, whether present, future or contingent and whether based in contract, equity, tort or statute.

“**Defect**” or “**Defects**” means any defect, shrinkage or other fault in the Property.

“**Defects Rectification Period**” means twelve (12) Months from the Settlement Date.

“**Due Diligence Date**” means the date that is 30 days after the Contract Date.

“**Essential Term**” has the meaning set out in clause 1.1(2)(p) of the Terms of Contract and is amended by inserting the word “5.3(1)(c)” at the end of subparagraph (i).

“**Financial Approval Condition Date**” means the date which is twenty-one (21) Business Days from the Contract Date.

“Guarantor” means [insert name of guarantor] of [insert address of guarantor].

“Improvements” has the meaning set out in Clause 1.1(2)(v) of the Terms of Contract and is amended by inserting the word “Works” in the definition.

“Included Chattels” means those items forming part of the Works that are not fixed on the Land including without limitation electrical appliances and white goods and are not Improvements.

“Intellectual Property” means all intellectual property now in existence or developed or created in the future including but not limited to copyrights, trade marks, service marks, designs, patents, images, performances, concepts, audio or visual recordings, broadcasts, photographs, films, choreography, lyrics, music, compositions, scripts, brand names, business names, logos, indicia, references, phrases, expressions, trade secrets, business concepts, know-how, domain names, circuit designs, circuit layouts, discoveries, inventions, documents, drawings, specifications, records, manuals, models, memoranda, technical data and social media handles, account names, usernames or web addresses or other literary, musical, artistic or dramatic works.

“Intellectual Property Rights” means all rights existing in Australia or elsewhere, whether created before, on or after the Contract Date, whether registered or not and whether protected by legislation or not, which attach to any Intellectual Property, including all rights to register such rights.

“Maintenance Period” means twelve (12) Months from the Settlement Date.

“Month” means calendar months.

“Practical Completion” or **“Practically Completed”** means the Works have been completed in accordance with Special Condition 16.

“Pre-conditions” means:

- (a) [insert if applicable] the Seller’s acquisition of the Land in Special Condition 3;
- (b) the Finance Approval Condition in Special Condition 4;
- (c) the Due Diligence Condition in Special Condition 5; and
- (d) the Building Approval condition in Special Condition 6.

“Proposed Practical Completion Date” means [insert the proposed practical completion date].

“Services” includes:

- (a) Special services for telecommunications and nbn;
- (b) Television;
- (c) Water;
- (d) Gas;
- (e) Electricity;
- (f) Sewer; and
- (g) Any fire safety systems installed in the Property.

“Sunset Date” means [insert sunset date] or as varied in accordance with Special Condition 17.2(e)(iii).

“Variation Cost” means the cost of a Buyer’s Variation.

“Winding Up or Bankruptcy” means the liquidation or entry into any scheme or arrangement with creditors or the appointment of any liquidator, provisional liquidator, managing controller, controller,

administrator, receiver, receiver and manager or official manager or where applicable, the mental illness, death, bankruptcy or the making of any order or implementation of any statutory provision having the effect of restricting or deferring claims by creditors of any party.

“**Works**” means:

- (a) the works set out in:
 - (i) the Seller’s Specifications marked Annexure “A”;
 - (ii) the Plans marked Annexure “B”;
 - (iii) the Buyer’s additional Specifications marked Annexure “C”; and
- (b) the demolition of all structures on the Property (including without limitation removal of all slabs and the capping of any redundant services) as at the Contract Date.

2. Terms of Contract

2.1 Acknowledgement

The Seller [insert name of seller] and the Buyer **THE STATE OF QUEENSLAND (REPRESENTED BY DEPARTMENT OF HOUSING AND PUBIC WORKS)** acknowledge that they have received and read the Terms of Contract for Houses and Residential Land 15th Edition as recommended by the Real Estate Institute of Queensland (“the Terms of Contract”).

2.2 Inconsistency of conditions

- (a) If there is any inconsistency between any of the conditions contained in the Contract then the parties agree that the following parts of the Contract take precedence in the stated order:
 - (i) the Special Conditions;
 - (ii) the Specifications contained in Annexure “A” and the Plans contained in Annexure “B” and Buyer’s Specifications contained in Annexure “C”; and
 - (iii) the Terms of Contract.
- (b) If there are any inconsistencies between plans and Specifications contained in Annexure “A”, the Plans contained in Annexure “B” and the specifications contained in Annexure “C”, then the parties agree that the following parts of the Contract take precedence in the stated order:
 - (i) the Buyer’s additional specification marked Annexure “C”
 - (ii) Seller’s Specifications marked Annexure “A” and Plans marked “Annexure B”;

[insert the following special condition if the Seller does not own the land at the time of signing the Contract.

3. Ownership of the Land

- (a) If the Seller does not own the Land as at the Contract Date, the Seller must ensure that it is the registered owner of the Land by 5:00pm on that which is thirty (30) days from the Contract Date (**Registration Date**).
- (b) The Seller must promptly upon becoming the registered owner of the Land give to the Buyer a copy of the registration confirmation statement or a title search of the Land evidencing the satisfaction of Special Condition 3(a).
- (c) If the Seller fails to comply with Special Condition 3(a) by 5pm on the Registration Date, the Buyer may at any time before 5:00pm on that day which is ten (10) Business Days after the

Registration Date terminate this Contract by giving written notice to the Seller. If this Contract is terminated under this Special Condition, neither party will be entitled to any Claim as a result of termination under this Special Condition 3.

4. Finance Approval Condition

4.1 Contract subject to finance approval

This Contract is conditional on the Buyer obtaining financial approval for the purchase of the Property, from the person who has the relevant authority by 5:00pm on the Finance Approval Condition Date.

4.2 Satisfaction of condition

The Buyer will give written notice to the Seller no later than by 5:00pm on that day which is two (2) Business Days after the Finance Approval Condition Date as to whether or not the condition has been satisfied.

4.3 If notice not given

- (a) If notice is not given under Special Condition 4.2, the Seller may terminate this contract by written notice to the Buyer. This is the Seller's only remedy for the Buyer's failure to give notice.
- (b) The Seller's right under Special Condition 4.3(a) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver (which the Buyer may do-the condition having been included for the exclusive benefit of the Buyer) pursuant to Special Condition 4.2.

4.4 Finance Approval not obtained

If the condition in Special Condition 4.1 is not satisfied, then this Contract will be at an end. Neither party will be entitled to any Claim as a result of termination under this Special Condition 4.

5. Due Diligence Condition

- (a) This Contract is subject to the Buyer being satisfied in its absolute discretion with the outcomes and results of all and any enquiries and inspections the Buyer wishes to conduct in relation to the Seller, the Property, the Land and extending to for example and without limitation, valuations, investigations and enquiries it desires to commission or conduct in relation to the Property and the Land (collectively '**Due Diligence**') by 5:00pm on the Due Diligence Date.
- (b) The Seller must, upon request by the Buyer, provide any necessary information or documents that are in the possession or within the control of the Seller for the Buyer's due diligence enquiries within five (5) Business Days of the Buyer's request, including without limitation:
 - (i) development and building approvals;
 - (ii) geotechnical reports;
 - (iii) hydraulics/stormwater management plan;
 - (iv) utility service capacity and locations;
 - (v) water pressure testing;
 - (vi) waste management;
 - (vii) contour and detail survey;
 - (viii) town planning reports;
 - (ix) contamination studies;

- (x) searches of relevant authorities'
 - (xi) asbestos reports and management plans;
 - (xii) environmental management reports;
 - (xiii) acoustic reports;
 - (xiv) financial reports; and
 - (xv) cultural heritage reports.
- (c) The Seller warrants that:
- (i) the information and documents provided under Special Condition 5(b) will not infringe the Intellectual Property Rights of any person and that the Buyer will have the benefit of the Intellectual Property of that information and documents at no cost to the Buyer; and
 - (ii) if the Seller does not own the Intellectual Property of the information and documents provided under Special Condition 5(b) as at the Contract Date, the Seller must ensure that it has the right to assign or licence the benefit of the Intellectual Property of that information and documents at no cost to the Buyer at the Settlement Date.
- (d) The Buyer is entitled to treat failure to receive a response or any information (including the Seller's failure to provide information or documents in accordance with Special Condition 5(b)) on or before the Due Diligence Date as an unsatisfactory Due Diligence.
- (e) The Buyer must within two (2) Business Days after the Due Diligence Date give the Seller written notice that:
- (i) the Due Diligence is satisfactory (' **Satisfaction Notice**'); or
 - (ii) the Due Diligence is unsatisfactory (' **Dissatisfaction Notice**'); or
 - (iii) the Buyer waives the benefit of this Special Condition 5 (which the Buyer may do-the condition having been included for the exclusive benefit of the Buyer) (' **Due Diligence Waiver Notice**').
- (f) If the Seller has not terminated this Contract under Special Condition 5(h), the Buyer may (notwithstanding it is later than two (2) Business Days after the Due Diligence Date) give a Satisfaction Notice or Dissatisfaction Notice or Due Diligence Waiver Notice under this Special Condition 5(e) at any time up until settlement.
- (g) A Dissatisfaction Notice has effect to terminate this Contract.
- (h) If the Buyer fails to give notice under Special Condition 5(e), the Seller may terminate this Contract before the Buyer gives a Satisfaction Notice or Due Diligence Waiver Notice and before settlement, but that is the Seller's only remedy for the Buyer's failure to give the notice.
- (i) If this Contract is terminated under this Special Condition 5, neither party will be entitled to object or to make a Claim against the other as a result of termination under this Special Condition 5.

6. Building Approval Condition

6.1 Contract subject to building approval

This Contract is conditional on:

- (a) the Seller lodging the Building Approval Application no later than Building Approval Application Date;

- (b) the Seller obtaining the necessary Building Approval by the Building Approval Date; and
- (c) the Buyer being satisfied with the conditions of the Building Approval.

6.2 Satisfaction of condition

- (a) The Seller must:
 - (i) lodge the Building Approval Application no later than Building Approval Application Date
 - (ii) provide to the Buyer a copy of the Building Approval Application no later than two (2) Business Days after the Building Approval Application has been lodged;
 - (iii) obtain the Building Approval by the Building Approval Date; and
 - (iv) provide to the Buyer a copy of the Building Approval no later than two (2) Business Days after receipt by the Seller of the Building Approval.
- (b) If the Seller does not lodge the Building Approval Application in accordance with Special Condition 6.2 (a) (i) and/or provide to the Buyer with a copy of the Building Approval Application in accordance with Special Condition 6.2 (a) (ii) the Buyer may by written notice to the Seller terminate the Contract at any time after two (2) Business Days from the Building Approval Application Date.
- (c) The Buyer must give written notice to the Seller by no later than 5:00pm on that day which is five (5) Business Days after receipt of a copy of the Building Approval from the Seller that:
 - (i) the Buyer is satisfied with the conditions of the Building Approval;
 - (ii) the Buyer is not satisfied with the conditions of the Building Approval and terminates the Contract; or
 - (iii) the Buyer waives the benefit of this Special Condition (which the Buyer may do-the condition having been included for the exclusive benefit of the Buyer).

6.3 If notice not given

- (a) If notice is not given under Special Condition 6.2(b) within the time specified, the Seller may terminate this Contract by written notice to the Buyer. This is the Seller's only remedy for the Buyer's failure to give notice.
- (b) The Seller's right under Special Condition 6.3(a) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to Special Condition 6.2(b).

6.4 Building Approval not obtained

- (a) The Seller must give written notice to the Buyer by no later than 5:00pm on that day which is two (2) Business Days after the Building Approval Date as to whether or not the Building Approval has been obtained.
- (b) If the Seller:
 - (i) gives notice to the Buyer under Special Condition 6.4(a) that the Building Approval has not been obtained, the Buyer may terminate this Contract by written notice to the Seller given no later than 5pm on the day which is five (5) Business Days after receipt of the notice under Special Condition 6.4(a); or
 - (ii) fails to give notice to the Buyer as to whether a Building Approval has been obtained by the date specified in Special Condition 6.4(a), the Buyer may terminate this Contract by written notice to the Seller given no later than 5pm on the day which is seven (7) Business Days after the Building Approval Date.

6.5 Effect of termination

If the Contract is terminated pursuant to Special Condition 6.2(c)(ii), Special Condition 6.3(a) or Special Condition 6.4, neither party will be entitled to make a Claim against the other party as a result of termination under this Special Condition 6.

7. Settlement

7.1 Settlement Date

Subject to the satisfaction of Special Conditions 3, 4, 5, 6, 14, 15, 16, 18.1 and 18.2 the Settlement Date will be [insert the number of days after which settlement will occur, note: it will be fourteen (14) days unless instructed otherwise] after the Buyer provides a Practical Completion Satisfaction Notice or Practical Completion Waiver Notice pursuant to Special Condition 18.2(b) but no later than the Sunset Date.

7.2 Sunset Date

If settlement of this Contract has not occurred by the Sunset Date, the Buyer may at its option terminate this Contract by giving written notice to the Seller no later than three (3) Business Days after the Sunset Date, then this Contract will be at an end. Neither party will be entitled to any Claim as a result of termination under this Special Condition 7.

8. Land Tax

Despite the provisions of Clause 2.6(4) of the Terms of Contract:

- (a) any land tax which has been paid by the Seller and which relates to the period following the Settlement Date, shall not be adjusted on the Settlement Date; and
- (b) any land tax which is owing by the Seller as at the Settlement Date, even though relating to the period following the Settlement Date, shall be paid by the Seller and not adjusted on the Settlement Date.

9. No Deposit to be paid

Clauses 2.2, 2.3, 2.4 of the Terms of Contract do not apply.

10. Production of Transfer at Office of State Revenue

Clause 5.2 of the Terms of Contract is amended by omitting Sub-Clause (2) and substituting the following clause:

- “(2) The Buyer may require the Seller to produce Transfer documents at the Office of State Revenue nearest the Place of Settlement for stamping before settlement. The Seller shall produce the Transfer documents without payment of any production fee by the Buyer.”

11. Documents prior to Settlement

Clause 5.3(1) of the Terms of Contract are amended by

- (a) amending the first sentence to read:

“The Buyer may pay to the Seller the Balance Purchase Price (less the defects Retention Funds referred to in Special Condition 18.3(b)) at settlement subject to the Seller having delivered to the Buyer the following at least 7 days prior to settlement:”
- (b) inserting at the end of paragraph Clause 5.3(1)(c) “including a release of any mortgage or charge (including any PPSR registration) which relates to the Property in a form satisfactory to the Buyer.”

(c) inserting the following paragraphs

- “(g) all service manuals and warranties for the Improvements and Included Chattels;
 - (h) if a gas system is installed on the Property – the Gas System Compliance Certificate evidencing that the gas installation complies in all respects with the safety requirements of the Petroleum & Gas (Production and Safety) Act 2004;
 - (i) proof (in the form of a tax invoice) and date of purchase of all fittings and fixtures installed in the Property requested by the Buyer (including without limitation ceiling fans, air conditioning units, rangehood, oven, cooktop, hot water system and water tank pump);
 - (j) certification that the Property has been treated for subterranean termites to current Australian Standard; and
 - (k) evidence that the benefit of the Intellectual Property of the information and documents provided under Special Condition 5(b) has been or will be transferred or assigned to the Buyer at no cost to the Buyer at the Settlement Date in accordance with Special Condition 5(c).”
- (d) Including an additional sentence at the end of Clause 5.3(1) “In the case of the releases referred to in Clause 5.3(1)(c), a copy must be provided to the Buyer at least 7 days prior to settlement with the original to be provided at settlement in exchange for the Balance Purchase Price.”

12. Assignment of rights against third parties

At settlement, the Seller assigns to the Buyer any rights available to the Seller against any person engaged to prepare information or documents provided to the Buyer under clause 5(b), in connection with any deficiency in:

- (a) that information or those documents; or
- (b) any testing, analysis or other work carried out for the purposes of preparing that information or those documents.

13. Risk

The Terms of Contract are amended by omitting Clause 8.1 of the Terms of Contract and substituting the following clauses:-

- “8.1 Notwithstanding any rule of law or equity to the contrary the Property shall be at the risk of the Seller until the whole of the Purchase Price is paid or the Buyer is entitled to or is given possession of the Property whichever is the earlier and thereupon the risk shall pass to the Buyer.

14. Condition of Property

The Seller will ensure that on the Settlement Date:

- (a) the Property is left in a clean and tidy condition, free of any rubbish, the gardens are weeded and lawns are mowed;
- (b) all Services will be connected to the Property and all electrical, gas, plumbing and water reticulation fixtures and fittings are in good working order; and
- (c) vacant possession of the Property is given.

15. Pre-Settlement Inspection

15.1 Buyer's right to inspect the Property

The Seller will permit the Buyer and its Authorised Persons to have access to the Property on the morning of the Settlement Date for the purpose of conducting an inspection to ensure the Seller has complied with its obligations under Special Condition 14 and Clause 8.3 of the Terms of Contract.

15.2 Extension of settlement

If the Buyer determines the Seller has not complied with its obligations under Special Condition 14 and/or Clause 8.3 of the Terms of Contract, the Buyer may delay settlement until the condition of the Property is satisfactory to the Buyer.

15.3 Buyer's notice of extension

If the Buyer elects to delay settlement under Special Condition 15.2, it must immediately give written notice to this effect to the Seller. The notice must specify the matters that the Seller must rectify and the date by which rectification is required. That date will become the Settlement Date, with time to remain of the essence.

15.4 Buyer's continuing right to inspect the Property

If the Buyer gives notice under Special Condition 15.3, the Buyer may again exercise its right under Special Condition 15.1 on the new Settlement Date.

15.5 Buyer may terminate

If the Seller does not comply with its obligations in the notice under Special Condition 15.3, then the Buyer may terminate this Contract by written notice to the Seller.

15.6 No liability for termination

The Seller is not entitled to any Claim as a result of termination under Special Condition 15.5.

15.7 No liability for extension of settlement

- (a) The Seller is not entitled to any Claim as a result of the Settlement Date being extended under Special Condition 15.2.
- (b) To remove doubt, if the Settlement Date is extended under Special Condition 15.3, then the provisions of Clause 9.9 of the Terms of Contract do not apply.

16. Completion of Construction Works and provision of Certificates of Approval

16.1 Seller's obligations

- (a) The Seller must commence the Works within fourteen (14) days of the satisfaction or the waiver by the Buyer of the last of the Pre-conditions.
- (b) For clarity, the Seller must demolish the existing structures on the Property (including without limitation removal of all slabs and capping of any redundant services) (if any) at its own cost and at its own risk.
- (c) For clarity, in undertaking the Works, the Seller:
 - (i) enters the Property and carries out the Works at its own cost and risk; and
 - (ii) assumes all risk and liability with respect to any site constraints and latent and patent conditions of the Land.

- (d) The Seller acknowledges and agrees that:
- (i) the Seller remains responsible for the design and construction for the Works, notwithstanding any Building Approval;
 - (ii) inspections of the Property or review or approval of any document undertaken by the Buyer under this Contract must not be relied upon by the Seller as compliance with any obligation of the Seller under this Contract or any approvals, permits, consents, licences or certificates;
 - (iii) the Seller remains responsible for complying with all the requirements under any approvals, permits, consent, licence or certificate for the Works including but not limited to the Building Approval; and
 - (iv) the Buyer is relying upon the skill and expertise of the Seller in the design and construction of the Works.
- (e) In exercising the Buyer's right to inspect the Property under this Contract, the Buyer makes no warranty or representation as to:
- (i) the adequacy, suitability or fitness of the Property;
 - (ii) whether the Works are defective; or
 - (iii) whether the Works are in compliance with Special Condition 16.
- (f) The Seller warrants that, at its cost and expense:
- (i) all Works will be performed in a good and tradesmanlike manner using new, quality material that are proper and fit for purpose;
 - (ii) all fittings and chattels installed will be new and proper and fit for purpose and completed to the satisfaction of the Buyer; and
 - (iii) the completed Works will be fit for purpose.
- (g) The Seller warrants that, at its cost and expense, connection of all Services to the Property will be completed prior to the Settlement Date.
- (h) In relation to the connection of power/electricity supply to the Property
- (i) The Seller is to cause an application to an electricity retailer ("**the Retailer**") of their/its choice in its/their name, for the permanent supply of electricity to allow for the installation of all meters (community and individual units) where necessary;
 - (ii) Electricity /power and permanent supply are to be installed and functioning on or before the Proposed Practical Completion Date; and
 - (iii) On the Proposed Practical Completion Date, the Seller and or its agent/s are to arrange disconnection of supply and settle their account with the Retailer; and
 - (iv) The Seller is to pay all fees and costs associated with and in connection with the application with supply and installation of meters, and then disconnection of supply.
- (i) In relation to the Telephone connection:-
- (i) The Seller is to cause an application to open an account with the service provider known as 'Telstra', and pay the initial connection fee for the Property.
 - (ii) The Seller will be responsible for obtaining a telephone number to the Property and settle the account with Telstra prior to the Proposed Practical Completion Date.

- (iii) The telephone number is to be passed to the appropriate employee of the Buyer prior to or on the Proposed Practical Completion Date.
- (j) In relation to the Television connection:-
 - (i) The Seller is to cause the testing required by the Buyer as follows:-
 - (A) Taking readings with a single level meter;
 - (B) Using a colour television receiver (minimum 34 cm of normal design) to ensure clear reception on all commonly received free to air channels;
 - (ii) The Seller must arrange for a television service provider to lodge written certification work that include a guarantee to attend, at no cost to the Buyer, as necessary to maintain clear reception from the installation for a period of six (6) Months from the Settlement Date. Written certification is to include installer's name and address.
- (k) [insert the following clause if required. In relation to the nbn connection:-
 - (i) Whether or not 'nbn' broadband access network (**nbn**) is available to the Property, the Seller must cause the lead-in conduit for nbn to be installed and connection points to be supplied to the Property.
 - (ii) If nbn is available at the Property the Seller must on or before the Proposed Practical Completion Date:
 - (A) install the nbn connection box
 - (B) install the nbn utility box;
 - (C) open an account with the service provider known as [TBA]; and
 - (D) pay the initial nbn connection fee for the Property; and
 - (E) pay the initial cost of establishing an account with the service provider.
- (l) [insert the following clause if the schedule of finishes include a lift. In relation to the lift SIM cards:
 - (i) without limiting the specification of the Works, the lifts must:
 - (A) be dual SIM compatible
 - (B) have a modem with a minimum two (2) hour battery back-up; and
 - (C) have the necessary phone connections installed;
 - (ii) the Seller must order two (2) SIM cards (one from each of the providers known as Optus and Telstra); and
 - (iii) the Buyer may at its election apply for the SIM cards on behalf of a third party (including the Housing Service Centre) after the Settlement Date.
- (m) Without limiting any other provisions of this Contract, the Seller must:
 - (i) comply with all relevant laws in relation to the design, construction and fitout of the Works;
 - (ii) ensure construction and fitout of the Works complies with all relevant Australian Standards;

- (iii) give to the Local Government and any other relevant authority any notices required to be given to them in relation to the Works, at the earliest dated they respectively can be given;
- (iv) pay in full before the Settlement Date all amounts payable (including but not limited to headworks/infrastructure charges) to the Local Government or other relevant authority for, or as a condition of any approval relating to the Land or construction of the Improvements (including their use after settlement), or any inspection or certificates of inspection or compliance;
- (v) ensure that the contractors and subcontractors employ apprentices and trainees who have undertaken training required by the Queensland Government Building and Construction Training Policy for the construction of the Works (which at the date of this Contract can be obtained at <https://training.qld.gov.au/employers/trainingpolicy>); and
- (vi) provide evidence of the above at the request of the Buyer before the Settlement Date.

16.2 Provision of documents

On or before the Proposed Practical Completion Date, the Seller must provide to the Buyer:

- (a) the originals or duly certified copies of the following documents approved or issued by the Local Government or other authority (including private certifier) having jurisdiction in relation to the Property:-
 - (i) building development application approval documents under the Building Act 1975;
 - (ii) compliance permit and compliance certificate under the Plumbing and Drainage Act 2002;
 - (iii) final inspection certificate or certificate of classification under the Building Act 1975;
 - (iv) if the building contains special fire services requiring referral to Queensland Fire and Emergency Services, an inspection report evidencing compliance with the QFES jurisdiction as identified in the Planning Regulation 2017, Schedule 9, Part 3, Division 3, Table 1;
 - (v) any development approval under the Planning Act 2016;
 - (vi) other approval, permit, consent, licence, certificate or authority relevant to the use or development of the Property;
- (b) evidence to the satisfaction of the Buyer that:
 - (i) all conditions of any development approval under the Planning Act 2016 relative to the building works and development generally have been complied with;
 - (ii) all infrastructure charges under the Planning Act 2016 have been satisfied or paid;
 - (iii) all charges, levies and fees in relation to the development and use of the Property have been satisfied or paid;
 - (iv) any requirement under the building assessment provisions or a condition of the building development approval for a referral agency inspection of the building has been complied with or has ceased to apply; and
 - (v) if the building contains fire safety installations, a list of all fire safety installations installed in the building and drawings showing the location of the fire safety installations has been provided to Queensland Fire and Emergency Service.

16.3 Buyer may terminate

If the Seller fails to comply with Special Condition 16.1 or any certificate or document provided under Special Condition 16.2 includes a requirement to undertake further works or pay any money, the Buyer may at its option terminate this Contract by notice in writing to the Seller and the Seller is not entitled to any Claim as a result of termination under this Special Condition 16.3.

17. Buyer's Variations

17.1 Variations sought by Buyer

The Buyer may direct a Buyer's Variation to the Works prior to or during the course of construction of the Works.

17.2 Details of Variation Cost

- (a) If the Buyer directs a Buyer's Variation to the Works in accordance with clause 17.1, within twenty (20) Business Days after receipt of a Buyer's Variation direction, the Seller must submit to the Buyer:
 - (i) detailed drawings of the Buyer's Variation;
 - (ii) the fully itemised statements detailing the proposed Variation Cost on a fixed price basis being a direct pass through of the actual trade costs, preliminaries and margins of proposed subcontractors (not subject to rise and fall) with a [insert %] profit margin for the Seller; and
 - (iii) details of any delay to Practical Completion.

(Variation Details).
- (b) The Buyer must notify the Seller in writing by 5:00pm on that day which is ten (10) Business Days after receipt of the Variation Details, whether or not the Buyer requires the Buyer's Variations to be carried out.
- (c) If the Buyer fails to notify its acceptance or rejection within ten (10) Business Days of receipt of the Variation Details, the Buyer will be deemed to have rejected the Variation Details and the Seller will not be required to carry out the Buyer's Variations.
- (d) If the Buyer and the Seller cannot agree on the Variation Costs, the Variation Cost will be determined by the Buyer who will apply proper and reasonable criteria in making such determination.
- (e) If the Buyer approves the Variation Details:
 - (i) the Seller must procure the carrying out of the Buyer's Variation in accordance with the Variation Details (including obtaining any necessary approvals, permits, consent, licence, certificate or authority for the Buyer's Variation);
 - (ii) the Buyer must pay to the Seller the Variation Cost at settlement in addition to the Balance Purchase Price; and
 - (iii) the Sunset Date will be extended by the period of delay to Practical Completion specified under Special Condition 17.2(a)(iii).

17.3 Changes to Variation Cost

- (a) The Seller must when requested by the Buyer from time to time and also no later than five (5) Business Days prior to the Settlement Date, provide the Buyer with fully itemised statements detailing the actual Variation Costs so that the Buyer can properly assess the items and charges.
- (b) Despite anything to the contrary:

- (i) if the actual Variation Cost is less than the Variation Costs determined by the Buyer in accordance with Special Condition 17.2(d), the amount payable by the Buyer at settlement in accordance with Special Condition 17.2(e)(ii) will be reduced to the actual Variation Cost; and
- (ii) the Buyer is not liable for the actual Variation Costs to the extent that those costs exceed the Variation Costs determined by the Buyer in accordance with Special Condition 17.2(d);
- (iii) no payment for additional works will be made unless the additional works are authorised by the Buyer.

18. Defects

18.1 Defects prior to Practical Completion

- (a) The Buyer and its Authorised Persons shall be entitled to inspect the Property at least once per fortnight, on the provision by the Buyer of not less than 24 hours' notice. The Seller must accompany the Buyer's Authorised Persons at the Property to ensure that there are no Defects and the Works are being constructed and fitted in compliance of Special Condition 16.
- (b) If the Buyer determines in its discretion the Seller is not meeting its obligations under Special Condition 18.1(a):
 - (i) the Buyer may give written notice to that effect to the Seller ("**Defects Notice**");
 - (ii) the notice must specify the Defects which are to be rectified and the date by which rectification is required ("**Rectification Date**");
 - (iii) the Rectification Date must be a date that is reasonable having regard to the nature of the Defect/s to be rectified.
- (c) If the Buyer gives a Defects Notice, the Buyer may again exercise its rights under Special Condition 18.1(b) after the Rectification Date.
- (d) If the Seller has not by the Rectification Date rectified the Defects listed in a Defects Notice, the Buyer may terminate this Contract by notice in writing to the Seller and the Seller is not entitled to any Claim as a result of termination under this Special Condition 18.1(d).

18.2 Defects after Practical Completion

- (a) When all the Works have been properly completed and all the originals or duly certified documents or certificates have been provided to the Buyer in accordance with Special Condition 16, the Seller must within three (3) Business Days notify the Buyer in writing of the Practical Completion of the Works ("**Practical Completion Notification Date**") and provided the Buyer gives the Seller 24 hours' notice in writing, allow the Buyer and its Authorised Persons to inspect the Property as often as the Buyer requests.
- (b) The Buyer must within five (5) Business Days after the Practical Completion Notification Date give the Seller notice in its discretion that:-
 - (i) The Works completed in accordance with Special Condition 16 are satisfactory ("**Practical Completion Satisfaction Notice**"); or
 - (ii) The Seller has not met obligations under Special Condition 16 ("**Practical Completion Defect Notice**"); or
 - (iii) The Buyer waives the benefit of Special Condition 16 (which the Buyer may do the condition having been included for the exclusive benefit of the Buyer) ("**Practical Completion Waiver Notice**")

- (c) The Practical Completion Defect Notice must specify the Defects which are to be rectified and the day by which rectification is required ("**Practical Completion Rectification Date**"). The Practical Completion Rectification Date must be a date which is reasonable having regard to the nature of the Defect/s to be rectified.
- (d) If the Buyer gives a Practical Completion Defect Notice, the Buyer may again exercise its rights under Special Condition 18.2(a) after the Practical Completion Rectification Date.
- (e) If the Seller has not by the Practical Completion Rectification Date rectified the Defects listed in a Practical Completion Defect Notice, the Buyer may terminate this Contract by notice in writing to the Seller and the Seller is not entitled to any Claim as a result of termination under this Special Condition 18.2(e).

18.3 Defects after Settlement

- (a) Any Defects in the Improvements which may be evident and be notified to the Seller within the Defects Rectification Period must be rectified by the Seller within a reasonable time. The Buyer will provide reasonable access to the Property after the Settlement Date to allow the Seller to attend to the rectification of the Defects. The Seller must cause as little inconvenience to the occupier of the Property as practical in doing so.
- (b) The Buyer will retain 2.5% of the Purchase Price ("**Retention Funds**") at settlement from the settlement funds to be held by the Buyer. The parties irrevocably authorise and direct the Buyer to hold the Retention Funds on trust until one Month after the later of:
 - (i) the end of the Defects Rectification Period; and
 - (ii) the rectification of the Defects in the Improvements notified by the Buyer to the Seller during the Defects Rectification Period,
 at which time the Buyer is to release the Retention Funds to the Seller (subject to Special Condition 18.3(c)).
- (c) If the Seller does not attend to the rectification of the Defects or does not carry out rectification properly, the Buyer may elect to carry out the rectification on the Seller's behalf and pay the cost of rectification from the Retention Funds.
- (d) This Special Condition does not merge on settlement.

19. Workplace Health and Safety

Prior to the Buyer and its Authorised Persons entering the Property for inspection under this Contract, the Seller must ensure that:

- (a) the Buyer and its Authorised Persons complete any relevant site specific safety inductions and training at no cost to the Buyer; and
- (b) the Seller provides and makes available to the Buyer and its Authorised Persons appropriate personal protection equipment (PPE) as required by the Work Health and Safety Regulations (Qld) 2011, site rules and nature of work.

20. Buyer's Termination Right

If the Seller does not comply with its obligations under any Special Conditions in this Contract, then the Buyer may terminate this Contract by written notice to the Seller. The Seller is not entitled to any Claim as a result of termination under this Special Condition 20.

21. Seller as Trustee

If the Seller enters this Contract as trustee of a trust (whether or not that fact is disclosed to the Buyer):

- (a) the Seller will be liable under this Contract in its own right and as trustee of the trust;
- (b) nothing releases the Seller from any liability in its personal capacity; and
- (c) the Seller warrants that as at the Contract Date and at the Settlement Date:
 - (i) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the Seller as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
 - (ii) the Seller has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Contract on behalf of the trust and that this Contract is being entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
 - (iii) no restriction on the Seller's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

22. Guarantee and indemnity

22.1 Application

If the Seller is a company or includes a company other than a public company as defined in the *Corporations Act 2001*, then the Seller must procure the due execution of a guarantee and indemnity from each director of the company in accordance with this Contract.

22.2 Consideration

The Guarantor gives the guarantee and indemnity in this Special Condition 22 in consideration of the Buyer agreeing to enter into this Contract with the Seller. The Guarantor acknowledges the receipt of valuable consideration from the Buyer for the Guarantor incurring obligations and giving rights under this Special Condition 22.

22.3 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Buyer the due and punctual performance and observance by the Seller of its obligations under this Contract (**Guarantee**).

22.4 Indemnity

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Buyer against any liability or loss arising from, and any costs incurred in connection with the Seller's breach of this Contract, including without limitation a failure to attend to the rectification of all Defects during the Defects Rectification Period (**Indemnity**).

22.5 Enforcement of rights

The Buyer is not required to make any Claim against the Seller, or to enforce this Contract, or any other right, power or remedy against the Seller, before making any Claim against the Guarantor under this Special Condition 22.

22.6 Continuing security

The guarantee and indemnity in this Special Condition 22 is a continuing security and is not discharged by any one payment.

22.7 Guarantee not affected

The liabilities of the Guarantor under this Special Condition 22 as a guarantor, indemnifier or principal debtor and the rights of the Buyer under this Special Condition 22 are not affected by anything which might otherwise affect them at law or in equity, including one or more of the following:

- (a) the Buyer giving any extension of time or indulgence to any person;
- (b) acquiescence, delays, acts, omissions or mistakes of the Buyer;
- (c) any variation or novation of a right of the Buyer;
- (d) any variation of the Contract;
- (e) the Winding Up or Bankruptcy of the Seller or the Guarantor;
- (f) the failure of the Buyer to sue the Seller or any neglect or omission of the Buyer to enforce any of its rights against the Seller or any waiver of any breaches or defaults under the Contract;
- (g) the Buyer exercising or refraining from exercising any other security or any of the rights, powers or remedies conferred on it by law or by the Contract or any other agreement with any person, or taking or failing to take any other security;
- (h) the Seller's obligations or any part of them being or becoming wholly or partially illegal, void, voidable or unenforceable;
- (i) the failure by the Buyer to give notice to the Guarantor of any default by the Seller under the Contract;
- (j) any legal limitation, disability, incapacity or other circumstances related to the Seller; or
- (k) the failure of any guarantor to execute this guarantee or the granting of this guarantee by any guarantor being or becoming void or voidable.

22.8 Suspension of Guarantor's rights

The Guarantor may not, without the consent of the Buyer:

- (a) raise a set off or counterclaim available to it or the Seller against the Buyer in reduction of its liability under this Guarantee and Indemnity; or
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Buyer in connection with the Contract, until all money payable to the Buyer in connection with the Contract is paid.

22.9 Costs

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

- (a) the Buyer's costs, charges and expenses in making, enforcing and doing anything in connection with this Guarantee and Indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this Guarantee or Indemnity or a payment, receipt or other transaction contemplated by it.

Money paid by the Guarantor to the Buyer must be applied first against payment of costs, charges and expenses under this Special Condition 22, then against other obligations under the Guarantee and Indemnity.

22.10 Items included in loss, liability and costs

The Guarantor agrees that the costs referred to in Special Condition 22.10 include:

- (a) legal costs in accordance with any written agreement as to legal costs (whether or not the Guarantor is a party to the agreement) or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis; and
- (b) those paid, or that the Buyer reasonably believes are payable, to persons engaged by the Buyer in connection with this guarantee and indemnity (such as consultants).

23. Seller's maintenance obligations

- (a) The Seller must during the Maintenance Period:
 - (i) maintain and ensure that all Improvements and Included Chattels are in good working order, except for fair wear and tear and damage caused to the Included Chattels and Improvements by the occupier of the Property; and
 - (ii) enter into and keep in force during the Term comprehensive contracts for the maintenance and replacement of operational component parts in respect of [insert details] with responsible specialists in such maintenance, repair and replacement work approved by the Buyer.
- (b) The Buyer will provide the Seller or the Seller's Authorised Persons reasonable access to the Property after the Settlement Date for the purposes of carrying out maintenance works. The Seller must cause as little inconvenience to the occupier of the Property as practical in doing so.
- (c) This Special Condition does not merge on settlement.

24. Seller's warranty

24.1 Seller's warranty

The Seller warrants and represents (in addition to all other warranties and representations under this Contract) that:

- (a) the Seller is the absolute legal and beneficial owner of the Land;
- (b) the Seller holds the relevant licence under the Queensland Building and Construction Commission Act 1991 Qld and there is no fact, matter, circumstance or thing that has or might give rise to the suspension or renovation of that registration;
- (c) there are no third party or other interests in the Property;
- (d) the Seller has disclosed in writing to the Buyer all material documents pursuant to which the Property is used or occupied and there are no other documents, correspondence or other material which has not been provided to the Buyer which affects the interests of the Seller in the Property;
- (e) The Seller has received no notice of and there is no order, declaration, report recommendation or approved proposal of a public authority or government department which would materially affect the use of the Property. In particular:
 - (i) no notices, orders or directions have been given to the Seller or any other person pursuant to the Building Act 1975 Qld or other statute in respect of any building or structure on the Property which will be current at the Settlement Date.
 - (ii) no notices or orders have been issued pursuant to any statute or by any authority necessitating the doing of work or any expenditure in relation to the Property or any path or road adjoining the Land;

- (f) there are no notices, orders or directions issued by any authority against the Seller or other person alleging breach of laws and the Seller is not aware of any circumstance that would give rise to the issuing of such a notice, order or direction;
- (g) neither the Seller nor any other person is in material breach of any law applying to the Property;
- (h) there are no tenancy or other agreements affecting the Property (except those disclosed in this Contract);
- (i) the Seller has not received any notice from any local or other competent authority or from any third party and to the best of knowledge of the Seller there are no proposals made or intended to be made by any such authority or person concerning the acquisition or resumption of any part of the Property or the Land;
- (j) the Land is not:-
 - (i) dedicated as protected area of any class mentioned in section 14 of the Nature Conservation Act 1992 Qld or affected by a conservation agreement conservation covenant or conservation plan pursuant to that Act;
 - (ii) affected by the Queensland Heritage Act 1992 Qld;
 - (iii) included in the World Heritage List; or
 - (iv) affected by any claim by any Australian Aboriginal person pursuant to the Aboriginal Land Act 1991, the Native Title Act 1993 Cth or the Native Title (Queensland) Act 1993 Qld;
- (k) There are no:
 - (i) improvements constructed on the Property which encroaches onto any adjoining land or any other land or any street;
 - (ii) structures owned by a third party including any structures owned by a third party which encroaches on to the Property and/or the Land;
 - (iii) disputes, claims or actions relating to the Land or its use including disputes with adjoining or neighboring owners with respect to boundary walls or fences or with respect to any easement, right or means of access to the Land; and
 - (iv) buildings or other structures or chattels, fixtures or fittings forming part of any Improvements on the Property that any person is entitled to remove;
- (l) The principal means of access to the Land is over roads which are maintainable at public expense and no means of access to the Land is shared with another party;
- (m) All conditions of approvals, consents, permissions or the like dated prior to the Settlement Date relating to the Land and Property including any subdivision or reconfiguration approval, planning approval or building approval in relation to the Land and Property have been satisfied, observed, met or discharged (for example all headworks charges and other infrastructure charges due to be paid have been paid in full to the relevant authority);
- (n) no objection has been made against any valuation of the Land under the Land Valuation Act, 2010 Qld, nor has an appeal been lodged against a valuation pursuant to that Act;
- (o) except as permitted by this Contract, the Seller will not alter, change or conduct any works in relation to the Land or Property prior to the Settlement Date without the Buyer's express written consent being first obtained which may be withheld for any reason whatsoever; and
- (p) the Seller's Specifications marked Annexure "A", the Plans marked Annexure "B" and the Works do not infringe the Intellectual Property Rights of any third party.

24.2 Breach of warranty

If the Buyer ascertains prior to settlement being effected, that the Seller is in breach of any one of these warranties or that any of the warranties is not correct, then (without prejudice to the Buyer's other rights arising), the Buyer may (in its sole and absolute discretion) terminate this Contract by notice in writing to the Seller. The Seller will not be entitled to any Claim as a result of termination under this Special Condition 24.

24.3 No merger

This Special Condition 24 will not merge on settlement.

25. GST/ABN Disclosure/PAYG Withholding Provisions of the Taxation Administration Act 1953

25.1 Seller's warranty

The Seller warrants (and the Buyer enters into this Contract of Sale on the basis) that:

EITHER:

- (a) The sale of the Property is made to the Buyer in the Seller's capacity as an individual and is wholly of a private or domestic nature by the Seller ☐

OR

- (b) The sale of the Property is not made by the Seller in the course or furtherance of an enterprise made in Australia ☐

OR

- (c) If the sale of the Property is made by the Seller in relation to the carrying on of an enterprise in Australia then the Seller warrants that:

The enterprise is registered or required to be registered for GST

☐ Yes ☐ No

The Seller's ABN is

.....

(tick relevant box)

 **SELLER TO COMPLETE**

26. GST

26.1 Terms do not apply

Clause 2.1 of the Terms of Contract does not apply.

26.2 Adjustment to Purchase Price

The Purchase Price includes any GST payable on the supply of the Property and if the sale is a taxable supply, the Buyer and Seller agree that the Seller will choose to apply the margin scheme in calculating the applicable GST to the extent the GST Act permits the Seller to do so.

27. Electronic Transmission

27.1 Receipt by electronic transmission

The Seller and the Buyer agree to receive this Contract by email or facsimile.

27.2 Signing of the Contract

This Contract may be entered into and becomes binding on the parties named in the Contract upon one party signing the Contract that has been signed by the other (or a photocopy, email or facsimile copy of such Contract) and transmitting an email or facsimile copy of it to the other party or to the other party's agent or solicitor.

28. Appointment of Expert

28.1 Parties' Disputes

Notwithstanding anything in the Contract to the contrary, if the parties disagree as to what is and what is not a Defect in the Works in accordance with Special Conditions 18.1(b)(ii) and 18.2(b)(ii), the Buyer may refer the dispute to an expert ("**Expert**") in accordance with the ADC Rules for Expert Determination published by the Australian Dispute Center.

28.2 Appointment of Expert

The Expert is the person to be appointed in accordance with Special Condition 28.1. If that person is unable or unwilling at any time to act as the Expert, the parties will arrange for a replacement in accordance with this Special Condition 28.

The Expert must be:

- (a) an independent person with appropriate qualifications and experience; and
- (b) selected by agreement between the parties, or if the parties fail to agree, the person nominated by President for the time being of the Queensland Law Society (which nomination binds the parties).

28.3 Expert's determination

The Expert:

- (a) must act as an Expert and not as an arbitrator;
- (b) must resolve the dispute according to what he or she considers to be in the best interests of the parties as a whole, as opposed to the interests of any particular party;
- (c) may resolve all types of disputes, including those that do not require any specialist expertise as such, but do require the exercise of judgement including commercial judgement; and
- (d) has the power to request any of the disputing parties to provide him or her with such statements (that must be written unless otherwise specifically required), documents or information as he or she may determine.
- (e) Within 21 days of being requested by any party to do so, the Expert must give written notice of his or her decision to the parties. The Expert's decision is final and binding on the parties who must give effect to the decision immediately.

28.4 Expert's costs

The Expert's costs are payable by the party determined by the Expert, or in the absence of a determination, equally by the parties.

28.5 Effect of appointment of Expert

This Special Condition 28 does not prejudice the right of a party to institute court proceedings to seek urgent injunctive or declaratory relief in relation to any matter arising under this Contract.

28.6 No merger

This Special Condition 28 does not merge on settlement.

DRAFT

Signing page

Seller:

SIGNED by [insert name of seller]

in accordance with section

127(1) of the *Corporations Act 2001*

this day of 2018

by [insert name of director and director /secretary of
the seller company]

.....
Director (signature)

.....
Director/secretary (signature)

Buyer:

SIGNED for and on behalf of

***The State Of Queensland (Represented By
Department of Housing and Public Works)***

this day of 2018

by

.....
(signature)

.....
(full name)

.....
(designation)

who is a duly authorized officer,

in the presence of:

.....
(signature of witness)

.....
(print name of witness)

Guarantor: Signed Sealed and delivered as a deed

SIGNED by [insert name of Guarantor]

on this day of 2018 in the presence of:

.....
(signature of witness)

.....
(signature)

.....
(print name of witness)