

NOTE:

THIS IS AN INDICATIVE SAMPLE AGREEMENT ONLY. COMMERCIAL TERMS WILL BE AGREED PROJECT BY PROJECT, AND NOT ALL PROVISIONS IN THE SAMPLE WILL APPLY TO ALL FUNDING AGREEMENTS. THE STATE MAY REQUIRE PROJECT SPECIFIC ADDITIONS OR CHANGES BEFORE AGREEING A FUNDING AGREEMENT.

Funding Agreement

Date

This Agreement is dated on the date it is signed by the last party to do so.

Parties

State	<i>State of Queensland (acting through the Department of State Development, Infrastructure and Planning)</i>
ABN	29 230 178 530
Recipient	
ABN	

Background

- A. The State has established the Program.
- B. The Recipient seeks Funding from the State to undertake the Project.
- C. In reliance on the information provided in the Recipient's application, the State has agreed to provide Funding to the Recipient for the purpose of assisting the Recipient to undertake the Project, on the terms of this Agreement.
- D. The Recipient agrees to use the Funding to undertake the Project in accordance with the terms and conditions of this Agreement, which consists of the Signing page, the Reference Schedule, the Payment Schedule, the Standard Conditions and all other schedules and annexures.

Reference Schedule

Project identifiers	Project title: Project ID/reference number:	
Program details		
1.	Program	Residential Activation Fund
2.	Program Guidelines	Residential Activation Fund Program Guidelines, Round 1
3.	Program Objectives	The objectives set out in section 2 of the Program Guidelines.
Project details		
4.	Project	The construction of the trunk infrastructure, as described in detail in Annexure A.
5.	Site	<i>[Where infrastructure will be constructed]</i>
6.	Residential Development Site	
7.	Infrastructure	<i>[Infrastructure to be constructed at the Site]</i>
8.	Commencement Date	The date this Agreement is executed by both parties
9.	Target Project Completion Date	
10.	End Date	If: (a) there are no Cost Savings, 6 months after the Project Completion Date; or (b) there are Cost Savings, 6 months after the end of the Additional Payment Claim Period described in clause 5.4(a)(ii).
11.	Approved Project Plan	The Recipient must provide a Draft Project Plan by no later than [XX] Business Days after the date of this Agreement.
12.	Project Outcomes	
Financial matters		
13.	Funding	\$(XXXX) (excl GST) as Cash Grant

14.	Estimated Total Project Costs	Financial \$[XXXX] (ex GST). Non-financial: [...]	
15.	Recipient Contribution	\$[XXXX] (ex GST) Non-financial: [...]	
16.	Third Party Contribution	Third Party Contributor	Third Party Contribution
		[Entity name, if any]	\$[XXXX] (ex GST) Non-financial: [...]
17.	Bank Account	Account Name	
		BSB	
		Account Number	
		Swift Code	
18.	Eligible Project Costs	<p>Eligible Project Costs means:</p> <ul style="list-style-type: none"> (a) Project management costs, including remuneration of the Recipient's technical, professional, and administrative staff for time directly related to managing the Project works (excluding executive duties and overhead charges) (b) the procurement and installation of fixed plant and equipment which is required to establish the Infrastructure and for the fit out of the Site which, for the purposes of this Agreement are Assets; (c) reasonable construction costs integral to the Project, including: <ul style="list-style-type: none"> (i) all site works required as part of the construction; (ii) construction-related labour costs; and (iii) construction materials and equipment (including vehicle) hire, <p>but excludes:</p> <ul style="list-style-type: none"> (d) any "ineligible project costs", as defined in section 3.4 of the Program Guidelines; (e) any costs incurred after the Project Completion Date. 	
19.	Required Interim Homes	[Subject to the type of Residential Development, 5% of the number of single homes or other dwellings to be constructed in the Residential Development, rounded up to the nearest whole number]	
20.	Security	[Security type/s required if any and details such as amount, return date etc]	
21.	Assets	[Assets (eg machinery) if any that may be purchased with the funding]	

Preconditions		
22.	Detailed Design Precondition	The Recipient must provide to the reasonable satisfaction of the State, certified by an Authorised Officer of the Recipient, a copy of detailed designs of the Infrastructure signed off by a Registered Professional Engineer Queensland.
23.	Equipment agreements Precondition	The Recipient must provide evidence to the reasonable satisfaction of the State certified by an Authorised Officer of the Recipient of executed legally binding unconditional agreements with suppliers for the purchase, delivery, installation and commissioning of all equipment necessary to conduct the Project including the Assets.
24.	Project Plan Precondition	The Recipient must have an Approved Project Plan in place.
25.	Regulatory Approvals Plan Precondition	The Recipient must develop and submit a Regulatory Approvals Plan.
26.	Finance, Insurance and General Approval Preconditions	<p>The Recipient must provide evidence to the reasonable satisfaction of the State, certified by an Authorised Officer of the Recipient:</p> <ul style="list-style-type: none"> (a) that the Recipient has, on terms and conditions satisfactory to the State, received unconditional finance approval sufficient to undertake the Project (including funding sources, amounts and expected timing of availability of funds) and either: <ul style="list-style-type: none"> (i) satisfied the conditions precedent to the drawdown under the financing arrangements; or (ii) otherwise has sufficient finance or other funding necessary to implement and carry out the Project; (b) that the Recipient has obtained all necessary internal approvals for the Project including Board Approval (if required); (c) of relevant compliance and safety certificates and Approvals from relevant Authorities required for the Project; and (d) of effected certificates of insurance or insurance policies (as may be required by the State) required by this Agreement.
27.	Tenure Preconditions	<p>The Recipient must provide evidence to the reasonable satisfaction of the State, certified by an Authorised Officer of the Recipient that the Recipient either:</p> <ul style="list-style-type: none"> (a) owns the Site and the Residential Development Site; or (b) has acquired appropriate rights to the Site and the Residential Development Site, <p>such that there are no outstanding land tenure issues (including native title) to resolve at the date of this Agreement to enable the Recipient to:</p> <ul style="list-style-type: none"> (c) undertake: <ul style="list-style-type: none"> (i) the Project on the Site; and

		(ii) the Residential Development on the Residential Development Site; and (d) meet its obligations under this Agreement.	
28.	Intellectual Property Rights Precondition	The Recipient must provide evidence to the reasonable satisfaction of the State, certified by an Authorised Officer of the Recipient that the Recipient has entered into agreements to acquire, lease or otherwise obtain rights to use any property, including intellectual property, necessary to implement and carry out the Project.	
29.	Infrastructure Charges Precondition	The Recipient must provide, to the State's satisfaction, evidence of how it will comply with the requirements under clause 5.7.	
30.	Preconditions Satisfaction Date	[XX] Business Days after the date of this Agreement or such later date notified in writing by the State to the Recipient.	
Authorised officer and Key Personnel			
31.	Authorised Officer (Recipient)	Name	
		Position	
		Contact details	
32.	Authorised Officer (State)	Name	
		Position	
		Contact details	
33.	Key Personnel	Name	
		Position	
		Contact details	
Ongoing obligations			
34.	Insurance	(a) Public liability insurance for no less than the amount of [\$20,000,000] in respect of any individual claim covering the respective rights and interests, and liabilities to third parties, of the Recipient and the State on terms and from an insurer reasonably acceptable to the State; (b) Workers' compensation insurance for the Recipient's employees in accordance with the Workers' Compensation and Rehabilitation Act 2003 (Qld); (c) General insurance in respect of all property (in which the Recipient has an insurable interest) for the full replacement and reinstatement value, that is used in connection with the Project, including all buildings, fixtures and fittings and contents, against all loss and damage caused by or resulting from accident, fire, theft, malicious damage, storms, cyclones and/or flooding and any other insurable risk which property of a similar nature is commonly insured against and be on terms and from an insurer reasonably acceptable to the State;	

		<p>(d) Comprehensive contract works insurance which covers all development and construction works in connection with the Project for their full replacement and reinstatement value on terms and from an insurer reasonably acceptable to the State;</p> <p>(e) Transit insurance for any plant and equipment purchased for its full replacement value; and</p> <p>(f) if the Recipient engages any third party to provide professional services for the Project, that Recipient must procure that the third party supplier has appropriate professional indemnity insurance cover for an amount that is not less than the amount of [\$10,000,000] per claim.</p>	
35.	Reporting	Progress Report	To be provided as part of a Payment Claim on each Payment Claim Date (other than the final Payment Claim) in the form provided by the State
		Final Report	To be provided as part of the Payment Claim on the final Payment Claim Date.
		Financial Acquittal Report	To be provided as part of the Payment Claim on the final Payment Claim Date
		Residential Development Progress Report	To be provided in accordance with clause 5.9(b).
36.	Funding Acknowledgement Requirements	The Recipient must comply with the requirements of the State's standard media and communications requirements, which are located at the following website link, as amended from time to time: [Insert link]	
37.	Signage	The Recipient must comply with State's signage requirements contained in the Funding Acknowledgement Requirements.	
38.	Queensland Charter for Local Content	The Queensland Charter for Local Content [does/does not] apply to the Project.	
39.	Licence under the QBCC Act	Recipient's QBCC licence number: [XX] Group Entity QBCC licence number: [XX] [Group Entity name]: [XX]	
40.	Relevant Third Parties – Consortium Members	[Name of any third party that is not a Group Entity of the Recipient which is part of the consortium undertaking the Project]	
Address for service			
41.	State	Street address	
		Postal address	
		Email	

		Attention	
42.	Recipient	Street address	
		Postal address	
		Email	
		Attention	
Special Conditions			
43.	Special Condition 1	<u>Special Condition 1 – Infrastructure Agreement</u> (a) The Recipient must: <ul style="list-style-type: none"> (i) enter into an Infrastructure Agreement in respect of the Project under which the Recipient and the relevant local government or distributor-retailer agree [...]; (ii) by the Pre-Condition Satisfaction Date, provide a signed copy of the Infrastructure Agreement to the State; (iii) not vary any provisions of the Infrastructure Agreement relating to any infrastructure credits for the Project without the State's consent; and (iv) at all times, comply with the Infrastructure Agreement. (b) A breach by any party (other than the State) of the Infrastructure Agreement will be a Default Event. (c) For the purposes of this Special Condition 1, "Infrastructure Agreement": <ul style="list-style-type: none"> (i) has the meaning given in the Planning Act 2016 (Qld); and (ii) includes, where relevant, a water infrastructure agreement, as defined in the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (Qld). (d) This Special Condition 1 survives expiration of this Agreement.	
	Special Condition 2	<u>Special Condition 2 – Infrastructure Owner</u> If the Recipient is not the ultimate owner/operator of the Infrastructure, the Final Report must evidence that [utility provider/LGA name] has accepted the Infrastructure as being on maintenance.	
Annexures			
44.	Annexure A	Project Description	
	Annexure B	Description of Residential Development	

Payment Schedule

Payment Number	Payment Claim Date	Payment Requirements	Payment Amount ¹
1.	<p>The later of:</p> <p>(a) 20 Business Days after the Commencement Date; and</p> <p>(b) The date by which the Recipient has satisfied the Payment Requirements for Payment Number 1.</p> <p>(Payment 1 Date)</p>	<p>(a) The Agreement has been fully executed by the parties; and</p> <p>(b) The Recipient has demonstrated, to the satisfaction of the State, that it has satisfied the Preconditions by the Preconditions Date.</p>	5% of the Funding (excluding GST)
2.	<p>The later of:</p> <p>(a) [date]; and</p> <p>(b) the date by which the Recipient has satisfied the Payment Requirements for Payment Number 2; and</p> <p>(c) such later date that the State may notify in writing to the Recipient</p> <p>(Payment 2 Date)</p>	<p>The Recipient has demonstrated, to the satisfaction of the State, that it has:</p> <p>(a) submitted a Progress Report;</p> <p>(b) carried out all activities in accordance with the Approved Project Plan (as applicable) up to the Payment 2 Date;</p> <p>(c) Incurred and paid Eligible Project Costs of at least \$[XXXX] (excluding GST) from the Commencement Date to the Payment 2 Date; and</p> <p>(d) [...].</p>	Reimbursement of Eligible Project Costs of up to \$[XXXX] (excluding GST) (such amount being a Cash Grant)
3.	<p>The later of:</p> <p>(a) [date]; and</p>	<p>The Recipient has demonstrated, to the satisfaction of the State, that it has:</p>	Reimbursement of Eligible Project Costs of up to \$[XXXX] (excluding GST) (such amount being a Cash Grant)

¹ The Payment Amounts are subject to the Funding limitation and sub-limitations referred to in the Reference Schedule and clauses 4.2(a) and 4.3.

Payment Number	Payment Claim Date	Payment Requirements	Payment Amount ¹
	(b) the date by which the Recipient has satisfied the Payment Requirements for Payment Number 3; and (c) such later date that the State may notify in writing to the Recipient (Payment 3 Date)	(a) submitted a Progress Report; (b) achieved the Payment Requirements for Payment Numbers 1 and 2; (c) carried out all activities in accordance with the Approved Project Plan (as applicable) up to the Payment 3 Date; (d) incurred and paid Eligible Project Costs of at least \$[XXXX] (excluding GST) from the Commencement Date to the Payment 3 Date; and (e) [...].	
4.	The later of: (a) [date]; and (b) the date by which the Recipient has satisfied the Payment Requirements for Payment Number 4; and (c) such later date that the State may notify in writing to the Recipient (Payment 4 Date)	The Recipient has demonstrated, to the satisfaction of the State, that it has: (a) submitted a Final Report and Financial Acquittal Report that evidences the Recipient's completion of the Project; (b) incurred and paid Eligible Project Costs of at least \$[XXXX] (excluding GST) from the Commencement Date to the Payment 4 Date; and (c) [...].	Reimbursement of Eligible Project Costs of up to \$[XXXX] (excluding GST) (such amount being a Cash Grant)

Standard Conditions

1. Definitions and interpretation

1.1 Terms defined in the Reference Schedule or Payment Schedule

Terms used in the Reference Schedule (such as **Funding**, **Project** and **Infrastructure**) or Payment Schedule have the meanings set out in the Reference Schedule or the Payment Schedule (as applicable).

1.2 Additional Definitions

In this Agreement:

Actual Total Project Cost means the actual aggregate of:

- (a) the Recipient's Contribution, including, for the avoidance of doubt, the costs of the Project that are not Eligible Project Costs;
- (b) the Funding; and
- (c) as relevant, any Third Party Contributions.

Affected Party has the meaning set out in clause 20.1.

Agreement means this document the Reference Schedule, the Payment Schedule, and these Standard Conditions.

Amended Project Plan has the meaning given in clause 5.5(d).

Ancillary Material includes any contract, insurance policy, certificate of currency, assessment, invoice, receipt, report, record, authorisation, statutory declaration or other document or information relating to or in connection with the Project, the Recipient or any Group Entity and includes any document or any of the matters required to be disclosed to the State under this Agreement.

Approval means the consents, authorisations, registrations, certificates, permissions, permits, licences, approvals, registrations, determinations, administrative decisions or exemptions which are required from, by or with any Authority or under any Law (including any conditions or requirements under any of them).

Approved Project Plan means the Draft Project Plan approved by the State in accordance with clause 5.5(b)(ii).

Approved Security Provider means an approved security provider as defined in section 31 of the Financial and Performance Management Standard 2019 (Qld).

Asset means any item of real or personal property that is either:

- (a) leased or purchased (in whole or in part) using the Funding; or
- (b) transferred to the Recipient for the purposes of delivering the Project.

Authorised Officer, for a party, means each person specified in the Reference Schedule to act on behalf of the party for the purposes of this Agreement, as updated from time to time in accordance with this Agreement.

Authority means each:

- (a) national, federal, state, provincial, territory or local government (and all agencies, authorities, departments, ministers or instrumentalities or any of them); and
- (b) administrative body, judicial body, public tribunal, commission, statutory or government owned corporation, authority, agency or instrumentality,

which has jurisdiction or authority in respect of the State, the Recipient, this Agreement or the Project.

Bank Guarantee means one or more bank guarantees, provided by an Approved Security Provider in favour of the State, for the amount specified in the Reference Schedule (if applicable), which is:

- (a) irrevocable and unconditional;
- (b) payable, in whole or in part, immediately on demand;
- (c) payable without reference to another person;
- (d) not conditional on another right or obligation contained in another document;
- (e) not conditional on the State making, or proving that a demand has been made, under this Agreement;
- (f) unlimited as to time; and
- (g) otherwise satisfactory to the State in its absolute discretion.

Board Approval means the unconditional investment approval of the Recipient's board for the Project.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane, Australia.

Change in Control of an entity occurs if a person who did not previously do so acquires or holds, directly or indirectly:

- (a) securities conferring 50% or more of the voting or economic interests in the entity;
- (b) the power to control the appointment or dismissal of the majority of the entity's directors; or
- (c) the capacity to control the financial or operating policies or management of the entity or otherwise to control the entity as set out in section 50AA of the Corporations Act.

Claim means any claim, demand, remedy, suit, action, proceeding, right of action, claim for compensation or claim for abatement of any monetary obligation, whether arising under contract (including this Agreement), in tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise.

Confidential Information means:

- (a) information of whatever description and in whatever form communicated (whether by electronic means, in an electronic storage device, in writing or orally) that:
 - (i) is by its nature confidential;
 - (ii) is designated by the State as confidential; or

(iii) the recipient of the information knows or ought to know is confidential,

(including the interpretation, analysis and application of general information in the public domain);

- (b) the terms and conditions (including proposed terms and conditions) of any term sheet and this Agreement; and
- (c) information, communications and correspondence in relation to this Agreement or the Project,

but does not include:

- (a) information which is or becomes public knowledge other than by breach of this Agreement; or
- (b) the existence of this Agreement.

Consortium Agreement means an agreement or a memorandum of understanding between the Recipient and each (or all) of the Consortium Members, a copy of which was provided at the application for the Funding, under which each Consortium Member is responsible to the Recipient as the lead of the consortium for contributing towards and participating in the Project in accordance with this Agreement including arrangements for managing the Project risks.

Consortium Member means the person(s) stated in item 40 of the Reference Schedule as a Consortium Member.

Corporations Act means the Corporations Act 2001 (Cth).

Cost Savings has the meaning given in clause 5.3(b).

Cure Period has the meaning set out in clause 16.1(b).

Default Event means the occurrence of any of the following:

- (a) breach by the Recipient of any terms or conditions of this Agreement or any other failure of the Recipient to perform or comply with any of its obligations, undertakings or warranties under this Agreement;
- (b) a warranty or representation of the Recipient to the State, or any information provided to the State under this Agreement, including in a Progress Report, is or becomes false, misleading or deceptive;
- (c) Insolvency of the Recipient or any Group Entity;
- (d) the purported assignment, transfer or other dealing by the Recipient of or with its rights or obligations under this Agreement or its interest in the Project, or a Change in Control of the Recipient or Relevant Third Party, without the prior written consent of the State;
- (e) cessation of the Project or the cessation of operations of the Project at the Site;
- (f) cessation of the Residential Development on the Residential Development Site;
- (g) abandonment of, or unreasonable delay in respect of the progress of, the Residential Development (in the reasonable opinion of the State);
- (h) loss of the Recipient's or Group Entity's tenure of the Site or the Residential Development Site or any other event or circumstance occurs that has, in the reasonable opinion of the State, a material adverse effect on the Recipient's or Group Entity's tenure of the Site or the Residential Development Site;

- (i) suspension of the Project such that there is no reasonable prospect of all Payment Requirements being satisfied by the applicable Payment Claim Dates;
- (j) relocation or proposed relocation of the Project or its material assets (including any Assets) required to undertake the Project and operate the Infrastructure (excluding any necessary replacements, upgrades or improvements to those assets provided that any such asset so removed or relocated is promptly replaced so as to ensure the continuous and effective operation of the Infrastructure is not compromised) from the Site, without the prior written consent of the State;
- (k) the determination of the State, acting reasonably but in its own interests, that an act or omission, of the Recipient, a Group Entity or their respective officers, employees, agents or contractors who are involved in the Project, adversely affects, or is likely to adversely affect, the reputation of the Project or the State, whether or not:
 - (i) the act or omission occurred before or during the Term; or
 - (ii) the circumstances of the act or omission were disclosed to the State prior to the entry into the Agreement;
- (l) not providing a statutory declaration required under clause 22.18;
- (m) providing a statutory declaration pursuant to clause 22.18 which is false, misleading or deceptive in any respect;
- (n) a breach by any party (other than the State) of any other agreement or arrangement the Recipient has entered into for the purposes of satisfying the Tenure Precondition or the Intellectual Property Rights Precondition; or
- (o) a breach by the Recipient of any other agreement (including any loan or facility agreement) entered into between the Recipient and the State in connection with the Project.

Default Interest Rate means the Corporate Overdraft Reference Rate published by the Commonwealth Bank of Australia or, if such rate ceases to be published, such rate as determined by the State (acting reasonably) as an appropriate substitute for such rate.

Default Notice has the meaning set out in clause 16.1(a).

Dispute Notice has the meaning set out in clause 14(b).

Draft Project Plan has the meaning given in clause 5.5(a).

Early Termination Date has the meaning set out in clause 17.1(b).

Early Termination Payment means the reasonable financing costs of the Project, including interest, of the Recipient in order to borrow an amount, which is equal to the Funding, less the aggregate amount of Funding paid by the State to the Recipient on or before the Early Termination Date or which the Recipient is entitled to claim under clause 18(c)(ii), for the period from the Early Termination Date to the Target Project Completion Date.

Electronic Signature means an electronic method of signing that identifies the person and indicates their intention to sign the applicable agreement.

Eligible Project Costs has the meaning given in item 18 of the Reference Schedule.

Estimated Total Project Cost means the amount specified in item 14 of the Reference Schedule, which is the estimated aggregate of:

- (a) the Recipient's Contribution, including, for the avoidance of doubt, the costs of the Project that are not Eligible Project Costs;

- (b) the Funding; and
- (c) as relevant, any Third Party Contributions.

Final Report means a report in the form provided by the State and updated from time to time.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances, which:

- (a) is beyond the reasonable contemplation or control of a party;
- (b) by the exercise of due diligence that party, is not reasonably able to be prevented or overcome; and
- (c) has the effect of preventing the party from performing an obligation under this Agreement, including:
 - (a) acts of God, including earthquakes, floods, landslides, storms, pandemics and the elements;
 - (b) war, riot, insurrection, vandalism, sabotage or terrorism;
 - (c) strike, lockout, ban, limitation of work or other industrial disturbance; and
 - (d) an order or direction of any Authority not in force at the date of this Agreement,

but expressly excludes obtaining finance, changes in economic, business or trading conditions, and delays in obtaining contractors, suppliers or labour.

Group Entity means any related body corporate (as defined in the Corporations Act) of the Recipient, and each entity that the Recipient is required by accounting standards (as defined in the Corporations Act) to include in consolidated financial statements, from time to time.

GST has the meaning it has in the GST Act.

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

Indemnified has the meaning set out in clause 12.2.

Insolvency, in relation to the Recipient or a Group Entity, means:

- (a) it is (or states that it is or conducts itself in a manner from which it may be reasonably deduced that it is) under administration (whether voluntary or not) or insolvent (each as defined in the Corporations Act) or financially unable to proceed with this Agreement;
- (b) it has had a controller appointed or is in liquidation (including voluntary liquidation), in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to all or a material part of its property or any mortgage, charge or other security over any of its property is enforced;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or is dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the State);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 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;

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the State reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due;
- (h) it is or any of its directors are seeking or makes a statement, or conducts itself or themselves in a manner, from which it may reasonably be deduced that it is or any director is seeking, to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the Corporations Act;
- (i) a winding up order is made;
- (j) execution is levied by creditors, debenture holders or trustees or under a floating charge; and
- (k) something having a substantially similar effect to (a) to (j) happens in connection with the Recipient or a Group Entity under the law of any jurisdiction.

Intellectual Property includes all copyright (including any future copyright), Moral Rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Key Personnel means each person or position specified in the Reference Schedule for the Recipient, who are fundamental to the success of the Project, as updated by the Recipient in writing from time to time and approved by the State in writing.

Law means the common law (including equity), current and future Acts of the Parliament of the Commonwealth of Australia, the Legislative Assembly of Queensland, Parliaments of other States and Territories which have jurisdiction, and related regulations, by-laws and other subordinate legislation, and the requirements of Authorities.

Loss means any loss, cost, liability (including a fine or penalty), expense or damage, whether direct or indirect, present or future, fixed or ascertained, actual or contingent and whether arising under contract (including this Agreement), in tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise.

Moral Rights has the meaning given to that term in the Copyright Act 1968 (Cth).

Notified Party has the meaning set out in clause 20.1.

Payment means payment of all or part of the Funding and a reference to a particular numbered Payment (for example Payment Number 1) means a reference to the Payment of that number specified in the Payment Schedule.

Payment Amount, for a Payment, means the aggregate of the amounts specified in the Payment Amount column of the Payment Schedule for the relevant Payment.

Payment Claim means a claim for a Payment, which complies in all respects and is submitted by the Recipient in accordance with clause 4.4.

Payment Claim Date, for a Payment Claim, means the Payment Claim Date set out in the Payment Schedule for the applicable Payment to which the Payment Claim relates, as extended from time to time in accordance with this Agreement.

Payment Schedule means the Payment Schedule set out at the front of this Agreement.

Preconditions means the Preconditions set out under the precondition heading in the Reference Schedule.

Progress Report means a report in the form provided by the State and updated from time to time.

Project Completion Date means the date the Recipient submits the Final Report evidencing completion of the Project, to the State's satisfaction.

Project Details means all information provided, prior to the date of this Agreement, by the Recipient to the State in relation to the Project for the State's consideration of the Project's eligibility for funding under the Program, including the information describing the Project set out in the Reference Schedule.

Project Intellectual Property means Intellectual Property created or used in connection with the Project (including pre-existing Intellectual Property of the Recipient or third parties).

Queensland Charter for Local Content means the *Queensland Charter for Local Content* published by the Department of State Development, Infrastructure and Planning in June 2021, as amended or replaced from time to time.

Recipient Contributions means:

- (a) the amount specified in item 15 of the Reference Schedule;
- (b) any amount contributed in lieu of a Third Party Contribution in accordance with clause 5.2; and
- (c) any additional amount required to complete the Project.

Records means books of account, transaction records, operating records and employee records in connection with the Project, including all information and material necessary to prepare and explain a Payment Claim or prepare any Progress Report or other report required under this Agreement.

Reference Schedule means the Reference Schedule set out at the front of this Agreement.

Regulatory Approvals Plan has the meaning given in clause 5.6(b).

Repayable Amount has the meaning given in clause 4.8(b).

Required Interim Homes has the meaning given in item 19 of the Reference Schedule.

Residential Development means the development described in Annexure B.

Residential Development Progress Report means a report to be provided under clause 5.9(b) in a form required by the State and updated from time to time.

Signage has the meaning set out in clause 9.7.

Signage End Date means the End Date, or such earlier date as may be notified in writing by the State to the Recipient.

Signage Installation Date means the date of commencement of construction of the Infrastructure at the Site or such earlier date as the State may notify the Recipient in writing.

Standard Conditions means the terms and conditions set out in clauses 1–23 inclusive.

State Proportion has the meaning given in clause 5.3(b).

State Supplied Information means any information, data or document (including designs, drawings and reports) in whatever form:

- (a) issued, disclosed or made available to the Recipient or any Group Entity or any of their respective representatives by or on behalf of the State or the Department of State Development, Infrastructure and Planning in connection with the Project, the Program, the Site or this Agreement (including in a virtual data room or at an information session or during any Site visit, if any); or
- (b) referred to, or incorporated by reference into the Program or Project publications or any other information supplied by the State,

and irrespective of when that information, data or document is issued, disclosed or made available (including before or after the Commencement Date).

Target Project Completion Date means the date set out in item 9 of the Reference Schedule.

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

TFC Notice has the meaning set out in clause 17.1(a).

Third Party Contribution means the contribution specified in item 16 of the Reference Schedule.

Third Party Contributor means the entity specified in item 16 of the Reference Schedule to provide the Third Party Contribution.

1.3 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.4 Business Day

- (a) If the day on which any act, matter or thing is to be done under or pursuant to this Agreement is not a Business Day, the act, matter or thing must be done on or by the next Business Day.
- (b) Acts, matters or things done after 5.00pm on a Business Day are deemed done on the next Business Day.

1.5 Consents or approvals

Unless expressed to the contrary in this Agreement, if the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (whether or not the relevant clause specifies that the matter is in the sole discretion of the party).

1.6 Precedence

To the extent of any inconsistency between them, the following order of precedence applies in the interpretation of this Agreement:

- (a) Special Conditions;
- (b) Reference Schedule;
- (c) Payment Schedule;
- (d) Standard Conditions; and
- (e) any other document referenced in or incorporated in the Reference Schedule.

1.7 Language

This Agreement is prepared in the English language. English is the authentic text for all purposes, including interpretation of this Agreement.

1.8 Group Entities and Third Parties

While this Agreement may provide for the Preconditions or Payment Requirements to be satisfied by the Recipient and Eligible Project Costs, other expenditure in relation to the Project, payroll tax, land tax or transfer duty to be incurred by the Recipient, it is acknowledged and agreed that:

- (a) the Preconditions and Payment Requirements may be satisfied by a Group Entity or Relevant Third Party (if applicable) instead of the Recipient itself; and
- (b) the Recipient may recover the relevant Cash Grants, Payroll Tax Rebates, Land Tax Rebates and Transfer Duty Rebates despite the relevant Eligible Project Costs, other expenditure in relation to the Project, taxes or duties being incurred by a Group Entity or Relevant Third Party instead of the Recipient itself provided that such expenditure, taxes and duties are the result of satisfaction of the Preconditions and Payment Requirements by such Group Entity or Relevant Third Party.
- (c) The Recipient must procure that each of its Group Entities complies with and gives effect to this Agreement as if they were bound by this Agreement in place of the Recipient.

2. Commencement and term

This Agreement commences on the Commencement Date and continues until the End Date, unless terminated earlier in accordance with this Agreement.

3. Preconditions

3.1 Recipient to satisfy

- (a) The Recipient must satisfy each of the Preconditions on or before the Preconditions Satisfaction Date.
- (b) The Preconditions are solely for the benefit of the State. The State may waive any or all Preconditions at its discretion by written notice to the Recipient.
- (c) The Preconditions must be satisfied or waived before the State is obliged to provide the Funding to the Recipient.
- (d) For the avoidance of doubt, subject to clause 3.1(c), the terms of this Agreement will apply on and from the Commencement Date, even where any or all of the Preconditions are satisfied or waived after the Commencement Date.

3.2 Failure to satisfy

- (a) If the Recipient fails to satisfy any Precondition (which has not been waived by the State) on or before the Preconditions Satisfaction Date, the State may terminate this Agreement with immediate effect by written notice to the Recipient.
- (b) Termination of this Agreement under clause 3.2(a) will not affect any rights or obligations which may have accrued prior to termination, including in respect of any prior breach.

4. Funding

4.1 Funding

Subject to the provisions of this clause 4, the State must pay to the Recipient, in accordance with the Payment Schedule.

4.2 Requirements for Payment of Funding

- (a) Without limiting this clause 4, the State shall not be obliged to pay a Payment Claim or Payment Amount unless:
 - (i) subject to paragraph (ii), the Recipient makes a valid Payment Claim for the Payment Amount within 30 Business Days of the applicable Payment Claim Date;
 - (ii) the Recipient satisfies the Payment Requirements relating to the Payment Amount by the applicable Payment Claim Date;
 - (iii) the State is satisfied with the Recipient's Payment Claim;
 - (iv) the Preconditions have been satisfied;
 - (v) no Default Event has occurred and is continuing;

- (vi) any Security specified in the Reference Schedule has been provided, remains in full force and effect and is undrawn or unenforced (as applicable) or, if it has been drawn, it has been replenished; and
 - (vii) in aggregate with other amounts paid to the Recipient under this Agreement or in respect of the relevant category of Funding (as applicable), the Payment Amount does not exceed the Funding or the applicable Funding sub-limitation (if any) for the category of Funding to which the Payment Amount relates.
- (b) The State may withhold all or some of the Funding the subject of a Payment Claim if at the Payment Claim Date the Recipient is unable to demonstrate to the State's reasonable satisfaction that it is reasonably likely that the Recipient will meet all future Payment Requirements for Funding under this Agreement. If the future Payment Requirements are subsequently satisfied, the Recipient may make a Payment Claim for the withheld amounts in accordance with clause 4.2(a) as if the withheld amounts were a Payment Amount.
- (c) The Recipient acknowledges and agrees that:
- (i) Funding is payable only for the strict and complete satisfaction of the applicable Payment Requirements by the applicable Payment Claim Date, as an incentive to achieve those Payment Requirements by the applicable Payment Claim Date;
 - (ii) the State is not obliged to advance any Funding related to Payment Requirements unless all applicable Payment Requirements in respect of the relevant Payment Amount are satisfied by the applicable Payment Claim Date; and
 - (iii) the provision of any Payment under this Agreement is further subject to the Recipient achieving strict and complete satisfaction of all Payment Requirements in respect of all Payment Amounts by the applicable Payment Claim Date, and accordingly:
 - A. all Payments made by the State to the Recipient prior to the State confirming that all Payment Requirements in respect of all Payments Amounts have been met by the applicable Payment Claim Date to its satisfaction shall be considered an advance of such Funding to the Recipient and the Recipient shall not be absolutely entitled to such Funding unless and until the State confirms its satisfaction in respect of all Payment Requirements for all Payments Amounts by the applicable Payment Claim Date; and
 - B. in the event that all Payment Requirements in respect of all Payment Amounts are not met by the applicable Payment Claim Date to the State's satisfaction, the State may require the Recipient to repay the whole or any part of the Funding advanced to the Recipient, with such repayment to be made in accordance with clause 4.8.
 - (iv) By way of example, if the Recipient satisfies the Payment Requirements by the Payment Claim Date for Payment Number 1 and Payment Number 2 and receives an advance on the Funding for the corresponding Payment Claims but does not subsequently achieve the Payment Requirements for Payment Number 3, the State may require the Recipient to repay the amounts advanced by the State to the Recipient in respect of Payment Number 1 and Payment Number 2.
- (d) The Recipient's obligations under this Agreement to satisfy the Payment Requirements by the Payment Claim Date set out in the Payment Schedule are for the benefit of the State only. The State may, in its absolute discretion and by written notice to the Recipient:
- (i) waive the requirement to meet a particular Payment Requirement on such conditions the State may determine appropriate; or
 - (ii) extend the Payment Claim Date to a future date specified by the State.

- (e) Where the State has exercised its rights under clause 4.2(d), the State may, in its absolute discretion, pay the Recipient the relevant Payment Amount (or the Payment Amount less a withheld portion) in advance of the Recipient meeting the required Payment Requirements. In this instance, the Recipient further agrees:
 - (i) to apply the relevant Payment Amount solely to Eligible Project Costs and provide evidence as required by this Agreement in relation to how it has applied the Payment Amount, including evidence as to how it has incurred and paid the Eligible Project Costs; and
 - (ii) that if the conditions of the waiver provided by the State under clause 4.2(d) (if applicable) or the extended Payment Claim Date by which the relevant Payment Requirements were required to be satisfied are not complied with, the relevant Payment Amount must be repaid in accordance with clause 4.8.

4.3 Maximum Funding

- (a) Despite any other provisions of this Agreement:
 - (i) the Funding is the maximum amount of the State's commitment to the Recipient under this Agreement in respect of all Funding; and
 - (ii) the Funding sub-limitation for any category of Funding is the maximum amount of the State's commitment to the Recipient under this Agreement in respect of that category of Funding.
- (b) To the extent any provision of this Agreement would require the State to pay any amount to the Recipient which, when aggregated with amounts previously paid under this Agreement or in respect of the relevant category of Funding (as applicable), would exceed the Funding or the applicable Funding sub-limitation (if any) for the relevant category of Funding, the amount of such payment shall be reduced (to zero, if necessary) to ensure the Funding or Funding sub-limitation (as applicable) is not exceeded.

4.4 Form and Content of Payment Claim

- (a) Without limiting the other requirements of this Agreement, the State is not obliged to make a Payment to the Recipient unless the Recipient submits a satisfactory (in the State's absolute discretion) Payment Claim to the State.
- (b) A Payment Claim must be in writing signed by an Authorised Officer of the Recipient and include:
 - (i) certification by an Authorised Officer of the Recipient that the Recipient has satisfied all of the Payment Requirements by the applicable Payment Claim Date in respect of the applicable Payment Amount, which must include supporting evidence (including books of account, invoices, receipts or other documents) to the satisfaction of the State;
 - (ii) a tax invoice for the Payment Amount issued by the Recipient in accordance with the GST Act;
 - (iii) any additional information or documentation set out in the Payment Schedule in respect of the applicable Payment; and
 - (iv) a Progress Report in accordance with clause 5.2.
- (c) Upon receiving a Payment Claim, the State may request that the Recipient provides additional information to satisfy the State that the Payment claimed is due in accordance with this Agreement. The Recipient must provide the information requested within 5 Business Days. The State may make any number of requests under this paragraph (c)

and may refuse to make a Payment until it is satisfied (acting reasonably) that the Payment claimed is payable in accordance with this Agreement.

4.5 Payment

The State will only be obliged to make a Payment to the Recipient if the State is satisfied:

- (a) the Preconditions, Special Conditions (if applicable), Payment Requirements (in respect of that Payment Amount) and the Standard Conditions have been satisfied or waived by the State in writing; and
- (b) the Payment Claim is valid, supported by the information and further documents required under clause 4.4 (if applicable) and is otherwise payable by the State under this Agreement.

4.6 Timing for Payment

- (a) The State must make a Payment due to the Recipient by the date 30 Business Days following the date the State is satisfied as to the Recipient's entitlement to the Payment.
- (b) The State is not obliged to make a Payment to the Recipient if the applicable Payment Claim is submitted to the State after the End Date.

4.7 Bank Account

The State may make a Payment to the Recipient by direct deposit or transfer to the Bank Account set out in the Reference Schedule or such other account as the Recipient directs in writing from time to time.

4.8 Repayments by Recipient

Where:

- (a) the State for any reason pays to the Recipient an amount in excess of its entitlement to a Payment Amount or the Funding under this Agreement; or
- (b) the Recipient becomes obliged under this Agreement to repay any amount previously paid by the State on account of the Funding, including under clause 4.2(c)(iii)B, clause 4.2(e)(ii) or clause 16.2(b)

(each such amount being a **Repayable Amount**), then:

- (c) the Repayable Amount is a debt due and payable by the Recipient to the State;
- (d) the Recipient must pay the Repayable Amount to the State in accordance with, and within 10 Business Days of, a written demand by the State; and
- (e) without limiting any other rights of the State, the State may:
 - (i) have immediate recourse to the Bank Guarantee (if applicable) to recover any amount of the Repayable Amount; and
 - (ii) accrue and recover interest at the Default Interest Rate on any Repayable Amount not received by the State on the due date for payment until it is received or recovered by the State.

4.9 Acknowledgements

The Recipient acknowledges and agrees that:

- (a) achievement of the Payment Requirements by the applicable Payment Claim Date is consistent with the Recipient's pre-contractual representations to the State about the intended nature and extent of the Project and its proposed investment and employment activities in Queensland;
- (b) the Funding is provided in alignment with the Program Objectives and to further the housing development objectives of the State, including:
 - (i) prioritising and investing in trunk and essential infrastructure to fast-track new homes to market;
 - (ii) expediting delivery of enabling infrastructure for developments that will accelerate housing supply; and
 - (iii) bringing forward planned and approved housing projects where access to funding for planned infrastructure is delaying delivery of new homes in both SEQ and regional, rural and remote Queensland;
- (c) the State has a legitimate interest in the strict and complete satisfaction of all Payment Requirements and achieving the Project Outcomes by the applicable Payment Claim Dates as a condition of the Recipient retaining the benefit of the Funding advanced under this Agreement, and the risk profile in this Agreement has been negotiated and agreed by the parties and their professional advisers to secure this legitimate interest;
- (d) the State will suffer Loss if the Payment Requirements are not satisfied completely by the applicable Payment Claim Dates, which Loss may not be capable of quantification;
- (e) the obligation to repay the Repayable Amount in the circumstances required by this Agreement reflects the State's legitimate interests and is reasonable and proportionate in those circumstances; and
- (f) the State may, in its absolute discretion and without being under any obligation to do so, at any time by notice in writing to the Recipient, extend any Payment Claim Date for any reason and without any explanation.

4.10 Survival

Clauses 4.2(c)(iii)B, 4.2(e)(ii) and 4.8 survive termination of this Agreement.

5. Recipient's obligations

5.1 General obligations

During the Term, the Recipient must:

- (a) promptly and diligently carry out the Project with due care and skill by the Target Project Completion Date (and if applicable in accordance with the Approved Project Plan);
- (b) maintain the Project in Queensland at the Site, to a level capable of delivering the Project activities set out in the Reference Schedule that is satisfactory to the State (acting reasonably), and ensure that the Key Personnel are employed or engaged, and continue to be employed or engaged, by the Recipient in relation to the Project;
- (c) if the Project is undertaken by a consortium,
 - (i) be the lead for the consortium
 - (ii) be responsible for undertaking the Project and the performance of the Consortium Members; and

- (iii) notify the State if there is any change to the Consortium Members and the Consortium Agreement and provide the State a copy of the updated Consortium Agreement;
- (d) appoint and maintain at least one Authorised Officer;
- (e) notify the State of any changes to the Authorised Officer (and provide to the State specimen signatures of the current Authorised Officer) within 20 Business Days of any changes;
- (f) comply with the terms and conditions of this Agreement (and ensure any Group Entity or any third party engaged by the Recipient complies with the terms and conditions of this Agreement);
- (g) not mortgage, charge, encumber or otherwise grant any Security Interest in, or sell, lease, transfer, assign or otherwise part with possession of, the Project or any interest in the Project (including the Site, any Assets or any other property funded (directly or by way or reimbursement) through the provision of Funding), without the prior written consent of the State;
- (h) procure, effect and maintain the insurance policies identified in the Reference Schedule on accepted industry terms;
- (i) provide any Ancillary Material or Records (if required, certified by an Authorised Officer of the Recipient as accurate, complete and up to date) reasonably requested by the State;
- (j) comply with all Laws;
- (k) (subject to it not being prohibited by any Law) immediately notify the State in writing when it becomes aware of any of the following:
 - (i) any actual or proposed material change to the Project;
 - (ii) any actual or proposed material change which affects the Recipient or any Group Entity, including any actual or proposed Change in Control of the Recipient or any Group Entity or any change in Key Personnel;
 - (iii) the occurrence or likely occurrence of any Default Event; and
 - (iv) any act or omission of the Recipient, a Group Entity or their respective officers, employees, agents or contractors who are involved in the Project which adversely affects, or is likely to adversely affect, the reputation of the Project or the State; and
- (l) obtain and comply with all Approvals required for the Project or for the performance by the Recipient of its obligations under this Agreement.

5.2 Recipient Contributions and Third Party Contributions

- (a) If specified in the Reference Schedule, the Recipient must apply the Recipient Contribution to the Project.
- (b) If the Reference Schedule specifies a Third Party Contribution for the Project, the Recipient must, by the relevant Payment Claim Date:
 - (i) obtain the Third Party Contribution from the Third Party Contributor and apply the Third Party Contribution only for the purposes of the Project; or
 - (ii) if the Recipient is unable to obtain the Third Party Contribution from the Third Party Contributor:

- A. secure an amount equal to the Third Party Contribution from another third party; or
- B. contribute an amount equal to the Third Party Contribution as a Recipient's Contribution, and apply that amount only for the purposes of the Project.

5.3 Allocation of Cost Savings for completion of trunk infrastructure

- (a) This clause 5.3 applies if, at the Project Completion Date, the Actual Total Project Cost is less than the Estimated Total Project Cost.
- (b) In this clause 5.3 and in clause 5.4:
 - (i) "Cost Savings" means the amount which is the difference between the Actual Total Project Cost and the Estimated Total Project Cost; and
 - (ii) "State Proportion" means the percentage of the Estimated Total Project Cost that the State has agreed to fund.
- (c) The Recipient's entitlement to the Funding will be reduced by the State Proportion of the Cost Savings.
- (d) If the State has already paid the Funding (including all or part of the State Proportion of the Cost Savings), then the excess Funding paid will be a Repayable Amount under clause 4.8.
- (e) If the State has not already paid all or part of Funding attributable to the State Proportion of the Cost Savings, then the State may reduce the next Payment by an amount equal to the State Proportion of the Cost Savings, in accordance with clause 4.3(b).

5.4 Additional Payment - Cost Savings

- (a) If:
 - (i) there are Cost Savings; and
 - (ii) within 18 months of receiving payment of the final Payment Claim (the **Additional Payment Claim Period**), the Recipient completes construction of, and is issued a certificate of occupancy or final inspection certificate (as applicable) for, the Required Interim Homes within the Residential Development,

the Recipient may, by notice in writing to the State given within the Additional Payment Claim Period, request an additional payment of an amount equal to the State Proportion of the Cost Savings (**Additional Payment**).
- (b) If the Recipient duly issues a notice under clause 5.4(a), then subject to clause 5.4(c) the State must within 20 Business Days of receipt of the notice pay the Additional Payment to the Recipient if the State is satisfied (acting reasonably) that the Recipient has completed the Required Interim Homes within the Residential Development and has evidenced that completion (including the issue of certificates of occupancy or final inspection certificates (as applicable)), to the State's satisfaction.
- (c) For the avoidance of doubt, the State is not liable to pay any amount that would cause the aggregate payments made by the State under this Agreement to exceed the amount of the Funding, before the Recipient's entitlement to the Funding was reduced in accordance with clause 5.3(c).

5.5 Approved Project Plan

- (a) The Recipient must, if the Reference Schedule requires and by the date specified in the Reference Schedule, develop and submit to the State a project plan in a form satisfactory to the State that includes, at a minimum:
 - (i) details of the Recipient's governance structure for the Project;
 - (ii) identification of key roles and responsibilities;
 - (iii) regulatory requirements and status of approvals;
 - (iv) a detailed breakdown of key activities, deliverables, and project timeframes for conduct of the Project, key activities and provision of deliverables;
 - (v) a GANTT chart or detailed work schedule for the Project;
 - (vi) details of the Project location and land ownership arrangements;
 - (vii) Project budget and risk management details; and
 - (viii) a breakdown of proposed Project expenditure,**(Draft Project Plan);**
- (b) The State will review the Draft Project Plan and, within 15 Business Days of receipt of the Draft Project Plan, by notice to the Recipient and in its absolute discretion:
 - (i) reject the Draft Project Plan, and provide details of any deficiencies and issues in respect of the Draft Project Plan; or
 - (ii) approve the Draft Project Plan, in which case the Draft Project Plan will be the Approved Project Plan.
- (c) If the State rejects the Draft Project Plan under clause 5.5(b)(i):
 - (i) the Recipient must re-lodge the Draft Project Plan for the State's further review within 10 Business Days of receiving a notice under clause 5.5(b)(i); and
 - (ii) clause 5.5(b) will apply to the State's further review.
- (d) After the State approves the Draft Project Plan under clause 5.5(b)(ii), the Recipient may submit an amended project plan (**Amended Project Plan**) to the State at any time.
- (e) The Amended Project Plan must include details of the change, how any change in costs will be met and an assessment of the impact of the change on the Project.
- (f) If the Recipient submits an Amended Project Plan under clause 5.5(d) the process described under this clause will apply as if the Amended Project Plan is a Draft Project Plan.
- (g) The existing Approved Project Plan will continue to apply unless and until the State approves the Amended Project Plan.
- (h) If the State approves an Amended Project Plan, the Amended Project Plan will be the Approved Project Plan.
- (i) Once approved, the Recipient must:
 - (i) monitor and evaluate the progress, including against the Approved Project Plan;

- (ii) advise and seek the State's approval of any changes to the Approved Project Plan; and
- (iii) advise the State of any adverse event which may impact on progress against the Approved Project Plan or the scope of the activities required to deliver the Project as soon as reasonably practicable after it occurs and in any event within 10 Business Days of the occurrence of the event.

5.6 Regulatory Approvals Plan

- (a) The Recipient is responsible for obtaining all Approvals required for the conduct of the Project.
- (b) The Recipient must, if the Reference Schedule requires and by the date specified in the Reference Schedule, develop and submit to the State a regulatory approvals plan in a form satisfactory to the State that includes, at a minimum:
 - (i) a list of all Approvals (and the relevant exemptions) that the Recipient must obtain to construct, commission and operate the Project; and
 - (ii) the steps to be undertaken by the Recipient in obtaining the Approvals and exemptions set out in the list in (i) above; and
 - (iii) the estimated timeframes for the Recipient to obtain the Approvals and exemptions; and
 - (iv) details of any consequences linked to a failure by the Recipient to obtain the Approvals within the timeframes set out in (c) above (for example, delays in commencement of construction or commissioning of the Project),

(Regulatory Approvals Plan).
- (c) The Recipient must:
 - (i) provide evidence that the Recipient has obtained all of the relevant Approvals to complete the Project in accordance with the timeframes and requirements set out in the Regulatory Approvals Plan; and
 - (ii) provide an update on the Recipient's progress against the Regulatory Approvals Plan,

where required as part of a Progress Report or in the relevant Payment Requirements.
- (d) For the avoidance of doubt, the State will not assess, verify or approve that the list of Approvals that the Recipient included in the Regulatory Approvals Plan (or any other part of that plan) is adequate or complete in order for the Recipient to carry out the Project.

5.7 Infrastructure Charges

- (a) The Recipient must:
 - (i) ensure that it does not seek or receive any refund, credit or offset of infrastructure charges in relation to infrastructure funded under this agreement, or any part thereof; and
 - (ii) provide evidence of how it will meet the requirement under clause 5.7(a) to the State's satisfaction, as a Precondition.
- (b) The Recipient must comply with any commitments it makes in relation to how it will comply with the requirement under clause 5.7(a), including compliance with any agreement it enters with a third party to give effect to its commitments.

- (c) This clause 5.7(a) survives expiration of this Agreement.

5.8 Assets

If the Reference Schedule specifies an Asset, the Recipient must:

- (a) not relocate the Asset from the Site;
- (b) not decommission the Asset;
- (c) not mortgage, charge, encumber, transfer, deal with or dispose of, or otherwise allow any Security Interest in, or sell, lease, assign or otherwise part with possession of, the Asset, without the prior written consent of the State;
- (d) use the Asset for the purposes of and in the manner contemplated for the Project;
- (e) maintain the Asset in good working order;
- (f) maintain all appropriate insurances in respect of the Asset; and
- (g) store the Asset at a site owned by the Recipient and not store the Asset at any site owned or controlled by a third party without the prior written consent of the State (which may be given in its absolute and unfettered discretion and subject to conditions required by the State),

during the Term unless otherwise approved by the State in writing.

5.9 Residential Development Requirement

- (a) The Recipient acknowledges that the State's provision of Funding is to achieve the Program Objectives, including to bring forward planned and approved housing projects.
- (b) The Recipient must promptly provide to the State Residential Development Progress Reports as reasonably requested by the State in respect of the progress of the Residential Development. Without limiting the information the State may require, Residential Development Progress Reports must report on the number of homes or other dwellings to be constructed as part of the Residential Development for which:
 - (i) construction has commenced or been completed; or
 - (ii) certificates of occupancy or final inspection certificates (as applicable) have issued,since the reporting date under the previous Residential Development Progress Report provided by the Recipient.
- (c) The Recipient acknowledges that the State may continue to request Residential Development Progress Reports under clause 5.9(b) after the End Date and that the Recipient's obligations under clause 5.9(b) continue until it has made a Residential Development Progress Report confirming completion of the Residential Development.

5.10 Reporting

- (a) The Recipient must, by the dates specified for each Report in the Reference Schedule, prepare and submit, to the satisfaction of the State:
 - (i) Progress Reports;
 - (ii) a Final Report including:

- A. confirmation that all works within the Project Description are complete, including a certificate of practical completion; and
 - B. confirmation that the Recipient has achieved all Approvals required to complete the Project; and
 - C. where professional engineering services as defined by the Professional Engineers Act 2002 (Qld) are required for the Project, certification by a registered professional engineer of Queensland that the construction has been undertaken in accordance with the design; and
 - D. photographic evidence of the completed Project and one colour photograph of signage in place to meet the Funding Acknowledgement Requirements; and
- (iii) a Financial Acquittal Report that verifies the Funding has been expended on Eligible Project Costs in accordance with this Agreement including the verification of the Actual Total Project Cost for the Project and, if applicable, confirmation that the Recipient has fully expended the Recipient Contribution and any Third Party Contributions for the Project.
- (b) The State may request that the Recipient provides additional information in relation to any Progress Report, the Final Report or the Financial Acquittal Report, including details of Eligible Project Costs incurred and paid by the Recipient from time to time. The Recipient must provide the information requested within 10 Business Days.
- (c) The Recipient must promptly (and within 5 Business Days) notify the State in writing after becoming aware of any event or occurrence that may delay or will delay any Payment Requirements by the applicable Payment Claim Date. The written notification under this paragraph must include the details of the delay and the cause.

5.11 Authorised Officers

- (a) The Recipient:
- (i) must ensure there is an Authorised Officer of the Recipient at all times during the Term;
 - (ii) warrants that the Authorised Officer of the Recipient is authorised by the Recipient to sign any document contemplated or required to be signed on behalf of the Recipient for the purposes of this Agreement; and
 - (iii) must notify the State of any changes to the Authorised Officer within 20 Business Days and provide to the State specimen signatures of the new Authorised Officer.
- (b) All acts and omissions of the Authorised Officer of the Recipient in respect of this Agreement will be binding on the Recipient.

5.12 Special Conditions

The Recipient must comply with the Special Conditions (if any) set out in the Reference Schedule. For the purposes of clause 1.6, this obligation will be deemed to be incorporated in the Reference Schedule.

5.13 No guarantee of Funding

For the avoidance of doubt, the State has no obligation to provide any Funding (including making any Payment) if the State, in its discretion, is not satisfied with the Recipient's compliance with and satisfaction of the conditions in clauses 3, 4 or 5.

6. Security

6.1 Bank Guarantee

- (a) **(Application):** This provision applies if item 20 of the Reference Schedule requires the Recipient to provide a Bank Guarantee.
- (b) **(Provision):**
 - (i) The Recipient must provide the Bank Guarantee to the State, promptly upon execution of this Agreement or at such other date as specified in the Reference Schedule, as security for the due performance of the Recipient's obligations under this Agreement, including the repayment of the Funding if required by this Agreement.
 - (ii) If the Bank Guarantee is drawn by the State under this Agreement, the Recipient must replenish or replace the Bank Guarantee within 10 Business Days of it being drawn, such that it is in full force and effect for the full amount specified in the Reference Schedule.
- (c) **(Recourse):**
 - (i) The State may have recourse to the Bank Guarantee, without notice to the Recipient:
 - A. to recover any amounts actually or contingently owing by the Recipient to the State in respect of this Agreement; or
 - B. where the Recipient does not replace the Bank Guarantee in accordance with the requirements of the Reference Schedule or clause 6.1(b), in which case the State may have recourse to the full amount of the Bank Guarantee.
 - (ii) If the State has recourse to the Bank Guarantee in an amount in excess of the amounts referred to in paragraph 6.1(c)(i)A, the State must promptly pay the excess amount to the Recipient.
 - (iii) If the State has recourse to the Bank Guarantee pursuant to clause 6.1(c)(i)B:
 - A. the State will hold the amount received as cash security and shall have recourse to such cash security in the circumstances in which it would have been entitled to have recourse to the Bank Guarantee. Any such amounts shall be retained by the State; and
 - B. if the Recipient subsequently provides a replacement Bank Guarantee (which meets the requirements of this Agreement), the State must promptly pay the amount of the cash security to the Recipient (less any amount the State is entitled to retain, as contemplated by Additional Clause 6.1(c)(iii)A).
 - (iv) To avoid doubt, the State:
 - A. does not hold the proceeds of the Bank Guarantee received by it on trust for the Recipient; and
 - B. may exercise its rights under 6.1(c) even if the State has not served a Default Notice on the Recipient and even if a Dispute Notice has been given by the Recipient to the State under clause 15 of the Standard Conditions.
 - (v) The Recipient must not take any steps to injunct or otherwise restrain:

- A. any issuer of any Bank Guarantee provided under Additional Clauses 6.1(b)(i) and 6.1(c)(iii)B from paying the State under that Bank Guarantee;
- B. the State from taking any steps for the purposes of making a demand under any Bank Guarantee or receiving payment under any Bank Guarantee; or

C. the State using the money received under any Bank Guarantee,

even where the Recipient disputes the State's right to payment (including where dispute resolution proceedings have been commenced under this Agreement).

(d) (Replacement of Bank Guarantee):

- (i) If the Bank Guarantee procured by the Recipient is given by an entity who ceases at any time to be an Approved Security Provider, the Recipient must, within 20 Business Days of such change, provide to the State a replacement Bank Guarantee from an entity which is an Approved Security Provider, in favour of the State for the same amount as the existing Bank Guarantee.
- (ii) The Recipient may upon reasonable notice to the State replace existing Bank Guarantees with one or more replacement Bank Guarantees which satisfy the requirements of this Agreement.
- (iii) A replacement Bank Guarantee procured under clauses 6.1(d)(i) or 6.1(d)(ii) will be taken as the Bank Guarantee required to be provided under this Agreement and, upon receipt of the replacement Bank Guarantee, the State will return to the Recipient the Bank Guarantee that has been replaced.

(e) (Return of Bank Guarantee):

- (i) The State must return the Bank Guarantee to the Recipient:

- A. as provided for in the Reference Schedule (if applicable); or
- B. if no time is provided for in the Reference Schedule, in accordance with clause 6.1(e)(ii),

in each case to the extent undrawn at such time.

- (ii) Where this clause 6.1(e)(ii) applies, the State must return the Bank Guarantee to the Recipient within 20 Business Days of the Project Completion Date upon request by the Recipient if the State is satisfied that:

- A. the Recipient has satisfied all of the Payment Requirements in respect of all Payment Amounts; and
- B. the Recipient is not in default of its obligations under this Agreement.

(f) (Retention of Bank Guarantee at State's discretion):

Despite any other provision of this Agreement, the State may continue to hold the Bank Guarantee where this Agreement may otherwise require it to be returned to the Recipient or after termination of this Agreement for any reason, to the extent of any amount claimed by the State under or in connection with this Agreement.

(g) (Survival)

This Clause 6.1 survives termination of this Agreement.

6.2 Other Security

(a) **(Application):**

- (i) This provision applies if item 20 of the Reference Schedule requires the Recipient to provide Security other than a Bank Guarantee.
- (ii) If item 20 of the Reference Schedule requires provision of a Bank Guarantee and some other Security, then:
 - A. clause 6.1 applies in relation to the Bank Guarantee; and
 - B. this clause 6.2 applies in relation to the other Security.

(b) **(Provision):**

- (i) The Recipient must provide to the State the Security specified in the Reference Schedule, promptly upon execution of this Agreement or at such other date as specified in the Reference Schedule, as security for the due performance of the Recipient's obligations under this Agreement, including the repayment of Funding if required by this Agreement.
- (ii) If the Security is over Assets, the Recipient acknowledges that the Funding provided by the State is for the acquisition of all or part of that equipment in order to facilitate the Recipient undertaking the Project.
- (iii) The Security must be provided in a form approved by the State.

(c) **(Recipient's Obligations):**

- (i) Without limiting clause 22.6, the Recipient must do everything (including executing agreements and documents) necessary or reasonably required by the State or follow any reasonable directions by the State, to give full effect to the State's Security.
- (ii) If:
 - A. the Security is over Assets; and
 - B. the State is entitled to enforce its rights under the Security,then without limiting the State's other rights (including its rights under the instrument creating the Security), the Recipient must:
 - C. on demand, transfer to the State full legal and equitable title in the Assets in discharge of its obligations to the State under the Security; and
 - D. consent to any court order necessary or desirable to facilitate the transfer referred to in 6.2(d).

(d) **(Recourse):**

- (i) The State may enforce its Security without notice to the Recipient, to recover any amounts actually or contingently owing by the Recipient to the State in respect of this Agreement.
- (ii) To avoid doubt, the State may exercise its rights under 6.2(d)(i) even if the State has not served a Default Notice on the Recipient and even if a Dispute Notice has been given by the Recipient to the State under clause 14(b).

(e) **(Release):**

(i) The State must release the Security:

- A. as provided for in the Reference Schedule (if applicable); or
- B. if no time is provided for in the Reference Schedule, in accordance with clause 6.2(e)(ii).

(ii) Where this clause 6.2(e)(ii) applies, the State must release the Security within 20 Business Days of the Project Completion Date upon request by the Recipient if the State is satisfied that:

- A. the Recipient has satisfied all of the Payment Requirements in respect of all Payment Amounts; and
- B. the Recipient is not in default of its obligations under this Agreement.

(f) **(Retention of Security at State's discretion):**

Despite any other provision of this Agreement, the State may continue to hold the Security where this Agreement may otherwise require it to be released or after termination of this Agreement for any reason, to the extent of any amount claimed by the State under or in connection with this Agreement.

(g) **(Survival):**

This clause 6.2 survives termination of this Agreement.

6.3 Keeping the State informed

- (a) The Recipient must provide to the State any information reasonably requested by the State at any time in connection with the Project and the Residential Development.
- (b) The State may, on reasonable notice, require the Recipient to attend a meeting with the State to discuss any aspect of the Project, the Residential Development or this Agreement.

7. Records

7.1 Maintenance

- (a) The Recipient must keep and maintain, to the State's satisfaction, complete and accurate Records during the Term and for 7 years after the End Date.
- (b) Without limiting paragraph (a), the Recipient must keep and maintain proper and separate Records for the Project costs including Eligible Project Costs.

7.2 Access and inspection

- (a) The Recipient must, upon reasonable request by the State, provide access for the State to, and permit the State to take copies of, all Records or any other documents or material which, in the State's opinion, are relevant to the Project and reasonably required to substantiate fulfilment of the Payment Requirements.
- (b) Upon 5 Business Days' notice, the Recipient must grant the State and its representatives' access to the Infrastructure and provide all reasonable and necessary assistance to enable those persons to assess the activities of the Project.

7.3 Audit

- (a) The State may at any time, but not more than once in any 12 month period unless the State reasonably considers a Default Event has occurred, request from the Recipient an audit report in a form satisfactory to the State in its sole discretion in respect of any matter relating to the Recipient's compliance with the terms of the Agreement.
- (b) The cost of an audit requested by the State under paragraph (a) will be borne by the Recipient.

7.4 Certification

All information and documents given to the State under this clause 7 must be certified as correct by an Authorised Officer of the Recipient.

7.5 Personal information

Nothing in this clause 7 requires the Recipient to disclose to the State any personal information which is capable of identifying an individual in breach of any applicable privacy legislation.

7.6 Survival

This clause 7 survives termination of this Agreement.

8. Representations and warranties

8.1 Representations

The Recipient represents and warrants to the State that:

- (a) it has full power and authority to enter into and perform its obligations under this Agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and the performance of the Agreement;
- (c) this Agreement constitutes legal, valid and binding obligations, enforceable in accordance with its terms;
- (d) the Project Details and other information provided by the Recipient to the State in respect of the Project or under this Agreement including in a Progress Report are true and accurate and not misleading in any material respect;
- (e) it does not have any interests or obligations that conflict with its interests and obligations under this Agreement;
- (f) in entering into this Agreement, it has not relied on or been influenced by any representations or warranties by the State or by any person associated with the State in respect of:
 - (i) the subject matter of this Agreement;
 - (ii) the suitability of the Site;
 - (iii) Approvals relating to the Project;
 - (iv) the feasibility of the Project;

- (v) the possibility of any other financial assistance or arrangements between the Recipient and the State; or
- (vi) any other matter;
- (g) it has made full disclosure to the State of all matters that adversely affect, or may be expected to adversely affect, the reputation, character or standing of the Recipient, Group Entities and their respective officers, employees, agents and contractors who are involved in the Project; and
- (h) neither it, nor any of its Group Entities, is required to be licensed under the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**) to carry out the Project or for the performance of any of its obligations under this Agreement or, if it or any of its Group Entities is required to be licensed under the QBCC Act for such purpose, the Recipient warrants that it and the relevant member of the Group Entity (as applicable) holds the licence number specified in the Reference Schedule in accordance with the QBCC Act.

8.2 Continuing representations

The representations and warranties in clause 8.1 are made at the date of this Agreement, the Commencement Date, and the date on which each Payment Claim and Progress Report is provided to the State.

8.3 State Supplied Information

The Recipient agrees:

- (a) any State Supplied Information:
 - (i) has been or will be provided only for the Recipient's convenience; and
 - (ii) has not been and will not be relied upon by the Recipient for any purpose (including entering into this Agreement or performing its obligations under this Agreement);
- (b) the State does not:
 - (i) assume any responsibility or duty of care in respect of; or
 - (ii) warrant, guarantee or make any representation as to the State Supplied Information (including its correctness, suitability, appropriateness, accuracy, completeness or adequacy for the purposes of this Agreement);
- (c) the State will not be liable to the Recipient for any Claim arising from or in connection with the State Supplied Information, the provision of the State Supplied Information or the non-provision of any other information by the State; and
- (d) the Recipient:
 - (i) must not rely upon (or allow any other person to rely upon) the State Supplied Information for or in connection with the carrying out of Project until it has satisfied itself as to the correctness, suitability, appropriateness, accuracy, completeness and adequacy of the State Supplied Information;
 - (ii) will not be entitled to any Claim of any kind arising from or in connection with the inaccuracy, incompleteness or inadequacy of the State Supplied Information; and
 - (iii) releases and indemnifies the State, and each of its representatives, from and against all Claims arising from or in connection with the State Supplied Information (including the correctness, suitability, appropriateness, accuracy, completeness or adequacy of the State Supplied Information).

9. Confidentiality

9.1 Confidential Information

The State will treat all Confidential Information arising from or relating to the Project as confidential, subject to clause 9.5.

9.2 Disclosure of Confidential Information

- (a) Subject to 9.2(b), the Recipient must not disclose Confidential Information relating to this Agreement or the Funding to any person except:
 - (i) employees, accountants, auditors, insurers, financial advisers or legal advisers (including those of any Group Entity) requiring the information for the purposes directly related to the Project or this Agreement (and who accept or owe a duty of confidence in relation to the information);
 - (ii) with the prior written consent of the State;
 - (iii) if the Recipient is required to do so by Law or by a stock exchange and the State has been notified in writing before the disclosure; or
 - (iv) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement and the State has been notified in writing before the disclosure.
- (b) The Recipient may disclose information which:
 - (i) is or becomes public knowledge other than by breach of this Agreement; or
 - (ii) has been independently developed or acquired by the Recipient.
- (c) The Recipient must:
 - (i) maintain an information security environment and controls, which are consistent with international security standards and best practice; and
 - (ii) ensure that any subcontractors and external systems which host or have access to any Confidential Information have undergone a security assessment and have appropriate controls to protect the information from unauthorised access, modification, use or disclosure.

9.3 No further disclosure

The Recipient must use all reasonable endeavours to ensure that persons receiving information about the terms of this Agreement do not disclose the information except in the circumstances permitted in clause 9.2.

9.4 Announcements or releases by Recipient

The Recipient may not make press or other announcements or releases relating to the Project, this Agreement and the transactions the subject of this Agreement without first obtaining the written approval of the State in accordance with the Media Funding Acknowledgement Requirements as to the form, content and manner of the announcement or release unless, and only to the extent, that the announcement or release is required to be made by the Recipient by Law, in which case the Recipient must use best endeavours to obtain the prior approval of the State.

9.5 Disclosure by the State

The State reserves the right to:

- (a) disclose to any person the name of the Recipient and general information about this Agreement (excluding the amount of Funding) and the Project, including, without limitation, for the purposes of complying with any Law or complying with or meeting applicable standards for accountability of public money;
- (b) make press or other announcements or releases relating to the existence of this Agreement and details of the Project (excluding the amount of Funding):
 - (i) within 6 Months of the date of this Agreement, in a form and manner to be agreed by the parties or, if the parties cannot agree within 5 Business Days, at the discretion of the State; or
 - (ii) after 6 Months of the date of this Agreement, at the discretion of the State; and
- (c) disclose Confidential Information arising from or relating to the Project, including this Agreement:
 - (i) to an Authority to the extent such disclosure is required to be made in accordance with established governmental policies, procedures or protocols;
 - (ii) to the Office of the Information Commissioner;
 - (iii) to the State's representatives;
 - (iv) if required to do so by Law or by a stock exchange;
 - (v) to employees, accountants, auditors, insurers, financial advisers or legal advisers requiring the information for the purposes directly related to the Project or this Agreement (and who accept or owe a duty of confidence in relation to the information);
 - (vi) in connection with legal proceedings relating to this Agreement; and
 - (vii) where the Confidential Information is or becomes public knowledge other than by breach of this Agreement by the State.

9.6 Funding Acknowledgement

- (a) The Recipient must comply with the Media Funding Acknowledgement Requirements specified in the Reference Schedule.
- (b) If requested by the State upon reasonable notice, the Recipient must participate in media events or announcements facilitated by the State in respect of the Project.

9.7 Signage

- (a) If specified in the Reference Schedule, the Recipient must procure and install, at the Recipient's cost, signage (**Signage**) at the Site, in accordance with the Media Funding Acknowledgement Requirements specified in the Reference Schedule, by the Signage Installation Date. The Recipient must maintain the signage in good and visible condition at the Site until the Signage End Date.
- (b) The Recipient must obtain and maintain all Approvals required to comply with this clause 9.7.

9.8 Continuing obligation

The obligations of confidentiality under this clause 9 survive the termination of this Agreement and continue until the Confidential Information becomes publicly available other than as a result of a breach of this Agreement.

10. Intellectual Property

10.1 Grant of licence to State

The Recipient grants to the State (and will procure any relevant third party to also grant to the State) a non-exclusive, irrevocable, perpetual and royalty-free licence to use, adapt for its own use, modify, develop and distribute any Project Intellectual Property for the purpose of administering this Agreement or discharging the State's portfolio responsibilities.

10.2 Obligations of Recipient to obtain consent

The Recipient must ensure that any individual who may hold any Moral Rights in respect of the Project has provided its consent to any act or omission by the Recipient or the State which would otherwise infringe the Moral Rights of that individual.

10.3 Survival

This clause 10 survives termination of this Agreement.

11. Insurance

11.1 Obligations

The Recipient must:

- (a) effect and maintain the insurance policies required by Law and those identified in the Reference Schedule during the Term;
- (b) within 20 Business Days of the Commencement Date, provide to the State copies of certificates of insurance to evidence the insurance policies required by paragraph (a) and evidence that the policies are current;
- (c) provide to the State a copy of the certificates of currency for the renewal of the insurance policies referred to in paragraph (a), within 20 Business Days of each renewal date of the relevant policy;
- (d) upon request by the State, provide to the State a copy of the contract of insurance for the insurance policies referred to in paragraph (a); and
- (e) if any insurance policy required to be maintained under this Agreement during the Term is not procured on an occurrence basis (for example, it is procured on a claims made or claims made and notified basis), maintain such insurance policy for a period of six years following the end of the Term (or such shorter period as the State approves in writing).

11.2 Survival

This clause 11 survives termination of this Agreement.

12. Release, indemnity and limitation of liability

12.1 Release

- (a) As between the State and the Recipient and to the extent permitted by Law the Recipient undertakes the Project at its risk, and is solely responsible for all costs, expenses, risks and liabilities in connection with the Project (including the risks of obtaining or maintaining Approvals in relation to the Project), subject to this clause 12.

- (b) To the extent permitted by Law, the Recipient releases the State from all Claims in respect of the Project or this Agreement, except Claims for payment of Funding in accordance with this Agreement.

12.2 Indemnity

To the extent permitted by Law, the Recipient indemnifies the State and each of its Ministers, officers and employees (**Indemnified**) in respect of all Loss incurred or suffered by the Indemnified in respect of the Project, including Loss in respect of Claims by third parties (including Group Entities), except to the extent that Loss is caused by the fraud or wilful misconduct of the Indemnified or breach of this Agreement by the State.

12.3 Limitation of liability

- (a) To the extent permitted by Law and notwithstanding any provision of this Agreement to the contrary:
 - (i) no Indemnified (other than the State) will have any liability whatsoever to the Recipient under, or in connection with this Agreement;
 - (ii) the State's only liability to the Recipient under or in connection with this Agreement will be for breach of contract and the Recipient will not have any right to Claim against the State in respect of the Project or this Agreement;
 - (iii) the State shall have no liability to the Recipient for any loss of profits or revenue, loss of bargain (other than the bargain represented by this Agreement), loss of opportunity, loss of anticipated savings, cost of finance (except as expressly contemplated by clause 17), economic losses or incidental, special, remote or unforeseeable loss or damage; and
 - (iv) the aggregate liability of the State to the Recipient under or in connection with this Agreement, whether in contract (including this Agreement), in tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise, is limited to the Funding.
- (b) The Recipient must procure that each of its Group Entities, directors, officers, personnel and contractors comply with and give effect to clause 12.3(a) as if they were bound by clause 12.3(a) in the position of the Recipient.
- (c) The Recipient indemnifies the State and each Indemnified in respect of any Claims made by the Recipient or any person referred to in clause 12.3(b) which are inconsistent with the exclusions and limitations of liability contained in clause 12.3(a).
- (d) The State may enforce this clause 12 for the benefit of any other Indemnified.

12.4 Survival

This clause 12 survives termination of this Agreement.

13. GST

13.1 Definitions

Words in this clause 13 which are defined in the GST Act have the same meaning as in the GST Act, unless the context requires otherwise.

13.2 Amounts exclusive of GST

Unless expressed to the contrary in this Agreement, all amounts (including any monetary or non-monetary consideration required to be provided under this Agreement) are exclusive of GST.

13.3 Payment of GST

If provision of Funding is consideration for a taxable supply under the GST Act, the State must pay to the Recipient the GST amount in addition to the Funding, subject to the Recipient first submitting to the State a valid tax invoice in respect of the supply.

13.4 Adjustment and reimbursement

(a) If, for any reason, including:

- (i) any amendment to the GST Act;
- (ii) the issue of a ruling or advice by the Commissioner of Taxation;
- (iii) a refund to the State or to the Recipient in respect of a supply made under this Agreement; or
- (iv) a decision of any tribunal or court,

the amount of GST paid by the State differs from the amount of GST paid or payable by the Recipient to the Commissioner of Taxation, then the Recipient must issue an appropriate GST adjustment note and any difference must be paid by or to the State as the case may be.

(b) If a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an input tax credit (or would have been entitled to an input tax credit if that party had done all things necessary to obtain an input tax credit).

13.5 GST registration

The State may withhold the provision of Funding under this Agreement until:

- (a) the Recipient has given the State evidence of the Recipient's GST registration and Australian Business Number;
- (b) the Recipient has issued a tax invoice to the State for the amount of the applicable Payment Claim; and
- (c) the parties have satisfied any other condition required by Law to be satisfied before the State can provide the Funding or to ensure that the State does not become liable for any taxes or charges for which the Recipient is primarily liable.

13.6 Survival

This clause 13 survives termination of this Agreement.

14. Dispute resolution

- (a) If a dispute arises in respect of this Agreement, a party must not commence legal proceedings in relation to the dispute (except proceedings seeking interlocutory relief) unless and until it complies with the procedures set out in this clause 14.

- (b) A party may refer a dispute for resolution under this this clause 14 by written notice to the other parties (**Dispute Notice**).
- (c) The following representatives of the parties must promptly meet on a without prejudice basis to endeavour to resolve the dispute:
 - (i) the Authorised Officers of the parties (or their nominees), within 5 Business Days of the date of the Dispute Notice; and
 - (ii) failing resolution under paragraph (i), a more senior representative of each party, within a further 5 Business Days.
- (d) The parties must act in good faith and use reasonable endeavours to resolve the dispute in all meetings conducted in accordance with paragraph (c).
- (e) Paragraph (a) ceases to apply to the dispute if another party fails to participate in the procedures set out in this clause 14.
- (f) Despite the existence of a dispute, the parties must continue to perform their obligations under this Agreement.

15. Suspension

15.1 Suspension of Funding

- (a) The State may, without prejudice to any of the State's rights under this Agreement or at Law (including its right to terminate this Agreement) suspend the provision of all or any part of the Funding if a Default Event occurs (**Suspension**).
- (b) The State must notify the Recipient in writing of the Suspension and the grounds for the Suspension (**Suspension Notice**).

15.2 Effect of Suspension Notice

If the State gives a Suspension Notice to the Recipient under clause 15.1:

- (a) the Recipient must continue to comply with its obligations under this Agreement;
- (b) upon receipt of a Suspension Notice the Recipient has 20 Business Days:
 - (i) if the Default Event is capable of remedy, to cure the Default Event; or
 - (ii) if the Default Event is not capable of remedy, to:
 - A. to take the steps and do the things the State, acting reasonably, requires to ensure that the Default Event will not be repeated; and
 - B. pay the State the sum, if any, that the State reasonably determines is required to compensate it for the Default Event and its consequences; and
- (c) the Suspension Notice continues until the earlier of:
 - (i) the Agreement is terminated;
 - (ii) the Suspension Notice is withdrawn by the State; or
 - (iii) the Recipient has remedied the Default Event stated in the Suspension Notice to the satisfaction of the State.

15.3 Payment Claims during Suspension

For the avoidance of doubt:

- (a) Suspension may occur notwithstanding that the Recipient has at the relevant time made a Payment Claim or is entitled to make a Payment Claim;
- (b) while a Suspension Notice is in effect, the State will cease to process any Payment Claim and is not required to pay any Payment Claim;
- (c) the State may elect whether to issue both or either of a Suspension Notice and/or a Default Notice pursuant to clause 16; and
- (d) if the State gives a written notice of withdrawal of a Suspension Notice under clause 15.2(c)(ii):
 - (i) the State will proceed to deal with any outstanding Payment Claim in accordance with this Agreement; and
 - (ii) any later Payment Claim made by the Recipient may include the period of the Suspension as part of the relevant Payment Claim.

16. Default

16.1 Default Notice

- (a) If a Default Event occurs, the State may give the Recipient a notice (**Default Notice**) stating particulars of the Default Event and that it is a Default Notice under this clause 16.
- (b) Upon receipt of a Default Notice, the Recipient has 20 Business Days (**Cure Period**):
 - (i) if the Default Event is capable of remedy, to cure the Default Event; or
 - (ii) if the Default Event is not capable of remedy, to:
 - A. take the steps and do the things that the State, acting reasonably, requires to ensure that the Default Event will not be repeated; and
 - B. pay the State the sum, if any, that the State reasonably determines is required to compensate it for the Default Event and its consequences.

16.2 Remedies

Without limiting the State's rights under clause 16.3, if the Default Event is not cured within the Cure Period, the Recipient shall be deemed to have repudiated its obligations under this Agreement and the State may by notice in writing to the Recipient (without prejudice to any of its other rights under this Agreement or at Law) exercise any, or any combination, of the following remedies (in its absolute discretion):

- (a) terminate this Agreement;
- (b) require the Recipient to repay the whole or any part of the Funding advanced to the Recipient under this Agreement;
- (c) suspend its obligations under this Agreement until the Default Event is cured or until the State terminates this Agreement;
- (d) have recourse to the Security (if any); and

- (e) sue the Recipient for damages for that Default Event and exercise any other available legal or equitable remedies including seeking specific performance, injunctive ruling or any other relief that the State considers appropriate.

16.3 Insolvency

If the Recipient or Group Entity is subject to Insolvency, then the State may by notice in writing to the Recipient, without giving a Default Notice or applying any Cure Period, immediately exercise any, or any combination, of the rights under clauses 16.2(a), 16.2(b), 16.2(c), 16.2(d) or 16.2(e) and the rights and remedies given by this clause 16.3 are additional to any other rights and remedies, whether under the Agreement, at Law or otherwise and may be exercised regardless of whether there has been a breach of contract.

16.4 Preservation of rights

This clause 16 does not limit a party's other rights at Law in respect of a breach of this Agreement.

16.5 Reservations

To avoid doubt, if for any reason the purported termination by the State under clause 16.2(a) is prohibited or unenforceable, the purported termination will be deemed not to constitute repudiation of this Agreement by the State and this Agreement shall continue in full force and effect.

16.6 Survival

Clauses 16.2(b), 16.2(d) and 16.2(e) survive termination of this Agreement.

17. Termination for convenience

17.1 TFC Notice

- (a) Subject to clause 17.2, the State may terminate this Agreement at any time by 30 days' written notice to the Recipient specifying that it is a notice under this clause 17.1 (**TFC Notice**).
- (b) A TFC Notice terminates this Agreement effective from the date of termination set out in the TFC Notice (**Early Termination Date**).
- (c) To avoid doubt, the State may give a TFC Notice:
 - (i) in its absolute discretion and acting in its sole interest;
 - (ii) for any reason and without giving any reason;
 - (iii) whether or not the State or the Recipient is in breach of this Agreement; and
 - (iv) even if the State has previously given another notice of termination under this Agreement (in which case the TFC Notice supersedes the other notice of termination).
- (d) The State may:
 - (i) give a Default Notice in accordance with clause 16.1 after giving a TFC Notice; and
 - (ii) exercise its rights under clause 16.2 in respect of that Default Notice,

without prejudice to the TFC Notice but, if the State terminates this Agreement under clause 16.2(a), the TFC Notice will be deemed to have no force or effect.

17.2 Consequences of termination

- (a) Upon termination of this Agreement under clause 17.1, the State:
 - (i) must pay the Early Termination Payment to the Recipient within 20 Business Days after the Early Termination Date;
 - (ii) may set off any amounts owing to it by the Recipient in respect of this Agreement at the Early Termination Date against the Early Termination Payment;
 - (iii) (after exercising its rights of recourse, if any, under the Bank Guarantee) must release the Bank Guarantee; and
 - (iv) (after exercising its rights of recourse, if any, under the Security) must release the Security.
- (b) To the extent permitted by Law, the sole liability of the State to the Recipient in respect of any termination under this clause 17, whether in contract (including this Agreement), in tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise, is payment of the Early Termination Payment.

17.3 Reservations

To avoid doubt:

- (a) if for any reason the purported termination by the State under clause 17.1 is prohibited or unenforceable, the purported termination will be deemed not to constitute repudiation of this Agreement by the State and this Agreement shall continue in full force and effect; and
- (b) unless the State gives a notice under clause 17.1, termination or repudiation of this Agreement by the State will be deemed not to be termination under clause 17.1.

17.4 Survival

This clause 17 survives termination of this Agreement.

18. Effect of early termination

- (a) Subject to paragraphs (b) and (c), termination of this Agreement pursuant to clauses 16, 17 or 20 will not affect any rights of the State which may have accrued prior to termination, including in respect of any prior breach by the Recipient or the State's rights under clause 4.2(c)(iii).
- (b) If this Agreement is terminated under clause 16 or 20, the State is not obliged to provide any Funding to the Recipient under this Agreement, even if the Recipient has submitted, or has a right to submit, a Payment Claim to the State or otherwise has a right to make a Payment Claim for the Funding before the Default Event or Force Majeure Event (as applicable).
- (c) If this Agreement is terminated under clause 17, unless this Agreement expressly provides otherwise the Recipient may:
 - (i) retain Funding advanced to it prior to the Early Termination Date; and

- (ii) make a Payment Claim if the Payment Claim Date for the applicable Payment is on or before the Early Termination Date.

19. Dealings with rights

19.1 Dealings by the Recipient

- (a) The Recipient may not assign, novate, subcontract or otherwise deal with its rights or obligations under this Agreement, or allow any interest in them to arise or be varied, without the prior written consent of the State.
- (b) A Change in Control of the Recipient is deemed to be an assignment of the Recipient's rights under this Agreement for the purposes of this clause 19.1.

19.2 Dealings by the State

- (a) The State may assign, novate or otherwise deal with its rights and obligations under this Agreement to any Queensland Government agency or authority without the consent of the Recipient. The Recipient must enter into any agreements or deeds reasonably required by the State to give effect to any such assignment, novation or dealings.
- (b) The Recipient acknowledges that a department of the State (other than the Department of State Development, Infrastructure) and Planning may administer the Program from time to time and may be substituted for the Department of State Development and Infrastructure for the purposes of this Agreement.

20. Force Majeure Events

20.1 Notice

- (a) If any party is unable, by reason of a Force Majeure Event, to carry out any of its obligations whether wholly or in part under this Agreement, the party so affected (**Affected Party**) must, within 5 Business Days of the day that the Affected Party becomes aware of or ought reasonably to have become aware of the occurrence of the Force Majeure Event, give notice to the other party (**Notified Party**) in writing specifying the full particulars and expected duration of the Force Majeure Event.
- (b) If, in the case of a Force Majeure Event, the Recipient is the Affected Party and does not comply with the requirements of clause 20.1(a), the Recipient shall not be entitled to any Claim in connection with the Force Majeure Event.

20.2 Suspension of obligations

- (a) Upon receipt of the notice by the Notified Party, the Affected Party's obligations under this Agreement will be suspended to the extent to which they are affected by the applicable Force Majeure Event but for no longer period than the continuance of the effects of the Force Majeure Event.
- (b) The Affected Party must use all reasonable endeavours to minimise the impact and remove or overcome the conditions constituting the Force Majeure Event.

20.3 Prolonged force majeure

- (a) If any of the Affected Party's obligations are suspended under clause 20.2 due to a Force Majeure Event for more than 6 months, either party may elect to terminate this Agreement.
- (b) If the Agreement is terminated under this clause 20, clause 18 applies.

21. Notices

21.1 Delivery

A notice or other communication to or by a party under this Agreement:

- (a) must be in writing and given by an Authorised Officer;
- (b) may be delivered in person, by email or by post to an address of the addressee specified in this Agreement or any new address of the addressee notified to the sender by the Authorised Officer of the other party;
- (c) subject to paragraph (d), is deemed to be effective:
 - (i) if delivered in person, upon delivery to the addressee;
 - (ii) if sent by email, one Business Day after the date shown on the email of the sender, unless:
 - A. the sender receives an automated notification that the email has not been received by the intended addressee, in which case the notice is deemed to not have been served at the time of sending; or
 - B. receipt is acknowledged by the addressee sooner than one Business Day; in which case the notice is deemed to have been served at the time the receipt is acknowledged; and
 - (iii) if posted, 5 Business Days (or 10 Business Days, if posted outside Australia) after the date of posting to the addressee; and
- (d) if delivered or received on a day which is not a Business Day, it is taken to have been delivered or received on the following Business Day and, if delivered or received after 4:00pm (addressee's time), then notice is taken to have occurred at 9:00am on the following Business Day.

21.2 Consent to use of electronic communications

The parties consent to the use of electronic communications as a means of communicating about this Agreement and the matters contained within it, including for the purposes of the *Electronic Transactions (Queensland) Act 2001* (Qld).

22. General provisions

22.1 Successors and assigns

This Agreement binds and benefits the parties to this Agreement, their successors and permitted assigns.

22.2 Amendments and extensions of time

This Agreement may be amended only by another agreement executed by all parties. The State may, in its absolute discretion, extend any timeframe for anything to be done by the Recipient under this Agreement by written notice to the Recipient.

22.3 Entire Agreement

This Agreement:

- (a) contains the entire agreement between the parties with respect to its subject matter as at the date of this Agreement;
- (b) sets out the only conduct relied on by the parties; and
- (c) supersedes all earlier conduct and prior agreements, arrangements and understandings between the parties in connection with its subject matter.

22.4 Severability

If a provision in this Agreement is unenforceable or invalid in any jurisdiction, it will be ineffective in that jurisdiction to the extent that it is unenforceable or invalid. No provision in this Agreement will otherwise be affected in any jurisdiction.

22.5 Continuing performance

- (a) The obligations contained in this Agreement continue until satisfied in full and do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.
- (b) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance, termination or expiry of, this Agreement.
- (c) Any indemnity given by any party under this Agreement:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
 - (ii) survives and continues after performance, termination or expiry of this Agreement.

22.6 Further steps

Each party must do everything (including executing agreements and documents) necessary or reasonably required by any other party to give full effect to this Agreement and the transactions contemplated by it.

22.7 Waiver

The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right given to that party under this Agreement does not operate as a waiver of that power or right, nor does any single or partial exercise of the power or right preclude any other exercise of it or the exercise of any other power or right under this Agreement. A power or right may only be waived in writing, signed by the Authorised Officer of the party to be bound by the waiver.

22.8 Relationship of parties

- (a) No party is authorised to bind or to make representations on behalf of another party, or to pledge its credit, except as expressly provided in this Agreement.
- (b) Nothing in this Agreement is to be interpreted as creating an employment, agency, partnership or joint venture relationship between any parties.
- (c) Except as expressly stated in this Agreement, no party enters into this Agreement as an agent or for the benefit of any other person or as trustee of any trust.
- (d) Subject to clauses 9.6 and 9.7, the Recipient must not, and must ensure that its Group Entities and the employees, agents, consultants and contractors of the Recipient and its Group Entities do not, represent that:
 - (i) the State is a party to or involved in the Project;

- (ii) the Project has been given any particular endorsement, support or status by the State; or
- (iii) they are a partner, agent, consultant, contractor, employee or representative of the State in any capacity.

22.9 Trustee warranties

If the Recipient enters into this Agreement as a trustee, the Recipient:

- (a) is liable both personally and in its capacity as trustee; and
- (b) represents and warrants that:
 - (i) it is the sole trustee of the trust;
 - (ii) it is not in breach of trust;
 - (iii) it has the right to be fully indemnified out of the trust assets for obligations incurred under this Agreement before the claims of beneficiaries; and
 - (iv) this Agreement is for the benefit of the trust.

22.10 Costs and duties

- (a) Each party must pay its own costs in relation to the negotiation, preparation, execution and performance of this Agreement, except as otherwise expressly provided in this Agreement.
- (b) The Recipient must pay all duties and charges (including fines, penalties and interest) payable and assessed by legislation or by any revenue office on this Agreement, on any instruments entered into under this Agreement, and in respect of a transaction evidenced by this Agreement, and indemnify on demand the State against any liability for those duties (including fines, penalties and interest).
- (c) The Recipient must pay or reimburse the State on demand for the State's costs in exercising or attempting to exercise the State's rights under this Agreement in respect of any Default Event, including legal costs on a full indemnity basis.

22.11 Set off

The State may at any time set off any amount due for payment by the Recipient to the State against any amount due for payment by the State to the Recipient under this Agreement or otherwise.

22.12 Other rights preserved

Except as otherwise expressly provided in this Agreement, the rights, powers and remedies under this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by Law.

22.13 No fetter

- (a) Nothing in, or contemplated by, this Agreement has the effect of constraining the State or any Authority or placing any fetter on the State's or any Authority's discretion to exercise or not to exercise any of its rights, duties, powers, discretions or functions, statutory or otherwise.

- (b) Any statement or requirement in this Agreement providing that the State will act in 'good faith' or use or exercise 'reasonable endeavours' or 'act reasonably' in relation to any matter or outcome, means that the State:
 - (i) will take steps to deal with the relevant matter, or bring about the relevant outcome, so far as it is reasonable able to do so having regard to its resources and other responsibilities;
 - (ii) does not guarantee the relevant matter or outcome will be brought about; and
 - (iii) is under no obligation to:
 - A. exercise a right of any government agency, or to influence, over-ride, interfere with or direct any other government agency in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - B. exercise a power or discretion in a manner that the State regard as not in the public interest;
 - C. develop or implement new policy or a change in policy;
 - D. procure any new legislation or a change in legislation (including by-laws); or
 - E. act in any way that the State regards as not in the public interest.

22.14 Governing law and jurisdiction

- (a) The laws of Queensland govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from them for determining any dispute concerning this Agreement.
- (c) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a party by being delivered to that party in accordance with clause 21.

22.15 Attorneys

Each attorney who purports to execute this Agreement on behalf of a party declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney purports to execute this Agreement.

22.16 Counterparts

- (a) This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.
- (b) This Agreement may be entered into and becomes binding on the parties named in this Agreement upon one party signing a copy (including a scanned copy) that has been signed by the other party and transmitting a copy of this Agreement to the other party or the other party's agent or solicitors.
- (c) If this Agreement is signed by any person using an Electronic Signature, the parties:
 - (i) agree to enter into this Agreement in electronic form;
 - (ii) consent to either or both parties signing the Agreement using an Electronic Signature; and

- (iii) agree a counterpart may be electronic and signed using an Electronic Signature.
- (d) Each signatory to this Agreement confirms that their signature appearing in the Agreement through use of an Electronic Signature, including any print-out (irrespective of which party printed it), is their personal signature authenticating this Agreement.

22.17 Recipient's responsibility

- (a) The Recipient shall be fully and vicariously liable to the State and, to the extent permitted by Law, indemnifies the State, for the acts, defaults and omissions of:
 - (i) its directors, officers, employees and agents; and
 - (ii) each person engaged by the Recipient or Group Entity for the Project,as if they were the acts, defaults or omissions of the Recipient.
- (b) Each person forming part of the Recipient shall be fully and vicariously liable to the State and, to the extent permitted by Law, indemnifies the State, for the acts, defaults and omissions of the other person(s) forming part of the Recipient as if they were the acts, defaults or omissions of the first mentioned person.

22.18 Statutory declaration

The Recipient agrees that:

- (a) at any time, the State may request that the Recipient provides a completed and signed statutory declaration (in a form and containing such detail as reasonably required by the State) from a representative of the Recipient who is in a position to know the facts confirming that the Recipient:
 - (i) is solvent and not subject to any Insolvency; and
 - (ii) is (and its directors are) not seeking to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the Corporations Act;
- (b) the Recipient must provide such completed and signed statutory declaration within 2 Business Days of the request from the State; and
- (c) the Recipient must immediately notify the State in writing if it or its directors have taken advantage, or sought to take advantage, of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the Corporations Act.

23. Privacy Obligations

23.1 Information Privacy Act

- (a) In this clause 23.1, the terms 'Personal Information', 'agency' and 'Information Privacy Principles' have the same meaning as they have in the *Information Privacy Act 2009* (Qld) (**Information Privacy Act**).
- (b) Where the Parties are required to provide information containing Personal Information, or Personal Information is incorporated in the information being shared for the Project, this clause 23 applies.
- (c) The Recipient agrees in undertaking the Project and receiving any Personal Information sourced from or disclosed by the State, a participant in the Project, or other person:

- (i) to collect Personal Information, and to use or disclose Personal Information obtained during the Project only for the Project;
- (ii) not to do any act or engage in any practice that would breach an Information Privacy Principles contained in Schedule 3 of the Information Privacy Act, which if done or engaged in by an agency, would be a breach of that Information Privacy Principles;
- (iii) to carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Information Privacy Act;
- (iv) to comply with Chapter 2 Part 3 of the Information Privacy Act if transfer of Personal Information outside Australia is contemplated or necessary for the Project;
- (v) to immediately notify the other party if the party becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 23; and
- (vi) to ensure that any personnel of the party who is required to deal with Personal Information for the purposes of this Agreement is made aware of the obligations of the party set out in this clause 23.

23.2 Privacy Act

- (a) In this clause 23.2, the terms 'personal information', 'sensitive information' and 'Australian Privacy Principles' have the same meaning as they have in the *Privacy Act 1988* (Cth) (**Privacy Act**).
- (b) In relation to any personal information provided or to be provided by the Recipient in connection with the Project, the Recipient warrants to the State:
 - (i) the Recipient has obtained and will obtain the consent of each individual about whom any sensitive information is provided; and
 - (ii) the Recipient has or will within the time required by the Privacy Act ensure that each individual about whom any personal information is provided has received or will receive a written statement setting out all of the matters required by the Australian Privacy Principles:
 - A. in relation to disclosure of the personal information to the State, its agents and advisors requiring the information for the purposes set out in 23.223.2(b)(ii)B and
 - B. disclosing that the entities referred to in clause 23.2(b)(ii)(A) will use the personal information for the purposes of reviewing and assessing matters relevant to the Project and the Agreement from time to time.
- (c) The Recipient must comply with the provisions of the Privacy Act in relation to any personal information provided to the Recipient by the State, its agents or advisors.