

[Confidential Exposure Draft for consultation]
[Not Government Policy]

[DRAFT 7/5/2024]

Master Funding Agreement

between the

State of Queensland through the Department of Housing,
Local Government, Planning and Public Works

and

[Name of Provider]

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Master Funding Agreement

BETWEEN: STATE OF QUEENSLAND through the Department of Housing, Local Government, Planning and Public Works
(the State)

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

Background

The State provides funding for Social Housing under the Act. The Provider is a charity and a Registered Provider or Exempt Provider. The State has provided funding to the Provider.

As part of the State's commitment to deliver safe, secure and affordable housing, the State identified the need for implementing an operating environment that enables streamlined service delivery and incentivises growth. This Agreement replaces former types of agreement and sets out the terms for the following Funding:

- capital funding;
- leases to the Provider;
- monetary funding for Funded Services.

The Funding that the State provides to the Provider under these terms is set out in the following Schedules, as amended from time to time under this Agreement:

- Schedule 1 - Capital Funded Properties
- Schedule 2 - Lease Properties
- Schedule 3 - Services Funding

Agreed terms

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

Agreement Particulars

Item 1 – Contacts and Start Date

State contact:	Attention:	Name:	[Insert]
		Position:	[Insert]
	Telephone:	[Insert]	
	Address:	[Insert]	
	Email:	[Insert]	
Provider contact:	Attention:	Name:	[Insert]
		Position:	[Insert]
	Telephone:	[Insert]	
	Address:	[Insert]	
	Email:	[Insert]	
Start Date	The date this Agreement is signed by the last party to sign this Agreement.		

Item 2 - Policies

Policies:	<p>means the policies, specifications, guidelines, tools and templates published by the State from time to time for community housing providers, registered providers who provide ancillary services and providers of funded services. As at the date of this Agreement the policies are published at:</p> <ul style="list-style-type: none"> • https://www.business.qld.gov.au/industries/service-industries-professionals/housing-accommodation/community/policies-guidelines; • https://www.business.qld.gov.au/industries/service-industries-professionals/housing-accommodation/community/reporting; and • Queensland Government Supplier Code of Conduct 2023.
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Item 3 - Sustainability and Growth Plan

Sustainability and Growth Plan:	<p>means a five-year plan including:</p> <ul style="list-style-type: none"> (a) a strategic overview of the Provider's plans for portfolio renewal, portfolio growth and service development; (b) specific details of proposed new capital works, redevelopment projects, upgrade and revitalisation and reconfiguration projects; and/or (c) portfolio revitalisation and reconfiguration, enhancing existing services, offering innovative new services or organisational capacity improvements, <p>prepared using the template issued by the State. The template for the Sustainability and Growth Plan as at the date of this Agreement is template 1 in Schedule 5.</p>
Due date to submit draft Sustainability and Growth Plan:	<p>[insert the date six months after the date of the Agreement or 'The Provider's first Sustainability and Growth Plan was approved by the State on [insert date] and is contained in schedule 4'].</p>

Item 4 - Reports

Report	Period	Due date	Contents	Submit to
Sustainability and Growth Plan progress report	Each year of the Sustainability and Growth Plan	Within 21 Business Days after the anniversary of the approval of the first Sustainability and Growth Plan	Information in the template report form provided by the State from time to time	[insert email or database address]
Community Housing Annual Financial Returns	Each Financial Year	31 October, following the end of each financial year	Information about funded properties, finances and surplus position in the template form provided by the State from time to time	HHSProgramsFinancialAnalysis@Housing.qld.gov.au
Annual Reconciliation of Funded Property	Each Financial Year	31 October, following the end of each financial year	Information about properties in the template form provided by the State from time to time	[insert email or database address]

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<p>Report, including the:</p> <ul style="list-style-type: none"> • report on annual property inspection of Lease Properties; and • Annual Capital Lettable Dwelling count 				
<p>Performance measurement data</p>	<p>Monthly and Quarterly</p>	<p>Monthly, by the 5th day after the end of each month. Quarterly, by the day 21 days after the end of the Quarter</p>	<p>Performance measurement data.</p>	<p>hschreporting@housing.qld.gov.au</p>
<p>Financial acquittals</p>	<p>Each Financial Year</p>	<p>31 October, following the end of each financial year</p>	<p>A statement itemising Funding receipts and expenditure in the template form provided by the State from time to time.</p>	<p>CHReporting@communities.qld.gov.au</p>
<p>Audit Report and Audited Financial Statements</p> <p>Financial Acquittals</p>	<p>Each Financial Year (ending 30 June)</p>	<p>31 October, following the end of each Financial Year</p>	<p>Audited annual statement prepared in accordance with the Australian Accounting Standards comprising the following documents:</p> <ol style="list-style-type: none"> Statement of profit and loss and other comprehensive income Statement of financial position Statement of changes in equity Statement of cashflows Notes to and forming part of the financial statement Directors' statement/declaration Independent audit report, and Asset register in relation to Funded Personal Property (where applicable). 	<p>HHSPROGRAMSFINANCIALANALYSIS@HOUSING.QLD.GOV.AU</p> <p>CHReporting@communities.qld.gov.au</p>

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			<p>You must provide, for each service, an annual acquittal statement for the Funding.</p> <p>Final acquittals must be signed and certified as correct by two members of Your executive or management committee responsible for Your activities.</p> <p>If funding acquittals is provided for part of the reporting period, then the Financial Acquittals must be submitted for the relevant part of the reporting period.</p>	
Australian Institute of Health and Welfare: Community Housing National Data Collection Survey	Each Financial Year	By 31 July, following the end of each Financial Year	survey in the format provided by the Australian Institute of Health and Welfare	Address specified in the survey.

Schedule 1 – Capital Funded Properties

Schedule 1 Capital Funded Property	
Schedule 1 - Lettable Dwelling Count	
Social Housing Dwellings	Insert # of dwellings
Affordable Housing Dwellings	Insert # of dwellings
Total	Insert # of dwellings

Schedule 1 - Capital Funded Property Summary											
State Reference ID #	Address	Lot Plan, CT Reference	Total Project Costs	State Funding Contribution	Provider Contribution	Excluded Land	Tripartite ID Ref #	Program	SH Count	AH Count	Special Conditions (eg Target group)
Property 1											
Property 2											
Property 3											
Property 4											

Version Control	Description	Issue Date
Signed on behalf of the Provider		
Signed on behalf of the State		

Schedule 2 – Lease Properties

Schedule 2 – Lease Property											
State Reference ID #	Address	Lot on Plan	CT Reference	Program	Target Group	Lease Term	Start Date	End Date	SH Count	AH Count	Special Conditions
Property 1											Example – By-laws attached for use of property Approved for caretaker
Property 2											
Property 3											
Property 4											

Version Control	Description	Issue Date
Signed on behalf of the Provider		
Signed on behalf of the State		

Schedule 3 – Services Funding

State Ref ID #	Program	Start Date	End Date	Total Funding (GST incl or excl)	GST	Per annum funding Year 1 (GST exclusive)	Per annum funding Year 2 (GST exclusive)	Per annum funding Year 3 (GST exclusive)	Per annum funding Year 4 (GST exclusive)	Per annum funding Year 5 (GST exclusive)	Special Conditions	Other Requirements

Version Control	Description	Issue Date
Signed on behalf of the Provider		
Signed on behalf of the State		

Schedule 4 – Approved Sustainability and Growth Plan

Note: The Provider may give the State a Sustainability and Growth Plan for approval before this Agreement is signed. If it has been approved before this Agreement is signed it will be included here. If it has not been provided and approved before this Agreement is signed it will be included in this schedule once it has been approved, under clause 9.9.

[insert]

Schedule version

Note: To keep track of changes to schedules each version of the schedule will be given a version number.

Version	Description	Issue date
1	Original	[Insert date]

Signed on behalf of the State

Note: When the State approves a Sustainability and Growth Plan or a revised Sustainability and Growth Plan, the State will give the Provider a revised Schedule 4 signed on behalf of the State and it will then become part of this Agreement.

EXECUTED on behalf of the **STATE OF QUEENSLAND THROUGH THE DEPARTMENT OF HOUSING, LOCAL GOVERNMENT, PLANNING AND PUBLIC WORKS** by:

.....
(full name)

.....
(designation)

a duly authorised person in the presence of:

.....
(print name of witness)

.....
(signature of witness)

.....
(signature)

..... / /
(date)

Schedule 5 – Templates

Note: The Provider must use these templates. They State may update the templates from time to time by issuing a revised Schedule 5, under clause 14.1.

List of templates

Template Number	Description
1.	Sustainability and Growth Plan template
2.	Transaction Proposal template (including Project specific details for proposed capital Funding)
3.	Service Funding - Community Rent Scheme Terms
4.	Service Funding - Crisis Accommodation Program Terms
5.	Service Funding - Home Assist Secure Program Terms

Template 1 - Sustainability and Growth Plan template

Sustainability and Growth Plan			
Item 1	Sustainability and Growth Plan period	Start date:	[Insert, for example, '1 July 2024']
		End date:	[Insert date five years after the start date, for example, '30 June 2027']
Item 2	Capital Lettable Dwelling Count as at the start date of the Sustainability and Growth Plan period	Social Housing dwellings	[Insert number]
		Affordable Housing dwellings	[Insert number]
		Total	[Insert number]
Item 3	Target Capital Lettable Dwelling Count to be achieved by the end date of the Sustainability and Growth Plan period	Social Housing dwellings	[Insert number]
		Affordable Housing dwellings	[Insert number]
		Total	[Insert number]
Item 4	Strategic Objectives for Growth	[Insert]	
Item 5	Description of demand	Locations:	[Insert locations in Queensland within the area that the provider operates where social housing is most in demand, for example, by postcodes or statistical areas or proximity to services and transport.]
		Dwelling types:	[Insert description of dwelling types demanded, for example, single person units and large family dwellings.]
Item 6	Description of how existing Properties may not meet demand	Undersupply:	Supply exceeds demand in all areas other than those identified in the following row.
		Oversupply:	[Insert description of any property underused because of property type or location.]

		Property condition:	[Insert description of any property identified as needing maintenance or upgrade.]		
Item 7	Targets	Target:		Due date for submitting transaction proposals	Target completion date:
		1.	[insert summary of each target and attach summary budgets, including indicative costs and funding sources, and any other relevant attachments for each target] Attachments: [insert]	[Insert, for example, '30 June 2024']	[Insert, for example, '30 June 2025']
		2.	[Insert, for example, for financing targets, describe the approved finance, for example: <ul style="list-style-type: none"> • approved Housing Australia finance/status of application • approved commercial finance/status of application Attachments: [insert]	[Insert]	[Insert]
		3.	[Insert, for example, for purchase, building or upgrades, describe the work and target cohort, for example: <p>'[number] new social housing units to be built in [suburb] as part of a 15 x 2-bedroom unit development comprising [insert number and other types of property in development eg 5 units to be used for social housing, 5 to be used for affordable housing and 5 to be sold. The target cohort is single income families.'</p> <p>'[number] dwellings to be purchased in [suburb] for use as social housing.'</p> Attachments: [insert]	[Insert]	[Insert]

		4.	[Insert, for example, for other growth initiative targets, insert a description of <ul style="list-style-type: none"> any partnering arrangements with other providers or organisations to build the provider's capacity; additional tenant engagement or support services or brokerage services; how those changes will constitute growth; how success will be measured.] Attachments: [insert]	[Insert]	[Insert]
		5.	[Insert, for example, for disposal targets, sale of underused property at [address]] Attachments: [insert]	[Insert]	[Insert]
		6.	[Insert] Attachments: [insert]	[Insert]	[Insert]
Item 8	Change in properties table	Attach completed NRSCH Property Data List Template from National Regulatory System for Community Housing (nrsch.gov.au) with additions underlined and deletions struck through, including: <ul style="list-style-type: none"> additional rows for target additional properties; and strikethrough of properties planned to be sold. Changes should also be highlighted.			
Item 9	Attachments	<input type="checkbox"/>	[List].		

Template 2 - Transaction Proposal template

Note: To implement the Sustainability and Growth Plan, the Provider gives the State proposals in this form. The proposal must comply with the requirements in clause 11.3.

Transaction Proposal		
Item 1	Proposal reference number	
Item 2	Project	[insert general description of project, for example, 'A project to sell property at [insert] and purchase land at [insert] and build 15 new dwellings of community housing as part of Partnering for Growth.']
Item 3	Transactions	<input type="checkbox"/> Grant of security to Housing Australia or another financier approved by the State in respect of borrowing to finance the purchase or construction of Capital Funded Property. <input type="checkbox"/> Sale of Capital Funded Property to obtain funds for: <ul style="list-style-type: none"> • the purchase or construction of Capital Funded Property. <input type="checkbox"/> purchase of Capital Funded Property. <input type="checkbox"/> construction on Capital Funded Property. <input type="checkbox"/> For proposed capital Funding to obtain funds for: <ul style="list-style-type: none"> • the purchase or construction of Capital Funded Property. <input type="checkbox"/> purchase of Capital Funded Property. <input type="checkbox"/> construction on Capital Funded Property. <input type="checkbox"/> Lease: <ul style="list-style-type: none"> <input type="checkbox"/> additional Lease Property. <input type="checkbox"/> alterations to Lease Property. <input type="checkbox"/> surrender Lease Property. <input type="checkbox"/> Change Service Funding. <input type="checkbox"/> Other: [set out description of other transactions]
Item 4	Description of Transactions	[insert summary of each of the proposed transactions]

Item 5	Timeframes for transactions	[insert timeframes for each of the proposed transactions]	
Item 6	Total Proposed Funding	Type	Amount (exclusive of GST)
		Sale proceeds	\$[insert amount or 'Not applicable'] Note: Proceeds of the sale of Capital Funded Property equal to the Reinvestment Amount for the Capital Funded Property constitute Funding, under clause 11.3(a).
		State's Surplus	\$[insert amount or 'Not applicable']
		New monetary Funding	\$[insert amount of new monetary Funding proposed to be provided by the State or 'Not applicable']
		Total	\$[insert amount]
Item 7	Proposed additional Lease Property	[insert following or 'Not applicable']	
		Address, lot on plan & title reference	[insert]
		Program	[insert]
		Commencement date	[insert]
		Expiry date	[insert]
		Options	[insert]
Item 8	Alterations to Lease Property	[insert following or 'Not applicable']	
		State reference ID	[insert from table in Schedule 2]
		Address, lot on plan & title reference	[insert]
		Proposed alterations	[insert and attach documents under clause 75]
Item 9	Proposed surrender of Lease Property	[insert following or 'Not applicable']	
		State reference ID	[insert from table in Schedule 2]
		Address, lot on plan & title reference	[insert]
		Proposed surrender date	[insert]

Item 10	Proposed Services Funding	[insert summary or 'Not applicable']			
Item 11	Attachments	<input type="checkbox"/> Proposed amendments to schedules to the Master Funding Agreement that would be made through effecting the transaction. <input type="checkbox"/> For proposed capital Funding attach a 'Project specific details for proposed capital Funding' in the template form. <input type="checkbox"/> For proposed additional Services Funding attach a 'Specific details for proposed Services Funding Schedule' in the template form. <input type="checkbox"/> [List other attachments, for example, budgets]			
	Project specific details for proposed capital Funding:				
Item 12	State Reference ID Number	[Insert]			
Item 13	Local government area	[Insert]			
Item 14	Housing region	[Insert]			
Item 15	Land / Property	Suburb	Address	Lot on plan	Title reference
		[Insert]	[Insert]	[Insert]	[Insert]
		The Land is/is not Excluded Land. [Note: Land will only be Excluded Land if the Provider supplies the full value of the Land as part of its contribution in accordance with the definition of 'Excluded Land' in clause 1.1. In other words, the Land is wholly owned by the Provider and is to be contributed by the Provider without leveraging funded property or Receipts]			
Item 16	Program	Long Term Community Housing Program, Social Housing Program Specifications			
Item 17	Project	[Insert description as appropriate for the project type. Examples are provided below]			
Item 18	Condition Precedent	To be negotiated with the department and subject to the project particulars.			
Item 19	Condition Precedent Date	[Insert, for example: 'The date 3 months after the date of this Agreement or such later date that the parties agree in writing.']			
Item 20	State's Security	State's Security		State's Security delivery date	

		A registered mortgage on terms set out in Schedule 2 that will rank first in priority unless otherwise agreed by the State in a Tripartite Deed.		[Insert, for example 'To be provided on execution of this Agreement']
Item 21	Total Project Costs	[Insert depending on type of project]		
Item 22	Funding	The following contribution by the State towards the Project:		
		Type	Amount (exclusive of GST)	
		Accrued State's surplus under existing capital funding agreements	\$[Insert]	
		Land	\$[insert]	
		New monetary funding	\$[Insert]	
		Reinvestment Amount	\$[Insert]	
		Total	\$[Insert]	
Item 23	GST Amount	\$[Insert]		
Item 24	Contributions	Type	Amount (exclusive of GST)	
		Provider monetary contribution	\$[Insert]	
		Provider land contribution (Land contributed by the Provider that is included in the reinvestment requirement calculations)	\$[Insert]	
		Excluded Provider Land Contribution (Land contributed by the Provider that is excluded from reinvestment requirement calculations)	\$[Insert]	
		Financier Contribution	\$[Insert]	
		Total State Funding Contribution	\$[Insert]	
		Total Project Cost	\$[Insert]	
Item 25	Tripartite Deed reference	[Insert reference number or description]		
Item 26	Milestones and Milestone Dates	No	Milestone	Milestone Date

Construction only [delete this row and next five rows if not applicable]		
1.	Execution of this Agreement	Not applicable
2.	Development Approval	The date X months from the date of this Agreement.
3.	Building Contract signed	The date X months after the Development Approval has been obtained
4.	Construction Commencement	The date X months after the Building Contract has been signed
5.	Practical Completion of all units to be constructed under the Project	Within XX months from Construction Commencement
Purchase only [delete this row and next two rows if not applicable]		
1.	Execution of this Agreement	Not applicable
2.	Settlement of the Provider's purchase of the Property	[insert date]
Purchase and construction [delete this row and next six rows if not applicable]		
1.	Execution of this Agreement	Not applicable
2.	Settlement of the Provider's purchase of the Property	[insert date]
3.	Development Approval	The date X months from the satisfaction of Milestone 2.
4.	Building Contract signed	The date X months after the Development Approval has been obtained
5.	Construction Commencement	The date X months after the Building Contract has been signed

		6.	Practical Completion of all units to be constructed under the Project		Within XX months from Construction Commencement		
Item 27	Instalments of Funding	No	Instalment Date	Milestone due before instalment is to be paid	Percentage	Amount of instalment (GST exclusive)	
		Construction only [delete this row and next six rows if not applicable]					
		1.	[Insert, for example: Date this Agreement is executed]	Milestone 1	[Insert, for example: [Insert]% of Surplus Funding, and [Insert]% of Monetary Funding	<p>\$(Insert)</p> <p>\$(Insert)</p>	
		2.	Date a copy of an approved Development Approval is provided to the State	Milestone 2	[Insert]% of Monetary Funding	\$(Insert)	
		3.	Date a copy of the executed Building Contract is provided to the State	Milestone 3	[Insert]% of Monetary Funding	\$(Insert)	
		4.	Foundations and ground floor slab completed	Milestone 4	[Insert]% of Monetary Funding	\$(Insert)	
		5.	Construction lock-up achieved	Milestone 4	[Insert]% of Monetary Funding	\$(Insert)	
		6.	Practical Completion of all dwellings to be constructed through the Project.	Milestone 5	[Insert]% of Monetary Funding	\$(Insert)	

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

Item 28	Project Use	[Insert, for example: Providing Social Housing to the Target Group, using the allocated number of Social Housing and Affordable Housing dwellings set out in Attachment 1]	
Item 29	Target Group	[Insert]	
Item 30	Number of Social Housing dwellings	[Insert]	
Item 31	Number of Affordable Housing dwellings	[Insert]	
Item 32	Third Party Lease	Term:	[Insert for Third Party Lease Land only]
		Start date:	[Insert for Third Party Lease Land only]
Item 33	Special Conditions	Dependent on Project – to be negotiated with the department.	
Item 34	List of Attachments	Attachment 1 – Allocated number of Social Housing and Affordable Housing dwellings Attachment 2 – Project Budget	

Template 3 - Community Rent Scheme Terms

[Standard schedule terms to be attached or set out here]

Template 4 - Crisis Accommodation Program Terms

[Standard schedule terms to be attached or set out here]

Template 5 - Home Assist Secure Program Terms

[Standard schedule terms to be attached or set out here]

DRAFT

Schedule 6 – Delivery Kit

[to be inserted]

Schedule version

Version	Description	Issue date
1	Original	[insert]

DRAFT

Schedule 7 – Mortgage

[to be inserted]

Schedule version

Version	Description	Issue date
1	Original	[insert]

DRAFT

Schedule 8 – Tripartite Deed

Tripartite Deed indicative terms

Parties	<ul style="list-style-type: none"> • State of Queensland through the Department (State). • Provider (Provider). • Financier (Financier).
Description of security subject to priority arrangements	<ul style="list-style-type: none"> • Financier security – For example, real property mortgage granted by the Provider to the Financier over property that secures the Provider’s obligations under its loan facility agreement with the Financier. • State’s security – Real property mortgage granted by the Provider to the State over property that secure the Provider’s obligations under this agreement.
Priority adjustment	<ul style="list-style-type: none"> • First priority amount. The deed will set out the amount for which the Financier’s security is given first priority. • The State agrees that the financier security is a first ranking security up to the first priority amount.
Consent and information	<ul style="list-style-type: none"> • The Financier consents to the State’s security and the State consents to the Financier’s security. • The Financier and the State must inform each other about the amounts secured under their respective securities.
Enforcement	<ul style="list-style-type: none"> • If an enforcement trigger event occurs, including if the Provider becomes insolvent or ceases to be a registered provider, a standstill period of 90 days applies. During this period the Financier may take possession of the property or appoint a receiver to the property but may not sell the property and must not interfere with the quiet enjoyment of tenants. • The Financier must use reasonable endeavours to nominate an alternative registered provider in whose favour the State might wish to exercise the State’s transfer powers under the <i>Housing Act 2003</i>. The Financier must consider novating or refinancing the Provider’s loan in favour of the nominated alternative provider. • After the end of the 90-day standstill period if no alternative provider has been nominated or the Financier has declined the novation then the Financier may exercise the power of sale under its security. The State is to provide all reasonable assistance to the Financier to achieve an orderly transition of tenants to other dwellings to allow vacant possession. • The State has an option to purchase the Provider’s debt and a right of first refusal to purchase the property.

Schedule version

Version	Description	Issue date
1	Original	[insert]

DRAFT

Schedule 9 - Service Funding Schedule

Template 3: Service Funding Schedule (Proposed)		
Item 1	Schedule State Date	
Item 2	Schedule End Date	
Item 3	Description of Services	
Item 4	Service Users/Target Group	
Item 5	Service Type	
Item 6	Service Provider	
Item 7	Geographic Catchment Area	
Item 8	Operating Hours	
Item 9	Afterhours Arrangements	
Item 10	Private Headlease property quota "Head lease Quota"	
Item 11	Deliverables (outcomes)	
Item 12	Service Delivery requirements	
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Terms

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DRAFT

Part A - General Terms

Part B - Capital Funding Terms

Part C - Lease Terms

Part D - Services Funding Terms

Part A - General Terms

1. Interpretation

1.1 In this Agreement the following definitions apply:

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

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

Agreement means this agreement, including the Agreement Particulars, the Terms and the schedules and annexures to this agreement;

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

Approved Transaction Proposal means a Transaction Proposal approved by the Department under clause 11.5;

Allowable Expenditure Policy means the Department's 'Allowable Expenditure Policy for Funded Community Housing and Crisis Accommodation Program Providers';

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

Capital Funded Properties means the land and improvements identified in Schedule 1 or an Approved Transaction Proposal;

Capital Lettable Dwelling Count means the count of Capital Funded Property dwellings let or available for let in accordance with this Agreement and specified as the 'Capital Lettable Dwelling Count' in Schedule 1;

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

Conditions Precedent Date, see Part B – Capital Funding Terms, clause 40.1;

Conditions Precedent, see Part B – Capital Funding Terms, clause 40.1;

Deliverable, see Part D - Service Terms, clause 87.1;

Delivery Kit, see Part B – Capital Funding Terms, clause 40.1;

Department means the Department in which the Act is administered;

Development Approval, see Part B – Capital Funding Terms, clause 40.1;

Director-General means the chief executive under the Act or their delegate;

Electronic Lodgement Network Operator, see Part B – Capital Funding Terms, clause 40.1;

Electronic Workspace, see Part B – Capital Funding Terms, clause 40.1;

Establishment Date, see Part D - Service Terms, clause 87.1;

Ethical Supplier Mandate means the Queensland Government Ethical Supplier Mandate 2024;

Ethical Supplier Threshold means the Ethical Supplier Threshold referred to in the Queensland Government Queensland Procurement Policy 2023;

Excluded Land means Land in respect of a Capital Funded Property:

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

Part A – General Terms

Exempt Provider has the meaning given in the Act;

Existing Capital Funding Agreements means the Capital Funding Agreements identified as 'Existing Capital Funding Agreements' in Schedule 1;

Existing Leases means the Leases identified as 'Existing Leases' in Schedule 2;

Existing Service Agreements means the Service Agreements identified as 'Existing Service Agreements' in Schedule 3;

Financier, see Part B – Capital Funding Terms, clause 40.1;

Financier Contribution, see Part B – Capital Funding Terms, clause 40.1;

Force Majeure Event means:

- (a) acts of God;
- (b) pandemic or epidemic;
- (c) war, riot, insurrection, vandalism or sabotage;
- (d) terrorism, act of war, invasion, act of public enemies, civil war, rebellion, revolution, insurrection, military or usurped power hostilities, whether war is declared or not;
- (e) fire, except to the extent caused or contributed to by the effected party or its subcontractors; or
- (f) strike, lockout, ban or other industrial disturbance which was not caused or contributed to by the effected party or its subcontractors,

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

Funded Personal Property, see Part D - Service Terms, clause 87.1;

Funded Services means services that the Provider must deliver for which Services Funding is provided;

Funding means the funding provided under this Agreement, being:

- (a) the funding for the Capital Funded Properties;
- (b) the lease of the Lease Properties; and
- (c) the Services Funding;

Geographic Catchment Area, see Part D - Service Terms, clause 87.1;

Government Authority means the Commonwealth, the State of Queensland, a minister, a government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority and any agent or employee of any of the foregoing;

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

GST Amount means the amount of GST on a Taxable Supply calculated at the rate of GST applicable at the time that the Taxable Supply is made;

GST has the same meaning as in the GST Act;

Housing Australia is the entity continued in existence as Housing Australia under the *Housing Australia Act 2018* (Cth);

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

Improvements means the housing and other improvements on the Land;

Input Tax Credit has the same meaning as in the GST Act;

Instalment Date, see Part B – Capital Funding Terms, clause 40.1;

Instalments, see Part B – Capital Funding Terms, clause 40.1;

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

Part A – General Terms

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

Land means, in respect of a Capital Funded Property, the land for the Capital Funded Property specified in Schedule 1 or an Approved Transaction Proposal;

Lease Properties means the land and improvements identified in Schedule 2;

Lease Term, see Part C – Lease Terms, clause 62.1;

Leased Third Party Land, see Part B – Capital Funding Terms, clause 40.1;

Market Value, see Part B – Capital Funding Terms, clause 40.1;

Milestones and **Milestone Dates**, see Part B – Capital Funding Terms, clause 40.1;

National Regulatory System for Community Housing or **NRSCH** means the regulatory system implemented under the Act and corresponding law of participating jurisdictions in accordance with the Inter-Governmental Agreement for a National Regulatory System for Community Housing;

No Net Loss Principle means the principle in clause 10;

Payment Claim, see Part B – Capital Funding Terms, clause 40.1;

Permitted Use, see Part C – Lease Terms, clause 62.1;

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

Policies has the meaning given in Item 2 of the Agreement Particulars;

Practical Completion, see Part B – Capital Funding Terms, clause 40.1;

Premises, see Part C – Lease Terms, clause 62.1;

Premises Improvements, see Part C – Lease Terms, clause 62.1;

Priority Limit means the amount the State is prepared to allow Housing Australia or another financier first priority under a Tripartite Deed in respect of a Capital Funded Property, as notified by the State in its entire discretion;

Program means, for a dwelling, the program specified in the schedules for the dwelling. Specifications for programs are set out in program specifications in the Policies;

Project, see Part B – Capital Funding Terms, clause 40.1;

Project Budget, see Part B – Capital Funding Terms, clause 40.1;

Project Manager, see Part B – Capital Funding Terms, clause 40.1;

Project Use, see Part B – Capital Funding Terms, clause 40.1;

Provider Contribution, see Part B – Capital Funding Terms, clause 40.1;

Provider's Employees, see Part C – Lease Terms, clause 62.1;

Provider's Improvements, see Part C – Lease Terms, clause 62.1;

Quantity Surveyor, see Part B – Capital Funding Terms, clause 40.1;

Queensland Government Insurance Fund or **QGIF**, see Part C – Lease Terms, clause 62.1;

Rent, see Part C – Lease Terms, clause 62.1;

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

RCTI means a recipient created Tax Invoice;

QPP Compliance Unit means the Queensland Procurement Policy Compliance Unit, Office of the Chief Advisor – Procurement, Department of Housing, Local Government, Planning and Public Works;

Quarter means each three month period ended 30 September, 31 December, 31 March and 30 June;

Part A – General Terms

Queensland Procurement Policy means the 'Queensland Procurement Policy (QPP 2023)', currently administered by the Department of Housing, Local Government, Planning and Public Works;

Receipts has the meaning given in the Regulation;

Registered Provider has the meaning given in the Act;

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

Regulation means the *Housing Regulation 2015*;

Reinvestment Amount for a Capital Funded Property, means the amount determined by the State under clause 55;

Replacement Property, see Part B – Capital Funding Terms, clause 40.1;

Report means reports provided under this Agreement including the reports set out in Item 4 of the Agreement Particulars;

Resident, see Part C – Lease Terms, clause 62.1;

Schedule End Date, see Part D - Service Terms, clause 87.1;

Schedule Start Date, see Part D - Service Terms, clause 87.1;

Secured Term, see Part B – Capital Funding Terms, clause 40.1;

Service Delivery Requirements, see Part D - Service Terms, clause 87.1;

Service Users means the tenants of the Capital Funded Properties and Leased Properties and the users of services that are funded under Services Funding;

Services Funding means the funding identified in Schedule 3;

Services Funding Schedule means the item of Services Funding in Schedule 3 and the

applicable Services Funding Schedule terms set out in Schedule 9;

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

Special Conditions means terms identified as 'Special Conditions' in the schedules or an Approved Transaction Proposal;

Specific Funded Personal Property Security Agreement, see Part D - Service Terms, clause 87.1;

State Funding Contribution has the meaning given in clause 55.4;

Start Date means the date specified in Item 1 of the Agreement Particulars;

State's Improvements, see Part C – Lease Terms, clause 62.1;

State's Security, see Part B – Capital Funding Terms, clause 40.1;

Statutory Charges, see Part C – Lease Terms, clause 62.1;

Surplus has the meaning given in the applicable Policy, being, as at the date of this Agreement, the Allowable Expenditure Policy. The Provider does not have an entitlement to a surplus balance under section 6 of the Allowable Expenditure Policy;

Sustainability and Growth Plan has the meaning given in Item 3 of the Agreement Particulars;

Target Capital Lettable Dwelling Count means that amount specified to be the target capital lettable dwelling count in the Sustainability and Growth Plan approved under clause 9.3;

Target Group, see Part B – Capital Funding Terms, clause 40.1;

Tax Invoice has the same meaning as in the GST Act;

Taxable Supply has the same meaning as in the GST Act;

Part A – General Terms

Term, see Part C – Lease Terms, clause 62.1;

Terms means these terms, being the:

- (a) Part A - General Terms;
- (b) Part B - Capital Funding Terms;
- (c) Part C - Lease Terms; and
- (d) Part D – Services Funding Terms;

Third Party Lease, see Part B – Capital Funding Terms, clause 40.1;

Third Party Owner, see Part B – Capital Funding Terms, clause 40.1;

Total Project Costs, see Part B – Capital Funding Terms, clause 40.1;

Transaction Proposal means a transaction proposal the Provider gives to the Department under clause 11;

Transfer Documents, see Part B – Capital Funding Terms, clause 40.1;

Tripartite Deed means a deed between the Financier, the State and a Provider on terms satisfactory to the State, on terms similar to the indicative terms set out in Schedule 8;

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

1.2 In this Agreement:

- (a) words importing a gender include any other gender and words in the singular include the plural and vice versa;
- (b) any monetary amounts refer to Australian currency unless otherwise specified;
- (c) a reference to legislation includes subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to policies, procedures or specifications includes any policies, procedures or specifications amending, consolidating or replacing them;

- (e) a reference to an individual or person includes a corporation or other legal entity;
- (f) a reference to a clause or schedule means a clause or schedule to this Agreement;
- (g) if an expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (h) a reference to days or months means calendar days or months;
- (i) if the day on which any act or thing is to be done under this Agreement is a Saturday, Sunday or public holiday in the place where the act or thing is to be done, the act or thing may be done on the next Business Day in that place;
- (j) an obligation on the part of two or more persons binds them jointly and each of them individually;
- (k) a reference to consent or approval means prior written consent unless otherwise specified in another process for approval under this Agreement;
- (l) a reference to a notice, request or proposal means a written notice, request or proposal;
- (m) includes means includes without limitation; and
- (n) a reference to an offer or acceptance means a written offer or acceptance signed by the party effecting the offer or acceptance.

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

- (a) ceases to exist; or
- (b) is reconstituted, renamed or replaced, and its powers or functions are transferred to another government State or agency, a reference to the government State or agency will include that other government State or agency.

Part A – General Terms

- 1.4 The Special Conditions are terms of this Agreement.
- 1.5 In the event of any inconsistency between provisions in different parts of this Agreement the provisions will prevail in the following descending order of precedence:
- (a) Special Conditions.
 - (b) Terms.
 - (c) Agreement Particulars.
 - (d) Schedules.

2. Term

- 2.1 This Agreement will commence on the Start Date and continue indefinitely unless terminated under clause 34 or 35.

3. Review of Agreement after two years

- 3.1 From 1 July 2026 or before that date, the State will consult with the Provider about the operation of the standard Master Funding Agreement with a view to identifying amendments to improve the effectiveness of the standard Master Funding Agreement. Those amendments may be reflected in a variation to this Agreement negotiated between the parties.

4. General compliance

- 4.1 The Provider must:
- (a) be a Registered Provider or Exempt Provider;
 - (b) be registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
 - (c) comply with all relevant laws;
 - (d) exercise due care and skill in carrying out its obligations under this Agreement; and
 - (e) act diligently, effectively and in a professional manner.
- 4.2 The Provider must:

- (a) use each Capital Funded Property for:
 - (i) the purpose of delivering Social Housing; and
 - (ii) if Schedule 1 sets out a Project Use for the Capital Funded Property – for the Project Use state in Schedule 1;
- (b) use each Lease Property for the purpose of delivering Social Housing; and
- (c) use each Services Funding amount for the purpose of that Services Funding amount set out in the Services Funding Schedule.

- 4.3 The Provider must comply with the Policies including by:

- (a) letting dwellings on the Capital Funded Properties and Lease Properties only to those tenants who are eligible under those Policies;
- (b) complying with the program specific requirements for each Capital Funded Property and Lease Property in the Policies for the relevant Program; and
- (c) calculating rent in respect of the accommodation it provides in the Properties in accordance with the applicable Policy.

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

5. Transition of existing arrangements

- 5.1 On the Start Date the:
- (a) Existing Capital Funding Agreements;
 - (b) Existing Leases; and
 - (c) Existing Service Agreements,
- are terminated and replaced with this Agreement.

Part A – General Terms

- 5.2 The termination under clause 5.1 does not affect any Claim a party to those documents may have against another party to those documents by reason of any breach of those documents occurring on or before the Commencement Date and any such breach is deemed to be a breach of both the terminated document and this Agreement.
- 5.3 To the extent, if any, that a property subject to an Existing Capital Funding Agreement or Existing Lease has not been included in Schedule 1 or 2 as at the date of this Agreement, Schedule 1 or 2, as applicable, is deemed to include that property as at the date of this Agreement.
- 5.4 The parties acknowledge that, unless otherwise agreed, the following principles were applied in relation to the transition of 'Surplus' under the existing arrangements:
- (a) The 'State's Surplus' was returned to the State or became State Funding Contribution or Surplus under this Agreement as specified in the Schedules to this Agreement.
 - (b) If the existing arrangement contained a provision allowing the Provider to retain a 'Provider's Surplus' – the Provider retained that amount.
- 5.5 The Provider acknowledges and agrees that any amount specified in a schedule to be transitioned surplus constitutes Surplus under this Agreement.
- (b) in accordance with applicable Policies; and
- (c) as prescribed in the Provider's approved Sustainability and Growth Plan.
- 6.2 The Provider must obtain the State's approval for the use of the Receipts for any other purpose.
- 6.3 The Provider:
- (a) must not use Receipts for paying an amount owing to the State other than when the Provider is returning the Surplus to the State under clause 6.5; and
 - (b) must not use the Surplus for paying down a loan from a financier in respect of a Capital Funded Property without the State's approval. That approval may be subject to conditions, including a condition that the State Funding Contribution in respect of a Capital Funded Property is deemed to increase through the payment to the extent that Receipts that are used constitute State Funding. The Provider must comply with the conditions.
- 6.4 The Provider must:
- (a) keep the Funding and Receipts in a separate bank account;
 - (b) calculate Surplus annually using the Provider's accounts used to prepare its annual audited financial statements; and
 - (c) identify the Surplus in its books of account as the Surplus.
- 6.5 The Provider must immediately return all of the Surplus (inclusive of GST) to the State:
- (a) if this Agreement is terminated; and
 - (b) if the Provider is in breach of this Agreement – within 7 days of the State giving the Provider a written notice requiring payment of the Surplus to the State.

6. Receipts and Surplus

- 6.1 The Provider must only use the Receipts and Surplus:
- (a) for expenditure described as 'allowable expenditure' in the applicable Policy, being, as at the date of this Agreement, the State's 'Allowable Expenditure Policy for Funded Community Housing and Crisis Accommodation Program Providers';

Part A – General Terms

7. Property condition

- 7.1 The Provider must comply with its obligations under the Regulation in respect of the Capital Funded Properties and Lease Properties, including its obligations to keep and implement an asset management plan as required by section 12 of the Regulation.
- 7.2 Without limiting the Provider's obligation under clause 7.1, the Provider must keep the Capital Funded Properties and Lease Properties:
- (a) in good order and repair and fit for a tenant to use; and
- (b) in compliance with the *Residential Tenancies and Rooming Accommodation Act 2008*.
- 7.3 When the Provider carries out repairs, any broken items must be replaced with similar items of a similar standard.
- 7.4 Maintenance undertaken by the Provider must be carried out in a tradesperson-like and lawful manner and should be from good quality, durable, low maintenance materials to cater for high wear and tear.
- 7.5 The Provider must comply with all laws and regulations in relation to the health and safety of persons using, entering or renting the Capital Funded Properties and Lease Properties, including in compliance with the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).
- 7.6 The Provider must ensure that purchases made and work undertaken in relation to the Capital Funded Properties and Lease Properties:
- (a) represent good value for money, that is, a good return and performance for the money being spent;
- (b) are completed by tradespersons selected through fair and equitable means in accordance with Queensland Procurement Policy requirements, free from any conflict of interest;

- (c) where required by law, are completed by a qualified licensed tradesperson with adequate insurance cover; and
- (d) are completed in a timely manner.

8. Other parts

- 8.1 Part B - Capital Funding Terms sets out terms specifically applicable to Capital Funded Properties.
- 8.2 Part C - Lease Terms sets out terms specifically applicable to Lease Properties.
- 8.3 Part D - Services Terms sets out terms specifically applicable to Funded Services.

9. Sustainability and Growth Plan

- 9.1 The State may give information to the Provider about the demand for housing services.
- 9.2 The Provider must prepare a draft Sustainability and Growth Plan and give it to the State by the due date specified in Item 3 of the Agreement Particulars. The Provider must ensure the Sustainability and Growth Plan is prepared using the template in schedule 5.
- 9.3 The State will review the draft Sustainability and Growth Plan and:
- (a) approve the draft Sustainability and Growth Plan; or
- (b) refuse to approve the draft Sustainability and Growth Plan and provide the State's comments on the draft Sustainability and Growth Plan,
- and notify the Provider of that approval or refusal. The State will use best endeavours to do this within 3 months after receiving the draft Sustainability and Growth Plan.
- 9.4 If the State refuses to approve the draft Sustainability and Growth Plan, the Provider must take into account the State's comments and revise the draft Sustainability and Growth Plan and resubmit it to the State for review under clause 9.3 promptly, and, in

Part A – General Terms

- any event, within 20 Business Days after receiving notice of the refusal.
- 9.5 If the Sustainability and Growth Plan has not been approved within 6 months after the due date specified in Item 3 of the Agreement Particulars due to the Provider's unreasonable refusal to revise the Sustainability and Growth Plan in accordance with the State's comments, the Provider is deemed to be in breach of this clause 9.
- 9.6 The Provider must use best endeavours to implement the approved Sustainability and Growth Plan.
- 9.7 The Provider may request the State's approval to submit a revised Sustainability and Growth Plan at any time. The State may approve or refuse the request in its discretion. If approved, then within 2 months after the State's approval, the Provider must submit a revised Sustainability and Growth Plan for review under clause 9.3.
- 9.8 The Provider must, by no later than 6 months before the Sustainability and Growth Plan expires, submit a new Sustainability and Growth Plan for the next five years to the State for review under clause 9.3.
- 9.9 When the State approves a Sustainability and Growth Plan or a revised Sustainability and Growth Plan, the State will give the Provider a revised Schedule 4 signed on behalf of the State.
- 10.2 The parties acknowledge that Part B of this Agreement sets out obligations in respect of Replacement Properties for Capital Funded Properties sold in accordance with this Agreement.
- 10.3 Any new funding from the State must be used by the Provider to add to the Capital Lettable Dwelling Count and must not be used to fund a Replacement Property.
- 10.4 If the Capital Lettable Dwelling Count recorded in Schedule 1 does not at any time reconcile with or achieve the Target Capital Lettable Dwelling Count recorded in the Sustainability and Growth Plan, the Provider must:
- (a) notify the State within 10 Business Days; and
- (b) either:
- (i) demonstrate to the State's satisfaction how the target will be achieved under the present Sustainability and Growth Plan through planned construction, sales and purchases; or
- (ii) request the State's approval under clause 9.7 to submit a revised Sustainability and Growth Plan. The request must include how the target would be proposed to be
- (b) The Affordable Housing dwellings count can fluctuate within the Sustainability and Growth Plan period. For example, Affordable Housing dwellings may be temporarily used for Social Housing to ensure there is no reduction in capacity to allocate from the Housing Register while Social Housing is being redeveloped or replaced.
- (c) There must be no reduction of Social Housing and Affordable Housing assets recorded as the Target Capital Lettable Dwelling Count in the Sustainability and Growth Plan approved under clause 9.3(a).

10. No Net Loss Principle

- 10.1 The Provider must apply the principle in this clause (**No Net Loss Principle**) when exercising its rights and performing its obligations under this Agreement, including the following:
- (a) There can never be a reduction in actual Capital Lettable Dwelling Count available for allocation.

Part A – General Terms

achieved under a revised Sustainability and Growth Plan through planned construction, sales and purchases.

10.5 Whenever a Provider submits to the State any proposal in connection with this Agreement, including any Transaction Proposal, the Provider must address the impact that the proposal may have on their Approved Sustainability and Growth Plan Count by providing evidence of:

- (a) how any new funding will increase the Capital Lettable Dwelling Count (where applicable); and
- (b) the Provider's ability to replace any existing properties removed from the Capital Lettable Dwelling Count independent of further State funding.

(i) Substitute Capital Funded Property subject to this Agreement with an alternative property which is not subject to this Agreement if:

- (i) the tenant residing in the Capital Funded Property will:
 - (A) lease the Capital Funded Property from the Provider at a rent higher than the rent required under this Agreement; or
 - (B) purchase the Capital Funded Property from the Provider; and
- (ii) the Provider and the State agree that other property owned by the Provider will become Capital Funded Property. This transaction will be treated in the same way as a sale and purchase.

11. Transactions to implement the Sustainability and Growth Plan

11.1 To implement the Sustainability and Growth Plan the Provider must, in accordance with the timeframes in the Sustainability and Growth Plan, give the State proposals to enter into any one or more of the following transactions (**Transaction Proposal**):

- (a) Grant of security to Housing Australia or another financier approved by the State, over Capital Funded Property in respect of borrowing to finance the purchase of Capital Funded Property or construction on Capital Funded Property.
- (b) Sale of Capital Funded Property.
- (c) Purchase of Capital Funded Property.
- (d) Construction on Capital Funded Property, including upgrades and improvements to Capital Funded Property.
- (e) Lease additional Lease Property.
- (f) Alterations to Lease Property.
- (g) Surrender of Lease Property.
- (h) Change to Services Funding.

11.2 The Provider may request the State's approval to submit a proposal that is not covered by the Sustainability and Growth Plan at any time. The State may approve or refuse the request in its discretion. The State will use best endeavours to approve or refuse the request within 3 months after receiving it. If approved, then within 2 months after the State's approval, the Provider must submit the proposal.

Requirements for proposals

11.3 The Provider must ensure that the Transaction Proposal complies with the templates set out in Schedule 5 and the following:

- (a) That part of the proceeds of the sale of a Capital Funded Property equal to the Reinvestment Amount is deemed to constitute Funding.
- (b) The Provider must ensure that proceeds of any borrowing secured by a mortgage over Capital Funded Property are used only for the purchase, construction or upgrade of Social Housing and

Part A – General Terms

Affordable Housing in Queensland as approved by the State.

- (c) The No Net Loss Principle.
- (d) A proposal that includes the grant of security to Housing Australia or another financier over Capital Funded Property must set out the proposed Priority Limit but the Provider acknowledges that the Priority Limit that the State is prepared to agree to will be assessed on a case by case basis.
- (e) The State Contribution for proposed new Capital Funded Property or construction on Capital Funded Property will be calculated as follows:
 - (i) the new funding amount; plus
 - (ii) the Surplus; plus
 - (iii) the Reinvestment Amount.

11.4 The Provider must provide further information about a proposal to the Department, within 10 Business Days after the Department's request.

Approval decisions

- 11.5 The Department will use best endeavours to notify the Provider whether the Department approves a Transaction Proposal within 3 months after receiving the Transaction Proposal.
- 11.6 The State may withhold its approval for a transaction that includes new monetary Funding in the State's entire discretion.
- 11.7 The State may approve or refuse a proposed Priority Limit in the State's entire discretion.
- 11.8 The State intends to approve proposals that:
 - (a) are consistent with the Sustainability and Growth Plan;
 - (b) comply with the templates set out in Schedule 5;
 - (c) ensure that proceeds of any borrowing secured by a mortgage over Capital Funded Property are used only for the

purchase, construction or upgrade of Social Housing and Affordable Housing in Queensland as approved by the State;

- (d) do not involve any additional funding being provided by the State;
- (e) are in accordance with the No Net Loss Principle;
- (f) make suitable accommodation arrangements for tenants of any Capital Funded Property being sold; and
- (g) do not include any proposal for security to be granted over the Capital Funded Property in favour of Housing Australia or another financier.

11.9 If the State refuses to approve a proposal the State will provide comments on the proposal and the Provider must take into account the State's comments and may revise the proposal and resubmit it to the State for review promptly, and, in any event, within 2 months after receiving notice of the refusal. The State will use best endeavours to notify the Provider whether the State approves the revised proposal within 2 months after receiving a revised proposal.

11.10 The Provider must not implement a Transaction Proposal under this Agreement unless it has been approved by the State.

Implementation

- 11.11 The Provider must ensure that proceeds of transactions are used only in accordance with the State's approval under clause 11.5. The proceeds of transactions include any proceeds of:
 - (a) borrowing secured by security over Capital Funded Properties; and
 - (b) sale of Capital Funded Properties.
- 11.12 Unless otherwise notified by the State in its approval given under clause 11.5, the Provider must not commence to implement an Approved Transaction Proposal unless, within 2 months after the approval:

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- (a) the State notifies the Provider of final approval of the transactions in the Approved Transaction Proposal by the Director-General, including any approval required under section 10 of the Regulation; and
- (b) the State delivers to the Provider revised versions of the Schedules which include the transactions and which are signed on behalf of the State, including:
 - (i) for purchase, construction and sale of Capital Funded Properties – an amended Schedule 1;
 - (ii) for new leases or surrenders relating to Lease Properties – an amended Schedule 2; and
 - (iii) for changes to Services Funding – an amended Schedule 3.

11.13 On delivery of the Schedules under clause 11.12(b):

- (a) this Agreement is amended to include those amended schedules;
- (b) for a lease of additional Lease Property transaction - the State grants to the Provider and the Provider accepts a Lease of the additional Lease Property on the Part C - Lease Terms; and
- (c) for a surrender of Lease Property transaction - the Provider surrenders all of its right, title and interest in respect of the lease surrendered.

11.14 Revision of schedules does not affect:

- (a) any Claim a party may have against the other party by reason of any breach of this Agreement in respect of a matter occurring on or before the change; or
- (b) any obligations that survive the changes, including reporting obligations in relation to Capital Funded Properties sold or Lease Properties surrendered in respect of the period prior to the sale or surrender.

12. Future Funding

- 12.1 Despite any other clause in this Agreement and anything in any Sustainability and Growth Plan, this Agreement does not commit the State to provide the Provider with any future or additional Funding for any purpose.
- 12.2 The State is not required to provide any Funding, whether in a Sustainability and Growth Plan or otherwise, unless:
 - (a) the Funding has been approved in writing by the State in its entire discretion; and
 - (b) the State has delivered to the Provider revised versions of schedules which include the Funding and which are signed on behalf of the State.
- 12.3 The Provider acknowledges that the State's contribution is capped at the amount of Funding specified in a schedule to this Agreement and the State is not obliged to contribute any additional amount. Any expenditure incurred by the Provider in excess of the Funding is the responsibility of the Provider. The Provider must complete Projects funded under this Agreement despite any additional expenditure required.
- 12.4 Provision of Funding does not constitute acceptance by the State that the Provider has complied with its obligations with this Agreement.

13. Funded Personal Property

- 13.1 The Provider may only use Funding or Receipts to purchase personal property with a price or value of \$5,000 or more if:
 - (a) a Services Funding Schedule specifies that one-off Services Funding is provided for the purchase of specific personal property; or
 - (b) the purchase is approved by the State.
- 13.2 The State may impose conditions on its approval, including a condition requiring the

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Provider to grant the State a first registered security over the personal property.

- 13.3 The Provider must comply with clause 93 in relation to the personal property.

14. Agreement management

- 14.1 The Provider must use the templates for notices, plans, requests and proposals under this Agreement set out in Schedule 5. The State may amend Schedule 5 by notice to the Provider attaching a revised Schedule 5 signed on behalf of the State.

- 14.2 The State may notify the Provider that it must use a web or app-accessible contract management or workflow system provided by the State. The Provider must use the system notified.

- 14.3 A change to this Agreement, other than a change effected by a deed of variation executed by the State and the Provider, only takes effect on the State issuing to the Provider revised schedules signed on behalf of the State. The State must ensure that each revised schedule that it issues contain a unique version number and the date of the version. The Provider must check the revised documents and notify the State of any discrepancies within 10 Business Days after receiving the revised documents. The State may issue further revised schedules to the Provider signed on behalf of the State to correct any discrepancies.

15. Conduct

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

Funded Services are delivered to meet the needs of specific Service Users.

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

- 15.3 The Provider must:

- (a) have and comply with a dispute resolution procedure for disputes between the Provider and Service Users concerning any of the Social Housing or Funded Services and the Provider must make the procedure available to all Service Users;
- (b) keep and implement a document outlining the Provider's procedure for dealing with complaints that any person may make about any of the Social Housing or Funded Services and make it available for viewing by any person on request; and
- (c) advise any person who makes a complaint about any of the Social Housing or Funded Services that they may complain to the State or a complaints agency if they are not satisfied with the outcome of the complaint.

- 15.4 The Provider must not discontinue or reduce any of the Social Housing or Funded Services, or otherwise take recriminatory action, because a person makes a complaint to the Provider about any of the Social Housing or Funded Services, provided that this does not preclude the Provider from taking action as necessary to ensure safety and prevent harm to Service Users and others that may come to the Provider's notice through the lodgement of the complaint.

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- 15.5 The Provider must comply with the State's requests, directions, and monitoring requirements to the State's satisfaction.
- 15.6 All personnel that the Provider employs in any capacity are the Provider's responsibility. The Provider will be responsible for payment of all wages and entitlements to the provider's employees.
- 15.7 The parties acknowledge that the State encourages the Provider to provide domestic and family violence leave to show leadership in supporting employees experiencing domestic and family violence.
- 15.8 Without limiting clause 38.2, the Provider must comply with all laws in relation to employment of the Provider's employees, including any requirements pertaining to domestic and family violence leave.
- 15.9 The Provider must ensure that the Social Housing and the Funded Services are culturally accessible to Aboriginal and Torres Strait Islander peoples and to people from culturally and linguistically diverse backgrounds, recognising the diversity of needs of people, including specific needs, from urban, regional and remote areas.
- 15.10 Where the Target Group for the Social Housing or Funded Services is Aboriginal and Torres Strait Islander peoples, the Provider must, if the State requests, provide evidence to the State's satisfaction that individuals, families, cultural custodians, clan and language groups, community organisations, communities or representatives deemed appropriate by the community to which the Social Housing and Funded Services are being delivered, are engaged in the design, delivery and evaluation of programs and the Social Housing and Funded Services to ensure they are appropriate to local community and cultural needs.
- 15.11 The Provider must not, and must take reasonable steps to ensure that the Provider's supply chain does not, undertake acts which could constitute an offence involving slavery or human trafficking.
- 15.12 The Provider acknowledges that if it is a public entity under the *Human Rights Act 2019*, it must ensure that it acts and make decisions in a way that is compatible with human rights and, in making a decision, gives proper consideration to a human right relevant to the decision.
- Ethical Supplier Threshold*
- 15.13 The Provider must satisfy and continue to satisfy the Ethical Supplier Threshold and requirements identified in the Ethical Supplier Mandate.
- 15.14 The Provider acknowledges and agrees that:
- (a) in addition to any other remedies available to the State under this Agreement, failure to comply with clause 15.13 may result in the imposition of a demerit or sanction under the Ethical Supplier Mandate; and
 - (b) the State may obtain information about the Provider from the QPP Compliance Unit or any Government Authority and may disclose information about the Provider's performance or conduct to the QPP Compliance Unit and any Government Authority.

16. Bank account

- 16.1 The Provider must keep the Funding and Receipts in a separate bank account.
- 16.2 Any interest earned on the funding forms part of the Funding.

17. Reports

- 17.1 The Provider must use the tools and templates in the Policies for reporting.
- 17.2 The Provider must give the State the Reports set out in Item 4 of the Agreement Particulars. The Provider must ensure that Reports:

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- (a) are provided by the due dates and comply with the requirements set out in Item 4 of the Agreement Particulars;
- (b) are accurate, complete and not misleading; and
- (c) are signed and certified by the Provider if specified in the State's template for the report.
- 17.3 The Provider must provide further information about any matter connected with a Report or resubmit a Report to the State, within 10 Business Days after the State's request.
- 17.4 The State, acting reasonably, may change the information required to be contained in Reports by notice to the Provider. The Provider must ensure that Reports it submits after it receives notice of the change contain the information required under the notice.
- 17.5 In addition to any requirements to provide information or reports under this Agreement, the Provider must comply with a written notice from the State requiring the Provider to supply information to the State in any way concerning the Provider or the carrying out of the Provider's obligations under this Agreement. The notice need not be in any specified form but must state the information required and a reasonable time within which the Provider must supply the information. The information that the State may require the Provider to provide to the State under this clause 17.5 includes information about the eligibility of the Provider's tenants for housing assistance so that the State may ascertain whether the Provider is complying with its obligation under this Agreement to let the Property only to tenants who are eligible under the Policies.
- 17.6 The Provider consents to:
- (a) the State disclosing information received by the State in connection with the Funding to the Registrar; and
- (b) the Registrar disclosing any information relating to or connected with the Provider to the State.
- 17.7 If the State notifies the Provider that the Provider is not required to give a Report to the State because it corresponds with a Report that the Provider is required to give to the Registrar, the Provider:
- (a) is deemed to have provided the Report to the State under this Agreement at the time that the Provider gives the Report to the Registrar; and
- (b) is not required to give the Report to the State if the Provider has given it to the Registrar.
- 17.8 The Provider must:
- (a) notify the State of any use of Receipts to pay down debt in respect of anything other than the Property; and
- (b) provide reports to the State on the Provider's compliance with clause 17.8(a):
- (i) containing the information; and
- (ii) provided at the frequency, requested by the State.
- 17.9 The State may:
- (a) develop a reporting dashboard system to enable the Provider and other Registered Providers and Exempt Providers to see how they are progressing over time and relative to other Registered Providers and Exempt Providers; and
- (b) display in that system the Provider's Capital Lettable Dwelling Count, growth in that count and other information connected with Capital Funded Properties, Lease Properties and Services Funding that does not include personal information. Any address information in that system about providers other than the Provider would be displayed to other providers at a suburb level only.

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18. Notice of emergencies, delays and other matters

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

- (a) event, circumstance or breach described in clause 35;
- (b) mismanagement or misappropriation of Funding, or misconduct or dishonesty in connection with the Funding, housing services or Funded Services;
- (c) breach of the Act or Regulation;
- (d) any incident or event connected with the Social Housing or Funded Services that has or is reasonably likely to attract press or media attention, whether positive or negative;
- (e) a situation, event or circumstance which:
 - (i) involves an incident requiring an emergency response including fire, natural disaster, industrial action which may affect the delivery of housing services, bomb threat, hostage situation, death or serious injury of any person or any criminal activity requiring police response;
 - (ii) poses a serious risk to a Property, the health or safety of people, including tenants, or the environment; or
 - (iii) constitutes a breach of laws which needs urgent remedy or compliance;
- (f) material adverse change in the Provider's financial position;
- (g) notices which the Provider receives from any authority which will or could impact the Provider's ability to deliver housing services under this Agreement in a material way;

- (h) any event for which the Provider is given notice by the Registrar of the national register of community housing providers for Queensland;
- (i) the Provider having a reasonable suspicion of any of the matters in clauses 18.1(a) to (h).

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

18.3 The Provider must immediately notify the relevant authority of a matter described in clause 18.1(e).

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

18.5 The Provider must promptly notify the State of any matters which will prevent or cause delays, or that the Provider expects will prevent or cause delays, to the Provider performing its obligations under this Agreement.

18.6 The Provider must notify the State of any change to the Provider's constitution that may impact on the performance of the Provider's obligations under this Agreement within 10 Business Days after the change.

18.7 If the Provider receives other funds from either the Commonwealth Government, another State Government department or authority or any other entity providing funds for meeting the costs of:

- (a) any of the Funded Services; or
- (b) other services or activities that are of a similar nature to any of the Funded Services,

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the Provider must notify the State of the amount and purpose of the additional funds received, unless the State notifies otherwise.

19. Records and audit

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

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

19.2 The Provider must, if requested by the State:

- (a) have its accounts kept under clause 19.1 audited by an independent auditor, and provide a copy of the audited accounts to the State within three months after the end of each financial year; and
- (b) produce any document, bank statement, invoice or receipt connected with the Funding or works within one month after the request.

19.3 The Provider must, no later than one month after the State's request, permit and provide persons nominated by the State (**Auditors**) access to the Provider's employees, premises, books, records, documents, computer systems, equipment and other property to enable the Auditors to:

- (a) inspect and copy:
 - (i) accounts kept under clause 19.1; and
 - (ii) documents related directly or indirectly to the receipt or expenditure of the Funding or the performance of the Provider's obligations under this Agreement; and

(b) discuss with the Provider, any matter pertaining to the Funding or funded activities or the Provider's compliance with its obligations under this Agreement.

19.4 The Auditors may make copies of books, records, documents and other materials, and the Provider must provide the Auditors with the necessary facilities to enable them to do so.

19.5 Within 5 Business Days after the State's request, the Provider must give the State evidence of its compliance with laws, including:

- (a) any licences and approvals; and
- (b) copies of documents recording work health and safety management systems that the Provider implements to comply with applicable work health and safety laws.

20. Inspection and access

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

20.2 The State may access premises under this clause to:

- (a) see if the Provider is complying with this Agreement;
- (b) exercise its rights under clause 33.2; or
- (c) do anything that the State is required to do under law.

20.3 The State must give the Provider reasonable notice before accessing premises under this clause 20, except in the case of an emergency. The minimum period of notice for access any part of premises occupied by a residential tenant is the minimum period required by law plus 2 Business Days.

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- 20.4 The State may enter premises at any time without notice and remain in them for as long as necessary if there is an emergency.
- 20.5 During access to premises under clause 20.2(a), the Provider must make its employees or contractors available to answer questions about the Provider's operations.
- 20.6 The Provider must take all action necessary to allow the State to enter any premises in accordance with this clause 20.

21. Cure plan

- 21.1 The State, or any person nominated by the State, may conduct a review of the Provider's:
- (a) compliance with its obligations under this Agreement, at any time, by giving the Provider at least 10 Business Days' prior notice; and
 - (b) financial position and capability to continue performing its obligations under this Agreement.
- 21.2 The State may conduct:
- (a) a review of any of the Social Housing or Funded Services to assess service or program effectiveness or supporting improvements in delivery; or
 - (b) a performance review of any aspect of the Provider's delivery of the Social Housing or Funded Services.
- 21.3 The State may exercise its rights under clauses 19 and 20 for the purposes of any review under this clause 21.
- 21.4 Without limiting any other right of the State, if at any time the State forms the view that:
- (a) the Provider has breached any term of this Agreement;
 - (b) a breach of the Agreement is reasonably likely to occur and the State has told the Provider about this but appropriate steps have not been promptly taken by the Provider; or

- (c) it is necessary or appropriate to address an issue, the Provider has been informed about but has not remedied, that was identified during the course of a review under this clause 21 to:

- (i) better ensure the performance of the Provider's obligations under this Agreement to a high standard; or
- (ii) address a performance-related concern,

the State may, by notice to the Provider, require the Provider to provide the State with a proposed cure plan, which must comply with clause 21.5. The Provider must prepare and provide the cure plan to the State within 10 Business Days after the State's notice to the Provider under this clause.

- 21.5 The Provider may request an extension to the 10 Business Day period under clause 21.4. The State may extend that period by notice to the Provider. The State will not unreasonably withhold its agreement to an extension to a date no later than 20 Business Days from the receipt of the notice under clause 21.4 but may withhold agreement to any longer extension in its entire discretion.

- 21.6 The Provider must ensure that the cure plan:

- (a) describes in reasonable detail:
 - (i) each measure that the Provider proposes to take to permanently cure the occurrences described in the State's notice under clause 21.4;
 - (ii) each measure that the Provider proposes to alleviate the adverse effect of those occurrences; and
 - (iii) the timing within which the Provider will take those measures; and
- (b) include any measures and timeframes stipulated by the State in the notice

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given by the State to the Provider under clause 21.4.

21.7 If the State:

- (a) approves a cure plan - the Provider must immediately implement and pursue diligently the cure plan with a view to curing the occurrences described in the State's notice under clause 21.4; or
- (b) rejects a cure plan - the State may specify required amendments to the cure plan, or alternative measures to be included in the cure plan, and to be implemented by the Provider, in which case the Provider must amend the cure plan or include the alternative measure in its cure plan and then immediately implement and pursue diligently the cure plan with a view to curing the occurrences described in the State's notice under clause 21.2.

(vi) the lawfulness of any use which the Provider proposes to make of the property; or

(vii) any matter, circumstance or thing which is not expressly included in this Agreement;

- (b) the Provider takes its interest the property 'as is where is', subject to any defect, dilapidation or want of repair;
- (c) the Provider has relied entirely on the Provider's own enquiries relating to, and inspections of the property and the use to which it may be put;
- (d) the Provider has not entered into, any transaction or agreement in respect of the property in reliance on any representation, promise, warranty, express or implied statement or document made or provided by the State or on its behalf in respect of any matter relating to a property; and
- (e) the Provider may not make any Claim in respect of a property in connection with its suitability or non-suitability for the Provider's expected or proposed uses.

22. Acknowledgements in relation to properties

22.1 The Provider acknowledges and agrees that in respect of each Lease Property and any Capital Funded Property, and anything owned by the State in or on such properties:

- (a) the State has not given any warranty as to:
 - (i) the condition, quality or suitability of the property for any purpose;
 - (ii) the condition, structural soundness or repair of the property;
 - (iii) whether the property is safe and without risk to the health and safety of any user at any time;
 - (iv) whether the property contains asbestos materials at any time;
 - (v) whether consents and approvals required from any authority for the use of the property have been obtained or complied with at any time;

23. Announcements

23.1 Except as required by law, all press releases and other public announcements in connection with this Agreement must be in terms agreed by the State prior to their release or announcement. This clause 23.1 only applies in respect of a Capital Funded Property that is the subject of an Approved Transaction Proposal and only applies in respect of that Capital Funded Property until:

- (a) if the Approved Transaction Proposal indicates that the Project for the Capital Funded Property is the purchase of the Property – 6 months after settlement of the purchase of the Property; or
- (b) if the Approved Transaction Proposal indicates that the Project for the Capital Funded Property is for construction on

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the Capital Funded Property or for the purchase of the Capital Funded Property and construction on the Capital Funded Property – the Provider has submitted all final acquittal reports in accordance with the Delivery Kit and this Agreement to the State’s satisfaction.

- 23.2 The State may make any press release or public announcement as it deems fit in its entire discretion and does not require the consent of the Provider.
- 23.3 The Provider must acknowledge the Funding received from the State in:
- (a) any annual report that the Provider produces; and
 - (b) in promotional material relating to activities of the Provider which include activities funded by the State.
- 23.4 The Provider must obtain the State’s prior permission before it commences any publicity of, or involvement with any media at, a Capital Funded Property or Lease Property or which in any way concerns any of those properties or the Funded Services or the Provider’s obligations under this Agreement.

24. Right to information and privacy

- 24.1 The Provider acknowledges that this Agreement and information connected with it is potentially subject to disclosure to third parties under the *Right to Information Act 2009* (Qld).
- 24.2 The State may publish or require the Provider to publish:
- (a) its name and address;
 - (b) a summary of the Provider’s obligations under this Agreement and the Funding, including the number and nature of the Capital Funded Properties and Lease Properties and a description of Funded Services and the amount of Funding; and

(c) a description of any procurement method used to award the Funding to the Provider.

- 24.3 If the Provider collects or has access to Personal Information in order to carry out the purposes of Funding, the Provider must comply with:
- (a) Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld), in relation to the discharge of its obligations under this Agreement as if the Provider was the State; and
 - (b) such other privacy measures and other measures to secure such Personal Information as the State reasonably advises the Provider in writing from time to time.
- 24.4 The Provider must make available to individuals from whom it collects Personal Information, a privacy notice containing the information specified in Information Privacy Principle 2(3) in schedule 3 of the *Information Privacy Act 2009* (Qld). The Provider must ensure that the privacy notice notifies tenants of the disclosure to the State of information about tenants for the purposes of the Provider reporting and providing information to the State under this Agreement, including information relevant to eligibility of tenants under the Policies. The privacy notice must be of a standard reasonably acceptable to the State.
- 24.5 The Provider must immediately notify the State on becoming aware of any breach of this clause 24.

25. Intellectual Property rights

- 25.1 If the State owns the Intellectual Property in material it provides to the Provider, the State will own any alterations or additions made to that material.
- 25.2 Subject to the interests reserved to the State in clause 25.1, where Intellectual Property exists in material created by the Provider from Funding, the Intellectual Property will

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be owned by the Provider. However, the Provider grants to the State an irrevocable, fee-free non-exclusive licence to use any such material as a resource for the purposes of service delivery under housing programs.

- 25.3 The State acknowledges that the licence granted by the Provider in the preceding clause does not extend to any Intellectual Property owned by, or jointly or severally owned with, any third party. However, the Provider will use best endeavours to obtain a licence on the same terms from that third party to the State for the use of such Intellectual Property solely for housing program delivery purposes.
- 25.4 The Provider must ensure that licences under clauses 25.2 and 25.3 include rights sufficient to enable the State to complete any construction works if the Provider is unable to complete them.
- 25.5 The Provider agrees that, in providing the Social Housing and delivering all Funded Services the Provider will:
- (a) respect the cultural and spiritual significance of Aboriginal and Torres Strait Islander people;
 - (b) refrain from incorporating any elements derived from Aboriginal and Torres Strait Islander cultural heritage into any material created under the Service Agreement without the informed and written consent of the cultural custodians, clan or language groups and community representatives deemed acceptable by each community; and
 - (c) inform the State in writing about any elements derived from Aboriginal and Torres Strait Islander cultural heritage which the Provider incorporates into any material which the Provider creates and delivers to the State under this Agreement, and of any consent which the Provider has obtained relating to the use of such elements.

26. Public records

- 26.1 This clause applies to Public Records referred to in clause 26.2 held by or created by the Provider and any Public Records which the State provides to the Provider.
- 26.2 The Provider must make and keep full and accurate records relating to the Agreement and the Funding and such records are made for the purposes of the State and are Public Records.
- 26.3 Any Public Records which the State provides to the Provider remain the property of the State.
- 26.4 Ownership in a Public Record created by the Provider vests in the State when the Public Record is created.
- 26.5 The Provider must comply with the *Public Records Act 2002* (Qld) as if it were the State in managing the Public Records including complying with any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records as amended or replaced from time to time, and any additional Queensland Government Information Standards relating to Public Records issued from time to time.
- 26.6 The Provider must fully co-operate with the State to enable the State to respond to applications for access to information under the *Right to Information Act 2009* (Qld) and *Information Privacy Act 2009* (Qld), including by giving the State access to the Provider's recordkeeping systems for the purposes of retrieving the relevant Public Records.
- 26.7 The Provider must give the Public Records to the State within 5 Business Days after the expiry or termination of the Agreement.
- 26.8 The Provider must ensure that sub-contractors engaged by the Provider in connection with the Agreement:
- (a) comply with obligations the same as those imposed on the Provider under this clause; and

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- (b) if requested by the State, enter into a deed in a form acceptable to the State which requires the sub-contractor to comply with obligations the same as those imposed on the Provider under this clause.

27. Indemnity

27.1 The Provider releases, discharges and indemnifies the State, to the full extent permitted by law, from and against any Claim that may be brought against or made upon or incurred by the State in connection with:

- (a) the carrying out of the Provider's obligations under this Agreement;
- (b) any wilful, negligent or unlawful act or omission of the Provider; or
- (c) a breach of this Agreement by the Provider,

except to the extent that any act or omission by the State caused or contributed to the Claim.

27.2 The Provider performs its obligations under this Agreement entirely at its own risk and the State will not be liable for any Claim brought against or made on or incurred by the Provider in connection with the performance of its obligations.

28. Insurance

28.1 The Provider, at its own cost, must maintain effective insurance cover to the reasonable satisfaction of the State for the term of the Agreement, including:

- (a) workers' compensation insurance;
- (b) public liability insurance of a minimum of \$20,000,000 per event giving rise to a Claim, or any other amount reasonably required by the State;
- (c) a buildings and property policy to cover the full value of the improvements on the Capital Funded Properties;

- (d) compulsory, comprehensive or replacement cover insurance for other assets purchased through the Funding; and
- (e) works insurance in accordance with the Delivery Kit; and
- (f) and any other policy which is required by law.

Note: There are additional requirements for insurance for:

- the construction phase of a Project in the Delivery Kit – see clause 51.7 and Schedule 6; and
- Leased Properties – see clause 69.

28.2 The Provider must provide evidence to satisfy the State that it has the insurance coverage listed above in place within 10 Business Days after receipt of the State's written request for evidence of such insurances.

28.3 If the Provider fails to take out or cause to be maintained insurance as required by clause 28.1, the State may effect the necessary insurance and recover the amount of the insurance premium from the Provider as a debt due to the State.

29. Dispute resolution

29.1 The Provider and the State agree to follow the following procedure prior to the commencement of litigation or other external dispute resolution procedure.

29.2 If either party notifies the other in writing that a dispute exists, then the parties will meet within 5 Business Days after receipt of the notice at a mutually convenient time and place or by telephone conference and attempt to resolve the dispute.

29.3 If, after 5 Business Days after meeting in accordance with clause 29.2, the parties cannot resolve the dispute to their satisfaction as agreed in writing, then either of them may give notice of the inability to resolve such dispute to their respective nominated executives. Within 10 Business

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Days after receipt of the notice, the executives will meet at a mutually convenient place or by telephone conference and attempt to resolve the dispute.

- 29.4 If after 10 Business Days the executives have not resolved the dispute to their satisfaction as agreed in writing, then either party may proceed in accordance with its remedies at law.
- 29.5 The parties may agree to escalate the dispute to any level at any time, or to attempt to resolve the dispute through mediation.
- 29.6 Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this Agreement.
- 29.7 This clause does not apply to the State exercising a right or making a decision in relation to a Condition Precedent or in relation to terminating this Agreement under clause 35.
- 29.8 Nothing in this clause prevents either party from commencing court proceedings relating to any dispute arising from this Agreement at any time where that party seeks urgent interlocutory relief or prevents the State exercising rights under clauses 21, 33 or 35.

30. Conflicts of interest

- 30.1 The Provider warrants that no conflict of interest exists or is likely to arise in connection with the performance of this Agreement.
- 30.2 The Provider must:
- (a) promptly notify the State if any conflict of interest arises or, in the reasonable opinion of the Provider, has the potential to arise; and
 - (b) promptly take all steps necessary to prevent that conflict or potential conflict.

30.3 The Provider must provide the notification and take the steps under clause 30.2 as promptly as possible and, in any event, within 72 hours.

30.4 Conflicts of interest include:

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

31. Force majeure

31.1 If the performance by a party of an obligation under this Agreement is affected by an unavoidable delay due to a Force Majeure Event:

- (a) the party must:
 - (i) promptly give notice of that fact to the other party; and
 - (ii) do all things necessary to mitigate remove the effects of the Force Majeure Event; and
- (b) that obligation is suspended to the extent that the performance of the obligation is affected by the Force Majeure Event as long as the Force Majeure Event continues.

31.2 Notice of a Force Majeure Event must include:

- (a) the full particulars of the Force Majeure Event;
- (b) the effect of the Force Majeure Event on the affected party's performance of their obligations;

Part A – General Terms

- (c) the anticipated period for which the Force Majeure Event will continue; and
- (d) any action the affected Party intends to take to mitigate or remove the effect of the Force Majeure Event.

- 31.3 If the Provider is prevented from or delayed in performing its obligations because of a Force Majeure Event for at least 6 months the State may, in its entire discretion, by notice to the Provider, terminate this Agreement only in relation to obligations regarding any particular Capital Funded Property, Lease Property or Funded Services which can no longer be used or provided in accordance with this Agreement. Clause 36 applies in respect of that termination.
- 31.4 This clause does not apply in respect of a Provider's obligation to reach Practical Completion of a Project by the Milestone Date for Practical Completion specified in the Approved Transaction Proposal for the Project.

32. GST

- 32.1 Subject to clause 32.2, if the whole or any part of any payment is consideration for a supply for which the payee is liable, or notionally liable, to GST, the payer must pay to the payee as additional consideration an amount equal to the GST Amount as follows:
- (a) if the payer is the Provider, the earlier of:
 - (i) the date on which the State issues the Provider with a Tax Invoice in respect of the payment; or
 - (ii) concurrently with the payment; or
 - (b) if the payer is the State, within 10 days of any ITC Refund Date;
- 32.2 The liability of the State under paragraph 32.1 is limited to the amount of the benefit of any Input Tax Credit entitlement that the State receives and retains in respect of the Supply.
- 32.3 If, for whatever reason, the Commissioner of Taxation determines that the State is not entitled to or disallows any Input Tax Credits referable to any GST Amount the State has paid to the Provider, the Provider will repay to the State an equivalent amount within 10 Business Days of the State notifying the Provider in writing of the Commissioner of Taxation's determination.
- 32.4 The payee will provide to the payer a Tax Invoice at the time at which any payment is made under this clause.
- 32.5 Clauses 32.1 to 32.4 do not apply to the extent that the consideration for the Supply is expressly stated to be GST inclusive.
- 32.6 Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, it will be reduced by any Input Tax Credit entitlement, or notional Input Tax Credit entitlement in relation to the relevant cost.
- 32.7 The State is responsible for:
 - (a) determining the value of all non-monetary consideration being provided by either party pursuant to this Agreement; and
 - (b) providing the Provider with all documents, evidence and information reasonably required by the Provider to support the value so determined.
- 32.8 The Parties agree that:
 - (a) the State can issue Tax Invoices in respect of supplies made by the Provider under or in connection with this Agreement; and
 - (b) the Provider will not issue Tax Invoices in respect of these supplies.
- 32.9 The Provider acknowledges that it is registered for GST when it enters into this Agreement and that it will notify the State if it ceases to be so registered.
- 32.10 If a person is a member of a GST group, references to GST for which the person is

Part A – General Terms

liable and to Input Tax Credits to which the person is entitled include GST for which the representative member of the GST group is liable and Input Tax Credits to which the representative member is entitled.

32.11 If, for any reason, including without limitation:

- (a) any amendment to the GST legislation;
- (b) the issue of a ruling or advice by the Commissioner of Taxation;
- (c) a refund to the State or to the Provider in respect of a supply made under this Agreement; or
- (d) a decision of any tribunal or court, the amount of GST paid by a party differs from the amount of GST paid or payable by the other party to the Commissioner of Taxation, then the other party must issue an appropriate GST adjustment note and any difference must be paid by or to the other party as the case may be.

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

33. Funding and breach

33.1 The State is not required to pay Funding if at the time that the Funding is payable, the Provider has not performed the Agreement to the reasonable satisfaction of the State, including if the Provider has failed to provide Reports under clause 17 or if a Payment Claim is unsatisfactory to the State.

33.2 If the Provider breaches this Agreement, the State may, at its entire discretion, remedy the breach, in which case the Provider must pay all of the State's reasonable costs and outlays of and incidental to remedying the breach.

33.3 If, at any time, the State forms the reasonable opinion or otherwise becomes aware that:

(a) any part of the Funding or Receipts has been used, spent or committed by the Provider other than in accordance with this Agreement; or

(b) the State has made payments of the Funding, or otherwise, to which the Provider is not, in whole or part, entitled,

the State may by written notice to the Provider require the Provider to repay that part of the Funding or Receipts, and the Provider must repay to the State the amount set out in the notice within 20 Business Days of receipt of the notice.

33.4 Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.

33.5 Despite any other provision of the Agreement, the State is not required to release the State's Security under clause 56 if the Provider is in breach of this Agreement or any debt remains outstanding to the State under this Agreement.

34. Termination of this Agreement by the Provider

34.1 The Provider may terminate this Agreement by written notice to the State if:

- (a) this Agreement has been terminated for:
 - (i) all Capital Funded Properties under clause 58;
 - (ii) all Lease Properties under clause 82;
 - (iii) all Services Funding Schedules under clause 95;
- (b) the Provider has complied with all of its Reporting obligations under clause 17 in respect of the period up to and including the date of the last of those terminations; and
- (c) there is no unremedied breach of this Agreement as at the date of the notice

Part A – General Terms

and no outstanding debt of the Provider to the State.

34.2 The termination of this Agreement under this clause takes effect on the date the State gives the Provider written notice that it accepts that the matters in clauses 34.1(a) to 34.1(c) have been satisfied.

35. Termination of this Agreement by the State

35.1 The State may terminate this Agreement by written notice to the Provider if the Provider:

- (a) is in breach of this Agreement and fails to remedy the breach within 20 Business Days after the State gives the Provider a notice to remedy the breach;
- (b) commits a breach of this Agreement that is incapable of remedy;
- (c) fails to immediately implement and pursue diligently a cure plan in accordance with clause 21.7;
- (d) commits a serious breach of this Agreement, including use of Property that is required under this Agreement to be used for the provision of Social Housing for purposes other than for the provision of Social Housing;
- (e) has breached any other funding agreement between the State and the Provider and that other funding agreement has been terminated for that breach;
- (f) ceases to be a Registered Provider or Exempt Provider;
- (g) ceases to carry on business for a continuous period of at least 20 Business Days;
- (h) becomes insolvent or is unable to pay its debts as and when they fall due;
- (i) enters into liquidation, or is subject to any proceedings being commenced for or in relation to its liquidation (unless

those proceedings are dismissed or withdrawn within 20 Business Days);

- (j) has a receiver or manager appointed or becomes subject to any form of external administration and such appointment is not terminated within 20 Business Days;
- (k) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
- (l) commences, or is subject to, any proceedings for its winding up (unless those proceedings are dismissed or withdrawn within 20 Business Days).

35.2 The notice to remedy under clause 35.1(a) may be in the form specified by s 124 of the *Property Law Act 1974*.

35.3 If this Agreement is terminated by the State under clause 35, subject to the provisions of any Tripartite Deed, the Provider must immediately repay all or part of the Funding which has not been spent by the Provider and the State may do one or more of the following:

- (a) Exercise all or any of its powers under the Security in respect of any or all of the Capital Funded Properties.
- (b) Demand from the Provider payment of the amount in respect of some or all of the Capital Funded Properties calculated as follows:
 - (i) the Market Value of the Capital Funded Property (inclusive of GST) (if applicable); minus
 - (ii) the current Market Value of the Excluded Land (assessed as if the Excluded Land was vacant land without the Improvements); minus
 - (iii) the Provider Contribution.
- (c) Require the Provider to immediately repay all or part of the Funding which has not been spent by the Provider.

Part A – General Terms

- (d) Re-enter into and take possession of the Lease Properties or any part of them without any prior demand or notice.
- (e) Demand from the Provider any other amount directly necessary to remedy the breach by the Provider including, for example, costs and expenses incurred in maintaining the Properties to the extent that the Provider has failed to comply with its maintenance obligations and reasonable legal costs and the Provider must pay the amount demanded.

35.4 Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.

36. Consequences of termination by the State

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

36.2 Termination of part of this Agreement means termination of this Agreement only in respect of a particular Capital Funded Property, Lease Property, Services Funding Schedule or particular Funding. If the State terminates part of this Agreement it will include in the notice of termination, revised schedules identifying which parts remain on foot.

36.3 Termination of this Agreement in whole or part will not affect any rights or remedies already accrued to either party under, or in respect of any breach of, this Agreement and will not relieve either party of any obligation under this Agreement that is expressed to continue after termination or expiry.

36.4 In connection with any termination or the cessation of any part of the Funding, the Provider must:

- (a) cooperate with the State in relation to:

- (i) the process that the Provider will employ to cease providing Social Housing, Affordable Housing and Funded Services;
- (ii) the continuity of provision of Social Housing, Affordable Housing and Funded Services to the Service Users; and
- (iii) handling of records and information in connection with the Funding and this Agreement; and

- (b) if the termination relates to termination of Funding under a Services Funding Schedule, comply with any notice that the State gives the Provider about the transfer or disposal of any Funded Personal Property.

36.5 If this Agreement is terminated or part of this Agreement is terminated for any reason the State will not be liable to pay the Provider compensation for any loss of profit or benefits that the Provider would have received had the termination not occurred.

36.6 The State may exercise its rights under this clause in its entire discretion in relation to the whole of this Agreement despite the breach relating to only one particular Property or particular Funding. This discretion is not limited in any way, whether under any implied obligation term or duty or otherwise.

36.7 The following clauses will survive termination or expiry of this Agreement:

- (a) Clause 6 (Receipts and Surplus).
- (b) Clause 17 (Reports).
- (c) Clause 19 (Records and audit).
- (d) Clause 24 (Right to information and privacy).
- (e) Clause 25 (Intellectual Property rights).
- (f) Clause 26 (Public Records).
- (g) Clause 27 (Indemnity).
- (h) Clause 32 (GST).

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- (i) Clause 33 (Funding and breach).
- (j) Clause 34 (Termination by the Provider)
- (k) Clause 35 (Termination by the State)
- (l) Clause 60 (Third Party Land).

37. Notices

- 37.1 All notices in connection with this Agreement must be in writing and must be delivered to the address of the party set out in Item 1 of the Agreement Particulars by hand or prepaid post or emailed to its email address.
- 37.2 A notice will be deemed to be given:
- (a) if posted – 2 Business Days after the date of posting;
 - (b) if delivered by hand during a Business Day– on the date of delivery; or
 - (c) if emailed – on the date of the email.
- except that an email or delivery received after 5:00 pm will be deemed to be given on the next Business Day.
- 37.3 The parties may from time to time change their respective addresses, telephone and email addresses by providing the other party with written notice.

38. General provisions

- 38.1 **Approvals** - Approval or comment by the State on something submitted under this Agreement does not constitute a waiver or relieve the Provider from any requirements to obtain approvals under relevant laws.
- 38.2 **Compliance with all laws** – Both parties must comply with all relevant laws in performing their obligations under this Agreement.
- 38.3 **Costs** - Each party must pay its own legal costs of and incidental to the preparation, negotiation and execution of this Agreement. The Provider must pay to the State on demand any costs (including legal fees on a full indemnity basis) incurred by the State in the enforcement of this Agreement, or as a result of any breach by the Provider of this Agreement.
- 38.4 **Entire agreement** - This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements.
- 38.5 **Execution** - This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument. This Agreement may be signed electronically.
- 38.6 **Further assistance** – Each party must do all things reasonably required to give effect to this Agreement.
- 38.7 **Governing law** - This Agreement will be construed according to the law of Queensland and the parties agree to submit to the jurisdiction of the courts of Queensland.
- 38.8 **No agency or partnership** - The Provider will not by virtue of this Agreement be or become an agent or partner of the State or a joint venturer with the State and must not represent itself or allow itself to be represented as the State's agent, partner or joint venturer.
- 38.9 **No assignment** - The Provider agrees that it will not assign, transfer, subcontract or novate in whole or part or create any security interest over or otherwise deal with in any way its interest in this Agreement, without the prior written consent of the State whose decision will be final.
- 38.10 **Severability** - If any part of this Agreement is determined to be invalid, unlawful or unenforceable for any reason then that part will be severed from the rest of the Agreement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

- 38.11 **Stamp duty** - The Provider must pay all stamp duty on this Agreement and any transaction, event or occurrence that is effected under or in relation to this Agreement.
- 38.12 **Variation** - Except as expressly provided under this Agreement, this Agreement may be varied by agreement signed by both parties.
- 38.13 **Waiver** - No provision of this Agreement will be deemed to be waived unless that waiver is in writing and signed by the waiving party. Any failure by a party at any time to enforce a clause of this Agreement, or any forbearance, delay or indulgence granted by a party to the other will not constitute a waiver of the party's rights. A waiver by a party of a breach of any provision of this Agreement will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.

Part B - Capital Funding Terms

39. Application

39.1 The terms in this Part B - Capital Funding Terms apply to all Capital Funded Properties in addition to the terms in Part A – General Terms.

40. Definitions for Part B

40.1 In this Part B - Capital Funding Terms, the following definitions apply in addition to the definitions set out in clause 1.1:

Conditions Precedent in respect of a Capital Funded Property, mean the conditions specified in respect of the property in the special conditions in the Approved Transaction Proposal;

Conditions Precedent Date in respect of a Capital Funded Property, means the conditions date specified in respect of the property in the special conditions in the Approved Transaction Proposal;

Delivery Kit means delivery kit in the Policies, being, as at the date of this Agreement, the document titled 'Delivery of Capital Grant Funded Construction Projects' and attached in Schedule 6;

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

Electronic Lodgement Network Operator has the meaning given in the Electronic Conveyancing National Law (Queensland);

Electronic Workspace means a shared electronic workspace within an Electronic Lodgement Network Operator's system that allows a seller and purchaser to effect electronic lodgement and financial settlement;

Financier means a lender in respect of a Capital Funded Property, approved by the

State under clause 42 or clause 44, from which the Provider will obtain a loan:

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

Financier Contribution means, in respect of a Capital Funded Property, the amount for a Capital Funded Property specified in an Approved Transaction Proposal, being the monetary contribution made by the Provider to the Total Project Costs using funds from finance arrangements, including without limitation, such arrangements entered into by the Provider and any Financier, where:

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

Instalments means, in respect of a Project, the instalments of Funding specified in respect of the Project in the Approved Transaction Proposal;

Instalment Date means, in respect of a Project, the date for payment of an Instalment of Funding specified in respect of the Project in the Approved Transaction Proposal;

Leased Third Party Land means land leased from a third party to the Provider under a lease referred to in clause 60;

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

Part B – Capital Funding Terms

Milestones and **Milestone Dates** in respect of a Project means the milestones and milestone dates specified in respect of the Project in the Approved Transaction Proposal;

Payment Claim means a claim for payment of an Instalment of Funding that includes the information and material set out in clause 51.2

Practical Completion means, in respect of a Project, the date upon which:

- (a) the dwellings for that Project are fit for use and occupation by the Provider and tenants with construction of those dwellings being complete except for minor omissions and minor defects that do not affect use and occupancy; and
- (b) all relevant statutory requirements have been complied with and certificates for those requirements have been obtained by the Provider;

Project means the Project to be carried out in respect of a Capital Funded Property by the Provider, as described for the Capital Funded Property in the Approved Transaction Proposal, in accordance with the Delivery Kit and this Agreement;

Project Budget means the budget for the Project identified in the Approved Transaction Proposal;

Project Manager has the meaning given in the Delivery Kit;

Project Use in respect of a Capital Funded Property, means the project use specified in respect of the Capital Funded Property in Schedule 1 or an Approved Transaction Proposal;

Provider Contribution means, in respect of a Capital Funded Property, the amount of funding contributed by the Provider towards the Total Project Cost, excluding any Financier Contribution;

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

Replacement Property has the meaning given in clause 55.1;

Secured Term means:

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

State's Security in respect of a Capital Funded Property, means the State's security specified in respect of the property in the Approved Transaction Proposal;

Target Group in respect of a Capital Funded Property, means the target group specified in respect of the Capital Funded Property in Schedule 1 or an Approved Transaction Proposal;

Total Project Costs in respect of a Project, mean the total development costs specified in respect of the Project in the Approved Transaction Proposal;

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

Third Party Lease has the meaning given in clause 60.3;

Third Party Owner means the entity identified in the Approved Transaction Proposal for a Capital Funded Property that is to lease the Third Party Lease Land to the Provider.

Part B – Capital Funding Terms**41. Conditions Precedent**

- 41.1 This clause 46 applies if the Approved Transaction Proposal indicates that the provision of Funding in respect of a Capital Funded Property is subject to Conditions Precedent.
- 41.2 The Provision of Funding in respect of the Capital Funded Property is subject to, and conditional upon, the satisfaction of the Conditions Precedent by the Conditions Precedent Date. Where there is more than one Condition Precedent, the provision of the Funding is conditional upon each Condition Precedent being satisfied by the relevant Condition Precedent Date.
- 41.3 The Provider must exercise diligence and use best endeavours to satisfy the Conditions Precedent by the Conditions Precedent Date, including, where a Condition Precedent relates to finance or borrowing, taking reasonable steps to obtain approval for a loan on terms and from a lender acceptable to the State.
- 41.4 The Provider must provide evidence to the State of the satisfaction of the Conditions Precedent by the Conditions Precedent Date. The State must notify the Provider of the date on which the State is satisfied that the Conditions Precedent have been met within 3 Business Days after it is satisfied that the Conditions Precedent have been met.
- 41.5 If the Conditions Precedent in respect of a Capital Funded Property are not satisfied by the Conditions Precedent Date, then:
- (a) either party may terminate this Agreement to the extent that it relates to the provision of Funding in respect of the Capital Funded Property, by notice to the other party;
 - (b) upon termination, neither party will have any obligations under this Agreement or any Claim against the other in respect of the provision of that

Funding, except as provided for in clause 41.6; and

- (c) after termination the State will issue revised schedules to the Provider, signed on behalf of the State, to reflect the termination.
- 41.6 If the State has paid any Funding in respect of a Capital Funded Property to the Provider before satisfaction of the Conditions Precedent the following applies:
- (a) If the Provider is in breach of this Agreement, the Provider must immediately repay to the State all amounts of that Funding.
 - (b) If the Provider is not in breach of this Agreement, the Provider must immediately repay to the State that part of the Funding which has not been spent by the Provider in accordance with this Agreement.
 - (c) Amounts required to be repaid by the Provider to the State under this clause 41.6 will be a debt due to the State.
- 41.7 The Provider may, on or before a Condition Precedent Date, request an extension of a Condition Precedent Date. The request must set out the reasons for any delay and the extension request.
- 41.8 The State may extend a Condition Precedent Date by notice to the Provider.

42. Finance

- 42.1 This clause applies if:
- (a) the Conditions Precedent include obtaining approval for a loan from a lender acceptable to the State or otherwise relate to any borrowing from a lender; or
 - (b) at any time during the Term, the Provider seeks approval from the State under clause 44.1 to grant any security over the Capital Funded Property to a third party.

Part B – Capital Funding Terms

- 42.2 The Conditions Precedent and the requirement to obtain the State's approval under clause 44.1 are deemed to include a requirement that:
- (a) the State approve the proposed financier in accordance with this clause;
 - (b) the State approve the terms of the proposed borrowing and financier's security;
 - (c) the proposed financier, the State and the Provider enter into a Tripartite Deed on terms satisfactory to the State; and
 - (d) the State is provided with a copy of the signed Tripartite Deed.
- 42.3 The Provider must give the State the name of the proposed lender and information about the loan promptly after entering into this Agreement, including the letter of offer from the lender and terms of the loan. The Provider must give the State any additional information about the proposed lender or loan reasonably requested by the State.
- 42.4 The lender will be acceptable to the State if it is Housing Australia.
- 42.5 If the lender is not Housing Australia, the State must notify the Provider whether it approves or refuses to approve the proposed lender within 14 days after receiving the information under clause 42.3. The State will not act unreasonably in approving a lender that is an authorised deposit-taking institution under the *Banking Act 1959* (Cth) or a corporation formed under a law of a State or Territory to carry on the business of banking in Australia.
- 42.6 If the State refuses to approve the proposed lender and the Approved Transaction Proposal includes a Financier Contribution, then the Provider must provide an alternative lender under clause 42.3. For clarity, the approval of the lender under this clause does not constitute approval of the Provider's proposed borrowing or the lender's proposed security.

- 42.7 The State must also approve the terms of the proposed borrowing and security. The State may approve or refuse to approve the proposed borrowing or security in its entire discretion.

43. State's Security

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

44. Financier security

- 44.1 The Provider must obtain the State's written approval prior to giving any security over the Capital Funded Property to any third party. The State may, in its sole discretion, approve or reject the Provider's request under this clause 44.1.
- 44.2 If the State approves a grant of security to a third party, the Provider may grant the security in accordance with the approval only if:
- (a) the Director-General of the Department has given any approval to the security required under the Regulation, including section 10 of the Regulation if applicable; and

Part B – Capital Funding Terms

(b) the conditions in clause 42 have been satisfied.

45. Payment and use of Funding

- 45.1 The State will provide the Funding subject to satisfactory completion of the Milestones and compliance with the terms of this Agreement in accordance with clauses 49 and 51, as applicable.
- 45.2 If the Approved Transaction Proposal indicates that the Provider may draw on any Funding constituted by the Surplus, the Provider may draw on that Surplus subject to the following:
- (a) The Provider may not draw on any Funding constituted by the Surplus until the State has notified the Provider that Funding may be drawn on as Funding under this Agreement.
 - (b) If required by the State, any new monetary Funding will only be paid after the Provider has fully expended any Funding constituted by the Surplus.
- 45.3 The Provider must use the Funding only for paying the reasonable costs of carrying out the Project to the extent that those costs constitute Total Project Costs and in accordance with the terms of this Agreement.
- 45.4 Without limiting clause 45.1, the Provider must use the Funding in respect of the Capital Funded Property only for the purpose specified in the Approved Transaction Proposal for the Capital Funded Property.

46. Bank account

- 46.1 The Provider must keep the Funding and Receipts connected with Capital Funded Properties in a bank account.
- 46.2 The Provider must maintain separate and readily identifiable ledger accounts to record the Provider's receipt of the Funding and

Receipts for the Project and the Provider's expenditure on the Project.

- 46.3 The Provider must keep itemised records of the Provider Contribution and Financier Contribution including payment schedules, security and outstanding third-party loan balances in respect of each Capital Funded Property and show those records to the State if requested by the State.

47. Provider Contribution

- 47.1 The Provider must:
- (a) contribute the Provider Contribution and the Financier Contribution towards the Project; and
 - (b) use Funding for the Project only after the Provider Contribution has been exhausted, unless otherwise approved by the State.
- 47.2 The Provider may use the Financier Contribution after using the Funding.
- 47.3 If the Contribution item in the Approved Transaction Proposal indicates that the Provider will obtain part of the Provider Contribution from another organisation, the Provider must ensure that it obtains that part. The Provider must ensure it obtains the Financier Contribution from the Financier. The Provider remains liable for making the Provider Contribution and the Financier Contribution and the State is not required to contribute any additional amount, even if the Provider does not obtain those contributions from any third party.

48. Future Funding requests

- 48.1 The Provider may request additional Funding to take into account escalations in building costs and increased financing costs that are beyond the Provider's control. The State may approve or refuse that request in its entire discretion and may require the Provider to enter into a deed of variation as a condition of any approval.

Part B – Capital Funding Terms

49. Purchase

- 49.1 This clause applies if the Funding is provided for the purchase of Capital Funded Property.
- 49.2 The State may in its entire discretion decide whether or not to advance amounts of new monetary Funding for the purchase of the Capital Funded Property prior to settlement of the purchase. Despite any other clause, the State reserves the right not to pay any amount of Funding for the purchase of a Capital Funded Property until settlement of the purchase of the Capital Funded Property.
- 49.3 The Provider must give the State a copy of the contracts of sale for the Provider's purchase of the Capital Funded Property. The Provider must promptly give the State any additional information about the contracts or the Capital Funded Property reasonably requested by the State, including notification of the settlement date, place and time.
- 49.4 The State will attend the settlement of the purchase of the Capital Funded Property and provide at settlement a bank cheque payable to, or at the direction of the seller of the Capital Funded Property, for the amount of the relevant Instalment of Funding. Alternatively, the State may, in its sole discretion, transfer the relevant Instalment of Funding to:
- (a) the Provider or the Provider's lawyers; or
 - (b) to the seller of the Capital Funded Property or its lawyers,
- for the sole purpose of making payments at settlement.
- 49.5 Despite any other clause;
- (a) any Funding for the purchase of the Capital Funded Property must not exceed the Market Value of the Capital Funded Property; and
 - (b) the amount payable under clause 49.4 must not exceed the adjusted balance purchase price less the deposit.
- 49.6 Before the settlement of the purchase of the Capital Funded Property, the Provider must deliver to the State:
- (a) the State's Security executed by the Provider;
 - (b) a receipt issued by, or on behalf of, the seller stating the amount of the deposit paid by the Provider under the contract of sale; and
 - (c) if applicable, the Tripartite Deed.
- 49.7 At the settlement of the purchase of the Capital Funded Property:
- (a) the Provider must deliver to the State, in a form capable of immediate registration:
 - (i) the Transfer Documents fully executed and stamped;
 - (ii) a release of any mortgage, caveat or other encumbrance over the Capital Funded Property, other than any easement or other encumbrance that the State agrees in writing may remain; and
 - (b) a bank cheque payable to Queensland Titles Registry Pty Ltd or such other entity or person as directed by the State for any registration fees for registration of the Transfer Documents and releases.
- 49.8 After settlement, the State will lodge the Transfer Documents, State's Security and any releases for registration and provide a copy of the registration confirmation statement to the Provider. The Provider authorises the State to complete any information missing from the Transfer Documents or State's Security which is required to enable registration to give effect to this Agreement.
- 49.9 The Provider must:
- (a) promptly assist the State to answer any requisition issued by the registrar of titles in respect of the lodgement for

registration of the Transfer Documents and State's Security; and

- (b) pay to the State any requisition fees in respect of those requisitions within 7 days after the State's request.

49.10 Any amount payable by the Provider under this clause is a debt due to the State.

49.11 Clauses 49.3 to 49.11 are subject to any direction by the State about settlement and lodgement arrangements with a Financier and the Provider must comply with any direction given by the State to provide documents, bank cheques, authorisation, assistance and payment under clauses 49.3 to 49.11 to the Financier instead of the State.

49.12 If settlement of the Provider's purchase of the Capital Funded Property does not occur by the Milestone Date for that settlement, the State may by notice to the Provider immediately terminate this Agreement to the extent that it relates to Funding for the Capital Funded Property and clauses 41.6(a) to 41.6(c) are deemed to apply as if they were set out in this clause and the cross-reference in clause 41.6 were to clause 49.12. The State will issue revised schedules to the Provider, signed on behalf of the State, to reflect any termination under this clause.

49.13 If settlement of the Provider's purchase of the Capital Funded Property occurs by means of an electronic settlement, facilitated by an Electronic Lodgement Network Operator capable of facilitating financial settlement and electronic lodgement in Queensland, then:

- (a) the reference to 'bank cheque' in clauses 49.4, 49.7(b) and 49.11 are deemed to mean electronic payment; and
- (b) the references to delivery of signed documents may be satisfied through the documents being digitally signed and lodged through the Electronic Workspace.

50. Transfer

50.1 If the Funding is paid by way of the transfer of property from the State to the Provider:

- (a) the State agrees and the Provider consents to the transfer of the property to the Provider on the later of that day that:

- (i) the State obtains the registered title to the property; and
- (ii) all documents required for the immediate transfer of the property and the State's Security have been duly executed by all parties and are held by the State;

(the **Transfer Date**);

- (b) the State will bear all risk in relation to the property up to and including the Transfer Date and the Provider will bear all risk in relation to the property from the Transfer Date;
- (c) the transfer of the property will occur subject to any relevant encumbrance; and
- (d) the Provider must only take possession of the property on or as soon as practical after the Transfer Date.

51. Construction

51.1 This clause 51 applies if Funding is provided for construction of Capital Funded Property or if a Project includes construction.

51.2 The State will pay each Instalment of the Funding (other than an Instalment that has been paid under clause 49) to the Provider on the Instalment Date, subject to:

- (a) the completion of any Milestone that is scheduled to be completed by the relevant Instalment Date and any Reports due before the Instalment is to be paid; and
- (b) the Provider providing a Payment Claim to the State.

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- 51.3 The Provider must ensure that the Payment Claim includes the following information and material:
- (a) a brief report signed on behalf of the Provider setting out the Instalment number and Instalment date, the Milestones which have been completed for the relevant period and Reports due before the Instalment is to be paid;
 - (b) a description of each Milestone achieved for the relevant period and, if applicable, evidence of completion of the Milestone;
 - (c) total expenditure by the Provider on Total Project Costs to date and a statement itemising each item of expenditure of the Funding received by the Provider, including breakdowns of expenditure on each improvement, project management costs and construction costs with a breakdown by trade;
 - (d) the total number of claims submitted by the Provider and the total amount already paid by the State up to the date of the claim;
 - (e) the amount of the budget remaining for the Project out of the Project Budget, excluding the amount of the claim; and
 - (f) in the absence of an RCTI – a Tax Invoice for the amount of the claim;
 - (g) if there is an RCTI agreement – a letter requesting the funds required for payment of the attached certified invoices;
 - (h) a copy of the contractor’s claim and invoice;
 - (i) a copy of the Project Manager’s certification;
 - (j) before and after photographs of construction milestones which have been achieved;
 - (k) confirmation that the Provider Contribution and any sale proceeds and Surplus has been fully expended on Total Project Costs before Funding has been used;
 - (l) a declaration signed on behalf of the Provider testifying that the information submitted in support of the claim is accurate;
 - (m) for Instalments required under an Approved Transaction Proposal to be certified by a Quantity Survey – a certification from the Quantity Surveyor that:
 - (i) the building work for the dwellings to be constructed through the Project has been satisfactorily carried out;
 - (ii) sets out the Quantity Surveyor’s determination of the building costs for the relevant period; and
 - (iii) includes, if requested by the State, documents setting out all of the calculations of the building costs for the relevant period; and
 - (n) any other information and material reasonably requested by the State relating to the Project for which the Instalment is claimed;
- 51.4 The Provider must engage the Quantity Surveyor to provide the certification under clause 51.3(m) unless the State notifies the Provider that the Quantity Surveyor will be engaged by the State.
- 51.5 The Provider may request the State to pay an Instalment before the relevant Instalment Date. The State may agree to or refuse to agree to that request in its sole discretion and the State is not required to pay any Instalment before the relevant Instalment Date.
- 51.6 Under this clause 51.6, the State may withhold Funding where the Provider has not spent some or all of the Funding

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previously paid by the State. The State may, in its absolute discretion, reduce payment of an Instalment of Funding if a Payment Claim reveals that the Provider has unspent Funding, by an amount up to the amount of the unspent Funding. The State will pay the reduced amount within a reasonable time after it receives from the Provider evidence that it has spent the unspent Funding under this Agreement.

- 51.7 The Provider must comply with all obligations under the Delivery Kit, unless otherwise agreed in writing by the State. If there is an inconsistency between the provisions in this Agreement and provisions in the Delivery Kit, the provisions of this Agreement, including about payment of Funding, prevail to the extent of the inconsistency.
- 51.8 The Provider must:
- (a) carry out the Project on the Capital Funded Property in accordance with this Agreement, and the Delivery Kit;
 - (b) achieve Practical Completion of the Project by the Milestone Date for Practical Completion specified in the Approved Transaction Proposal for the Project;
 - (c) use its best endeavours to achieve all other Milestones by the Milestone Dates;
 - (d) give the State information about the progress of the Projects as required by the State;
 - (e) ensure that the Capital Funded Property is used for Social Housing or otherwise as required by clause 4.2(a) promptly after Practical Completion and, in any event, within one month after Practical Completion, unless otherwise approved by the State; and
 - (f) notify the State when the Capital Funded Property is first used for Social Housing
- within 5 Business Days after it is first used for Social Housing.
- 51.9 The Provider must prepare an acquittal for the Project:
- (a) in accordance with clause 15.3 of the Delivery Kit; or
 - (b) if the Delivery Kit does not apply, in accordance with the requirements notified by the State to the Provider.
- 51.10 If the final acquittal identifies that the Contributions exceed actual Total Project Costs, the Provider must:
- (a) pay that amount to the State; or
 - (b) seek the State's approval to credit that amount towards the Provider's next project or other existing project.
- 51.11 If the Provider repays the amount under clause 51.10 the State Funding Contribution will be adjusted accordingly and the State will give the Provider a revised Schedule 1 with the revised State Funding Contribution and Total Project Cost.
- 51.12 If the final acquittal identifies that the actual Total Project Costs are more than Contributions, then the Provider Contribution will be adjusted accordingly and the State will give the Provider a revised Schedule 1 with the revised Provider Contribution.
- 51.13 An amount required to be repaid by the Provider to the State under clause 51.10 is a debt due to the State.
- 51.14 For the purpose of calculating actual costs in delivering the Project, Input Tax Credits that the Provider can claim are excluded.
- 51.15 The Provider must spend the Funding only on the reasonable costs of carrying out the Project incurred:
- (a) on or after the Conditions Precedent Date (unless otherwise approved by the State); and
 - (b) in accordance with the Project Budget.

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- 51.16 The Provider must complete construction of each Project by the Milestone Date for Practical Completion for that Project. If construction of the Project has not been completed by that date then, subject to clause 51.17, the State may terminate this Agreement immediately by written notice to the Provider and clauses 36.4 and 36.5 will apply.
- 51.17 If construction of the Project has not been completed by that date but the delay in the completion of construction was delayed through circumstances beyond the control of the Provider, then the State may give the Provider a notice to complete construction which states that:
- (a) this clause 51.17 applies; and
 - (b) the Provider must complete construction within 20 Business Days of receipt of the notice.
- 51.18 If the Provider fails to complete construction by the date stipulated in the notice given under clause 51.17, the State may terminate this Agreement to the extent that it relates to the Project or to the extent that it relates to the Capital Funded Property by written notice to the Provider and clause 36 will apply.

52. Extension of Milestone Dates

- 52.1 The Provider may, on or before the Milestone Date, request an extension of a Milestone Date. The request must set out the reasons for any delay and the extension request.
- 52.2 The State may extend a Milestone Date by notice to the Provider.
- 52.3 The State will not unreasonably withhold its agreement to an extension provided that the extension will not result in the extension of any Milestone Date to a date later than 12 months after the Milestone Date provided for in this Agreement prior to any extensions under this clause. If an extension is requested to a date that is later than 12

months after that original Milestone Date, the State may agree or refuse to agree to the extension in its entire discretion.

53. Property

- 53.1 The Provider must not grant any right or encumbrance over a Capital Funded Property in favour of any other person, or do or fail to do anything that may cause another person to hold such a right or encumbrance, except where:
- (a) permitted under this Agreement; or
 - (b) the right or encumbrance is a residential occupancy right granted as permitted under this Agreement.
- 53.2 The Provider:
- (a) must comply with the 'prescribed requirements' under the Act and Regulation in relation to the Capital Funded Properties; and
 - (b) acknowledges that community housing assets under the Act must be transferred under s 37H of the Act if the Provider intends to apply for cancellation of its registration under the Act or the registrar cancels the Provider's registration under s 37G(4) of the Act.
- 53.3 The Provider:
- (a) is responsible for the connection of all Utilities to the Capital Funded Properties;
 - (b) must promptly pay all charges for the Utilities;
 - (c) must pay all authority charges in relation to the Capital Funded Properties; and
 - (d) must within 20 Business Days of a request from the State, give proof of any payment of Utilities or authority charges to the State.
- 53.4 If the Provider proposes to name the housing constructed or located on the Capital Funded Property or to change any existing name of the housing, the Provider

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must seek the State's prior written consent to the proposed name.

53.5 The Provider must:

- (a) propose names for the State's consideration no later than 6 months' prior to Practical Completion or otherwise before any proposed name change is implemented; and
- (b) consult with the traditional owners, and community and support services relevant to the Capital Funded Property regarding any proposed name before making a proposal to the State.

54. Sale of Capital Funded Property

54.1 The Provider must not sell or agree to sell the Capital Funded Property to any third party, unless:

- (a) the sale is in accordance with an Approved Transaction Proposal; and
- (b) unless the Approved Transaction Proposal provides that the Provider is not required to make a first offer to the State, the Provider has first offered in writing to sell the Capital Funded Property to the State at the following price (**Offer**):
 - (i) the Market Value of the Capital Funded Property, inclusive of GST (if applicable) determined by a licensed valuer appointed by the President of the Queensland Division of the Australian Property Institute; minus
 - (ii) the Reinvestment Amount.

54.2 The Provider must pay the costs of the valuation under 54.1(b).

54.3 The State will notify the Provider within 7 days after receiving the Notice referred to in clause 55.5 (Notice to the State) of the Reinvestment Amount calculated in accordance with clause 55.

Sale to the State

54.4 If the State accepts the Offer, the Provider and the State must enter into an appropriate standard REIQ or equivalent contract within 14 days after acceptance in writing by the State of the Offer. The contract must provide for the following:

- (a) that the settlement date will be 60 days from the date the contract of sale is entered into;
- (b) any other conditions that the State requires to obtain clear title to the Capital Funded Property.

54.5 If there is a dispute regarding which standard contract is appropriate the dispute will be determined, at the request of either party, by the President of the Queensland Law Society. The costs of the determination will be shared equally by the parties.

Sale to Third Party

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

- (a) the State does not accept the Offer under clause 54.1 within 45 days of the date the State receives the Offer; and
- (b) the Provider complies with clause 55.

55. Re-investment requirements

55.1 On any Sale of the Capital Funded Property the Provider must reinvest the Reinvestment Amount calculated under clause 55.4 in a replacement property to be used in accordance with clause 4.2(a) by the Provider and be subject to the terms of this Agreement (**Replacement Property**).

55.2 Replacement Properties must deliver the same tenancy type as originally contracted unless otherwise approved by the State, including by being for the same Project Use.

55.3 For clarity, this clause 55 applies regardless of whether the State's Security is registered over the Capital Funded Property.

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Calculation of Reinvestment Amount

55.4 The Reinvestment Amount will be calculated as follows:

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

Where:

A = State Funding Contribution, the State's original capital contribution to the Total Project Cost in respect of the Capital Funded Property being sold;

B = Original Total Project Cost, the final Total Project Cost in respect of the Capital Funded Property being sold;

C = Outstanding Debt, that part of the Financier Contribution that is still owed to the financier with respect to the Capital Funded Property being sold, immediately prior to settlement of the sale transaction. Where the debt is secured by property other than the Capital Funded Property being sold, the debt must be apportioned to the Capital Funded Property being sold;

D = Proceeds of Sale, the amount received upon settlement of the sale of the Capital Funded Property minus the Market Value of any Excluded Land. Proceeds of Sale include any funds required to settle third party debts. The exclusion of Excluded Land from D does not diminish the Provider's obligation to comply with the No Net Loss Principle.

Notice to the State

55.5 The Provider must notify the State of the Provider's proposed sale of the Capital Funded Property and purchase or development of a Replacement Property by the earlier of:

- (a) the date it gives an offer to the State under clause 54.1; and

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

55.6 The notice under clause 55.5 must:

- (a) identify the Capital Funded Property to be sold and include an estimate of expected sale proceeds; and
- (b) identify potential Replacement Property and demonstrate to the State through its Sustainability and Growth Plan under the proposed Master Agreement or otherwise, how the transaction will comply with the No Net Loss Principle.

55.7 The notice under clause 55.5 need not identify the particular property to be purchased (and developed, if applicable) but must set a timeframe within which the Provider will complete the purchase (and development, if applicable) of a Replacement Property. The timeframe must not be more than 6 months after the date of the sale, unless otherwise agreed by the department and documented in the Sustainability and Growth Plan.

55.8 The Provider may not sell or agree to sell the Capital Funded Property unless it has provided the notice under clause 55.5 and complied with the other requirements of this clause 55.

Arrangements for tenants

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

Holding sale proceeds pending purchase

55.10 If the State, within one month after receiving the notice under clause 55.5, notifies the Provider that this clause 55.10 applies, the Provider must ensure that the amount required to be spent on the Replacement Property under clause 55.1 is, on settlement of the sale of the Capital Funded Property:

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

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

Timeframe for purchase

55.11 The Provider must complete the purchase (and development, if applicable) of the Replacement Property within the timeframe set in the notice given under clause 55.5.

Security over Replacement Property

55.12 The Provider must:

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

Information about sale and purchase

55.13 The Provider must keep the State informed about the sale and purchase (and development, if applicable), including by giving the State:

- (a) a copy of the contracts for the sale and purchase to the State;
- (b) information evidencing that the criteria in clause 55.13 have been met, including

the use to be made of each part of the Replacement Property; and

- (c) other information regarding the sale of the Capital Funded Property and purchase (and development, if applicable) of the Replacement Property requested by the State.

Agreement applies to Replacement Property

55.14 After any sale and purchase (and development, if applicable) under this clause, the State will give the Provider a revised Schedule 1 to reflect the sale and purchase (and development, if applicable), including changes to items and amounts to reflect the actual contributions to the Replacement Property.

55.15 The Provider acknowledges that the State, through allowing the use of the proceeds of the sale of the Capital Funded Property to be used to buy or develop the Replacement Property, provides funding under the Act, and that the Replacement Property is a Community Housing Asset;

55.16 The Provider must continue to use the Replacement Property for Social Housing in accordance with clause 4; and

55.17 All provisions of this Agreement, including clause 53.2 and this clause 55, apply to the Replacement Property and the Replacement Property is deemed to constitute the 'Capital Funded Property'.

56. Release of State's Security

56.1 The Provider acknowledges that the State's Security will remain over the Capital Funded Property unless released under this clause.

56.2 The State will release the Capital Funded Property from the Security only if:

- (a) the Provider is not in breach of this Agreement;
- (b) the Capital Funded Property has been used by the Provider as required under clause 4.2(a) and otherwise in

accordance with this Agreement for the duration that the Capital Funded Property has been subject to this Agreement;

- (c) no Tripartite Deed applies in respect of the Capital Funded Property; and
- (d) the Provider has requested the release through a Transaction Proposal in accordance with clause 11 of this Agreement and the State approves the Transaction Proposal in accordance with clause 11.7.

56.3 During the first 20 years of service delivery after the State has provided Funding for a Capital Funded Property, the State may in its sole discretion withhold its approval to a transaction proposal that includes a release the State's Security over the Capital Funded Property.

- 56.4 The Provider acknowledges that despite the release of the Capital Funded Property from the Security:
- (a) the Provider must continue to use the Capital Funded Property for Social Housing in accordance with clause 3 and other provisions of this Agreement; and
 - (b) clauses 54, 55 and all other provisions of this Agreement continue to apply.

57. Relocation of tenants

- 57.1 Upon termination of this Agreement or the sale of the Capital Funded Property or this Agreement otherwise ceasing to apply in relation to a Capital Funded Property, the Provider must ensure that suitable accommodation arrangements are made for tenants of the Capital Funded Property to the satisfaction of the State, including by:
- (a) assisting tenants in the Capital Funded Property to relocate to alternative accommodation; and
 - (b) funding all expenses associated with the relocation.

58. Termination in relation to Capital Funded Property by the Provider

- 58.1 This clause 58 does not apply to a Capital Funded Property if the Funding in respect of the Capital Funded Property includes land provided by the State.
- 58.2 If the Project for the Capital Funded Property includes the construction of dwellings, this clause does not apply until after Practical Completion of the dwellings.
- 58.3 The Provider may make a written request to the State for this Agreement to be terminated in so far as it relates to a Capital Funded Property identified by the Provider in the request, in accordance with this clause 58.
- 58.4 A written request by the Provider under this clause 58 must:
- (a) nominate an effective date for termination of this Agreement in respect of the Capital Funded Property which must be at least 6 months after the date of the notice;
 - (b) confirm whether any part of the Financier Contribution that is still owed to the Financier in connection with the Capital Funded Property will be repaid by the Provider; and
 - (c) outline whether the proposed termination is connected with the sale of the Capital Funded Property and, if so, contain information regarding the accommodation arrangements that will be made for tenants of the Capital Funded Property.
- 58.5 The State may, in its discretion (acting reasonably), approve the termination of this Agreement in respect of Capital Funded Property subject to the Provider paying to the State, by bank cheque on or before the effective date of termination, an amount equal to:

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$[(\text{State Funding Contribution} / \text{Original Total Project Cost}) + (\text{Outstanding Debt} / \text{Original Total Project Cost})] \times \text{MV}$

Where:

State Funding Contribution means the State's original capital contribution to the Total Project Cost in respect of the Capital Funded Property;

Original Total Project Cost means the final Total Project Cost in respect of the Capital Funded Property;

Outstanding Debt means that part of the Financier Contribution in respect of the Capital Funded Property that is still owed to the Financier immediately prior to the effective date of termination and which is proposed to be repaid by the Provider to the Financier upon termination of this Agreement in relation to the Capital Funded Property; and

MV means the Market Value of the Capital Funded Property minus the Market Value of any Excluded Land.

58.6 The Provider must pay the costs of the valuation under clause 58.

58.7 Clause 57 applies in relation to any termination under this clause 58.

58.8 Promptly after termination under clause 58, the State must release the relevant Capital Funded Property from the Security.

58.9 Any amount payable by the Provider under this clause 58 is a debt due to the State.

58.10 Termination of this Agreement in so far as it relates to a Capital Funded Property under this clause 58 does not affect the Provider's obligations regarding use of Receipts and repayment of the Surplus. For the avoidance of doubt, upon any termination under this clause, the Provider must:

- (a) not use any Receipts to pay down any debt in relation to the Capital Funded Property after the effective date of termination; and

- (b) immediately repay any Surplus in respect of the Capital Funded Property to the State.

59. Termination in relation to Capital Funded Property by the State

59.1 The State may terminate this Agreement in so far as it relates to a Capital Funded Property by written notice to the Provider

(a) if the Provider:

- (i) is in breach of a clause in any part of this Agreement and fails to remedy the breach within 20 Business Days after the State gives the Provider a notice to remedy the breach; or
- (ii) commits a breach of this Agreement that is incapable of remedy; or

(b) any of the events described in clause 35.1(c) to 35.1(l) have occurred.

59.2 If this Agreement is terminated by the State under clause 58 in so far as it relates to a Capital Funded Property then, subject to the provisions of any Tripartite Deed, the Provider must immediately repay all or part of the Funding in respect of the Capital Funding Agreement which has not been spent by the Provider and the State may do one or more of the following:

(a) Exercise all or any of its powers under the Security in respect of any Capital Funded Property.

(b) Demand from the Provider payment of the amount in respect of the Capital Funded Property in relation to which this Agreement is being terminated calculated as follows:

- (i) the Market Value of the Capital Funded Property (inclusive of GST) (if applicable); minus
- (ii) the current Market Value of the Excluded Land (assessed as if the

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Excluded Land was vacant land without the Improvements); minus (iii) the Provider Contribution.

- (c) Require the Provider to immediately repay all or part of the Funding in respect of the Capital Funded Property which has not been spent by the Provider.
- (d) Demand from the Provider any other amount directly necessary to remedy the breach by the Provider including, for example, costs and expenses incurred in maintaining the Capital Funded Property to the extent that the Provider has failed to comply with its maintenance obligations and reasonable legal costs and the Provider must pay the amount demanded.

59.3 Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.

59.4 Clause 36 applies in relation to any termination under this clause.

60. Third Party Land (if applicable)

Clause applies if Capital Funded Property is leased to the Provider from a related entity

60.1 This clause only applies in respect of a Capital Funded Property if the Approved Transaction Proposal or Schedule 1 indicates that it applies for the Capital Funded Property. It is intended that an Approved Transaction Proposal or Schedule 1 will only indicate that this clause applies to a Capital Funded Property if:

- (a) the Capital Funded Property is not owned by the Registered Provider party to this Agreement; and
- (b) in the circumstances, the Capital Funded Property must be leased to a Registered Provider, for example, to ensure compliance with s 22 of the *Housing Act 2003*.

60.2 For clarity, this clause does not apply in respect of any Funding provided under Part D of this Agreement for the Provider to head lease properties from third parties.

Funding conditional on Third Party Lease

60.3 The provision of Funding in respect of the Capital Funded Property is subject to and conditional upon the Third Party Owner and the Provider executing a lease for the Capital Funded Property in accordance with this clause (the **Third Party Lease**), by the date specified in the approved Transaction Proposal for the entry into the Third Party Lease. The State may, in its entire discretion, extend this date by written notice to the Provider.

60.4 The Third Party Lease must:

- (a) be for a minimum term of 40 years from the commencement date of the Third Party Lease, unless otherwise agreed in writing by the State;
- (b) have a peppercorn rent;
- (c) state the permitted use as Social Housing, crisis accommodation or Affordable Housing as specified in the Approved Transaction Proposal and be consistent with this Agreement;
- (d) require that, if a party gives the other party a notice under the Third Party Lease, the party giving the notice must also give a copy of the notice to the State;
- (e) contain the State's step-in and assignment rights on the same terms as contained in this clause;
- (f) provide that the Third Party Owner may not terminate the Third Party Lease during any period that the State had stepped-in under this clause;
- (g) require that if the Third Party Owner intends to terminate the Third Party Lease or otherwise exercise its right to

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take possession of the Capital Funded Property, the Third Party Owner must:

- (i) give the State notice of its intention; and
 - (ii) not exercise its right to terminate or take possession until at least 60 Business Days after the notice under this clause has been given by the Third Party Owner to the State;
- (h) require the lessee to sign a deed of assignment of the Third Party Lease to the State, or a Registered Provider or Exempt Provider nominated by the State and provide that the Third Party Owner irrevocably agrees to consent to the assignment and the assignment taking effect on a date notified by the State, if an event in clause 60.7(a), (b), (c) or (d) occurs;
- (i) provides that the State will have no liability, and neither the Provider nor the Third Party Owner will make any Claim against the State, arising out of or in connection with the exercise of the State's rights under the provisions included in the Third Party Lease under this clause;
- (j) provides that the obligations of the Third Party Owner and the lessee in favour of the State are intended to create duties enforceable by the State in accordance with s 55 of the *Property Law Act 1974* and that acceptance for the purposes of that section may be given by or on behalf of a State in any manner and at any time, including by written notice to the Third Party Owner; and
- (k) be on terms satisfactory to the State.

60.5 The Provider must give the State a copy of the proposed Third Party Lease at least one month before the date under clause 60.3.

60.6 The State must notify the Provider whether it is satisfied with the proposed Third Party Lease. The Provider must seek amendments

to the draft Third Party Lease in accordance with any reasonable requirements of the State.

State's step-in and assignment rights

60.7 In addition to any other right or remedy of the State, if, at any time:

- (a) the Provider has been given a notice under clause 59.1(a)(i) in respect of the Capital Funded Property and failed to remedy the breach within the time stipulated in the notice;
- (b) this Agreement ends for any reason in full or in respect of the Capital Funded Property subject to the Third Party Lease;
- (c) the Third Party Owner gives notice to the Provider that it intends to terminate the Third Party Lease, or otherwise take possession of the Capital Funded Property under the Third Party Lease; or
- (d) in the opinion of the State, the Provider has ceased to be capable of performing its obligations under this Agreement,

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

- (e) step-in and take control or management of the Capital Funded Property or part of it, and make any other arrangements considered necessary by the State to comply with this Agreement or the Third Party Lease; or
- (f) require the assignment of the Third Party Lease to the State, or a Registered Provider or Exempt Provider nominated by the State by the date specified by the State in the notice.

60.8 For clarity, the State may require an assignment under clause 60.7(f) even if it has not stepped-in under 60.7(e), or after having stepped-in for any period under 60.7(e) or after having stepped-out under clause 60.10. The Provider must ensure that

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a notice under clause 60.7 is complied with by the date specified by the State.

60.9 The Provider must do everything necessary, and ensure that the Third Party Owner does everything necessary, to give effect to the State's rights under this clause 60.7.

60.10 The State may, by giving 5 Business Days' notice to the Provider, step-out and return control or management taken by the State or reverse arrangements made under this clause.

Compliance with the Third Party Lease

60.11 The Provider must comply with the terms of the Third Party Lease.

State may recover costs

60.12 Where any action taken by the State under this clause is due to the default or breach of the Provider, the State may recover all of its costs associated with exercising its rights under this clause as a debt due from the Provider.

Expiry of the Third Party Lease and State's Security over the Third Party Lease Land

60.13 The parties acknowledge that at the end of the Third Party Lease:

- (a) the parties can agree to extend the Third Party Lease; or
- (b) the Third Party Lease can expire.

60.14 The State will not release a State's Security over the Third Party Lease Land until the end of the Third Party Lease unless:

- (a) the State's Security is released under clause 56; or
- (b) the Provider gives the State three months advance notice of a proposed sale of the Third Party Lease Land and:
 - (i) the purchaser of the Third Party Lease Land gives the State a replacement State's security with a priority equal to or higher than the State's Security;

- (ii) if there is to be a Financier, the Financier is acceptable to the State in its entire discretion; and

- (iii) the purchaser, Financier and State enter into a Financier Tripartite Deed on terms satisfactory to the State in its entire discretion.

60.15 On the expiry of the Third Party Lease, the State will release the State's Security if:

- (a) the Provider is not in breach of this Agreement; and
- (b) the Capital Funded Property has been used by the Provider for the purpose of Social Housing in accordance with this Agreement for the duration that the Capital Funded Property has been subject to this Agreement.

60.16 If the Third Party Lease is not extended, the Provider must:

- (a) implement arrangements to ensure that the Provider complies with the No Net Loss Principle; and
- (b) if it is necessary for tenants to be relocated from the Capital Funded Property, comply with its obligations under clause 57.

Part C - Lease Terms

61. Application

- 61.1 The terms in this Part C - Lease Terms apply to all Lease Properties in addition to the terms in Part A – General Terms.

62. Definitions for Part C

- 62.1 In this Part C - Lease Terms, the following definitions apply in addition to the definitions set out in clause 1.1:

Lease Term means, for a Lease Property, the term specified in Schedule 2 for the Lease Property;

Permitted Use means provision of housing to an individual for residential use as Social Housing, crisis accommodation or Affordable Housing in accordance with the terms of this Agreement;

Premises means the Lease Properties including the Premises Improvements and, in absence of any provision to the contrary, references to the Premises include any part of the Premises;

Premises Improvements means the State's Improvements and the Provider's Improvements;

Provider's Employees means the Provider's employees, officers, consultants, agents, contractors, invitees, volunteers and anyone in or on the Premises because of the Provider's use and occupation of the Premises, or any of them;

Provider's Improvements means all improvements, fixtures and fittings on the Premises, excluding the State's Improvements, improvements towards which the State has contributed Funding, improvements purchased or improved using Receipts and items owned by a third party;

Queensland Government Insurance Fund or QGIF means the Queensland Government self-insurance scheme.

Rent means \$1.00 per annum per Lease Property;

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

State's Improvements means all improvements, fixtures and fittings provided by the State to the Premises at the start of or during the Term;

Statutory Charges means:

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

Term means the term of the lease of a Lease Property specified for the Lease Property in Schedule 2.

63. Registration of leases

- 63.1 If the Provider requests the State to prepare a lease of one or more of the Lease Properties for registration:
- (a) the State must prepare the Lease in registrable form identifying the relevant Lease Property and relevant terms from this Agreement;
 - (b) the Provider must pay the State's legal fees and disbursements in connection with the preparation, execution and registration of the lease; and

Part C – Lease Terms

- (c) the parties must execute the lease and the State will lodge the lease for registration.

63.2 The terms of a Lease prepared under clause 63.1 will include terms providing that:

- (a) the Lessee must comply with all of the terms of this Agreement;
- (b) a breach of this Agreement is deemed to be a breach of the Lease; and
- (c) a breach of the Lease constitutes a breach of this Agreement.

64. Lease

64.1 The State leases the Premises to the Provider for the Lease Term under this Agreement.

65. Permitted use

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

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

65.3 The Provider may sublet or license the Premises to Residents for the Permitted Use. The Provider must not assign, sublet, license or part with possession of the Premises or deal with, or mortgage or charge its interest in, the Premises in any other way unless approved in writing by the State in the States entire discretion. The approval may be on conditions determined by the State in its entire discretion and the Provider must comply with those conditions. The Provider must ensure that tenancies entered into by the Provider with a Resident:

- (a) expire before the end of the Lease Term; and
- (b) contain an obligation on the Resident that it must not do anything that would

cause the Provider to be in breach of this Agreement.

65.4 Without limiting clause 4, the Provider must comply with all Policies when entering into tenancies with a Resident, including Policies relating to eligibility and allocation.

65.5 Without limiting clause 38.2, the Provider must comply with the *Residential Tenancies and Rooming Accommodation Act 2008*.

66. Rent

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

67. Outgoings

67.1 The Provider must pay all:

- (a) Statutory Charges for the Premises; and
- (b) other statutory levies and charges payable by the occupier of the Premises.

67.2 If an amount under clause 67.1 is levied on the State, then the Provider must:

- (a) reimburse the State for the amount, if the State provides the Provider with evidence of payment of the amount; or
- (b) pay the amount at the State's direction, by the later of:
 - (i) the due date for payment by the State; and
 - (ii) the date which is 30 days after the Provider is called upon by the State to pay the amount.

67.3 If an amount referred to in clause 67.1 relates to more than the Premises, then a pro-rata adjustment, as bona fide determined by the State, must be made and the Provider will be responsible for its reasonable share of the amount calculated as the proportion that the Premises bears to the area to which the amount relates.

67.4 In respect of Utilities provided to the Premises, the Provider is responsible for:

- (a) establishing accounts in its own name wherever possible; and
- (b) paying all fees and charges for the use of the Utilities.

68. Use of appurtenances

- 68.1 The Provider must not:
- (a) use the water closets, drains and other water apparatus and other appurtenances ('appurtenances') in the Premises for any purposes other than those for which they were constructed; and
 - (b) place any sweepings, rubbish, rags, ashes or other deleterious substances in the appurtenances.
- 68.2 Except as otherwise provided in this Agreement, the Provider must not interfere with any appurtenances, pipes, water supply, gas, electrical, plumbing or other services contained in or about the Premises without the prior consent of the State.
- 68.3 Without the prior consent of the State, the Provider must not install any electrical equipment on the Premises that overloads the cables, switchboards, or sub-boards through which electricity is conveyed to the Premises.

69. Insurance

- 69.1 For the avoidance of doubt:
- (a) this clause applies in addition to clause 28; and
 - (b) the Provider is not required to hold building insurance for the Premises under clause 28 or this clause 69.
- 69.2 The Provider acknowledges that QGIF is a self-insurance scheme and the QGIF premium is paid by one part of the State, being the State acting through the Department, to another part of the State, being the State acting through Queensland Treasury and the Provider is not insured by

QGIF and is not entitled to make any claim against QGIF.

70. Damage and destruction

- 70.1 The Provider must notify the State immediately of any damage to the Premises.
- 70.2 The Provider is responsible for the costs to repair any damage to the Premises costing less than the QGIF excess as at the time of the claim. The QGIF excess, as at the date of this Agreement is \$10,000.00.
- 70.3 The State is responsible for the costs to repair any damage to the Premises, except to the extent that the damage was caused or contributed to by the negligent or wilful act or omission of the Provider, if the cost of repairing the damage is equal to or exceeds the QGIF excess as at the time of the claim. The QGIF excess as at the date of this Agreement is \$10,000.00.
- 70.4 The Provider is responsible for:
- (a) the costs to repair any damage to the Premises to the extent that the damage was caused or contributed to by the negligent or wilful act or omission of the Provider; and
 - (b) reimbursing the Department for the QGIF excess, at the time of the claim, in any case where the Department makes a claim under the Department's QGIF insurance in respect of damage to the Premises, unless the claim is for damage to the Premises caused by natural disasters declared under the *Disaster Management Act 2003*, including flood, severe storm or bush fire.
- 70.5 Where the State is responsible for the costs to repair any damage, the State will, at the State's option:
- (a) repair the damage; or
 - (b) pay the Provider to have the damage repaired.

- 70.6 Where the Provider is responsible for the costs to repair any damage the Provider must have the damage repaired.
- 70.7 The Provider must ensure that the repair works required are promptly carried out by a qualified licensed tradesperson with adequate insurance cover.
- 70.8 If during the Term, the Premises are damaged or destroyed so that they are unfit, either wholly or partially, for the Provider to occupy and use then, despite any other clause, within 1 month after the destruction or damage occurs, either party may give to the other party a notice terminating this Agreement only to the extent that it relates to the Premises damaged or destroyed, effective on a date that is at least 1 month after the date of the notice.
- 70.9 The State will issue revised schedules to the Provider, signed on behalf of the State, to reflect any termination under this clause 70.9.
- 70.10 The State will notify the Provider if the QGIF excess changes.

71. Not to make insurance voidable

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

72. Nuisance

- 72.1 The Provider:
- (a) must conduct its operations on the Premises in an orderly and respectable manner; and
 - (b) must not do, or allow to be done, anything in, upon, or about the Premises which:
 - (i) is or may become illegal or a nuisance;
 - (ii) may contaminate or pollute the Premises;
 - (iii) exceeds maximum load weights throughout the Premises; or
 - (iv) may result in the State being in breach of any law in connection with the Premises.
- 72.2 The Provider must not:
- (a) use any method of heating, cooling or lighting that is not approved by the State;
 - (b) without the State's consent, keep or use inflammable, volatile or explosive materials on the Premises except as may be required within the normal case of the Permitted Use; or
 - (c) damage or destroy anything on the Premises.
- 72.3 The Provider must not destroy any trees or vegetation on the Premises unless in accordance with the *Vegetation Management Act 1999* or the *Planning Act 2016*. The Provider must consult with the State in regard to any proposed destruction.
- 72.4 The Provider must give the State a copy of any notice from any statutory authority that the Provider receives in connection with the Premises immediately on receiving the notice.

73. Maintenance and upgrades

73.1 This clause applies in addition to clause **Error! Reference source not found.**

73.2 At its cost, the Provider must:

- (a) keep and maintain the Premises fit for purpose, in good condition, operationally and aesthetically and meeting the minimum housing standard under the *Residential Tenancies and Rooming Accommodation Act 2008*;
- (b) ensure that the Premises, including all fittings and floor coverings in the Premises, are kept and maintained, in a clean condition and in good order and repair, including by making:
 - (i) repairs due to fair wear and tear; and
 - (ii) structural repairs to the Premises and the Premises Improvements;
- (c) ensure that at any time there are only minor defects, superficial wear and tear or deterioration of finishes and that major maintenance is not required;
- (d) keep the Premises fit for the Permitted Use;
- (e) replace all glass in the Premises that is broken or cracked;
- (f) not allow any accumulation of useless property or rubbish;
- (g) keep the Premises free of noxious weeds and free of rodents, termites, cockroaches and other vermin;
- (h) take all reasonable precautions to avoid fire and health hazards; and
- (i) replace fluorescent tubes and light bulbs in the Premises.

73.3 The State may give the Provider a 'notice to repair' requiring the Provider to remedy any breach of this clause 73 within a reasonable time. The time specified must not be less than 2 Business Days, except in case of emergency, where there is to be no

minimum time. The Provider must comply with the notice.

73.4 The State will keep the following in good repair:

- (a) Prescribed fire safety installations within the meaning in Queensland Development Code (QDC) MP 6.1 – Commissioning and maintenance of fire safety installations (MP 6.1) where MP 6.1 applies for the maintenance of those installations.
- (b) Lifts that must be registered with Workplace Health and Safety Queensland (WHSQ) under the *Work Health and Safety Regulation 2011* (Qld).

73.5 The Provider must allow persons nominated by the State to access the Premises to carry out the repairs under clause 73.4.

74. Infectious diseases

74.1 If any infectious disease occurs on the Premises and which may require notification by under any statute, regulation or ordinance, the Provider:

- (a) must give all the necessary notices and any other information which may be required, to the proper authorities;
- (b) must give a copy of the notification to the State; and
- (c) must thoroughly fumigate and disinfect the Premises, at its own expense.

75. Alterations

75.1 The Provider must not:

- (a) construct any new improvements on the Premises; or
- (b) make any structural or other alterations or additions to the Premises,

without first submitting:

- (c) a proposal under clause 11.1(f), including a description of the work and how it will be financed;

- (d) other specifications of the proposed works; and
 - (e) particulars of the materials proposed to be used,
- and obtaining the consent of the State. The State will not unreasonably withhold its consent.

- 75.2 The State may impose conditions on its consent, for example, requirements to:
- (a) submit detailed drawings; and
 - (b) enter into a Tripartite Deed.
- 75.3 If the State grants its consent, it may be a condition of that consent that the works are carried out under the supervision of the State's architect.
- 75.4 The Provider must pay to the State immediately on demand all reasonable costs and expenses incurred by the State in respect of a submission made under clause 75.1, including architect's and other consultants' fees payable by the State, whether consent is granted or not.
- 75.5 Unless otherwise agreed in writing by the State, if the Provider carries out any works on the Premises that constitute a construction project, the Provider acknowledges and agrees that for the purposes of the *Work Health and Safety Regulation 2011 (Qld)*, the Provider will be the principal contractor for the works and must comply with the obligations imposed on a principal contractor.

76. Inspection

- 76.1 Without limiting clause 20, the Provider must do the following:
- (a) Inspect the Premises on an annual basis to ensure that it is being kept in accordance with the Provider's obligations under this Agreement. The inspection must comply with the property inspection guidelines published by the Department from time to time.

- (b) Maintain records of it inspecting the Premises under this clause and provide evidence of the inspections to the State within 3 Business Days of the State's request.

76.2 Without limiting clauses 7.2 and 38.2, the Provider must:

- (a) keep the Provider's property in good repair and condition; and
- (b) comply with the requirements of authorities and all laws in connection with its use of the Premises.

77. Quiet enjoyment

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

78. Interruption of services and emergency

- 78.1 Despite any implication or rule of law to the contrary, the State will not be liable to the Provider in any circumstances for any loss or damage suffered by the Provider for:
- (a) any malfunction, failure to function or interruption of, or to, the water, gas or electricity services, or any of the appurtenances in the Premises; or
 - (b) the blockage of any sewers, wastes, drains, gutters, downpipes or storm water drains.
- 78.2 In an emergency the State may, for as long as is reasonably necessary in the circumstances, prevent or prohibit the Provider and its employees and Residents, and any invitees of the Residents from entering the Premises and the State is not liable to the Provider for doing so.

79. Right to deal with land

- 79.1 The State may subdivide the land for the Premises and grant easements and other rights over it if this does not substantially and permanently adversely affect the Provider's use of the Premises.
- 79.2 The State may deal with the land for the Premises and assign its interest in the lease of the Premises in its entire discretion including the grant of any concurrent lease.

80. Removal of improvements

- 80.1 No later than 3 months after the expiry or sooner termination of the Lease Term, the Provider may:
- (a) remove any of the Provider's Improvements and its other property, other than structural improvements, and must make good and repair any damage caused by the removal of the Provider's Improvements; or
 - (b) leave the Provider's Improvements on the Premises, provided that the Provider's Improvements are left in a good and tenable condition.
- 80.2 Any of the Provider's Improvements which have not been removed in accordance with clause 80.1(a) will become the property of the State.
- 80.3 On the expiry or sooner termination of the Lease Term the Provider must ensure that the Premises is returned to the State in good repair and condition and the condition required under clause 73.2 and free from rubbish.

81. Holding over

- 81.1 If the State has not granted the Provider a new lease of the Premises and the Provider continues to occupy the Premises after the expiry of the Term with the State's consent, the Provider occupies the Premises under a monthly tenancy that:

- (a) either party may terminate on 1 month's notice ending on any day; and
- (b) is on the same terms as this Agreement, with any changes appropriate to a monthly tenancy, except that if at any time the State specifies terms other than as stated in this Agreement, the monthly tenancy is to be on the terms the State specifies.

82. Termination in relation to Lease Property by the Provider

- 82.1 The Provider may make a written request to the State for this Agreement to be terminated in so far as it relates to a Lease Property identified by the Provider in the request, in accordance with this clause 82.
- 82.2 A written request by the Provider under this clause 82 must nominate an effective date for termination of this Agreement in respect of the Lease Property which must be at least 6 months after the date of the notice.
- 82.3 The State may, in its discretion (acting reasonably), approve the termination of this Agreement in respect of the Lease Property
- 82.4 If the State approves the termination under clause 82.3, the Provider must:
- (a) execute a Form 8 Surrender of Lease in respect the Lease Property within 5 Business Days after the State's request; and
 - (b) comply with:
 - (i) its obligation regarding the condition of the Lease Property and removal of Premises Improvements under this Agreement; and
 - (ii) any conditions imposed by the State on its approval.
- 82.5 Termination of this Agreement in so far as it relates to a Lease Property under this clause 82 does not affect the Provider's obligations regarding use of Receipts and repayment of the Surplus. For the avoidance of doubt,

upon any termination under this clause, the Provider must immediately repay any Surplus in respect of the Lease Property to the State.

83. Termination in relation to Lease Property by the State

- 83.1 The State may terminate this Agreement in so far as it relates to a Lease Property by written notice to the Provider
- (a) if the Provider:
- (i) is in breach of a clause in any part of this Agreement and fails to remedy the breach within 20 Business Days after the State gives the Provider a notice to remedy the breach; or
 - (ii) commits a breach of this Agreement that is incapable of remedy; or
- (b) any of the events described in clause 35.1(c) to 35.1(l) have occurred.
- 83.2 The notice to remedy under clause 83.1 may be in the form specified by s 124 of the *Property Law Act 1974*.
- 83.3 If this Agreement is terminated by the State under clause 83.1 in so far as it relates to a Lease Property then:
- (a) the Provider must immediately repay all or part of the Funding which has not been spent by the Provider; and
 - (b) the State may demand from the Provider any other amount directly necessary to remedy the breach by the Provider including, for example, costs and expenses incurred in maintaining the Lease Property to the extent that the Provider has failed to comply with its maintenance obligations and reasonable legal costs and the Provider must pay the amount demanded.

83.4 Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.

83.5 Clause 36 applies in relation to any termination under this clause.

84. General provisions

- 84.1 If this Agreement says that the Provider must not do something in respect of the Premises, then the Provider must not do anything that could result in that thing happening.
- 84.2 The Provider must ensure that the Provider's Employees and Residents comply, where appropriate, with the Provider's obligations under this Agreement in respect of the Premises.
- 84.3 If any legislation changes the Provider's rights or obligations under this Agreement in respect of the Premises so that the State's rights or obligations are adversely affected, the Provider waives its rights under that legislation to the extent that the waiver is not prohibited or made ineffective by law.
- 84.4 The State may appoint agents or others to exercise any of its rights or comply with any of its obligations under this Agreement.
- 84.5 The State may exclude any person from the Premises other than the Provider or the Provider's Employees and Residents.
- 84.6 The State may name or change the name of the Premises, adopt or change a logo or erect signs or change signs on or in the Premises.

85. Property Law Act exclusions

- 85.1 The obligations and powers implied under sections 105 and 107 of the *Property Law Act 1974* (Qld) are expressly excluded from this Agreement.

Part D - Services Funding Terms

86. Application

86.1 The terms in this Part D - Service Terms apply to all Services Funding.

87. Definitions for Part D

87.1 In this Part D - Service Terms, the following definitions apply in addition to the definitions set out in clause 1.1:

Deliverable means the deliverables, outputs, outcomes, results or quantities of, or for, the Funded Services, specified in the Services Funding Schedule that relates to the Funded Services;

Establishment Date means the Establishment Date (if any) for the Funded Services, specified in the Services Funding Schedule that relates to the Funded Services;

Funded Personal Property means a motor vehicle, item of plant or equipment or stationary acquired or created wholly or partly with any Funding or Receipts and includes personal property purchased to replace such personal property;

Geographic Catchment Area means the area or areas where the Services are to be delivered, as described in the Funding Schedule;

Schedule End Date means the Schedule End Date for a Services Funding Schedule, specified in the Services Funding Schedule;

Schedule Start Date means the Schedule Start Date for a Services Funding Schedule, specified in the Services Funding Schedule;

Service Delivery Requirements means the service delivery requirements for the Funded Services, specified in the Services Funding Schedule that relates to the Funded Services;

Specific Funded Personal Property Security Agreement means a 'security agreement' under the *Personal Properties Securities Act 2009* (Cth) in relation to the State's interest in a Funded Personal Property, as amended or replaced from time to time, in such form as the State may notify The Provider;

88. Services Funding start and end

88.1 The State's obligation to provide the Services Funding will start at the Schedule Start Date and will stop at the earlier of:

- the Schedule End Date;
- termination of the Services Funding Schedule, or relevant part of the Services Funding Schedule; or
- termination of this Agreement.

88.2 When a Services Funding Schedule expires, then, subject to clause 88.3, the Services Funding Schedule will automatically be severed from this Agreement and the State will give the Provider a revised Schedule 3 (List of Services Funding) signed on behalf of the State.

88.3 The expiry or termination of a Services Funding Schedule or this Agreement will not affect any right of action or remedy that has accrued as at the date of expiry or termination.

89. Funded Services commencement and delivery

89.1 The Provider must:

- start delivering the Funded Services by no later than the Schedule Start Date or, if an Establishment Date is specified, by the Establishment Date, except where otherwise agreed or notified by the State;

Part D – Services Funding Terms

- (b) continue delivering the Funded Services until the Schedule End Date;
 - (c) comply with the Service Delivery Requirements; and
 - (d) deliver or achieve the Deliverables.
- 89.2 The Provider must comply with the terms of the Services Funding Schedules.

90. Policies and quality standards

- 90.1 The Provider must comply with the Policies.
- 90.2 The Provider must comply with any quality standards in relation to the Funded Services specified in the Services Funding Schedule.

91. Payment of Services Funding

- 91.1 The State will provide the Services Funding to the Provider by instalments in accordance with the Services Funding Schedule.
- 91.2 The parties acknowledge that the Funding may be comprised of per-annum, one-off and other funding amounts and is the Funding is administered by the Department.
- 91.3 Unless otherwise specified in the Services Funding Schedule, Payments of Funding will be two payments per annum in advance in July and January of each year. Funding payments will only be made if the Provider is in compliance with this Agreement.
- 91.4 The State may withhold any instalment of the Services Funding if the Provider has not complied with any obligation under this Agreement, including the Provider's obligation to submit reports or information as required under clause 17.
- 91.5 The State may vary:
- (a) the timing of instalments in relation to the Funding (and therefore the timing and amount of each subsequent instalment of the Funding); or
 - (b) the periods and dates stated in the Service Agreement, either generally or in relation to particular Services Funding.

- 91.6 The State will give the Provider 7 Business Days' notice of any such variation.
- 91.7 In the case of an emergency, the Provider may make a written request for an instalment of the Services Funding in advance.
- 91.8 The State may request any additional information from the Provider before deciding whether to advance an instalment of the Services Funding to the Provider under clause 91.7.
- 91.9 the Provider acknowledges and agree that the State is under no obligation to provide the Services Funding to the Provider beyond the expiration or termination of the Services Funding Schedule or this Agreement.

Additional Funding

- 91.10 During the Term, the State may provide additional Services Funding to the Provider. Additional Services Funding may be provided under:
- (a) an additional or replacement Services Funding Schedule added to this Agreement by; or
 - (b) a variation to a Services Funding Schedule described in,
 - a variation agreement signed by both parties in accordance with clause 91.11(a).

Variation to Services or Funding

- 91.11 The parties acknowledge that:
- (a) a Services Funding Schedule, may be varied by a variation agreement signed by an authorised representative of the State and the Provider; and
 - (b) a variation which reduces or increases the scope of the Funded Services may result in a reduction of or increase in (as the case may be) the amount of, or any future instalment of, the Funding.

Increase in Funding

Part D – Services Funding Terms

91.12 The State may increase the Services Funding from time to time without a variation to the Service Agreement, provided that:

- (a) the State will notify the Provider about any such increase and the relevant Services Funding Schedule will be deemed varied in accordance with the notice; and
- (b) a formal variation to the Agreement will be required where new or expanded Funded Services are to be provided by the Provider in connection with the increase in the Services Funding.

92. Administration and expenditure of Services Funding

92.1 The Provider must use the Services Funding only:

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

92.2 The Provider must not, without the State's approval, use the Services Funding to:

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

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

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

- (a) the Services Funding is stopped due to circumstances stated in clause 94.2; or
- (b) the Provider has obtained the State's approval.

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

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

92.7 If the Provider provides a report or other information in accordance with clause 17 which shows that any part of the Services Funding for the previous period is unspent by the Provider, then the State may:

- (a) authorise the Provider to retain the unspent Services Funding and to expend some or all of it for an approved purpose, on terms and conditions specified by the State;
- (b) reduce a future payment or instalment of the Services Funding to take account of the unspent Services Funding; or
- (c) notify the Provider that the Provider are required to repay the unspent Services Funding to the State, within the period stated in the notice, which will be not less than 20 Business Days.

92.8 If, at the expiration of the Services Funding Schedule, any of the Funding has not been spent by the Provider, the State may:

Part D – Services Funding Terms

- (a) notify the Provider that the Provider is required to repay the unspent Funding to the State, within the period stated in the notice, which will be not less than 20 Business Days; or
- (b) authorise the Provider to retain the unspent Services Funding and to expend some or all of it for an approved purpose, on terms and conditions specified by the State.

92.9 Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.

93. Funded Personal Property

93.1 The Provider must, unless otherwise approved by the State:

- (a) if the acquisition of the Funded Personal Property was funded under a Services Funding Schedule – only use the Funded Personal Property for delivering the Funded Services specified in the Services Funding Schedule; or
- (b) in any other case – only use the Funded Personal Property for delivering housing services under this Agreement or Funded Services.

93.2 The Provider must:

- (a) keep the receipts evidencing the expenditure of Funding to purchase Funded Personal Property and provide a copy of any such receipts to the State upon request;
- (b) be the legal and beneficial owner of Funded Personal Property;
- (c) not encumber, use as a security, dispose or deal with Funded Personal Property other than in accordance with this Agreement, unless the State approve otherwise in writing;
- (d) hold Funded Personal Property securely and put in place reasonable safeguards

against theft, loss, damage or unauthorised use;

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

93.3 In relation to any Funded Personal Property, the State may require a Specific Funded Personal Property Security Agreement to be signed by the Provider.

93.4 If the State require a Specific Funded Personal Property Security Agreement to be signed:

- (a) the State will provide to the Provider two copies of the Specific Funded Personal Property Security Agreement;
- (b) the Provider must sign the Specific Funded Personal Property Security Agreement that the State provides and return a signed original copy of it to the State; and
- (c) the State will be entitled to register the Specific Funded Personal Property Security Agreement and, if the State does so, the State will pay any registration fees.

93.5 In relation to any Funded Personal Property that has:

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- (a) a purchase price or market value of more than \$5,000; and
 - (b) a useful life greater than one year,
- the Provider must:
- (c) record the following information about the Funded Personal Property in a register:
 - (i) the housing services or Funded Services it will be used to deliver;
 - (ii) a description of it, including model and engine number (if a vehicle);
 - (iii) the date of purchase and the name of the supplier;
 - (iv) the purchase or acquisition price;
 - (v) the depreciation rate (prime cost or diminishing value) as provided under relevant sections of the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth);
 - (vi) its effective or useful life; and
 - (vii) its written down or book value; and
 - (d) The Provider must not sell, lease, mortgage, destroy, part with possession of or give it away, without the Stat's prior consent, before the Schedule End Date, provided that this clause 93.5(d) will not apply to any Funded Personal Property that is the subject of a Specific Funded Personal Property Security Agreement.

- 93.6 If the Provider breach clause 93.5(d), then the greater of:
- (a) the amount of any proceeds that the Provider receive; and
 - (b) the value of the Funded Personal Property at the time of the breach, will be a debt due to the State.
- 93.7 If a Funded Personal Property is sold, the Provider must use the Provider's best endeavours to achieve a fair market value

for the sale and, if directed by the State, either:

- (a) apply sale proceeds only for the housing services or Funded Services that the Funded Personal Property was used to deliver; or
- (b) pay the proceeds of the sale to the State.

94. Reduction of Services Funding in particular circumstances

- 94.1 This clause 94 only applies to Services Funding.
- 94.2 the State can reduce the amount of the Services Funding or terminate any Services Funding Schedule:
- (a) by giving the Provider at least 3 months prior notice if the State determine that:
 - (i) changes to the State budget or any guidelines or policies of the State or Commonwealth government impact on the continued provision of the Services Funding to the Provider or recipients of similar funding generally; or
 - (ii) the needs of the Service Users no longer justify the Services Funding, or that other persons are in greater need than those Service Users; or
 - (b) by giving the Provider at least 6 months prior notice if the State determine that it is appropriate for the State to re-test the market for the delivery of the Funded Services.
- 94.3 If the State determines, that any of the circumstances described in clauses 94.2(a) or 94.2(b) apply to a substantial portion of all Services Funding or Funded Services under the Service Agreement, the State may reduce all Services Funding under the Service Agreement or terminate the Service Agreement.
- 94.4 The State can take action under clauses 94.2(a) or 94.2(b) without following any

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notice to remedy or show cause process, but the State's notice to the Provider will contain the reasons for the State's decision.

- 94.5 If the State reduce the Services Funding under clauses 94.2(a) or 94.2(b):
- (a) the State will review the scope of the Funded Services;
 - (b) the Provider must:
 - (i) do everything the Provider can to mitigate and lessen all losses, costs and expenses that the Provider may suffer in relation to the reduction;
 - (ii) repay to the State any unexpended part of the Services Funding that the State notify the Provider is required to be repaid as a result of the reduction, within the period stated in the notice, which will be not less than 20 Business Days. That amount will be a debt due to the State by the Provider; and
 - (iii) comply with any reasonable request made by the State in relation to the reduction of the Services Funding; and
 - (iv) the State will notify the Provider about the reduced amount of the Services Funding and any changed scope of the Funded Services and the Service Agreement will be deemed varied in accordance with the notice.
- 94.6 If a Services Funding Schedule is terminated under clause 94.2, the Services Funding Schedule will be immediately severed from this Agreement and clause 36 will apply.
- 94.7 If the State reduces any Services Funding, terminates a Services Funding Schedule under clause 94.2, the State will consider paying the Provider reasonable costs, including transitional arrangement costs for affected Service Users, that the Provider incur as a direct result of the reduction or termination, subject to the Provider

providing the State with written evidence of the costs claimed and the State approving those costs.

- 94.8 The State will issue revised schedules to the Provider, signed on behalf of the State, to reflect any changes under this clause.

95. Termination in relation to Services Funding by the Provider

- 95.1 The Provider may terminate:
- (a) a Services Funding Schedule, in which case the Services Funding under that Services Funding Schedule will stop; or
 - (b) the Agreement in so far as it relates to all Services Funding Schedule, in which case all Services Funding payable under this Agreement will stop,
- by giving the State at least 3 months' notice.

96. Termination in relation to Services Funding by the State

- 96.1 The State may:
- (a) Suspend Services Funding under a Services Funding Schedule for a period of time on specified conditions; or
 - (b) terminate this Agreement in so far as it relates to a Services Funding Schedule, by written notice to the Provider if:
 - (c) the Provider:
 - (i) is in breach of a clause in any part of this Agreement and fails to remedy the breach within 20 Business Days after the State gives the Provider a notice to remedy the breach; or
 - (ii) commits a breach of this Agreement that is incapable of remedy; or
 - (d) any of the events described in clause 35.1(c) to 35.1(l) have occurred.

- 96.2 If this Agreement is terminated by the State under clause 96.1 in so far as it relates to a Services Funding Schedule then:
- (a) the Provider must immediately repay all or part of the Funding which has not been spent by the Provider; and
 - (b) the State may demand from the Provider any amount directly necessary to remedy the breach by the Provider and reasonable legal costs and the Provider must pay the amount demanded.
- 96.3 Amounts payable by the Provider to the State under this clause are debts due and owing to the State by the Provider.
- 96.4 Clause 36 applies in relation to any termination under this clause.

DRAFT

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

EXECUTED on behalf of the **STATE OF QUEENSLAND THROUGH THE DEPARTMENT OF HOUSING, LOCAL GOVERNMENT, PLANNING AND PUBLIC WORKS** by:

.....
(full name)

.....
(designation)

a duly authorised delegate of the Director-General in the presence of:

.....
(print name of witness)

.....
(signature of witness)

.....
(signature)

..... / /
(date)

EXECUTED by **[PROVIDER] ABN [INSERT]** [Insert execution clause]

.....
(full name)

.....
(designation)

[insert]

in the presence of:

.....
(print name of witness)

.....
(signature of witness)

.....
(signature)

..... / /
(date)