REQUEST FOR TENDER

SPECIFICATION

Request for Tender :	Sale of Vacant Lots in the Township of Julia Creek

Closing Time:	**5 PM ON FRIDAY 6 DECEMBER 2019**

Tender Number:	T1920018

From:	Chief Executive Officer
Organisation:	McKinlay Shire Council
Address:	29 Burke Street, Julia Creek
Fax No:	07 4746 7549
Phone No:	07 4746 7166
Date:	14 November 2019

THIS REQUEST FOR TENDER IS NOT AN OFFER. THE REQUEST FOR TENDER IS AN INVITATION FOR PERSONS TO SUBMIT AN OFFER TO SUPPLY THE GOODS/SERVICES/GOODS AND SERVICES PARTICULARISED IN THE SPECIFICATION.

1. Introduction

McKinlay Shire Council is the owner of vacant land (Land) and proposes to dispose of the Land by Tender to the general public.

The Land includes several parcels (Lots) which can be purchased individually as set out below. The Land includes Rural Residential Lots and one Industrial Lot located in Julia Creek.

While being conscious of the various statutory requirements pertaining to this process, Council also intends to ensure any development of the Land is consistent with Council's planning scheme and intention to have a fully utilised residential subdivision and industrial estate in Julia Creek.

On that basis, Council will only accept Tenders from genuine Tenderers who intend to commence construction of a residence or industrial facility on the relevant Land within 12 months of the date of the Contract and which must be completed for occupation within 3 years of the date of Contract in accordance with the Special Conditions of the Contract.

Preference will be given to Tenderers who live in or intend to relocate to Julia Creek.

Pursuant to section 228(2)(b) of the *Local Government Regulation 2012,* this Request for Tender is an invitation for interested parties to submit a written Tender for the purchase of land in Julia Creek on the terms set out in these Conditions of Tender.

2. Conditions of Tender

It is Council's intention that the Land will be fully developed and occupied for residential/industrial purposes within 3 years of the date of the Contract.

The sale of the Land to a successful Tenderer is conditional upon the successful Tenderer entering into a Lease over the Land in accordance with clause 3 or 4 of the Special Conditions.

The purpose of the Lease is to ensure that the successful Tenderer is in a position to satisfy the Special Conditions of the Contract within 3 years of the date of the Contract by completing the construction of a suitable residence on the Land or industrial facility where the Land is zoned for industrial purposes.

Once the Special Conditions have been satisfied to Council satisfaction, settlement will be effected and the Land will be transferred to the successful Tenderer after which time the Lease will merge with the title of the Land.

This Tender Invitation is not an offer but is a request for Tenderers to submit a Tender for the purchase of the Land.

The Tenderer acknowledges that upon submitting a Tender (irrespective of whether that Tender is a Conforming Tender or a Non-Conforming Tender), the Tenderer shall be bound by the terms of these Conditions of Tender as though the Conditions of Tender were a deed between Council and the Tenderer.

If the Tenderer breaches any of these Conditions of Tender, Council may, at its discretion and without limiting its other rights, exclude the Tenderer's Tender(s) from assessment.

The Tender Documents must be read and construed together and are intended to be mutually explanatory.

If the Tenderer:

(a) finds any defect, deficiency, error, inconsistency, ambiguity, discrepancy or conflict in or between, or omission from any of the documents comprising the Tender Documents or any other information provided by Council; or

(b) finds any inconsistency or conflict between the Tender Documents and any Law; or

(c) has any doubt as to the meaning of any portion of the Tender Documents,

the Tenderer must notify Council and (if applicable) must include in its Tender a statement of the interpretation upon which it relies and on which its Tender has been prepared.

Council gives no warranty and makes no representation as to, and accepts no responsibility for, the accuracy, adequacy or completeness of the Tender Documents or any other information provided by or on behalf of Council.

The Tender Documents as set out in clause 8 of this Request for Tender must be used solely for the purpose of Tendering for the Agreement, and for no other purpose.

The Tender Documents shall at all times remain the property of Council.

3. Communications with Council

Unless otherwise agreed with Council, or expressly contemplated in these Conditions of Tender, all communications between the Tenderer and Council in relation to the Request for Tender shall be conducted with the Council's Representative.

Council's Representative may, in their discretion, circulate any response it provides to a Tenderer to all other Tenderers.

The Tenderer must not discuss the Request for Tender or obtain any information relating to the Request for Tender from any Personnel of Council other than in accordance with the preceding clause, unless expressly contemplated in these Conditions of Tender.

Without limiting any other provision of these Conditions of Tender, Council will not be bound by, and the Tenderer may not rely upon, any oral advice or information nor any written advice or information provided other than in accordance with this Request for Tender.

Council:

(a) may in its absolute discretion limit the time for Tenderers to make queries or requests for further information or clarifications;

(b) is not bound to respond to any query or request for further information or clarification, whether received prior to or after the required time; and

(c) may in its absolute discretion notify any or all Tenderers of a query or request for further information or clarification made (without identifying the submitting party) and Council's response to the query or request.

(d) may depart from the procedures set out in the Tender Documents and:

(e) may extend or reduce any timeframes or dates provided for in the Tender Documents;

(f) may amend, add to or delete any part of the Tender Documents;

(g) suspend, terminate or alter the Request for Tender at any time;

(h) request any one or more Tenderers to attend meetings.

4. Tender Obligations

The Tenderer must not, and must ensure that its Personnel do not:

(a) engage in misleading or deceptive conduct in relation to the Tender process;

(b) engage in any collusive Tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the Procurement Process;

(c) approach or communicate, or attempt to approach or communicate, in any way with any Personnel of Council, other than in accordance with the specific provisions of these Conditions of Tender;

(d) attempt to improperly influence any of Council's Personnel, or violate any applicable Law regarding the offering of inducements in connection with the Procurement Process;

(e) accept or seek improper assistance of any of Council's Personnel, or any former Personnel of Council in preparing its Tender; or

(f) use any information improperly obtained or obtained in breach of any obligation of confidentiality in preparing the Tender.

5. Lodgement of Tenders

5.1 Lodgement of Tenders

Tenderers are required to:

(a) submit a Tender to purchase one or more Lot/s on the attached Tender Response Schedule by the Closing Time;

(b) if the Tender is accepted by Council, enter into the Contract and the Lease simultaneously on substantially the same terms as the documents contained in Schedule 1 and 2 of this Request for Tender within seven (7) days of notification that the Tender is accepted by Council; and

(c) obtain all necessary approvals required for the construction of a residence/industrial facility on each of the Lot/s purchased, within twelve (12) months of the date of the Contract pursuant to the terms and conditions of the Lease; and

(d) complete the construction of the residence/industrial facility on the Lot/s ready for occupation and to Council's satisfaction, within 3 years of the date of the Contract; and

(e) take all necessary steps and provide and sign all documents necessary or required by Council to satisfy the Conditions of Tender and to complete the Contract within 3 years of the date of the Contract.

A Tenderer must:

- fully complete the Tender Response Schedule by inserting in it all information for which provision is made in the Tender Response Schedule;

- execute the Tender Response Schedule in a manner legally binding on the Tenderer and if the Tenderer is a company other than a public listed company or a government owned corporation within the meaning of the Government Owned Corporations Act 1993 (Qld), then the Tenderer must procure the completion, execution and delivery of the Guarantee by all of the directors of the Tenderer.

- In a sealed package clearly endorsed with the Tender Title, Tender Number, marked Confidential and must be addressed to:

  The Chief Executive Officer
  McKinlay Shire Council
  PO Box 177
  Julia Creek Qld 4823

  Or hand delivered to:
  McKinlay Shire Council Administration Office
  29 Burke Street
  Julia Creek Qld 4823

  Or emailed to:
  Tenderbox@mckinlay.qld.gov.au

By submitting a Tender, the Tenderer warrants that:

The Tenderer has, prior to the lodgement of the Tender:

(a) made their own enquiries and investigations of the Lot they intend to submit a Tender to purchase;
(b) secured the legal and other advice it requires;
(c) read and understood the Conditions of Tender;
(d) read and understood the Rural Residential Zone 3.2 and Industry Zone 3.6 in the McKinlay Shire Council Planning Scheme on Council's website; and

either:

(a) the Tenderer is not a Foreign Person with the meaning of the *Foreign Acquisitions and Takeovers Act* 1975 and no approval under that Act is required; or
(b) any such approval required by the Tenderer to lodge this Tender and acquire the Property has been secured prior to lodgement of this Tender.

5.2 Tender Closing Time

- **5:00 PM AUSTRALIAN EASTERN STANDARD TIME, ON FRIDAY 6 DECEMBER 2019.**

- Only those Tenders received by the Closing Time will be considered.

- Tenders that are mailed will be dated and time stamped when received.

- The Local Government will accept no responsibility in the event that a Tender is not received by the Closing Time.

5.3 Informal Tenders

Tenderers may submit a Tender that contains special conditions for the Contract and/or additional or amended Lease terms for the Lease. However, such Tenders will be treated as Non-Conforming Tenders and may not be accepted.

Acceptance of Non-Conforming Tenders is at the sole discretion of Council.

Any Tender may be rejected if it:

(a) Does not comply with the requirements of this Request for Tender; or
(b) Contains any provisions not required by this Request for Tender.

5.4 Validity of Tender

The Respondent agrees that the Tender will remain open for acceptance for a minimum period of 45 days after the Closing Time, notwithstanding that there may have been negotiations in respect of any Tender in the meantime.

The Tenderer's offer is irrevocable and will remain open for acceptance by the Council for a period of 45 days after the Closing Time.

The successful Tenderer (if any) will be notified in writing by the Council, and when that happens:

(a) an agreement for sale comes into existence between the Council and the successful Tenderer as purchaser on the terms set out in the Tender;

(b) the successful Tenderer must sign the Contract and Lease in the form contained in this Tender; and

(c) the successful Tenderer must pay the Deposit under the Tender to the Council's within 48 hours.

This Request for Tender, the Contract including the Special Conditions and Lease signed by the Council and the successful Tenderer will constitute the entirety of the Contract.

5.5 Disqualification of Tenderer

By lodging a Tender, the Tenderer warrants that:

(a) all information contained in the Tender is accurate;

(b) it has complied with its obligations under the Tender Documents;

(c) it has not relied on the accuracy, adequacy or completeness of the Tender Documents, or any other information provided by or on behalf of Council in preparing its Tender;

(d) it has not relied on the accuracy, adequacy or completeness of any other information

provided by or on behalf of Council in preparing its Tender;

(e) it has satisfied itself of the local conditions, environment and facilities that may impact upon the Tenderer's ability to perform its obligations under the Agreement;

(f) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and the performance of its obligations under the Agreement;

(g) it has informed itself fully as to the accuracy, adequacy and completeness of its Tender for the performance of the obligations under the Agreement and that the rates and prices included in the Tender include compliance with all obligations under the Agreement and all matters necessary for the complete performance of the Tenderer's obligations under the Agreement;

(h) it has carried out its own investigations as to the feasibility of its Tender and has relied on those investigations.

(i) Failure by a Tenderer to do any of the things that it has warranted will not relieve the Tenderer of its obligation to perform under the Contract and Lease that may be entered into between the Tenderer and Council.

(j) Council does not represent or warrant that the information provided in this Request for Tender, including any information provided by Council's Personnel or as part of the Request for Tender process generally, is accurate, adequate or complete.

6. Particulars

The Lots available for purchase are set out below and as shown on the Plans attached in Schedule 3.

The Lots are sold separately subject to the terms and conditions of this Request for Tender, the Contract, Special Conditions and the Lease.

The Lease details development that is required for the development of rural residential and industrial properties.

There are 8 Lots available for sale consisting of:

1. One (1) light industry Lot; and

2. Seven (7) rural residential Lots.

Serial	Registered Property Description	Area (Sq. M)	Zoning
1.	Lot 2 SP247177	5044	Light Industry
2.	Lot 13 SP 247177	4457	Rural Residential
3.	Lot 14 SP 247177	4039	Rural Residential
4.	Lot 15 SP 247177	4039	Rural Residential

5.	Lot 16 SP 247177	4043	Rural Residential
6.	Lot 5 SP278219	4029	Rural Residential
7.	Lot 6 SP278219	4102	Rural Residential
8.	Lot 7 SP278219	5051	Rural Residential

The Council gives no promise about the accuracy of and is not bound by any oral advice given or information furnished by any person on behalf of the Council about the Tender or the Land unless that information is confirmed in writing by an authorised officer of the Council. Against the background of this warning, the Tenderer acknowledges that any loss suffered as a result of relying upon any oral advice or information not confirmed in writing by the Council has not been caused by the Council.

Any Tenderer wishing to inspect the Land may do so by arranging an appointment with the Council.

7. Implementation Timetable

7.1 ASSESSMENT OF TENDERS

(a) **Tender Opening**

Tenders will not be opened publicly, and Tenderers will not be permitted to attend the opening of Tenders.

(b) **Council's Rights After Tenders Received**

(i) Without limiting any other specific clause in these Conditions of Tender, Council may, at any time after Tenders have been received, in its absolute discretion:

a. request any one or more Tenderers to change their Tender to take account of a change in the Tender Documents or any error in the Tender Documents. However, Council has no obligation to do so and need not extend the same opportunity to each Tenderer;

b. request a meeting with any one or more Tenderers to obtain additional information from that Tenderer;

c. seek to clarify and alter any aspect of a Tenderer's Tender and may, at its discretion, advise any or all of the preferred Tenderers of such clarification or alteration;

d. request any one or more Tenderers to provide a presentation of their Tender in person at Council's office at no cost to Council; and

e. request additional information from one or more Tenderers.

(c) **Negotiations**

(i) Council reserves the right to negotiate amendments to any aspect of the Tender or the Tender Documents with any one or more Tenderers. Council is under no obligation to enter into negotiations with any Tenderer, nor is Council required to extend the opportunity to each Tenderer.

(ii) Council entering into negotiations pursuant to the preceding subclause does not constitute a rejection of the Tenderer's Tender or a counteroffer to the Tenderer, unless specified otherwise.

(iii) Council may suspend or terminate negotiations at any time and for whatever reason.

(d) **Assessment of Tenders**

(i) In determining which Tender is most advantageous to Council, each Tender admitted to assessment in accordance with these Conditions of Tendering.

(ii) In assessing Tenders, Council may

a. consider:

i. information contained in the Tender;

ii. any other information available to Council;

iii. any relevant Law, including the *Local Government Act 2009* (Qld) and any regulation enacted under it; and

iv. other information which Council reasonably considers to be relevant to its assessment, including but not limited to any procurement policies or procedures implemented by Council;

b. ignore any part of the Tender, which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Tenderer and may assess the balance of the Tender.

(iii) Council may seek any further information or assistance from any person (including third parties) where Council considers in its absolute discretion it is necessary to do so in order to properly evaluate any aspect of the Tender. Council may (but is not required to) notify the Tenderer of a third party appointed by Council to provide such assistance to Council, and, if advised, the Tenderer must cooperate with and provide all information and assistance reasonably requested by such third party. Council may exclude from assessment or reject a Tender if the Tenderer does not provide such cooperation, information and other assistance.

(iv) Council:

a. is not bound to accept the lowest or any Tender, or any clarification, alteration or amendment of a Tender; and

b. may, subject to these Conditions of Tendering, at its discretion, reject or accept:

i. a late Tender;

ii. a Non-Conforming Tender;

iii. a Tender which has been clarified, altered or amended in accordance with these Conditions of Tendering; or

iv. a Tender submitted by a Tenderer that has breached these Conditions of Tendering.

8. Tender Documents

8.1 Tender Documents

The following documents are intended to be issued to each Tenderer:

- Request for Tender;
- Contract – Schedule 1;
- Special Conditions – Annexure A to the Contract;
- Lease – Schedule 2;
- Plans of the Lots – Schedule 3;
- Tender Response - Schedule 4;

The documentation listed above is available for each separate Lot on Council's website under Tender documents will be provided on request by emailing John Van Der Meer on **john.vandermeer@mckinlay.qld.gov.au** indicating your Lot preference and a Title Search from Department of Natural Resources Mines and Energy showing details of the relevant Lot of interest will also be provided by Council;

A Tenderer who believes that they have not received all of the Tender Documents should contact the Council before lodging any Tender.

9. Definitions and Interpretation

9.1 Definitions and Interpretation

Definitions

(a) In these Conditions of Tendering:

(i) Business Day means a day that is not a Saturday, Sunday or a public holiday in Julia Creek.

(ii) Conditions of Tendering means the conditions of Tendering contained in this Tender Invitation;

(iii) Conforming Tender means a Tender which:

a. is in the form required by the Response Schedules;

b. complies with the Lodgement Requirements;

c. contains substantially all of the information and documentation required by the Tender Documents;

(iv) Contract means

a. the Contract; and

b. Special Conditions;

both of which are contained in the Schedule 1 to this Request for Tender, and as modified by any subsequent negotiations between Council and a Tenderer which are evidenced in writing and executed by the parties, and which have been prepared in accordance with this Request for Tender.

(v) Council means McKinlay Shire Council, and may, if the context requires, include a duly authorised delegate of Council;

(vi) Council's Representative means the person specified in the Request for Tender.

(vii) Deposit means 50% of the Tendered purchase price offered by the successful Tenderer payable in accordance with clause 5.4;

(viii) Lease means a lease in substantially the same terms as contained in the lease document in Schedule 2;

(ix) Lodgement Requirements means the lodgement requirements noted in the Tender Information;

(x) Non-Conforming Tender means a Tender which is not a Conforming Tender;

(xi) Personnel includes the officers, employees, agents, representatives, agents, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable, and, in the case of Council, includes councillors;

(xii) Plans means SP278219 and SP247177, copies of which are attached in Schedule 3;

(xiii) Tender means the Tender submitted by a Tenderer in response to this Tender Information and includes all documents and information submitted with or as part of the Tender;

(xiv) Tender Closing Time means the closing time detailed in the Tender Information;

(xv) Tender Documents means this Request for Tender, any communications to Tenderers issued pursuant to these Conditions of Tender, and all documents included in or incorporated by reference into these documents;

(xvi) Tender Response Schedule means the form contained in Schedule 4 to this Request for Tender which are to be lodged in accordance with the Tender Documents;

(xvii) Tenderer means:

a. any person who submits a Tender; and

b. to the extent to which the Tender Documents can apply to any other person who obtains a copy of any of the Tender Documents during the Procurement Process, also includes such other persons;

Interpretation

(a) Without limiting the above, in the Tender Documents:

(i) an obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally;

(ii) words importing the singular number include the plural number and words importing the plural number include the singular number;

(iii) clause headings are for reference purposes only and must not be used in interpretation;

(iv) the words 'include', 'includes' or 'including' shall be read as if followed by 'without limitation';

(v) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;

(vi) where time is to be reckoned from a day or event, the day or the day of the event must be excluded and if any time period specified in the Tender Documents expires on a day which is not a business day, the period will expire at the end of the next business day;

(b) a reference to:

(i) a person includes any other legal entity and a reference to a legal entity includes a person;

(ii) a party includes the party's heirs, executors, successors and permitted assigns;

(iii) any gender shall be read as including every gender;

(iv) a monetary amount is a reference to an Australian currency amount;

(v) any Law, standard, code, guideline or policy includes a reference to that Law, standard, code, guideline or policy as amended or replaced from time to time, and all related Law, standards, codes, guidelines or policies;

(vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and facsimile transmissions;

(vii) a time is to local time in Julia Creek;

(viii) a business day is to a day that banks are open for trading in Julia Creek.

SCHEDULE 1 – CONTRACT AND SPECIAL CONDITIONS

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Contract for Houses and Residential Land

Sixteenth Edition

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

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

REFERENCE SCHEDULE

Contract Date:

SELLER'S AGENT

NAME:	N/A				
ABN:		LICENCE NO:			
ADDRESS:					
SUBURB:		STATE:		POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:		

SELLER

NAME:	McKinlay Shire Council			ABN:	
ADDRESS:	PO Box 177				
SUBURB:	JULIA CREEK	STATE:	QLD	POSTCODE:	4823
PHONE:	MOBILE:	FAX:	EMAIL:		
07 4746 7166		07 4746 7549	ceo@mckinlay.qld.gov.au		

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

SELLER'S SOLICITOR ■ *or any other solicitor notified to the Buyer*

NAME:	Preston Law				
REF:	JC:190744	CONTACT:	Julianna Cuda		
ADDRESS:	PO Box 707N				
SUBURB:	NORTH CAIRNS	STATE:	QLD	POSTCODE:	4870
PHONE:	MOBILE:	FAX:	EMAIL:		
07 4052 0700		07 4052 0777	jcuda@prestonlaw.com.au		

EXAMPLE

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

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BUYER

NAME: ABN:

ADDRESS:

SUBURB: STATE: POSTCODE:

PHONE: MOBILE: FAX: EMAIL:

NAME: ABN:

ADDRESS:

SUBURB: STATE: POSTCODE:

PHONE: MOBILE: FAX: EMAIL:

BUYER'S AGENT *(If applicable)*

NAME:

ABN: LICENCE NO:

ADDRESS:

SUBURB: STATE: POSTCODE:

PHONE: MOBILE: FAX: EMAIL:

EXAMPLE

BUYER'S SOLICITOR

■ *or any other solicitor notified to the Seller*

NAME:

REF: CONTACT:

ADDRESS:

SUBURB: STATE: POSTCODE:

PHONE: MOBILE: FAX: EMAIL:

PROPERTY

Land: ADDRESS:

SUBURB: McKinlay STATE: QLD POSTCODE: 4823

☐ Built On ☑ Vacant

Description: Lot:

On:

Title Reference:

Area: ■ *more or less*

Land sold as: ☐ Freehold ☐ Leasehold ■ *if neither is selected, the land is treated as being Freehold*

Present Use: Vacant

Local Government McKinlay Shire Council

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

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Excluded Fixtures:	N/A
Included Chattels:	N/A

PRICE

Deposit Holder:	Preston Law
Deposit Holder's Trust Account:	Preston Law Trust Account
Bank:	ANZ
BSB: 014-734	**Account No:** 835 827 858

Purchase Price: $

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

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

$ Balance Deposit (if any) payable on:

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

FINANCE

Finance Amount: **$**

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

Financier:

Finance Date:

BUILDING AND/OR PEST INSPECTION DATE

Inspection Date: N/A

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

MATTERS AFFECTING PROPERTY

Title Encumbrances:

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

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

Tenancies:

TENANTS NAME**:**

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

TERM AND OPTIONS:

STARTING DATE OF TERM:	ENDING DATE OF TERM:	RENT:	BOND:
		$	$

EXAMPLE

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

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Managing Agent:

AGENCY NAME: N/A			
PROPERTY MANAGER:			
ADDRESS:			
SUBURB:	STATE:	POSTCODE:	
PHONE:	FAX:	MOBILE:	EMAIL:

POOL SAFETY

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

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

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

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

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

- ☐ Yes
- ☐ No

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

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

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

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

EXAMPLE

POOL SAFETY INSPECTOR

Pool Safety Inspector:	N/A
Pool Safety Inspection Date:	N/A

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

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

ELECTRICAL SAFETY SWITCH AND SMOKE ALARM

This section must be completed unless the Land is vacant.

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:
(select whichever is applicable)

- ☐ Installed in the residence
- ☐ Not installed in the residence

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

- ☐ Installed in the residence
- ☐ Not installed in the residence

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

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

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

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NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011

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

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

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

GST WITHHOLDING OBLIGATIONS

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

- [ ] Yes
- [ ] No

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

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

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

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

☐	the Buyer *is not* required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property
☐	the Buyer *is* required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property. Under section 14-255(1) of the Withholding Law, the Seller is required to give further details prior to Settlement.

EXAMPLE

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

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The REIQ Terms of Contract for Houses and Residential Land (Pages 7-14) (Sixteenth Edition) contain the Terms of this Contract.

SPECIAL CONDITIONS

See Annexure A – Special Conditions

SETTLEMENT

SETTLEMENT DATE:		■ *or the next Business Day if that is not a Business Day in the Place for Settlement.*
PLACE FOR SETTLEMENT:	Cairns	■ *If Brisbane is inserted, this is a reference to Brisbane CBD.*

SIGNATURES

The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling-off period.

It is recommended the Buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.

BUYER: _____ **WITNESS:** _____

BUYER: _____ **WITNESS:** _____

By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

[***Note:*** No witness is required if the Buyer signs using an Electronic Signature]

SELLER: _____ **WITNESS:** _____

SELLER: _____ **WITNESS:** _____

By placing my signature above I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

[***Note:*** No witness is required if the Seller signs using an Electronic Signature]

DEPOSIT HOLDER: _____

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

EXAMPLE

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

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ANNEXURE A

SPECIAL CONDITIONS

1. EXCLUDED AND AMENDED TERMS

1.1. **Printed Provisions**

The REIQ Terms of Contract for Houses and Residential Land (**Standard Terms**) apply to this Contract except as are excluded or modified by these Special Conditions.

1.2. **Exclusions**

The following clauses of the Standard Terms are varied in the following respects:

(a) Clauses 2.3, 2.4, 4, 5.4, 5.5, 5.6, 5.7, 7.4(1)-(4), 7.5(2)-(4), 7.6, 7.7, 8.2, 8.3, 8.5 and 11 deleted;

(b) The following clauses are amended as follows:

a. Clause 8.1 is deleted and replaced as follows:

i. "The Property shall be at the risk of the Buyer on and from the Contract Date."

2. CONDITION OF PROPERTY

2.1. The Buyer is taken to have inspected the Property and accepts it in its present condition "as is where is" and subject to:

(a) Any legal, physical, patent or latent defects;

(b) all existing ways, easements and encroachments (if any) and to all statutes affecting the same or any part or parts thereof and to all orders and regulations made thereunder respectively; and

(c) all requisitions, orders and notices whatsoever issued by any competent authority in respect of the Property and requiring works to be performed on, about or in respect of the Property.

2.2. The Buyer:

(a) does not rely on any representations, warranties or information provided or statements about the Property made by or on behalf of the Seller, other than as expressly set out in this Contract;

(b) acknowledges that it has not been induced to enter into this Contract by any representation, warranty or information provided by the Seller, or their respective employees or agents;

(c) acknowledges that it has satisfied itself about:

(i) the quality and state of repair and condition of the Property;

(ii) the purposes for which the Property can be used (including, without limitation, any restrictions on its use or development);

(iii) whether the current use of the Property is authorised by the relevant town planning authority;

(iv) the fitness and suitability of the Property for any particular purpose;

(v) the existence or otherwise of necessary approvals and licences from authorities relating to the Property;

(vi) the existence of any hazardous contaminant within the meaning of the *Environmental Protection Act 1994.*

(vii) the present and future economic feasibility, viability and economic return of the Property; and

(viii) the value of the Property.

2.3. The Buyer is not entitled to:

(a) make any claim for compensation or damages;

(b) seek a reduction in the Purchase Price;

(c) delay completion;

(d) make any objection;

(e) be discharged from this Contract; or

(f) terminate this Contract,

for or because of:

(i) any reservation, Encumbrance, lien or interest to which this Contract is made subject that was capable of discovery by the Buyer prior to entry into this contract;

(ii) any minor error, minor misstatement or minor omission in the description or particulars of the Property in this Contract (including the area or boundaries of the Property);

(iii) any requisition, direction, recommendation, resumption, intended resumption or compulsory acquisition relating to the Property;

(iv) any matter about which, under this Contract:

(A) the Buyer agrees it has satisfied itself;

(B) the Buyer agrees it has not relied on any statement, representation or warranty.

2.4. The Buyer hereby covenants and agrees with the Seller that all warranties, conditions and representations as to the Property which might otherwise arise or be inferred implied or

imposed against the Seller whether by statute, regulation, contract or the parties' conduct or any other means howsoever are hereby expressly excluded and negatived in every respect, except to the extent that, at law, such warranties conditions and representations are implied and may not be excluded and negatived.

3. CONSTRUCTION LEASE [IF CONTRACT IS NOT SUBJECT TO FINANCE]

3.1. Simultaneously with the execution of this Contract the Buyer will execute a Lease on substantially the same terms as those in the Lease in Annexure B and deliver it to the Seller.

3.2. The Buyer gives the Seller authority to complete the Commencement and Expiry Dates, as those terms are defined in the Lease, as follows:

(a) Commencement Date – will reflect the Contract Date;

(b) Expiry Date – will reflect the date that is 3 years, less one day, from the Contract Date.

3.3. The Seller will provide a fully signed copy of the Lease to the Buyer as soon as reasonably practicable.

4. CONSTRUCTION LEASE [IF CONTRACT IS SUBJECT TO FINANCE]

4.1. If Standard Term 3 of this Contract applies, simultaneously with the provision of the Buyer's notice to the Seller, as provided by clause 3.2(2) of the Standard Terms, the Buyer will execute a Lease on substantially the same terms as those in the Lease in Annexure B and deliver it to the Seller.

4.2. The Buyer gives the Seller authority to complete the Commencement and Expiry Dates, as those terms are defined in the Lease, as follows:

(a) Commencement Date – will reflect the date of receipt of the Buyer's notice to the Seller pursuant to clause 3.2(2);

(b) Expiry Date – will reflect the date that is 3 years, less one day, from the date in clause 4.2(a).

4.3. The Seller will provide a fully signed copy of the Lease to the Buyer as soon as reasonably practicable.

5. BREACH OF LEASE

5.1. A breach of the Lease entered into between the parties in accordance with clause 3 of these Special Conditions will be taken to be a breach of this Contract.

5.2. This Contract will immediately be at an end and the Seller must refund the Deposit to the Buyer.

5.3. Neither party will have a claim against the other for any reason whatsoever save for any antecedent breach.

6. SETTLEMENT

6.1. Settlement must occur on or before the Expiry Date, as that term is defined in the Lease entered into between the parties in accordance with clause 3 of these Special Conditions.

6.2. If the conditions of the Lease have not been met and Settlement cannot occur on or before the Expiry Date, as that term is defined in the Lease, of the Lease then, unless the parties agree to an extension, this Contract will be at an end and neither party will have a claim against the other save for any antecedent breach. If the Contract comes to an end under this clause then the Lease will also come to an end.

6.3. If this Contract comes to an end in accordance with this clause then the Seller must refund the Deposit to the Buyer.

7. INCONSISTENCY

Where there is any inconsistency between the terms of the Standard Terms and these Special Conditions the terms of the Special Conditions shall prevail to the extent of that inconsistency.

TERMS OF CONTRACT

FOR HOUSES AND RESIDENTIAL LAND

1. DEFINITIONS

1.1 In this contract:

(1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and

(2) unless the context otherwise indicates:

(a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2013*;

(b) **"ATO"** means the Australian Taxation Office;

(c) **"ATO Clearance Certificate"** means a certificate issued under s14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;

(d) **"Balance Purchase Price"** means the Purchase Price, less the Deposit paid by the Buyer, adjusted under clause 2.6;

(e) **"Bank"** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)*;

(f) **"Bond"** means a bond under the Residential Tenancies and Rooming Accommodation Act 2008;

(g) **"Building Inspector"** means a person licensed to carry out completed residential building inspections under the *Queensland Building and Construction Commission Regulations 2003*;

(h) **"Business Day"** means a day other than:

(i) a Saturday or Sunday;

(ii) a public holiday in the Place for Settlement and

(iii) a day in the period 27 to 31 December (inclusive);

(i) **"CGT Withholding Amount"** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-220;

(j) **"Compliance or Exemption Certificate"** means:

(i) a Pool Safety Certificate; or

(ii) a building certificate that may be used instead of a Pool Safety Certificate under section 246AN(2) of the *Building Act 1975*; or

(iii) an exemption from compliance on the grounds of impracticality under section 245B of the *Building Act 1975*;

(k) **"Compliant Smoke Alarm"** means a smoke alarm complying with the requirements for smoke alarms in domestic dwellings under the *Fire and Emergency Services Act 1990*;

(l) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;

(m) **"Court"** includes any tribunal established under statute.

(n) **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;

(o) **"Encumbrances"** includes:

(i) unregistered encumbrances;

(ii) statutory encumbrances; and

(iii) Security Interests.

(p) **"Essential Term"** includes, in the case of breach by:

(i) the Buyer: clauses 2.2, 2.5(1), 2.5(5), 5.1 and 6.1; and

(ii) the Seller: clauses 2.5(5), 5.1, 5.3(1)(a)-(d), 5.3(1)(e)(ii) & (iii), 5.3(1)(f), 5.5 and 6.1;

but nothing in this definition precludes a Court from finding other terms to be essential.

(q) **"Financial Institution"** means a Bank, building society or credit union;

(r) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulations 2013*;

(s) **"GST"** means the goods and services tax under the GST Act;

(t) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;

(u) **"GST Withholding Amount"** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation.

(v) **"Improvements"** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;

(w) **"Keys"** means keys, codes or devices in the Seller's possession or control for all locks or security systems on the Property or necessary to access the Property;

(x) **"Notice of no pool safety certificate"** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;

(y) **"Notice of nonconformity"** means a Form 26 under the *Building Regulation 2006* advising how the pool does not comply with the relevant pool safety standard;

(z) **"Outgoings"** means rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies) but excludes land tax;

(aa) **"Pest Inspector"** means a person licensed to undertake termite inspections on completed buildings under the *Queensland Building and Construction Commission Regulations 2003*;

(bb) **"Pool Safety Certificate"** has the meaning in section 231C(a) of the *Building Act 1975*;

(cc) **"Pool Safety Inspection Date"** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following;

(i) the Inspection Date for the Building and/or Pest Inspection; or

(ii) 2 Business Days before the Settlement Date

(dd) **"Pool Safety Requirements"** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;

(ee) **"Pool Safety Inspector"** means a person authorised to give a Pool Safety Certificate;

(ff) **"PPSR"** means the Personal Property Securities Register established under *Personal Property Securities Act 2009 (Cth)*;

(gg) **"Property"** means:

(i) the Land;

(ii) the Improvements; and

(iii) the Included Chattels;

(hh) **"Rent"** means any periodic amount payable under the Tenancies;

(ii) **"Reserved Items"** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;

(jj) **"Security Interests"** means all security interests registered on the PPSR over Included Chattels and Improvements;

(kk) **"Transfer Documents"** means:

EXAMPLE

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(i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and

(ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;

(ll) **"Transport Infrastructure"** has the meaning defined in the *Transport Infrastructure Act 1994*; and

(mm) **"Withholding Law"** means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.

2. PURCHASE PRICE

2.1 GST

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

(2) If a party is required to make any other payment or reimbursement under this contract, that payment or reimbursement will be reduced by the amount of any input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled.

2.2 Deposit

(1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.

(2) The Buyer will be in default if it:

(a) does not pay the Deposit when required;

(b) pays the Deposit by a post-dated cheque; or

(c) pays the Deposit by cheque which is dishonoured on presentation.

(3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

2.3 Investment of Deposit

If:

(1) the Deposit Holder is instructed by either the Seller or the Buyer; and

(2) it is lawful to do so;

the Deposit Holder must:

(3) invest as much of the Deposit as has been paid with any Financial Institution in an interest bearing account in the names of the parties; and

(4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

2.4 Entitlement to Deposit and Interest

(1) The party entitled to receive the Deposit is:

(a) if this contract settles, the Seller;

(b) if this contract is terminated without default by the Buyer, the Buyer; and

(c) if this contract is terminated owing to the Buyer's default, the Seller.

(2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.

(3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.

(4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

2.5 Payment of Balance Purchase Price

(1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by bank cheque as the Seller or the Seller's Solicitor directs.

(2) Despite any other provision of this contract, a reference to a "bank cheque" in clause 2.5:

(a) includes a cheque drawn by a building society or credit union on itself;

(b) does not include a cheque drawn by a building society or credit union on a Bank;

and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.

(3) If both the following apply:

(a) the sale is not an excluded transaction under s14-215 of the Withholding Law; and

(b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:

(i) an ATO Clearance Certificate; or

(ii) a variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

(c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;

(d) the Buyer must lodge a Foreign Resident Capital Gains Withholding Purchaser Notification Form with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;

(e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and

(f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.

(4) For clause 2.5(3) and section14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:

(a) the Property includes items in addition to the Land and Improvements; and

(b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,

in which case the market value of the Land and Improvements will be as stated in the valuation.

(5) If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:

(a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;

(b) prior to settlement the Buyer must lodge with the ATO:

(i) a *GST Property Settlement Withholding Notification* form ("Form 1"); and

(ii) a *GST Property Settlement Date Confirmation* form ("Form 2");

(c) on or before settlement, the Buyer must give the Seller copies of:

(i) the Form 1;

(ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;

(iii) confirmation from the ATO that the Form 2 has been lodged; and

(iv) a completed ATO payment slip for the Withholding Amount;

(d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and

(e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.

(6) The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

2.6 Adjustments to Balance Purchase Price

(1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.

(2) Subject to clauses 2.6(3), 2.6(5) and 2.6(14), Outgoings for periods including the Settlement Date must be adjusted:

(a) for those paid, on the amount paid;

(b) for those assessed but unpaid, on the amount payable (excluding any discount); and

(c) for those not assessed:

EXAMPLE

(i) on the amount the relevant authority advises will be assessed (excluding any discount); or

(ii) if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).

(3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:

(a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and

(b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.

(4) The Seller is liable for land tax assessed on the Land for the financial year current at the Settlement Date. If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue.

(5) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.

(6) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.[illegible](2).

(7) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.

(8) Unpaid Rent for the rental period including both the Settlement Date and the following day (**"Current Period"**) is not adjusted until it is paid.

(9) Rent already paid for the Current Period or beyond must be adjusted at settlement.

(10) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(7), 2.6(8) and 2.6(9).

(11) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.

(12) The cost of Bank cheques payable at settlement:

(a) to the Seller or its mortgagee are the responsibility of the Buyer; and

(b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.

(13) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.

(14) Upon written request by the Buyer, the Seller will, prior to Settlement, give the Buyer a written statement, supported by reasonable evidence, of –

(a) all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and

(b) any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.6.

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

3. FINANCE

3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.

3.2 The Buyer must give notice to the Seller that:

(1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or

(2) the finance condition has been either satisfied or waived by the Buyer.

3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.

3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 3.2.

4. BUILDING AND PEST INSPECTION REPORTS AND POOL SAFETY

4.1 Building and Pest Inspection

(1) This contract is conditional upon the Buyer obtaining a written building report from a Building Inspector and a written pest report from a Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).

(2) The Buyer must give notice to the Seller that:

(a) a satisfactory Inspector's report under clause 4.1(1) has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or

(b) clause 4.1(1) has been either satisfied or waived by the Buyer.

(3) If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.

(4) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.1(2) by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.

(5) The Seller's right under clause 4.1(4) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 4.1(2).

4.2 Pool Safety

(1) This clause 4.2 applies if:

(a) the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and

(b) this contract is not a contract of a type referred to in section 160(1)(b) of the *Property Occupations Act 2014*.

(2) This contract is conditional upon:

(a) the issue of a Pool Safety Certificate; or

(b) a Pool Safety Inspector issuing a Notice of nonconformity stating the works required before a Pool Safety Certificate can be issued,

by the Pool Safety Inspection Date.

(3) The Buyer is responsible for arranging an inspection by a Pool Safety Inspector at the Buyer's cost. The Seller authorises:

(a) the Buyer to arrange the inspection; and

(b) the Pool Safety Inspector to advise the Buyer of the results of the inspection and to give the Buyer a copy of any notice issued.

(4) If a Pool Safety Certificate has not issued by the Pool Safety Inspection Date, the Buyer may give notice to the Seller that the Buyer:

(a) terminates this contract; or

(b) waives the benefit of this clause 4.2;

The Buyer must act reasonably.

(5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2(4) by 5pm on the Pool Safety Inspection Date.

(6) The Seller's right under clause 4.2(5) is subject to the Buyer's continuing right to give written notice to the Seller of termination or waiver pursuant to clause 4.2(4).

(7) The right of a party to terminate under this clause 4.2, ceases upon receipt by that party of a copy of a current Pool Safety Certificate.

EXAMPLE

(8) If the Buyer terminates this contract under clause 4.2(4)(a), and the Seller has not obtained a copy of the Notice of nonconformity issued by the Pool Safety Inspector, the Seller may request a copy and the Buyer must provide this to the Seller without delay.

5. SETTLEMENT

5.1 Time and Date

(1) Settlement must occur between 9am and 4pm AEST on the Settlement Date.

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

5.2 Transfer Documents

(1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.

(2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

5.3 Documents and Keys at Settlement

(1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:

(a) any instrument of title for the Land required to register the transfer to the Buyer; and

(b) unstamped Transfer Documents capable of immediate registration after stamping; and

(c) any instrument necessary to release any Encumbrance over the Property in compliance with the Seller's obligation in clause 7.2; and

(d) if requested by the Buyer not less than 2 clear Business Days before the Settlement Date, the Keys; and

(e) if there are Tenancies:

(i) the Seller's copy of any Tenancy Agreement;

(ii) a notice to each tenant advising of the sale in the form required by law; and

(iii) any notice required by law to transfer to the Buyer the Seller's interest in a Bond; and

(f) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Compliance or Exemption Certificate, if not already provided to the Buyer.

(2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.

(3) If the Keys are not delivered at Settlement under clause 5.3(1)(d), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

5.4 Assignment of Covenants and Warranties

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

(1) covenants by the tenants under the Tenancies;

(2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;

(3) manufacturers' warranties regarding the Included Chattels; and

(4) builders' warranties on the Improvements;

to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

5.5 Possession of Property and Title to Included Chattels

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

5.6 Reservations

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

(2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.

(3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.

(4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

5.7 Consent to Transfer

(1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.

(2) The Seller must apply for the consent required as soon as possible.

(3) The Buyer must do everything reasonably required to help obtain this consent.

6. TIME

6.1 Time of the Essence

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

6.2 Suspension of Time

(1) This clause 6.2 applies if a party is unable to perform a Settlement Obligation solely as a consequence of a Delay Event but does not apply where the inability is attributable to:

(a) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or

(b) termination or variation of any agreement between a party and any other person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.

(2) Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.

(3) An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.

(4) When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Delay Event, the Affected Party must give the other party a notice of that fact, promptly.

(5) When the Suspension Period ends, whether notice under clause 6.2(4) has been given or not, either party may give the other party a Notice to Settle.

(6) A Notice to Settle must be in writing and state:

(a) that the Suspension Period has ended;

(b) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date; and

(c) that time is of the essence.

(7) When Notice to Settle is given, time is again of the essence of the contract.

(8) In this clause 6.2:

(a) **"Affected Party"** means a party referred to in clause 6.2(1);

(b) **"Delay Event"** means:

(i) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;

(ii) riot, civil commotion, war, invasion or a terrorist act;

(iii) an imminent threat of an event in paragraphs (i) or (ii); or

(iv) compliance with any lawful direction or order by a Government Agency;

(c) **"Government Agency"** means the government of the Commonwealth of Australia or an Australian State, Territory or local government and includes their authorities, agencies, government owned corporations and authorised officers, courts and tribunals;

(d) **"Settlement Obligations"** means, in the case of the Buyer, its obligations under clauses 2.5(1) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a) – (e) and 5.5;

(e) **"Suspension Period"** means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Delay Event.

EXAMPLE

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7. MATTERS AFFECTING THE PROPERTY

7.1 Title

The Land is sold subject to:

(1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or

(2) the Conditions of the Crown Lease (if leasehold).

7.2 Encumbrances

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

7.3 Requisitions

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

7.4 Seller's Warranties

(1) The Seller warrants that, except as disclosed in this contract at settlement:

(a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;

(b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;

(c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and

(d) there will be no unsatisfied judgment, order (except for an order referred to in clause 7.6(1)(b)) or writ affecting the Property.

(2) The Seller warrants that, except as disclosed in this contract at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.

(3)(a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* (**"EPA"**), at the Contract Date:

(i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and

(ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.

(b) If the Seller breaches a warranty in clause 7.4(3), the Buyer may:

(i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or

(ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.

(4) If the Seller breaches a warranty in clause 7.4(1) or clause 7.4(2), the Buyer may terminate this contract by notice to the Seller.

(5) The Seller does not warrant that the Present Use is lawful.

7.5 Survey and Mistake

(1) The Buyer may survey the Land.

(2) If there is:

(a) an error in the boundaries or area of the Land;

(b) an encroachment by structures onto or from the Land; or

(c) a mistake or omission in describing the Property or the Seller's title to it;

which is:

(d) immaterial; or

(e) material, but the Buyer elects to complete this contract;

the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.

(3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).

(4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

7.6 Requirements of Authorities

(1) Subject to clause 7.6(5), any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("Work or Expenditure") must be fully complied with:

(a) if issued before the Contract Date, by the Seller before the Settlement Date;

(b) if issued on or after the Contract Date, by the Buyer.

(2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.

(3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.

(4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 246AR or 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* that affects the Property.

(5) Clause 7.6(1) does not apply to orders disclosed under section 33 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

7.7 Property Adversely Affected

(1) If at the Contract Date:

(a) the Present Use is not lawful under the relevant town planning scheme;

(b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;

(c) access or any service to the Land passes unlawfully through other land;

(d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;

(e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or omission in the Seller's title under clause 7.5(2)(c);

(f) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;

(g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;

(h) there is a charge against the Land under s104 of the *Foreign Acquisitions and Takeovers Act 1975*,

and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.

(2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.

(3) The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

7.8 Dividing Fences

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

8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT

8.1 Risk

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

EXAMPLE

8.2 Access
After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:
(1) once to read any meter;
(2) for inspections under clause 4;
(3) once to inspect the Property before settlement; and
(4) once to value the Property before settlement.

8.3 Seller's Obligations After Contract Date
(1) The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.
(2) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work on the Property, give a copy to the Buyer.
(3) Without limiting clause 8.3(1), the Seller must not without the prior written consent of the Buyer, give any notice or seek or consent to any order that affects the Property or make any agreement affecting the Property that binds the Buyer to perform.

8.4 Information Regarding the Property
Upon written request of the Buyer but in any event before settlement, the Seller must give the Buyer:
(1) copies of all documents relating to any unregistered interests in the Property;
(2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement;
(3) sufficient details (including the date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR; and
(4) further copies or details if those previously given cease to be complete and accurate.

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

9. PARTIES' DEFAULT

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

9.2 If Seller Affirms
If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:
(1) damages;
(2) specific performance; or
(3) damages and specific performance.

9.3 If Buyer Affirms
If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:
(1) damages;
(2) specific performance; or
(3) damages and specific performance.

9.4 If Seller Terminates
If the Seller terminates this contract under clause 9.1, it may do all or any of the following:
(1) resume possession of the Property;
(2) forfeit the Deposit and any interest earned;
(3) sue the Buyer for damages;
(4) resell the Property.

9.5 If Buyer Terminates
If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:
(1) recover the Deposit and any interest earned;
(2) sue the Seller for damages.

9.6 Seller's Resale
(1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
(a) any deficiency in price on a resale; and
(b) its expenses connected with any repossession, any failed attempt to resell, and the resale;
provided the resale settles within 2 years of termination of this contract.
(2) Any profit on a resale belongs to the Seller.

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

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

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

10. GENERAL

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

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

10.3 Duty
The Buyer must pay all duty on this contract.

10.4 Notices
(1) Notices under this contract must be in writing.
(2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.
(3) Notices under this contract or required to be given by law may be given by:
(a) delivering or posting to the other party or its solicitor; or
(b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
(c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).
(4) Subject to clause 10.4(5), a notice given after this contract is entered into in accordance with clause 10.4(3) will be treated as given:
(a) 5 Business Days after posting;
(b) if sent by facsimile, at the time indicated on a clear transmission report; and
(c) if sent by email, at the time it is sent.
(5) Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.
(6) If two or more notices are treated as given at the same time under clause 10.4(5), they will be treated as given in the order in which they were sent or delivered.

EXAMPLE

(7) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.

(8) For the purposes of clause 10.4(3)(c) and clause 12.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

10.5 Business Days

(1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.

(2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

10.6 Rights After Settlement

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

10.7 Further Acts

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

10.8 Severance

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

10.9 Interpretation

(1) Plurals and Genders

Reference to:

(a) the singular includes the plural and the plural includes the singular;

(b) one gender includes each other gender;

(c) a person includes a body corporate; and

(d) a party includes the party's executors, administrators, successors and permitted assigns.

(2) Parties

(a) If a party consists of more than one person, this contract binds them jointly and each of them individually.

(b) A party that is a trustee is bound both personally and in its capacity as a trustee.

(3) Statutes and Regulations

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

(4) Inconsistencies

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

(5) Headings

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

10.10 Counterparts

(1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.

(2) A counterpart may be electronic and signed using an Electronic Signature.

11. ELECTRONIC SETTLEMENT

11.1 Application of Clause

(1) Clause 11 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement using the same ELNO System and overrides any other provision of this contract to the extent of any inconsistency.

(2) Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 11.1(1).

(3) Clause 11 (except clause 11.5(3)) ceases to apply if either party gives notice under clause 11.5 that settlement will not be an Electronic Settlement.

11.2 Completion of Electronic Workspace

(1) The parties must:

(a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and

(b) do everything else required in the Electronic Workspace or otherwise to enable settlement to occur on the Settlement Date.

(2) If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.

(3) If any part of the Purchase Price is to be paid to discharge an Outgoing:

(a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;

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

(4) If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:

(a) the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;

(b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 11.2(4)(a);

(c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract;

(d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

11.3 Electronic Settlement

(1) Clauses 5.1(2) and 5.2 do not apply.

(2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.5(1).

(3) The Seller and Buyer will be taken to have complied with:

(a) clause 2.5(3)(c),(e) and (f); and

(b) clause 2.5(5)(d) and (e),

(as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.

(4) The Seller will be taken to have complied with clause 5.3(1)(b), (c), (d), (e) and (f) if:

(a) in relation to documents which are suitable for Electronic Lodgement in the Land Registry at settlement, the documents are Digitally Signed within the Electronic Workspace; and

(b) in relation to any other document or thing, the Seller's Solicitor:

(i) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys (if requested under clause 5.3(1)(d)) in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and

(ii) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and

(iii) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.

(5) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.

(6) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

(7) Electronic Settlement is taken to occur when Financial Settlement is effected, whether or not Electronic Lodgement has occurred.

EXAMPLE

11.4 Computer System Unavailable

If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or the relevant ELNO System is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.

11.5 Withdrawal from Electronic Settlement

(1) Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.

(2) A notice under clause 11.5(1) may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:

(a) the transaction is not a Qualifying Conveyancing Transaction; or

(b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to the ELNO System; or

(c) the Buyer's or Seller's Financial Institution is unable to use the relevant ELNO System to effect Electronic Settlement.

(3) If clause 11.5(2) applies:

(a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and

(b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

11.6 Costs

Each party must pay its own fees and charges of using the relevant ELNO System for Electronic Settlement.

11.7 Definitions for clause 11

In clause 11:
"Digitally Sign" and "**Digital Signature**" have the meaning in the ECNL.
"ECNL" means the Electronic Conveyancing National Law (Queensland).
"Electronic Conveyancing Document" has the meaning in the *Land Title Act 1994*.
"Electronic Lodgement" means lodgement of a document in the Land Registry in accordance with the ECNL.
"Electronic Settlement" means settlement facilitated by an ELNO System.
"Electronic Workspace" means a shared electronic workspace within an ELNO System that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement.
"ELNO" has the meaning in the ECNL.
"ELNO System" means a system provided by the ELNO for facilitating Financial Settlement and Electronic Lodgement.
"Financial Settlement" means the exchange of value between Financial Institutions facilitated by an ELNO System in accordance with the Financial Settlement Schedule.
"Financial Settlement Schedule" means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.
"Qualifying Conveyancing Transaction" means a transaction that is not excluded for Electronic Settlement by the rules issued by the relevant ELNO, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction.

12. ELECTRONIC CONTRACT AND DISCLOSURE

12.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:
(a) agree to enter into this contract in electronic form; and
(b) consent to either or both parties signing the contract using an Electronic Signature.

12.2 Pre-contract Disclosure

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

EXAMPLE

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SCHEDULE 2 – LEASE

LEASE/SUB LEASE

Dealing Number

OFFICE USE ONLY

Privacy Statement
Collection of information from this form is authorised by legislation and is used to maintain the publicly searchable records. For more information see the Department's website.

1. Lessor

MCKINLAY SHIRE COUNCIL

Lodger (Name, address, E-mail & phone number)
Preston Law
P.O. Box 707N
15 Spence Street
North Cairns QLD 4870
Email: info@prestonlaw.com.au
Ref: JC:190744
Ph: 07 4052 0700

Lodger Code
789

2. Lot on Plan Description **Title Reference**

[INSERT] [INSERT]

3. Lessee Given names Surname/Company name and number (include tenancy if more than one)

[INSERT]

4. Interest being leased

Fee Simple

5. Description of premises being leased

The whole of the Land

6. Term of lease

Commencement date/event: [INSERT]
Expiry date: [INSERT]
#Options: Nil

#Insert *nil* if no option or insert option period (eg 3 years or 2 x 3 years)

7. Rent/Consideration

See attached Schedule

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached schedule.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

McKinlay Shire Council

.....signature

.....

Mayor

.....full name

.....qualification / / .....

Witnessing Officer **Execution Date** **Chief Executive Officer**
(Witnessing officer must be in accordance with Schedule 1 Of Land Title Act 1994 eg Legal Practitioner, JP, C Dec) **Lessor's Signature**

9. Acceptance

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

.....Signature

.....full name

.....qualification / / .....

Witnessing Officer **Execution Date** **[INSERT]**
(Witnessing officer must be in accordance with Schedule 1 Of Land Title Act 1994 eg Legal Practitioner, JP, C Dec) **Lessee's Signature**

EXAMPLE

Title Reference [INSERT]

1. REFERENCE SCHEDULE

	Name and Address of Lessor:	McKinlay Shire Council 29 Burke Street, Julia Creek, Qld, 4823 Email: ceo@mckinlay.qld.gov.au
	Name and Address of Lessee:	[INSERT NAME] [INSERT ADDRESS] Email: [INSERT]
	Address of Premises:	[INSERT]
	Term:	3 years
	Options to Renew:	Nil
	Rent - First Year of Term:	$100.00 per month plus GST [if additional land parcels rent increases by $100.00 per month per parcel plus GST]
	Lessor's Outgoings payable by Lessee	Rates and Taxes Increase in Rates and Taxes Water Charges Waste Charges
	Lessee's Proportion of Lessor's Outgoings	100%
	Insurances to be taken out by Lessee:	Plate glass insurance Public risk insurance - $20,000,000.00 per claim Lessee's property and fittings at Premises
	Permitted Use:	The construction of a residence on the land and for no other purpose whatsoever
	Security Deposit:	$[INSERT] [insert an amount that is 50% of the Purchase Price]
	Guarantor	[INSERT] of [INSERT]

EXAMPLE

Title Reference [INSERT]

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Lease, the following terms have the following meanings unless the context otherwise requires:

Authority means any federal, state or local government authority or body.

Buildings means all improvements from time to time existing on the Land and improvements developed in conjunction with the Land and where appropriate, includes the Land.

Commencement Date means the date of commencement of this Lease as specified in Item 6.

Confidential Information means this Lease, all and any information whether recorded in writing or otherwise in respect of the matters contemplated by this Lease or which may be created or supplied following the execution of this Lease.

Consumer Price Index means the All Groups Consumer Price Index published from time to time by the Australian Bureau of Statistics in relation to the city of Brisbane.

Contaminated Land has the meaning given to it in the EP Act.

Contract means the Contract for the purchase of the Premises by the Lessee, in its capacity as buyer, from the Lessor, in its capacity as seller, dated [INSERT].

Creditable Acquisition, **GST**, **GST Exclusive Market Value**, **Input Tax Credit**, **Supply** and **Tax Invoice** each has the meaning attributed to each of those terms in the GST Law.

Default Rate means the rate of 12% per annum.

EP Act means the *Environmental Protection Act 1994 (Qld)*.

Expiry Date means the date of expiry of this Lease as specified in Item 6.

Force Majeure means delay or inability to perform caused by war, whether declared or not, insurrections, strikes, lockouts, other industrial disturbance, inability to obtain materials, unavailability of equipment, fire, cyclone, flood, storm or other severe action of the elements, accidents, government or statutory restrictions or from other causes whether like or unlike the foregoing which are unavoidable or beyond the reasonable control of either party but shall not include, for the avoidance of doubt, a lack of funds or the unserviceability of plant and equipment (for any reason).

GST Date means the date which this Lease becomes subject to GST under the GST Law.

GST Law means that term as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee means the Guarantee and Indemnity in this Lease.

Guarantor means the person or persons named as Guarantor in the Reference Schedule.

Increase in Rates and Taxes means any extra Rates and Taxes which the Lessor is charged (over and above those at the Commencement Date) by any Authority or other body due to the Lessee's use of the Premises.

EXAMPLE

Title Reference [INSERT]

Insurance means the costs of any insurance effected by the Lessor in respect of the Building and Lessor's Improvements.

Item means the relevant item number of the Form 7 of which this Schedule forms part.

Land means the land described in Item 2.

Law means any statute, regulation or ordinance made by an Authority and includes the applicable common law.

Lease means this Form 7 Lease and Form 20 Schedule and any schedules or annexures.

Lessee means the Lessee named in Item 3, and its successors in title and assigns.

Lessee's Proportion of Lessor's Outgoings' means the percentage of the Lessor's Outgoings that is specified in the Reference Schedule.

Lessor means the Lessor named in Item 1 and its successors and assigns.

Lessor's Insurance means the costs of any insurances effected by the Lessor in respect of the Land.

Lessor's Outgoings means all expenses and outgoings paid or incurred by the Lessor under the heads of expenditure listed as outgoings in the Reference Schedule.

Month or **Monthly** means respectively calendar month or calendar monthly.

Payee means the party receiving the Payment.

Payer means the party making the Payment.

Payment means:

(a) the amount of monetary consideration (exclusive of GST); or

(b) the GST Exclusive Market Value of any non-monetary consideration; or

(c) any amount required to be paid by the Payer to the Payee for a Supply under this Lease.

Permitted Use means the permitted use described in the Reference Schedule.

Premises means the Land and Building described in Item 5.

Rates and Taxes means the amount of any rates, taxes or charges which during the Term the Lessor or Lessee may be lawfully obliged to pay to any Authority by reason of the ownership or use of the Land.

Reference Schedule means the schedule in clause 1 of this Lease.

Rent means the annual sum specified in the Reference Schedule and where the context requires, any instalment/s of Rent.

Rent Year means each separate year of the Term, with the first Rent Year commencing on the Commencement Date and each subsequent Rent Year commencing on the anniversary of the Commencement Date in each succeeding year.

EXAMPLE

Title Reference [INSERT]

Security Deposit means a bank guarantee or cash to be given by the Lessee in accordance with clause 5 and for the sum specified in the Reference Schedule.

Services means all services of any nature from time to time provided to the Premises and/or the Buildings and/or the Land or available for use, and includes any electronic medium, electricity, lighting, gas, fire services, airconditioning and the fittings and equipment utilised for such services.

Supply has the meaning provided for that word in the GST Law.

Term means the term of this Lease, being the period from and including the Commencement Date to and including the Expiry Date.

Waste Charges means costs and charges levied or assessed in respect of sewerage and removal of garbage and other waste from the Land.

Water Charges means all rates, taxes and charges payable to any Authority or body in respect of water supplied to the Land.

2.2 **Interpretation**

(a) Words importing the singular number include the plural and vice versa.

(b) Reference to a person includes any corporation and vice versa.

(c) The respective obligations of each party under this Lease are separate and independent, and continue throughout the Term and any period of renewal and holding over (unless the context provides otherwise).

(d) If any term of this Lease becomes unenforceable, that term will not affect the validity of the remaining terms of this Lease.

(e) Reference to a Law includes all Laws amending or replacing a Law.

(f) Reference to an Authority or body that have ceased to exist or been reconstituted, will constitute a reference to the Authority or body established in lieu of the initial Authority or body.

(g) Where two or more persons are Lessees, the obligations of the Lessee (as the case may be) under this Lease bind them jointly and each of them severally.

(h) Headings and sub-headings have been included for ease of reference only and have no bearing on the construction of this Lease.

3. GRANT OF LEASE

The Lessor grants and the Lessee accepts a lease of the Premises on the terms and conditions set out in this Lease.

4. RENT AND OTHER CHARGES

4.1 **Payment of Rent**

(a) Rent is payable monthly in advance on the first day of each month by instalments each being one-twelfth (to the next whole cent) of the Rent for that Rent Year.

EXAMPLE

Title Reference [INSERT]

(b) If the Term commences on a day other than the first day of a month or expires on a day other than the last day of a month, the Lessee must pay to the Lessor Rent for the broken period calculated at a daily rate proportionate to the monthly Rent, and payable on the first day of the broken period.

(c) If this Lease ends at a time other than at the end of a Rent Year, the Lessee must pay to the Lessor prior to the end of this Lease the proportion of the Rent due at that time and the Parties must pay any monies owing to the other under this clause 4 (subject to any right of set-off) within one month of the Lease ending.

4.2 **Rent Reviews**

(a) Rent Reviews occur on the Rent Review Date and in accordance with the Rent Review Method.

(b) Pending determination of the Rent for any Rent Year, Rent is paid at the rate payable at the end of the previous Rent Year.

(c) If the Lessor does not undertake a Rent Review for a Rent Year, then the Lessor may at any time throughout the Term or after the Expiry Date recover from the Lessee the difference between the Rent that was paid by the Lessee and the Rent that ought to have been paid had the Rent Review occurred.

4.3 **Payment of Lessor's outgoings**

The Lessee must pay the Lessee's Proportion of Lessor's Outgoings to the Lessor within 14 days of being billed by the Lessor for the Lessor's Outgoings or any part of them.

4.4 **Payment of other charges**

(a) The Lessee must pay by the due date all utilities in respect of the Premises.

(b) The Lessee is responsible for establishing accounts in its own name wherever possible.

(c) Where accounts are not separately established in the Lessee's name and are received by the Lessor, the Lessee shall be required to reimburse the Lessor for those costs, within fourteen (14) days of a demand from the Lessor.

4.5 **Costs of Lease**

The Lessee must pay upon demand the following expenses:

(a) survey fees and registration fees associated with the registration of this Lease;

(b) the Lessor's solicitors' costs (on a solicitor and own client basis) of and incidental to the preparation, execution and registration of this Lease and any new lease, variation to or extension of lease.

4.6 **Costs of notices, re-entry and consents**

The Lessee must, upon demand by the Lessor, pay all costs (on a solicitor and own client basis) and expenses incurred by the Lessor in relation to:

EXAMPLE

(a) any notice lawfully given to the Lessee pursuant to this Lease and any actions taken to enforce the performance of the Lessee's obligations under this Lease;

(b) the lawful determination or attempted determination of this Lease, or the lawful re-entry or attempted re-entry by the Lessor into the Premises;

(c) the surrender of this Lease (including any duty and registration fees);

(d) the consideration of any consents by the Lessor; and

(e) the Lessor, without fault, being made a party to litigation commenced by or against the Lessee (other than litigation between the parties), and arising directly or indirectly from the Lessee's occupation of the Premises.

4.7 **Goods and Services Tax**

(a) Subject to sub-clause (b), any Payment required to be made under this Lease after the GST Date will be increased by any GST payable by the Payee for that Supply. The Payee will deliver a Tax Invoice for the Payment to the Payer at or before the Payment becoming due.

(b) Where a Payment is a repayment of, or contribution to, a Creditable Acquisition made by the Payee, the Payment will (prior to the increase provided for under sub-clause (a)) be discounted by the amount of the Input Tax Credit to which Payee is entitled for that Creditable Acquisition under the GST Law.

5. SECURITY DEPOSIT

(a) On or before the Commencement Date, the Lessee must give the Security Deposit to the Lessor.

(b) The Lessor may appropriate or call on any part of the Security Deposit if the Lessee does not comply with any of its obligations under this Lease, without first having to give notice to the Lessee.

(c) Any appropriation or call up of the Security Deposit by the Lessor will be without prejudice to any other rights or remedies the Lessor may have.

(d) If the Lessor appropriates or calls on the Security Deposit, the Lessee must give to the Lessor a replacement or additional Security Deposit, within 14 days of the Lessor's request to do so, so that the amount of the Security Deposit held by the Lessor at all times is the amount specified in the Reference Schedule.

(e) The Lessor will return the Security Deposit, or any unused portion of the Security Deposit to the Lessee at the end of the Lease, or any further term, or any holding over period.

6. OCCUPATION OF PREMISES

6.1 **Use and conduct**

(a) The Lessee must not use the Land for any use other than the Permitted Use.

(b) The Lessor does not warrant that the Land is, or will remain, suitable for the Lessee's use and any warranties as to the suitability of the Land implied by Law are negatived.

EXAMPLE

(c) The Lessee must:

i) conduct the Permitted Use at the Premises in an orderly manner and in accordance with the terms of this Lease;

ii) comply with all Laws, and obtain and maintain all licences and approvals;

iii) promptly notify the Lessor in writing of any damage sustained to the Premises;

iv) keep the Premises free of rodents, vermin and any infectious diseases.

(d) The Lessee must not:

i) interfere with the Services;

ii) carry on or permit to be carried on any offensive or illegal act, or any act which may void or invalidate any insurances effected by the Lessor in respect of the Land or any other part of the Premises;

iii) bring upon the Premises any explosive, flammable or corrosive fluid except that normally used by the Lessee in its business, and only if such fluids are safely confined in containers.

(e) Subject to the Lessor's rights under this Lease, the Lessee may occupy the Premises during the Term without interruption by the Lessor.

6.2 **Obligations under EP Act**

(a) The Lessor does not warrant that the Land is not Contaminated Land. The Lessee acknowledges and agrees that it has made the necessary inspections and enquiries to satisfy itself whether or not the Land is Contaminated Land.

(b) The Lessee must not permit its employees, agents or others (with or without invitation) who may be at or around the Premises to cause the Land to become Contaminated Land. If it does become Contaminated Land, the Lessee must immediately take such remediation measures as reasonably required by the Lessor and the chief executive under the EP Act. If the Lessee fails to take such measures, the Lessor may take such remediation measures as the agent of the Lessee and at the expense of the Lessee, which will constitute a liquidated debt immediately due and owing by the Lessee to the Lessor and payable on demand made by the Lessor.

(c) The Lessee must indemnify and keep indemnified the Lessor against any claim, damage, liability of expense which the Lessor may be, or becomes, liable (during or after the Term) because the Lessee fails to comply with sub-clause (b).

7. MAINTENANCE AND REPAIR OF PREMISES

7.1 **Obligation to clean, repair and maintain**

(a) The Lessee must:

i) keep the Premises (including the external surfaces) clean and tidy;

ii) not allow any accumulation of useless property or rubbish at the Premises.

EXAMPLE

(b) The Lessee must maintain the Premises and all Services in good condition as at the Commencement Date, except for:

i) fair wear and tear, subject to the express obligations of the Lessee in this clause 7.1, and then only if the Lessee has taken all reasonable measures to ensure that any damage attributed to fair wear and tear will not contribute to any further damage to the Premises;

ii) damage caused by an event of Force Majeure.

8. RESERVATIONS

8.1 Right of entry

The Lessor reserves the right to:

(a) at all reasonable times enter and view the Premises. If the Lessor considers it necessary, the Lessor may leave a notice at the Premises requiring the Lessee, within a stated period, to carry out a repair or take the required action for the Lessee to comply with the terms of this Lease;

(b) at all times effect any works to the Premises considered necessary by the Lessor for the safety or preservation of the Premises or to comply with any Laws. The Lessor will (except in an emergency, the existence of which shall be determined by the Lessor acting reasonably) carry out the works in a manner which minimises, so far as practicable, interruption to the Lessee's occupation of the Premises.

8.2 Third party interests

(a) The Lessee must during the Term permit any person having any interest in the Premises superior to or concurrent with the Lessor to exercise the Lessor's and that person's lawful rights.

(b) The Lessor reserves the right to grant, and the Lessee's rights under this Lease are subject to, any easements or arrangements the Lessor makes regarding the Land for the purposes of providing access to the Land or the provision of any services to the Land, provided that such easements do not substantially interfere with the Lessee's rights under this Lease.

9. INSURANCES AND INDEMNITIES

9.1 Insurances

(a) The Lessee must take out and maintain in the Lessee's name with the Lessor's interest noted, a standard public liability insurance policy with an insurance company approved by the Lessor, for at least the amount specified in the Reference Schedule. If required by the Lessor, the Lessee must extend this policy to cover risks of an insurable nature regarding any indemnities that the Lessee has provided to the Lessor under this Lease.

(b) The Lessee must take out and maintain an insurance policy to the replacement value of the Lessee's property and fittings at the Premises.

(c) If requested by the Lessor, the Lessee must produce to the Lessor evidence of any insurance policies (including renewals) effected by the Lessee under this clause 9.1.

(d) The Lessee must not do anything which could:

EXAMPLE

i) prejudice any insurance of the Premises or property in the Premises;

ii) increase the premium for that insurance without the Lessor's consent.

(e) If the Lessee does anything that increases the premium of any insurance the Lessor has in connection with the Premises, the Lessee must pay the amount of that increase to the Lessor on demand.

9.2 **Indemnities**

(a) The Lessee occupies and uses the Premises at its own risk. The Lessor is not liable in any circumstances to the Lessee for any damage to the Lessee's property in or about the Premises, interruption to the Services nor any loss of profits by the Lessee.

(b) The Lessee must indemnify and keep indemnified the Lessor (during and after the Term) against all actions, losses and expenses incurred by the Lessor:

i) for any loss, damage, death or injury caused by, or incidental to, the Lessee's use of the Premises or by the escape of any water, fire, gas, electricity or other such agent from the Premises, except where the Lessor has caused or contributed by negligence, wilful act or omission;

ii) which are caused by, or incidental to, the Lessee's failure to comply with this Lease.

(c) Notwithstanding anything in this Lease to the contrary, the Lessor will not be in default of this Lease for a remediable breach, unless the Lessee has given written notice to the Lessor of the breach, and the Lessor has failed to remedy the breach within a reasonable period of time.

10. SUBLETTING AND ENCUMBERING

10.1 **Subletting and encumbering**

The Lessee must not without the Lessor's prior written consent:

(a) sublet or in any manner part with possession of the Premises; or

(b) mortgage or otherwise encumber the Lessee's interest in this Lease.

11. DAMAGE OR DESTRUCTION OF PREMISES

11.1 **Abatement of rental and suspension of covenant to repair**

(a) If, without any neglect or default by the Lessee, all, or part, of the Premises are damaged or destroyed by any flood, storm, riot, war or act of God prior to settlement of the Contract which renders the Premises wholly or partially unfit for use by the Lessee, payment of the Rental or a proportionate part, (according to the damage sustained) will abate. The Lessee covenants to repair and restore the Premises and agrees that it will have adequate insurance coverage for this purpose.

11.2 **Parties may terminate if no reinstatement**

If, without any neglect or default by the Lessee, the Premises are damaged or destroyed by any flood, storm, riot, war or act of God prior to settlement of the Contract so as to render the Premises:

EXAMPLE

(a) wholly unfit for use by the Lessee and the restoration of the Premises by the Lessee has not substantially commenced within a reasonable period of time from the damage occurring, the Lessor may give a written notice to the Lessee stating that the Lessor will terminate the Lease if the restoration of the Premises has not substantially commenced within three months of the date of that notice. If the restoration has not substantially commenced within that time and continues not to be substantially commenced, the Lessor may terminate this Lease. The Lessee will be required to remove all property, improvements, fixtures and fittings from the Land and restore it to is condition as at the Commencement Date unless otherwise required by the Lessor. If the Lessee does not remove all property the Lessor may do so and recover the costs of doing so from the Lessee.

This termination will not prejudice either parties' rights regarding any antecedent breach of this Lease.

11.3 **Arbitration of disputes**

(a) If a dispute arises between the parties in respect of this clause 6, the dispute must be submitted for arbitration to an independent arbitrator appointed by the president of the Queensland Law Society Incorporated, whose decision will be conclusive and binding on the parties. The submission will be deemed to be a submission to arbitration within the meaning of the *Commercial Arbitration Act 2013*. A determination from arbitration under this clause will be a condition precedent to the parties commencing legal proceedings relating to the dispute.

12. LESSEE'S DEVELOPMENT OF THE LAND

12.1 **Development of Land**

(a) The parties acknowledge and agree that:

i) the Land is to be developed by the Lessee in accordance with this clause 12 in accordance with the Permitted Use ("Development"); and

ii) the Development is to be completed by the Expiry Date.

12.2 **Development Expiry Date**

(a) The parties acknowledge and agree that:

i) the Development of the Land must be completed, including a requirement for the improvements on the Land to be able to be lawfully occupied by the Lessee, by the Expiry Date; and

ii) settlement of the Contract will occur on or before the Expiry Date.

(b) If the Development of the Land is not completed by the Expiry Date, then the Lessor may give notice to the Lessee terminating this Lease, effective fourteen (14) days from the date of the notice.

(c) Upon termination of this Lease pursuant to this clause 12.2:

i) the parties must take any step required to give effect to the surrender of this Lease; and

EXAMPLE

ii) the Lessee shall have no claim against the Lessor because of termination pursuant to this clause 12.2. This includes, but is not limited to, any claim or any nature by the Lessee due to the Lessor repossessing the Development or partially developed Land, including without limitation a claim for reimbursement for the costs of works or improvements carried out on the Land.

12.3 **Development works**

(a) The Lessee must:

i) obtain all approvals required to develop the Land and undertake any works, including for the avoidance of doubt, any approvals required from the Lessor as the local government within twelve (12) months of the Commencement Date;

ii) as soon as practicable but no later than twelve (12) months after receiving the required approvals, commence the Development in accordance with the approvals;

iii) ensure that the Development is carried out in a proper and workmanlike manner by contractors who have a current public liability insurance policy for at least $20,000,000.00 and who have been approved by the Lessor and who have the required workers compensation insurance;

iv) ensure that the Development is constructed in a timely and efficient manner and is completed by the Expiry Date; and

v) indemnify and keep indemnified the Lessor against all claims, expenses and losses incurred by the Lessor of and incidental to the Lessee undertaking the works/development.

(b) In the event that the Lessee is in breach of clause 12.3(a), the Lessor, may without limitation to any other rights of the Lessor:

i) terminate this Lease in accordance with clause 12.2(b);

ii) repossess the Land and, subject to clause 14, all Development works, fixtures and improvements constructed on the Land as at the date of termination of the Lease;

iii) require the Lessee to hand up all approvals, Development plans, construction plans and other documentation associated with the Development to the Lessor immediately upon demand; and

iv) claim from the Lessee as a liquidated debt the costs associated with the Lessor enforcing its rights under this clause.

12.4 **Development costs**

All costs associated with completing the Development shall be borne by the Lessee, and the Lessee shall have no claim whatsoever against the Lessor for any costs however arising (including, but not limited to, overrun costs, construction costs or costs associated with required modifications or amendments to development plans or approvals for the Development).

EXAMPLE

Title Reference [INSERT]

13. DEFAULT OF LESSEE

13.1 Lessor may rectify

(a) If the Lessee fails to perform any of its obligations under this Lease, the Lessor may, in its absolute discretion (as the agent of the Lessee) do all such things and incur such expenses as are necessary to perform these obligations.

(b) All of the Lessee's costs associated with or incidental to taking a step under subclause (a) of this clause shall be recoverable from the Lessee as a liquidated debt and shall be payable on demand.

13.2 Overdue payments

(a) If the Lessee fails to pay any money payable on demand within 14 days of the Lessor's demand, or fails to pay any other money due under this Lease within 7 days of their due date, the Lessee must pay to the Lessor interest accruing daily at the Default Rate:

i) on the money owing from the payment due date until the money is paid; and

ii) upon any judgment the Lessor obtains against the Lessee from the date of the judgment until the debt is satisfied.

(b) Interest is capitalised on the last day of each month and payable on the first day of the next month. The interest is recoverable in the same manner as the Rent in arrears.

(c) If an amount of Rent, or any other money due under this Lease, remains unpaid by the Lessee as a result of consecutive breaches of the same term of this Lease, interest at the Default Rate accrues on that amount from the date when the breach first occurred.

(d) Without prejudice to any other remedy, the Lessor may sue the Lessee for any money owing by the Lessee under this Lease. Neither the institution of legal proceedings nor the entering of judgment by a court will bar the Lessor from bringing any subsequent suits against the Lessee for any other money owing by the Lessee to the Lessor under this Lease.

13.3 Definition of default

The Lessee will be in default of this Lease, if:

(a) any part of the Rent is in arrears for 7 days, whether demanded or not;

(b) any money (other than the Rent) payable by the Lessee under this Lease on demand is not paid within 14 days of the Lessor making such a demand, or if any other money payable by the Lessee under this Lease is not paid by the payment due date;

(c) the Lessee fails to comply with a term of this Lease;

(d) the Lessee (except for the purpose of reconstruction) becomes bankrupt, insolvent, under administration, in liquidation or receivership, or otherwise without full capacity; or

(e) the Lessee's interest under this Lease is taken in execution under any legal process.

EXAMPLE

13.4 **Rights upon default**

(a) If the Lessee defaults under this Lease, the Lessor may (without prejudice to any other rights):

i) subject to any prior notice required by Law, re-enter and take possession of the Premises and eject the Lessee and any persons in possession of the Premises (which may be by force, if necessary), from which time this Lease will be terminated;

ii) terminate this Lease by giving written notice to the Lessee; or

iii) by giving written notice to the Lessee, elect to convert the unexpired residue of the Term to a monthly tenancy. The Lease will be terminated and the Lessee will hold the Premises from the Lessor pursuant to clause 14.6 (Holding over).

(b) Upon re-entry to the Premises, the Lessor may remove any fittings, additions, signage, chattels or other property at the Premises and store them at the cost of the Lessee (those costs are payable by the Lessee to the Lessor on demand) without being guilty of conversion or liable for any loss or damage to these items. If the Lessee fails to claim the items within 14 days of removal, those items are deemed abandoned by the Lessee and will the Lessor may elect to either:

i) deem any fittings, additions, signage, chattels or other property not removed from the Premises as abandoned and such items shall become the property of the Lessor; or

ii) remove any fittings, additions, signage, chattels or other property not removed from the Premises and dispose of them, with any costs associated with such removal and disposal recoverable from the Lessee as a liquidated debt, payable on demand.

14. END OF LEASE

14.1 If settlement of the Contract does not occur and the Contract or this Lease is terminated the Lessee must yield up the Premises in the condition required by clauses 7.1 and this clause 14, and return to the Lessor all keys and security devices relating to the Premises.

14.2 The Lessee must remove any improvements it has made to the Land if demanded by the Lessor.

14.3 At the end of the Lease, the Lessor may elect to either:

(a) deem any improvements, fittings, additions, signage, chattels or other property not removed from the Premises as abandoned and such items shall become the property of the Lessor and no compensation shall be payable to the Lessee by the Lessor; or

(b) remove any improvements, fittings, additions, signage, chattels or other property not removed from the Premises and dispose of them, with any costs associated with such removal and disposal recoverable from the Lessee as a liquidated debt, payable on demand.

14.4 The ending of this Lease does not affect any of the Lessor's rights against the Lessee on account of any antecedent breach by the Lessee of a term of this Lease.

14.5 **Holding over**

(a) If the Lessee remains in occupation of the Premises after the expiration of the Term with the consent of the Lessor, the Lessee becomes a monthly tenant. The Lessee continues to pay the

EXAMPLE

same amount of Rent, the Outgoings and other money under this Lease in accordance with this Lease.

(b) The monthly tenancy created under sub-clause (a) will continue on the same terms of this Lease (so far as the terms can be applied to a monthly tenancy) until either party gives the other party one month's written notice terminating the tenancy. However, if the Lessee is in default, the Lessor may give 72 hours written notice to the Lessee terminating the tenancy.

15. GENERAL PROVISIONS

15.1 Power of attorney

The Lessee irrevocably appoints the Lessor to be the true and lawful attorney of the Lessee to do the following acts on the Lessee's behalf:

(a) If the Lessor has lawfully terminated this Lease (proof of which will be the declaration of the Lessor), the Lessor may execute and do all things necessary to register a surrender of this Lease; and

(b) Substitute the Lessor as the attorney with a purchaser of the Premises for the reversion of this Lease.

15.2 Consent

Subject to anything in this Lease to the contrary, any consent which the Lessor is requested to provide under this Lease may, at the absolute discretion of the Lessor, be granted, refused, granted subject to conditions or withdrawn at any time.

15.3 Waiver

(a) A waiver by either party of a term of this Lease will only be effective if it is made in writing by that party. The waiver will not extend to, and act as, a waiver of a term generally.

(b) If the Lessee is in breach of this Lease, the acceptance by the Lessor of money from the Lessee does not act as a waiver of the Lessor's rights regarding that breach.

(c) A delay by the Lessor to exercise its rights under this Lease does not act as a waiver of those rights.

15.4 Severance

If a provision of this Lease is void or unenforceable it must be severed from this Lease and the provisions that are not void or unenforceable are unaffected by the severance.

15.5 Service of notices

(a) A notice required to be given by one party to another under this Lease is effectively served, if it is in writing and:

i) served personally or left for the Lessee at the Premises, upon which the notice will be deemed to have been served immediately;

EXAMPLE

ii) sent by email to the other party's email address, upon which the notice will be deemed to be served at the time the email was transmitted by the sender, provided the sender does not immediately indicate a malfunction in the transmission;

iii) sent by facsimile machine to the other party's facsimile machine, upon which the notice will be deemed to be served at the time the facsimile was transmitted from the sending machine, provided the receiving facsimile machine does not immediately indicate a malfunction in the transmission; or

iv) forwarded by post addressed to the party at the address specified in the Reference Schedule notice will be deemed to be given on the next week day (other than a public holiday) after which it was posted.

(b) A party must as soon as possible advise the other party of its new facsimile and address details, if these change from that listed in the Reference Schedule.

15.6 **Time of the essence**

Time is of the essence in respect of the parties' obligations under this Lease.

15.7 **Effect of legislation**

Unless mandatory by Law, any Law (present or future) will not apply to this Lease if it has the effect of prejudicially affecting any of the Lessor's rights under this Lease or is inconsistent with the terms of this Lease.

15.8 **Entire agreement**

(a) The provisions of this Lease, and any consents given under it, contain the entire agreement as concluded between the parties and no oral or collateral agreements are of any effect.

(b) No representation by the Lessor regarding the Premises will form an implied or other term of this Lease. The Lessee acknowledges that it has not been induced into this Lease by any representation, made by the Lessor or its agents, that is not included in this Lease.

15.9 **Lessee's costs**

The Lessee must perform all of its obligations under this Lease at its own cost, unless otherwise specified in this Lease.

15.10 **Electronic communication**

The Lessee confirms it consents to receiving this Lease and any notices or communications pursuant to this Lease by electronic communication.

15.11 **Confidentiality**

(a) The parties covenant and agree that they will not without the prior written approval of the other party:

i) disclose the Confidential Information or cause, suffer or permit the same to be disclosed to any person other than its officers and employees who need to know for the purposes of the party discharging its obligations under this Lease; or

EXAMPLE

Title Reference [INSERT]

ii) use or allow the use of the Confidential Information for any purpose other than that for which it is supplied.

(b) The obligations of the parties under clause 15.11(a) shall not apply in respect of Confidential Information where:

i) the party is obliged by law to disclose the information;

ii) expressly agreed by all parties in writing; or

iii) the Confidential Information comes into the public domain otherwise than by a breach of this Lease.

(c) If requested by a party, the other party must immediately return all Confidential Information, and any copies of the Confidential Information, to the requesting party.

(d) Upon a breach or threatened breach of the terms of this Lease by a party, the other party will, as between the parties, be entitled to an injunction restraining the first party from committing a breach of this Lease without showing or proving any actual damage sustained or likely to be sustained by the party making the application for injunction.

(e) The obligations of the parties under this clause 15.11 will survive termination of this Lease.

(f) The parties shall assume responsibility for the actions of its advisers, consultants, employees and financiers who have access to the Confidential Information and must ensure that the consultants and employees are similarly bound by the obligations created under this Lease.

EXAMPLE

Title Reference [INSERT]

ANNEXURE A

GUARANTEE AND INDEMNITY

1. Consideration

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into the Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

2. Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

(1) under the Lease, even if the Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and

(2) in connection with its occupation of the Premises, including, but not limited to, the obligations to pay money.

3. Indemnity

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against any liability or loss arising from, and any costs, charges or expenses incurred in connection with:

(1) the Lessee's breach of the Lease; or

(2) the Lessee's occupation of the Premises,

including, but not limited to, a breach of the obligations to pay money; or

(3) a representation or warranty by the Lessee in the Lease being incorrect or misleading when made or taken to be made; or

(4) a liquidator disclaiming the Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

4. Interest

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated

EXAMPLE

interest at the end of each month without demand. Interest is calculated on monthly rests at the Default Interest Rate.

5. Enforcement of rights

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

6. Continuing security

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

7. Guarantee not affected

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

(1) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other Guarantor;

(2) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;

(3) any transfer of a right of the Lessor;

(4) the termination, surrender or expiry of, or any variation, assignment, licensing, extension or renewal of or any reduction or conversion of the Term;

(5) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;

(6) any change in the Lessee's occupation of the Premises;

(7) the Lease not being registered;

(8) the Lease not being effective as a lease;

(9) the Lease not being effective as a lease for the Term;

(10) any person named as Guarantor not executing or not executing effectively the Lease;

(11) a liquidator disclaiming the Lease.

8. Suspension of Guarantor's rights

Until all money payable to the Lessor in connection with the Lease or the Lessee's occupation of the Premises is paid, the Guarantor may not:

(1) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its

EXAMPLE

Title Reference [INSERT]

liability under this guarantee and indemnity; or

(2) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with the Lease; or

(3) make a claim or enforce a right against the Lessee or its property; or

(4) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due.

9. Reinstatement of guarantee

If a claim that a payment to the Lessor in connection with the Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

10. Costs

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

(1) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and

(2) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 10 then against other obligations under guarantee and indemnity.

11. Assignment

The Lessor may assign its rights under this guarantee and indemnity.

12. Interpretation

(1) A reference in this guarantee and indemnity to "the Lease" is a reference to the foregoing lease and to any holding over under it.

(2) Expressions used in this guarantee and indemnity which are capitalised (namely "Lessor", "Lessee", "Premises", "Default Interest Rate", "Term" and "Guarantor" have the meanings ascribed to them in the Lease.

EXAMPLE

Title Reference [INSERT]

(3) If the Guarantor consists of more than one person the obligations of each Guarantor are joint and several.

The Guarantor has signed this Deed of Guarantee and Indemnity this day of .

SIGNED SEALED and DELIVERED by **[INSERT]** as Guarantor in the presence of:

.....
Witness Signature

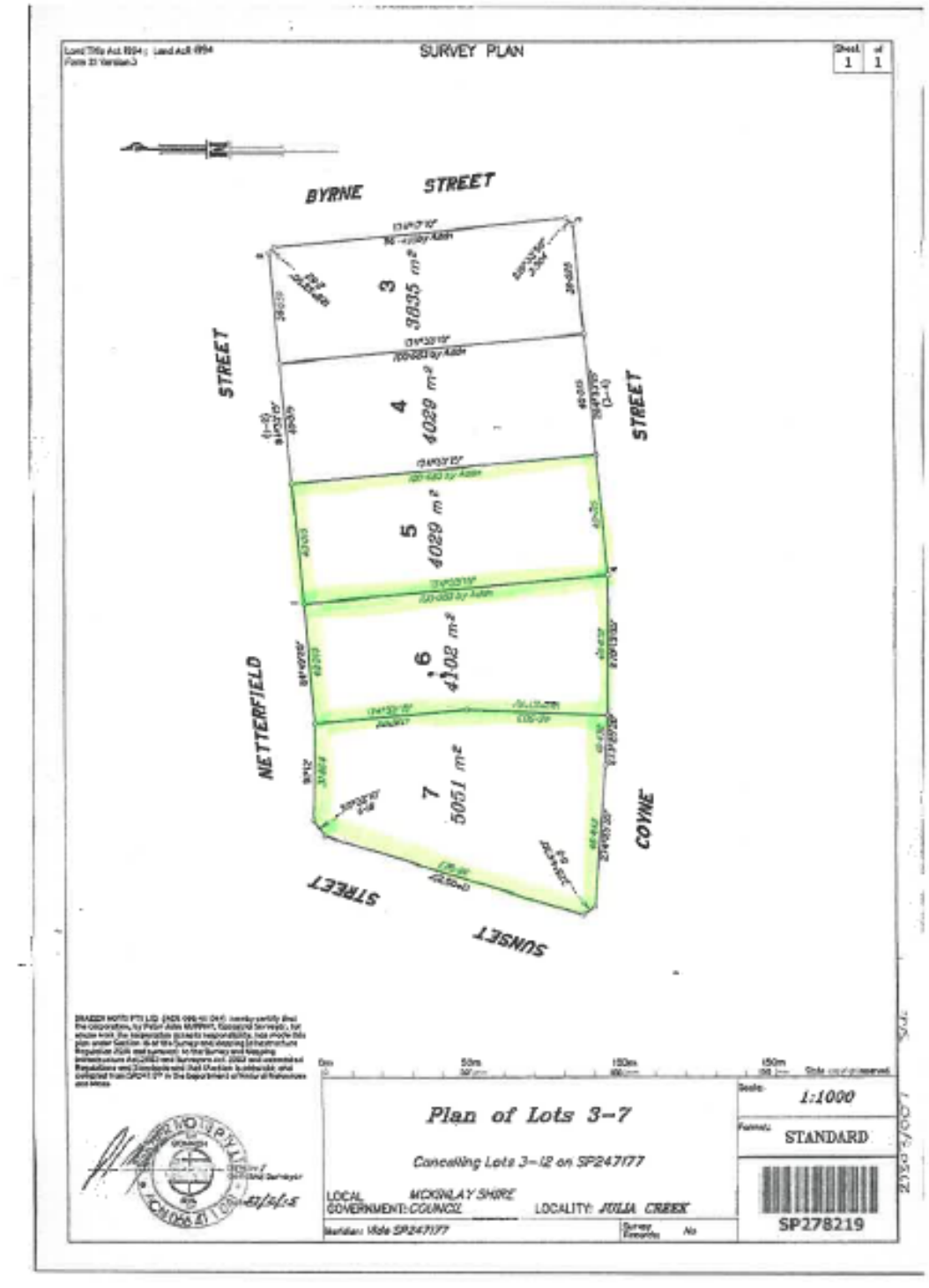
.....
Witness a Justice of the Peace/Solicitor/ Commissioner for Declarations

.....
Signature

EXAMPLE

SCHEDULE 3 – PLANS

SP278219 and SP247177



Land Title Act 1994 ; Land Act 1994
Form 21 Version 2

SURVEY PLAN

Sheet 1 of 4

Peg placed at all new corners, unless otherwise stated.

For Reference Tabulations See Sheet 4

For Traverse Tabulations See Sheet 4

For Permanent Mark Tabulations See Sheet 4

Area of New Road

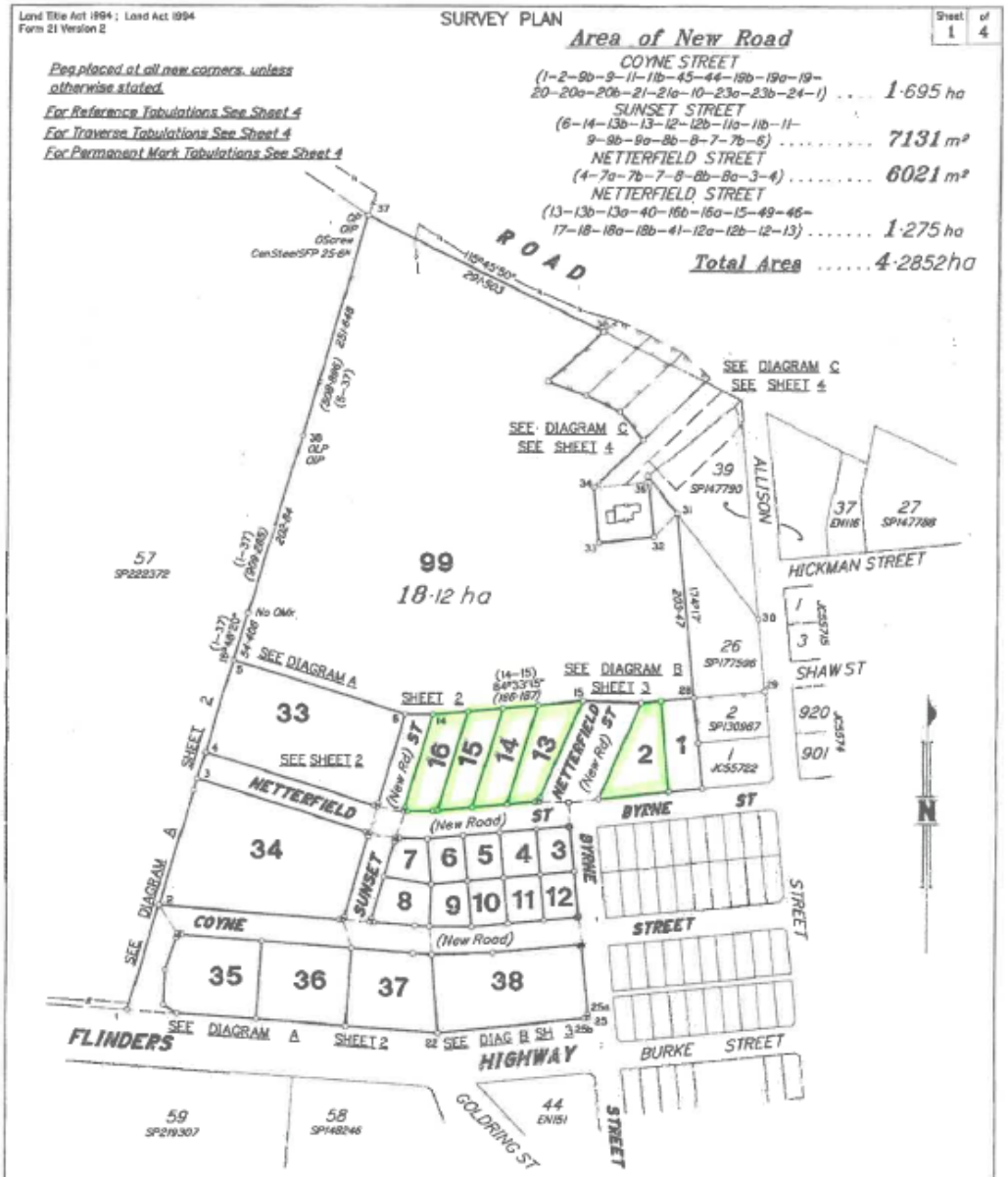
COYNE STREET
(1–2–9b–9–11–11b–45–44–19b–19a–19–20–20a–20b–21–21a–10–23a–23b–24–1) ..... 1·695 ha

SUNSET STREET
(6–14–13b–13–12–12b–11a–11b–11–9–9b–9a–8b–8–7–7b–6) ..... 7131 m²

NETTERFIELD STREET
(4–7a–7b–7–8–8b–8a–3–4) ..... 6021 m²

NETTERFIELD STREET
(13–13b–13a–40–16b–16a–15–49–46–17–18–18a–18b–41–12a–12b–12–13) ..... 1·275 ha

Total Area ..... 4·2852ha



BRAZIER MOTTI PTY LTD (ACN 055 411 041) hereby certify that the land comprised in this plan was surveyed by the corporation, by Luke David STEGER, Surveying Graduate, for whose work the corporation accepts responsibility, under the supervision of Peter John MURPHY, Cadastral Surveyor, and that the plan is accurate, that the said survey was performed in accordance with the Survey and Mapping Infrastructure Act 2003 and Surveyors Act 2003 and associated Regulations and Standards and that the said survey was completed on 7th September, 2011.

BRAZIER MOTTI PTY LTD ACN 055 411 041

Director

Director

Date 18/10/2011

0m 200m 400m 600m

State copyright reserved.

Plan of Lots 1–16, 33–38 & 99

Cancelling Lot 1 on SP189877

PARISH: HILTON COUNTY: Eddington

Meridian: MGA (Zone 54) vide SP189877 F/N's: No

Scale: 1:4000

Format: STANDARD

SP247177

Plan Status:

27303;005.SLW

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SCHEDULE 4 – TENDER RESPONSE SCHEDULE

To: Chief Executive Officer
McKinlay Shire Council
PO Box 177
Julia Creek Qld 4823

I/We the undersigned hereby provide a Tender for the purchase of the following Lot/s. The Tendered consideration is provided in the Price Schedule submitted with this Tender.

Name of Respondent:	
Full Name of Company:	
Address of Company:	
Phone Number:	
Fax Number:	
Mobile Phone Number:	
Email:	

PRICE SCHEDULE

Serial	Registered Property Description	Purchase Price including GST
1.	Lot 2 SP247177 - Title Reference 50864823	$
2.	Lot 13 SP 247177 - Title Reference 50864834	$
3.	Lot 14 SP 247177 - Title Reference 50864835	$
4.	Lot 15 SP 247177 - Title Reference 50864836	$
5.	Lot 16 SP 247177 - Title Reference 50864837	$
6.	Lot 5 SP278219 - Title Reference 50998574	$
7.	Lot 6 SP278219 - Title Reference 50998575	$
8.	Lot 7 SP278219 - Title Reference 50998576	$

DATED this day of , 20

If the Tenderer is an individual:

SIGNED by the Tenderer)
in the presence of:-) .....

.....
Witness

If the Tenderer is a Company:

Executed by the Tenderer in accordance with)
its Constitution and the officers executing this)
document warrant that they have authority to)
do so and that the execution of this Tender in)
this manner binds the company.)