



Agreement for Sale & Removal

8 South Calliope Street, Springsure QLD 4722

DRAFT

Contents of Instrument

Part 1	Reference Information	1
Item 1	Formation	1
Item 2	Parties	1
Item 3	Particulars	1
Part 2	Background	2
Part 3	Interpreting the Agreement	2
3.1	Interpretation Generally	2
3.2	Non-operative Provisions	2
3.3	Glossary	2
3.4	Cognate Expressions	6
3.5	Non-defined Expressions	6
3.6	Severance	6
3.7	Parties	6
3.8	Durations	6
3.9	References to Acts/Statutory Provisions	6
3.10	Inclusive and Particular References	6
3.11	Other References	7
3.12	Contra Proferentem Interpretation	7
Part 4	Sale and Purchase	7
4.1	Sale and Purchase	7
4.2	Exclusions	7
4.3	Condition of Sold Items	7
4.4	Smoke Alarms	7
4.5	Asbestos	7
4.6	Indemnity and Release	8
4.7	Encumbrances	9
4.8	Passage of Risk and Title	9
Part 5	Completion and Possession	9
5.1	Completion	9
5.2	Possession, Ownership and Risk	10
5.3	Conduct Standards	10
Part 6	Removal of Property	10
6.1	Vendor Obligation	10
6.2	Purchaser Obligation	10
6.3	Verification of Removal	11
6.4	Statutory Compliance	11
6.5	Licensing	11
6.6	Vehicles	11
Part 7	Security	11
7.1	Part-specific References	11
7.2	Payment of Bond	12
7.3	Banking the Bond	12

7.4	Vendor Resort to Bond	12
7.5	Application of Money Drawn	12
7.6	Refund of Bond	12
7.7	Security Interest	13
7.8	Power of Attorney	13
Part 8	Purchaser Insurance	14
8.1	Part-specific References	14
8.2	Cover	14
8.3	Public Liability Cover	14
8.4	Insurers	14
8.5	Proof of Insurance	15
8.6	Failure to Insure	15
Part 9	Goods & Services Tax	15
9.1	Interpretation of Terms	15
9.2	Character of Payments	15
9.3	Responsibility for Payment	15
9.4	Input Credits Adjustment (Reimbursements)	15
9.5	Tax Invoices	15
Part 10	Default	16
10.1	Part-specific References	16
10.2	Events of Default	17
10.3	Entitlements upon Default	17
10.4	Irremediable/Repudiatory Default	17
Part 11	Communications	17
11.1	Communications Generally	17
11.2	Formal Requirements	18
11.3	Methods of Giving Notice	18
11.4	Receipt of Notices	18
Part 12	Miscellaneous	19
12.1	Parties' Assurances	19
12.2	Further Assurances	19
12.3	Legal Relationship	19
12.4	Entirety of Agreement	19
12.5	Waiver/Abandonment of Entitlement	20
12.6	Governing Law	20
12.7	Jurisdiction (Adjudication of Disputes)	20
Appendix	.....	21
	[Indicative Property Photographs]	21
Attestations	.....	24
	Vendor	24
	Purchaser	24

Agreement for Sale & Removal

8 South Calliope Street, Springsure Qld 4722

PART 1 REFERENCE INFORMATION

Item 1 Formation

Date:

Item 2 Parties

Name: Central Highlands Regional Council.
ABN 79 198 223 277.

Abbreviated Reference: Vendor.

Address for Notices:

Delivery: Corner Egerton and Borilla Streets, Emerald, Qld.

Post: PO Box 21, Emerald, Qld, 4720.

E-mail: enquiries@chrc.qld.gov.au.

Contact Officer:

Name: Melissa Ellwood

Position: Senior Property Officer

Telephone: 07 4988 7216

E-mail: propertyservices@chrc.qld.gov.au

Name:

Abbreviated Reference: Purchaser.

Address for Notices:

Delivery:

Post:

E-mail:

Item 3 Particulars

Sold Items: The Dwelling and the Outbuilding (each including associated fittings).*

Location: 8 South Calliope Street, Springsure 4722

Exclusions: The Land and fencing

Sale/Purchase Price: \$

Purpose of Sale: Removal of the sold items from the Land.*

Completion of Sale: Not later than 4:30pm on third Business Day after the Formation Date.*

Removal of Sold Items: Not later than 60 days after the date of Completion.

Agreement for Sale & Removal
8 South Calliope Street, Springsure QLD 4720

Page 2

Removal Security:	The sum that is the higher of:	
	1. 20% of the Sale/Purchase Price; and	
	2. The sum of \$1,000.00 per Outbuilding and \$10,000.00 per Dwelling.	
Vendor Bank Details:	Bank:	Westpac
	Account name:	Central Highlands Regional Council Consolidated Account.
	BSB:	034 181
	Branch:	Emerald
	Account no.:	000 194
	* Refer to Clause 3.3 definitions.	

PART 2 BACKGROUND

- 2.1** The Vendor owns the property at 8 South Calliope Street, Springsure which comprises:
- (1) a dwelling house (the *Dwelling*); and
 - (2) Outbuildings.
- 2.2** The Vendor has accepted the Purchaser's tender, for purchase of the property described at Item 3.
- 2.3** This instrument records the terms of the sale and purchase.

PART 3 INTERPRETING THE AGREEMENT

3.1 Interpretation Generally

- (1) The Agreement is to be interpreted by reference to the provisions of this Part 3.
- (2) However, each such provision applies only to the extent that:
 - (a) a given context does not require otherwise; or
 - (b) a contrary intention is not apparent.

3.2 Non-operative Provisions

The headings, any notes (including footnotes and endnotes), and the table of contents appear in the Agreement for convenience only; they are not operative provisions of the Agreement.

3.3 Glossary

Each of the following expressions in bold to the left bears the meaning shown opposite or contained in the cross-referenced provision shown opposite:

- | | |
|------------|---|
| Act | (1) A legislative enactment of the Queensland Parliament or the Commonwealth Parliament. |
| | (2) Subordinate legislation made under the enactment. |
| | (3) A direction or requirement made by a competent entity under the enactment or subordinate legislation. |

Agreement for Sale & Removal
8 South Calliope Street, Springsure QLD 4720

Page 3

	(4) A licence, authorization, consent, approval, or exemption granted under the enactment or subordinate legislation.
	(5) A planning instrument.
	(6) A local law (including a subordinate local law).
Act of Insolvency	Refer to Part 10.
Address for Notices	For each Party: <ol style="list-style-type: none">(1) its address for delivery, post, or electronic mail shown in Item 2;(2) such other address for delivery, post, or electronic mail as it has notified to the Party giving it a notice as its address for notices under this Agreement; or(3) if it is not at any of those addresses, its last principal place of business or electronic mail address known to the Party giving it a notice.
ADI	An authorised deposit-taking institution, other than a restricted authorised deposit-taking institution, for the <i>Banking Act 1959</i> (Cwlth).
Agreement	This instrument and the agreement it evidences.
Aggrieved Party	Refer to Part 10.
Appendix	The appendix to the Agreement.
Bond	Refer to Part 7.
Bond Account	Refer to Part 7.
Business Day	A day other than a Saturday, Sunday, or public holiday in Emerald, Queensland.
Claim	An assertion of entitlement to a remedy relating to an act or occurrence, made by any means, including a demand or the pursuit of a cause of action before a judicial, quasi-judicial, or administrative body.
Clause	A numbered clause or sub-clause of the Agreement.
Completion	Refer to Clause 4.8.
Contractors: All Risks Cover	Refer to Part 8.
Default Notice	Refer to Part 10.
Dwelling	The dwelling house (indicative photographs of which appear in the Appendix) upon the Land and including: <ol style="list-style-type: none">(1) stand alone oven(2) air conditioning apparatus;(3) benches, sinks and taps, bath, showers and screens, and toilet;

Agreement for Sale & Removal
8 South Calliope Street, Springsure QLD 4720

Page 4

- (4) light fittings, external blinds, external antenna and satellite dish, and electrical fittings;
- (5) wardrobes/built-ins and floor coverings;
- (6) front and rear outdoor balconies;
- (7) front and rear stairs and railings;
- (8) downstairs laundry
- (9) double bay shed
- (10) plumbing;
- (11) concrete paving and paths and
- (12) concrete house supports and cross-bracing.

Encumbrance

A person's entitlement to, or interest in, the Property, which entitlement or interest qualifies the Vendor's interest in the Property, thereby diminishing or impeding the Vendor's power at law to deal freely with the Property.

Examples:

- (a) a security interest such as a mortgage, a charge, a pledge, or a lien;
- (b) an attachment order or notice issued by a court or other authority.

Expense

Cost, expense, or loss of any description, including damages.

Formation Date

The date specified at Item 1.

GST Act

Refer to Part 9.

Harm

All or any of:

- (1) death or personal injury (including shock);
- (2) disease or illness (including mental illness);
- (3) (for clarity) disablement, whether from disease, illness, or personal injury;
- (4) property damage and loss (including loss of use);
- (5) economic loss.

Item

A numbered item of information in Part 1.

Land

Lot 6 on RP604391, 8 South Calliope Street, Springsure including

- (1) pipes/conduits, and electrical connections, situated upon the lot; and
- (2) the lot boundary fences/gates.

Officer

- (1) For the Purchaser, if a corporation: a director, a company secretary, or an attorney or other authorised person.
- (2) For the Purchaser, if a natural person:
 - (a) the person himself/herself;
 - (b) his/her attorney (for a relevant purpose); or

Agreement for Sale & Removal
8 South Calliope Street, Springsure QLD 4720

Page 5

- (c) his/her lawfully appointed guardian or administrator, if (s)he suffers impaired capacity (*for example, a guardian or administrator appointed under the Guardianship and Administration Act 2000*).
- (3) For the Vendor, when concerning the signature of a document (*for example, a notice*):¹
 - (a) its mayor;
 - (b) a councillor or employee duly authorised by the mayor to sign the document, or documents of a class encompassing the document; or
 - (c) a person to whom it has delegated the power to sign the document or a class of document (including, if the delegate is its chief executive officer, the chief executive officer's subdelegate²).
- (4) For the Vendor, when concerning the performance of an act other than the signature of a document:
 - (a) a person to whom it has delegated the power to perform the act;
 - (b) if it has delegated the power to its chief executive officer: the chief executive officer's lawful subdelegate for the purpose.
- (5) For either Party: its solicitor.

Outbuilding	The double bay shed (indicative photographs of which appear in the Appendix), clothesline, and garden beds situated upon the Land.
Part	A numbered part of the Agreement containing one or more Items, or one or more Clauses.
Party	A party to the Agreement.
Personnel	For a Party, each of: <ul style="list-style-type: none">(1) its Officers and employees; and(2) its service-providers, and each of their officers, employees, and service providers.
PPS Act	Refer to Part 7.
Property	The Dwelling / the Dwelling and the Outbuilding (sold and purchased under this Agreement).
Public Liability Cover	Refer to Part 8.
Purchase Price	The sum specified at Item 3 (as the sale/purchase price for the Property).
Sale	Sale and purchase of the Property under this Agreement.
Vehicle Cover	Refer to Part 8.

¹ Refer to Local Government Act section 236 concerning persons who may sign documents on behalf of a local government.

² Refer to Local Government Act section 259 concerning chief executive officer subdelegation.

Vendor's Contact Officer The person identified in Item 2 as the Contact Officer, or such other person as the Vendor notifies to the Purchaser is the Vendor's Contact Officer, from time to time.

Workers Compensation Cover Refer to Part 8.

3.4 Cognate Expressions

Derivatives of a defined expression bear meanings corresponding to and consistent with the definition.

3.5 Non-defined Expressions

A term not relevantly defined in the Agreement carries the meaning that the Oxford Dictionary of English ascribes to it.

3.6 Severance

A provision is to be treated as omitted from the Agreement if:

- (1) it is void, unenforceable, or incomprehensible; or
- (2) retaining it would render the Agreement or another provision void, unenforceable, or incomprehensible.

3.7 Parties

- (1) Reference to a Party who is a natural person includes the person's personal representatives.
- (2) Reference to a Party that is a legal entity other than a natural person includes the entity's successors.
- (3) For a Party composed of two or more persons, each acknowledgement, representation, obligation, and entitlement binding or benefiting the Party binds or benefits all of those persons jointly and each of them as an individual.

3.8 Durations

- (1) A period beginning upon a specified day begins at the beginning of that day.
- (2) A period ending on a specified day ends at the moment before midnight of that day.

3.9 References to Acts/Statutory Provisions

- (1) Reference to an Act includes an Act that amends, consolidates, or replaces it.
- (2) Reference to a provision in an Act includes a provision that amends, consolidates, or replaces it.
- (3) Reference to an Act not identified (by definition or otherwise) as an Act of the Commonwealth Parliament is to an Act of the Queensland Parliament.

3.10 Inclusive and Particular References

- (1) *Include* and its derivatives are not expressions of limitation.
- (2) *In particular* and *particularly* are not expressions of limitation.

Examples:

- (a) *In a Clause stating that item A includes item B, item B is one of the things that item A encompasses; it is not necessarily the only thing.*

- (b) A provision requiring compliance with an approval, "particularly" a specified condition of the approval or permit, does not limit the compliance obligation to the stated condition.

3.11 Other References

- (1) Reference to the singular includes the plural, and vice-versa.
- (2) Reference to a person encompasses a natural person, a corporation, any other type of legal entity (including a body politic).
- (3) Reference to an act encompasses an act of commission and an act of omission.
- (4) Reference to money is a reference to Australian dollars and cents.
- (5) Reference to a time of day is a reference to Australian Eastern Standard Time.
- (6) Reference to writing is a reference to reproduction of words, figures, symbols, and shapes in visible form, in English.

3.12 Contra Proferentem Interpretation

A provision of the Agreement is not to be interpreted against the interest of a Party merely because the Agreement or provision was drawn or inserted by or on behalf of that Party.

PART 4 SALE AND PURCHASE

4.1 Sale and Purchase

- (1) The Vendor sells to the Purchaser, and the Purchaser purchases from the Vendor, upon the terms of this Agreement, all of the Vendor's interest and rights in and to the Property.
- (2) In return for the Property, the Purchaser will pay the Vendor the Purchase Price.

4.2 Exclusions

For clarity, the Sale does not include:

- (1) the Land; and
- (2) the fencing.

4.3 Condition of Sold Items

- (1) The Vendor sells the Property, and the Purchaser will accept it, in Formation Date condition.
- (2) The Vendor gives the Purchaser no assurance concerning:
 - (a) the condition of the Property (or any component item); or
 - (b) the suitability of the Property (or any component item) for the Purchaser's purposes or any purposes.

4.4 Smoke Alarms

The smoke alarms installed at the property do not meet the current compliance requirements under the legislation. Therefore, Tenderer's must be cognisant of this when submitting a Tender. The successful Tenderer acknowledges and accepts it will be its sole responsibility to ensure compliant smoke alarms are installed in the property.

4.5 Asbestos

- (1) In this Agreement, a reference to *asbestos* is to asbestos of any type (whether curly or straight) and in any form (whether friable or non-friable, bonded or unbonded).

-
- (2) The Vendor gives no assurance as to whether or not the Property contains asbestos.
 - (3) Due to the age of the Dwelling, the Vendor considers it is probable that the Dwelling contains asbestos.
 - (4) Prior to removing the Property from the Land, the Purchaser must undertake its own enquiries and investigations using suitably licensed persons to satisfy itself whether or not the Property contains asbestos.
 - (5) If the Property contains asbestos, the Purchaser must:
 - (a) take all action that is necessary or prudent to stabilise, control and manage the asbestos risk; and
 - (b) comply with legislative requirements regarding the removal and handling of asbestos-containing material including, without limitation, if applicable, engaging a suitably licensed contractor who is duly registered to handle asbestos, and obtaining the necessary authorisations from the relevant governmental authority to remove the Property from the Land.

4.6 Indemnity and Release

- (1) The Purchaser will indemnify the Vendor, and hold it harmless, against all Expense borne of Claims made, including liability incurred, in connection with acts of the Purchaser and its Personnel:
 - (a) in investigating, reporting, or identifying the condition of the Property, particularly the presence of asbestos; and
 - (b) in removing, handling, transporting, relocating, storing, disposing of, or otherwise dealing with, the Property and/or its components or contents, particularly asbestos.
- (2) The Purchaser releases and discharges the Vendor from responsibility and/or liability upon any and all Claims concerning Harm suffered and Expense incurred (including consequential loss) in connection with the Property-related acts the subject of this Clause 4.6.
- (3) *Consequential loss* is Expense that is a direct consequence of the relevant act but not an immediate consequence; for example:
 - (a) lost revenue;
 - (b) lost profit;
 - (c) anticipated savings or business lost;
 - (d) lost opportunity (including opportunity to enter or complete arrangements with third persons);
 - (e) lost data or goodwill;
 - (f) lost reputation.
- (4) This Clause 4.6 binds the Purchaser irrespective of whether the Expense or Harm results from:
 - (a) a person's carelessness; or
 - (b) the breach of a statutory duty; or
 - (c) the breach of a non-delegable duty of care,
- (5) Further, the Clause (4.6) binds the Purchaser irrespective of:
 - (a) who is Harmed;
 - (b) who is responsible for the care and safety of a person Harmed;
 - (c) what property is Harmed and

-
- (d) who owns, possesses, or controls Harmed property.
- (6) The Vendor may plead this Clause 4.6 as a bar and defence to any and every Claim from which the Purchaser has released the Vendor.

4.7 Encumbrances

The Property is sold to the Purchaser free of Encumbrance.

4.8 Passage of Risk and Title

- (1) For this Clause 4.8, *Completion* means completion of the Sale pursuant to Clause 5.1.
- (2) The Property is at the risk of the Purchaser from Completion.
- (3) Title to the Property passes to the Purchaser upon Completion.

PART 5 COMPLETION AND POSSESSION

5.1 Completion

- (1) For this Clause 5.1:
- (a) an *EFT* is an electronic funds transfer;
 - (b) a *transaction summary*, for an EFT, is a written transaction ID (including receipt number) generated by the ordering institution;
 - (c) a *financial institution cheque* is a cheque drawn by an ADI that is a bank, building society, credit union upon itself; but not a cheque drawn by one such institution upon another such institution;
 - (d) an *ordering institution* is an ADI that is a bank, building society, credit union, or a purchased payment facilities provider³;
 - (e) a *purchased payment facility* is a purchased payment facility for the *Payment Systems (Regulation) Act 1998* (Cwlth); and
- (2) The Purchaser must complete the Sale not later than 4:30pm on the third Business Day after the Formation Date.
- (3) The Purchaser effects completion by delivering to the Vendor:
- (a) a financial institution cheque for the Purchase Price, made payable to the Vendor's trust account; and
 - (b) a financial institution cheque for the Bond, made payable to the Vendor.
- (4) Alternatively, the Purchaser effects completion by:
- (a) paying the Purchase Price via EFT from an ordering institution to the credit of the Vendor's trust account; and
 - (b) paying the Bond via EFT from an ordering institution to the credit of the Vendor's bank account detailed at Item 3.
- (5) Completion by EFT is taken to occur when the Purchaser gives the Vendor's a copy of each of:
- (a) the transaction summary verifying transfer of the Purchase Price; and
 - (b) the transaction summary verifying transfer of the Bond.

³ At the Formation Date, PayPal Australia Pty Limited.

5.2 Possession, Ownership and Risk

- (1) Upon Completion, the Vendor must give the Purchaser possession of the Property.
- (2) For clarity, giving the Purchaser possession of the Property includes permitting the Purchaser and its Personnel:
 - (a) to access and leave the Property via the Land; and
 - (b) to use the Land to the extent necessary to facilitate removal of the Property from the Land, and reinstatement of the Land, in accordance with the relevant requirements of the Agreement.

5.3 Conduct Standards

The Purchaser must not do, and must ensure that its Personnel do not do, upon or about the Land:

- (1) anything annoying, noxious, or offensive to persons upon or in the vicinity of the Land; or
- (2) anything unlawful.

PART 6 REMOVAL OF PROPERTY

6.1 Vendor Obligation

Prior to or upon Completion, the Vendor will organise the disconnection of all utility services provided to the Property.

6.2 Purchaser Obligation

- (1) The Purchaser must ensure that the Property is removed from the Land within 60 (sixty) days after the date of Completion.
- (2) In removing the Property, the Purchaser must ensure that:
 - (a) construction site safety fencing is installed whilst removal works are being undertaken;
 - (b) all work is undertaken to comply with legislative obligations to avoid dust and noise nuisance to premises adjoining or in the vicinity of the Land;
 - (c) all pipes (particularly septic pipes) are removed, or alternatively are capped 300 millimetres below ground level;
 - (d) all underground electrical wires are isolated below ground level;
 - (e) all foundations and footings / steel house supports and cross-bracing are removed;
 - (f) all concrete and paving is removed;
 - (g) all earthworks holes and depressions are filled and each earthworks site is levelled;
 - (h) in particular, any hole or depression left by removal of the Property is filled and levelled;
 - (i) the Land is reinstated to a good order and condition, and any damage caused to the Land (including any remaining structures, fences and above ground or underground services) are made good, to the satisfaction of the Vendor's Coordinator Property Services; and
 - (j) the Land areas on which the Property was located prior to removal and the other Land areas used are left clean and tidy post-removal (including lawfully disposing of all material and waste generated from or arising out of removing the Property from the Land), to the satisfaction of the Vendor's Coordinator Property Services.
- (3) The Purchaser must ensure that all removal and related work is performed competently and compliantly with all relevant duties of care.

Bond Account The Vendor's trust account being:
Bank: Westpac
Account name: Central Highlands Regional Council Trust Account.
BSB: 034 181
Branch: Emerald
Account no. 000 194.

PPS Act *Personal Property Securities Act 2009* (Cwlth)

Registration Registration under the *PPS Act*.

7.2 Payment of Bond

- (1) The Purchaser must pay the Vendor the Bond at Completion, in accordance with Clause 5.1.⁴
- (2) The Vendor may apply the Bond:
 - (a) to remedy Purchaser defaults under Part 6; and
 - (b) to compensate the Vendor for Expense the Vendor incurs directly or indirectly through any such defaults.

7.3 Banking the Bond

If it receives a cheque for the Bond, the Vendor must deposit the Bond to the Bond Account.

7.4 Vendor Resort to Bond

Without limiting or waiving any Vendor entitlement under the Agreement: if the Purchaser defaults under Part 6, the Vendor may draw from the Bond Account the money the Vendor must expend:

- (1) to remedy the default;
- (2) to rectify the damage resulting from the default; and
- (3) to reimburse itself money otherwise lost or expended because of the default.

7.5 Application of Money Drawn

The Vendor must apply money drawn from the Bond Account, so far as the money will extend:

- (1) to discharge the outstanding Purchaser obligation/s;
- (2) to do anything else that the Vendor reasonably considers necessary to mitigate the damaging effects of incomplete or improperly completed work performed by or for the Purchaser; and
- (3) to compensate itself for damages suffered as a result of the Purchaser's breach of covenant.

7.6 Refund of Bond

The Vendor must pay the Purchaser the balance of money in the Bond Account not later than 14 days after the Vendor is satisfied (acting reasonably) that the Property removal work has been completed as required by Part 6.

⁴ Financial institution cheque or EFT.

7.7 Security Interest

- (1) The Purchaser acknowledges that:
 - (a) the Agreement is a security agreement for the *PPS Act*; and
 - (b) the Vendor may Register its security interest in the Bond.
- (2) The Vendor grants the security interest in priority to all other security interests in the Bond money.
- (3) The Vendor undertakes to give the Purchaser all information the Purchaser requires to enable it to Register the security interest.
- (4) The Purchaser undertakes to do everything necessary and reasonably required:
 - (a) to ensure that the Vendor's security interest in the Bond ranks ahead of all other security interests in the money;
 - (b) to ensure the enforceability of the security interest in priority to all other security interests in the money;
 - (c) to facilitate perfection of the security interest; and
 - (d) to facilitate enforcement of the security interest.
- (5) The Purchaser will bear, and pay the Vendor upon request, the cost the Vendor reasonably incurs in:
 - (a) documenting and Registering the Vendor's security interest in the Bond; and
 - (b) documenting and Registering release of that security interest.
- (6) The Purchaser waives its entitlement to receive from the Vendor, pursuant to *PPS Act* section 157, notice of the Registrar's verification statement.
- (7) To the extent that the Parties may lawfully exclude their operation, the following *PPS Act* provisions do not apply to the Agreement:
 - (a) section 130 (notice of disposal) to the extent that it requires the secured party to give a notice to the grantor;
 - (b) section 132(3)(d) (contents of statement of account after disposal);
 - (c) section 132(4) (statement of account if no disposal);
 - (d) section 135 (notice of retention);
 - (e) section 142 (redemption of collateral); and
 - (f) section 143 (reinstatement of security agreement).

7.8 Power of Attorney

- (1) The Purchaser irrevocably appoints the Vendor's chief executive officer the Purchaser's attorney, to execute whatever documents the attorney reasonably considers necessary or desirable to secure payment or retention of the Bond.
- (2) Where the Purchaser is a corporation, the documents the subject of Clause 7.8(1) include those necessary to secure registration of the Vendor's security interest in the Bond money and accrued interest) created by this Part 7.
- (3) The Purchaser will:
 - (a) ratify whatever the attorney does in lawfully exercising the powers of attorney; and
 - (b) reimburse the Vendor upon demand whatever Expense the attorney reasonably and properly incurs in that exercise.

PART 8 PURCHASER INSURANCE

8.1 Part-specific References

For this Part 8, each of the following expressions in bold to the left bears the meaning shown opposite:

Contractors: All Risks Cover	Cover under an insurance policy that indemnifies the assured contractor against Expense born of Harm resulting directly or indirectly from all risks and occurrences associated with planning and undertaking demolition and removal work.
Public Liability Cover	Cover under an insurance policy that indemnifies the assured against Expense born of claims concerning Harm to third persons (other than Personnel for whom the Purchaser must ensure cover by a policy of workers compensation insurance).
Vehicle Cover	Cover under a policy of comprehensive motor vehicle insurance that indemnifies the assured against Expense born of claims concerning, and liability for: <ol style="list-style-type: none">(1) vehicle damage or destruction;(2) loss of vehicle use; and(3) claims concerning, and liability for, Harm to persons and property arising from vehicle use.
Workers Compensation Cover	Insurance cover under the <i>Workers Compensation and Rehabilitation Act 2003</i> .

8.2 Cover

For removing the Property from the Land pursuant to Part 6, the Purchaser must:

- (1) hold Public Liability Cover;
- (2) ensure that its contractors hold Contractors: All Risks Cover, or equivalent;
- (3) ensure that all Personnel engaging in the removal process hold Workers Compensation Cover; and
- (4) ensure that each motor vehicle used in or in connection with the removal process has Vehicle Cover.

8.3 Public Liability Cover

The Public Liability Cover:

- (1) must be occurrence-based: that is to say, it must provide indemnity upon claims made after the policy has expired where the events generating the claims occur while the policy is current;
- (2) must provide indemnity of not less than \$25,000,000.00 per individual occurrence; and
- (3) must include the Vendor as a third-party beneficiary, for the Vendor's rights and interests as Land owner.

8.4 Insurers

The Public Liability Cover and the Vehicle Cover must issue from a registered insurer; namely, an entity conducting insurance business pursuant to a licence granted under the *Insurance Act 1973* (Cwlth).

8.5 Proof of Insurance

- (1) The Purchaser must give the Vendor, before the Property removal work begins, certificates of currency for the insurance cover this Part 8 requires.
- (2) A certificate of currency must issue from the insurer, not a broker.

8.6 Failure to Insure

- (1) If the Purchaser defaults in discharging an obligation to insure under this Part 8, the Vendor may obtain and maintain the required insurance.
- (2) The Purchaser must reimburse the Vendor upon demand whatever expense the Vendor properly incurs in obtaining and maintaining the insurance.

PART 9 GOODS & SERVICES TAX

9.1 Interpretation of Terms

For this Part 9:

- (1) an expression to which the *GST Act* ascribes a meaning carries that meaning;
- (2) the *GST Act* is *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), including other relevant GST-related legislation.

9.2 Character of Payments

Unless the Agreement states otherwise, monetary consideration for a taxable supply under the Agreement is GST-exclusive.

9.3 Responsibility for Payment

The recipient must:

- (a) bear the GST upon a taxable supply under the Agreement; and
- (b) pay the supplier a sum equivalent to that GST with the consideration for the supply.

9.4 Input Credits Adjustment (Reimbursements)

- (1) If the Agreement obliges a Party to indemnify the other Party against an Expense the other incurs or sustains, the Expense will be net of all input tax credits the payee is entitled to claim concerning that Expense.
- (2) For clarity, if the net Expense to be indemnified constitutes the consideration for a taxable supply, the payer must bear the GST for the taxable supply.

9.5 Tax Invoices

- (1) The supplier need not give the recipient a tax invoice or adjustment note for a taxable supply under the Agreement if:
 - (a) the Commissioner has issued a written determination or ruling permitting the recipient to issue a recipient-created tax invoice for the supply; and
 - (b) the recipient gives the supplier a recipient-created tax invoice or an adjustment note (as the case requires) for that supply.
- (2) Otherwise, however, the supplier must:
 - (a) give the recipient a tax invoice for the taxable supply in exchange for the consideration; and

- (b) give the recipient an adjustment note in return for or in conjunction with a supplementary payment or a refund (respectively) made to adjust the consideration or the GST.
- (3) A Party that has been issuing a recipient-created tax invoices for taxable supplies under the Agreement must notify the other Party promptly if it loses its entitlement to issue such invoices.

PART 10 DEFAULT

10.1 Part-specific References

For this Part 10, each of the following expressions in bold to the left bears the meaning shown opposite:

- Act of Insolvency**
- (1) For a Party subject to the *Bankruptcy Act 1966* (Cwlth):
 - (a) signing under an authority that appoints a controlling trustee;
 - (b) committing an act of bankruptcy;
 - (c) presenting a debtors petition for bankruptcy, or suffering the presentation of a creditors petition; or
 - (d) becoming bankrupt upon a debtors petition or a creditors petition.
 - (2) For a Party subject to the *Corporations Act 2001* (Cwlth) or the *Associations Incorporation Act 1981*:
 - (a) (if a company) entering voluntary administration;
 - (b) (if a company or a Part 5.7 body⁵) failing to satisfy a statutory demand;
 - (c) (if an incorporated association) meeting a criterion for enforced winding up;⁶
 - (d) passing a voluntary winding up resolution, voluntarily applying to be wound up, or suffering presentation of an application for its winding up otherwise than for the purpose of a reconstruction;
 - (e) suffering the appointment of a provisional liquidator; or
 - (f) being wound up or being deregistered otherwise than in the context of a reconstruction.
 - (3) For the Vendor (a local government):
 - (a) suffering the declaration, by a court of competent jurisdiction, that it is unable to pay its debts as and when they fall due; or
 - (b) suffering dissolution as a legal entity without another entity acceding to its functions.
 - (4) For a Party in any event:
 - (a) suffering the appointment of a receiver, which appointment is not terminated, postponed, or enjoined within 14 days after it is made;
 - (b) suffering an Encumbrance taking possession of its assets or any of them;

⁵ Part 5.7 bodies encompass certain corporations that are neither companies nor exempt public authorities nor corporations sole, certain foreign corporations, and certain unincorporated associations and partnerships.

⁶ Refer to *Associations Incorporation Act* section 90.

- (c) failing to pay a judgment debt, or to have the judgment set aside, within 21 days after the judgment is given against it; or
- (d) failing to secure the return of an asset within 21 days after a creditor or an Encumbrance lawfully seizes it.

Aggrieved Party A Party that suffers the breach of an obligation that the other Party owes it under the Agreement.

Default Notice A notice from an Aggrieved Party to a defaulting Party:

- (1) specifying the default in reasonable detail; and
- (2) directing the defaulting Party to remedy the default within a specified period or by a specified date, which date or period allows the defaulting Party a reasonable opportunity to comply with the notice.

10.2 Events of Default

A Party defaults under the Agreement if:

- (1) it fails to discharge an obligation that the Agreement imposes upon it;
- (2) a statement or assurance it makes or gives in the Agreement was materially incorrect or misleading when made;
- (3) a statement or assurance it makes or gives in the Agreement is rendered materially incorrect or misleading by its act; or
- (4) it commits an Act of Insolvency.

10.3 Entitlements upon Default

- (1) The Aggrieved Party may terminate the Agreement if the defaulting Party fails to comply with a Default Notice.
- (2) However, the Aggrieved Party may not terminate the Agreement for a specified default that is remedied:
 - (a) after the Default Notice expires; but
 - (b) before the Aggrieved Party delivers, posts, or transmits a notice of termination.
- (3) An Aggrieved Party terminates the Agreement by giving notice of termination to the defaulting Party.

10.4 Irremediable/Repudiatory Default

Irrespective of Clause 10.3, an Aggrieved Party need not give a Default Notice:

- (1) for an irremediable default; or
- (2) for a default that is repudiatory.

PART 11 COMMUNICATIONS

11.1 Communications Generally

- (1) This Part 11 governs communications under and for the Agreement save to the extent that a provision in another Part expressly provides otherwise.
- (2) Neither an approval nor a consent or permission binds the Party giving it unless that person gives it in writing.

- (3) A notice or direction is ineffective unless given in writing.
- (4) A statement is ineffective unless given in writing.
- (5) A request is taken as neither made nor received if not made in writing.
- (6) A response to a request made is taken as neither given nor received if not given in writing.

11.2 Formal Requirements

- (1) A notice must be intelligible.
- (2) The Party giving the notice, or one of its Officers, must sign the notice.
- (3) If a Party is composed of more than one person:
 - (a) a notice by that Party need not be signed by all of those persons if it expressly states that the signatory is, or signatories are, authorized by all of those persons to sign the notice; and
 - (b) the recipient of the notice need not enquire into the validity of the authorization.

11.3 Methods of Giving Notice

- (1) A Party must give a notice:
 - (a) by delivering it to the intended recipient's address for notices; or
 - (b) by posting it to the intended recipient at its address for notices; or
 - (c) by transmitting it via electronic mail (*e-mail*) to the intended recipient at its address for notices.
- (2) For each Party, its address for notices is:
 - (a) its address (delivery, post, or e-mail) shown at Item 2; or
 - (b) such other address as it has notified to the other Party as its address for notices under the Agreement; or
 - (c) if it is not at any such address, its last principal place of business or e-mail number known to the other Party.

11.4 Receipt of Notices

- (1) A notice delivered or posted is deemed received:
 - (a) if delivered at or before 4:30pm: at the moment of delivery;
 - (b) if delivered after 4:30pm: at 8:30am on the Business Day following the day of delivery;
 - (c) if posted to an address in Australia: 5 Business Days after posting, unless the recipient proves later receipt;
 - (d) if posted to an address outside Australia: 8 Business Days after posting, unless the recipient proves later receipt.
- (2) For Clauses 11.4(1)(c) and 11.4(1)(d), proof of later receipt need not be conclusive; proof that the later receipt occurred more probably than not will suffice.
- (3) A notice transmitted by e-mail is deemed received:
 - (a) at the time specified in the delivery receipt generated by the recipient's e-mail server; or
 - (b) if no delivery receipt is generated but the sender has not received notification of non-delivery from the recipient's e-mail server, 15 minutes after the time of transmission recorded by the sender's e-mail server.

-
- (4) If the e-mail transmission is received after 5:00pm, the notice will be deemed received at 8:30am on the Business Day following the date of receipt.
 - (5) A notice received upon a day that is not a Business Day is deemed received at 8:30am on the Business Day following the day of receipt.

PART 12 MISCELLANEOUS

12.1 Parties' Assurances

- (1) Each Party assures the other Party that:
 - (a) it possesses the power to enter this Agreement;
 - (b) it possesses the power to perform all of its obligations under the Agreement;
 - (c) all necessary authorizing action has been taken to enable it to enter the Agreement and to perform its obligations (*for example, the passage of any necessary resolutions*); and
 - (d) entering the Agreement and performing its agreed obligations does not contravene any law.
- (2) Each Party acknowledges that the other Party enters the Agreement in reliance upon those assurances.

12.2 Further Assurances

Each Party must do everything lawfully or reasonably required of it by the other Party:

- (1) to give effect to the provisions, and achieve the intent, of the Agreement; and
- (2) to preserve and promote the entitlements of the other Party under the Agreement.

12.3 Legal Relationship

- (1) This Clause 12.3 applies irrespective of any other provision in the Agreement, any provision of an Act, and any rule of general law.
- (2) The Agreement creates between the Parties no service provision, agency, partnership, or joint venture relationship.
- (3) The Agreement also grants no authorization for the Purchaser or its personnel to exercise the Vendor's powers or entitlements under an Act.

12.4 Entirety of Agreement

- (1) This instrument details the entire agreement between the Parties concerning the Sale:
 - (a) irrespective of negotiations or discussions preceding its execution and delivery; and
 - (b) irrespective of the content of any brochure, report, correspondence, or other document produced by or on behalf of a Party.
- (2) Each Party acknowledges that no representation, verbal or written, made by or on behalf of the other but not detailed in the instrument has induced it to enter the Agreement.

12.5 Waiver/Abandonment of Entitlement

- (1) The mere fact that a Party does not exercise an entitlement under or concerning the Agreement when the entitlement accrues does not deprive it of that entitlement or of similar entitlements that accrue at other times.
- (2) The mere fact that a Party grants an indulgence under or concerning the Agreement on a given occasion or in a given circumstance does not entitle the recipient to the same or a similar indulgence on another occasion or in a similar circumstance.
- (3) The waiver of an entitlement under the Agreement is not binding unless evidenced in writing.

12.6 Governing Law

Queensland law governs the Agreement.

12.7 Jurisdiction (Adjudication of Disputes)

- (1) For this Clause 12.7, a Queensland Court is a court or tribunal constituted under an Act and empowered to adjudicate a dispute arising under the Agreement.
- (2) The Parties submit exclusively to the jurisdiction of the Queensland Courts for the adjudication and resolution of disputes under the Agreement.
- (3) Each Party undertakes to refrain from bringing action upon the Agreement in a forum other than a Queensland Court.
- (4) Each Party waives all entitlement to object to the other bringing action upon the Agreement before a Queensland Court, including entitlement to claim that the Queensland Court is an inconvenient forum or has jurisdiction

[Appendix follows]

APPENDIX

[Indicative Property Photographs]

Note: The photographs are indicative only. They might not depict the Property components at the Formation Date or the date any preceding Purchaser inspection.

[Attestations follow]







DRAFT

ATTESTATIONS

Vendor

Executed on behalf of Central Highlands Regional Council

- pursuant to *Local Government Act 2009* section 236;
- as a deed;
- by a Council delegate, who certifies his/her authority to sign;
- in the presence of a witness:

..... Delegate	..... Witness
..... Full name [<i>Print</i>]	..... Full name [<i>Print</i>]

Purchaser

Executed by:

- as his/her deed;
- in the presence of a witness:

..... Signatory	..... Witness
.....	..... Full name [<i>Print</i>]

Executed by:

- as its deed;
- under *Corporations Act* sections 127(1) and 127(3);
- by the signatures of a director and a second director/the secretary:

..... Director	..... Director/Secretary
..... Full name [<i>Print</i>]	..... Full name [<i>Print</i>]

Executed by:

- as its deed;
- pursuant to *Corporations Act* sections 127(1) and 127(3);
- the signature of its sole director and sole secretary:

Sole director & sole secretary

Full name [*Print*]

[End of Instrument]

DRAFT