

**LANDCORP STANDARD RESIDENTIAL CONDITIONS**  
**(With Development Requirements)**

**1 DEFINITIONS AND INTERPRETATION**

**1.1** In these Conditions unless the contrary intention appears:

"**Act**" means the Western Australian Land Authority Act 1992 (WA).

"**Approved Plans**" means plans and specifications for the Development:

- (a) in accordance with the Development/Design Guidelines (if any);
- (b) in accordance with the requirements of any Authority; and
- (c) approved by LandCorp in writing (if so required by LandCorp).

"**Authority**" means any governmental, semi-governmental, statutory, local or public authority including without limitation the Local Authority, Department of Environmental Protection, the Western Australian Planning Commission, the Water Corporation, the Main Roads Department, and every and any other board, person or authority whatsoever now or at any time in the future exercising under any present or future act of Parliament (Federal or State) any control or jurisdiction over or power in connection with the Land and/or the owner or occupier of the Land and/or in connection with any Approved Purpose now or hereafter carried on upon the Land and every officer or person acting under the authority of such local or public authority or under the authority of any such act or by-law.

"**Bank Cheque**" means a cheque drawn by a Bank on itself or a financial institution as defined in Section 3 of the Cheques Act 1986 (Commonwealth).

"**Building Ready Specifications**" means the specifications governing the building requirements for connection of the Development to the Network Infrastructure, a copy of which can be obtained from LandCorp upon request.

"**Business Day**" means a day on which banks open for business in Perth, Western Australia.

"**Buyer's Conveyancer**" means any solicitor or settlement agent instructed by the Buyer to act for the Buyer on the Contract.

"**Buyer's Obligations**" means all or any of the obligations and agreements contained in or the implied obligations (whether present, future, actual or contingent) by this Contract to be observed and performed by the Buyer prior to or after Settlement.

"**Commission**" means the Western Australian Planning Commission.

"**Conditions**" means these conditions for the sale of the Land.

"**Contaminated Sites Act**" means Contaminated Sites Act 2003 (WA).

"**Contamination**" has the meaning given in section 4 of the Contaminated Sites Act.

"**Contract**" means the contract for sale of the Land of which these Conditions form part. Any reference in these Conditions to the Contract shall refer to both these Conditions and the terms of the Contract.

"**Deposit**" means the deposit mentioned in the Schedule. Unless otherwise required by LandCorp, the Deposit shall not exceed ten percent (10%) of the Purchase Price.

"**Development**" means the construction of a residential dwelling on the Land in accordance with the Development/Design Guidelines and the Approved Plans.

"**Development/Design Guidelines**" means the Development/Design Guidelines or the provisions of a Detailed Area Plan including those specified in the Schedule or other planning requirement (if any) relating to the development of the Land.

"**Finance Approval**" means any approval specified in the Schedule and in accordance with Condition 36.2.

"**GST**" means the Goods and Services Tax as imposed by the GST Act including, where relevant, any related interest, penalties, fines or other charge and any GST equivalent amount under any State Intergovernmental Agreement.

"**GST Act**" means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) and any legislation substituting or amending that Act.

"**Input Tax Credit**" has the same meaning given in Section 195-1 of the GST Act.

"**Land**" means the land as described in the Schedule.

"**LandCorp**" means the Western Australian Land Authority trading as LandCorp as seller of the Land to the Buyer.

"**LandCorp's Remedies**" means all or any of the rights powers and remedies contained in or implied by the Contract or at common law or in equity exercisable by LandCorp against the Buyer or in respect of the Land.

"**Landgate**" means the Western Australian Land Information Authority, a statutory body corporate established by the Land Information Authority Act 2006 and trading as "Landgate".

"**Latest Date for Loan Approval**" means the date specified in the Schedule.

"**Local Authority**" means the local authority having jurisdiction over the Land.

"**Margin Scheme**" means the scheme described in Division 75 of the GST Act as the margin scheme.

"**Network Infrastructure**" means the physical infrastructure of the high speed broadband fibre optic network to be installed on or in the Land including all fibre, cables, electronic devices and equipment, ducts, poles, towers, cabinets, housing and any other active and passive equipment and distribution infrastructure, but not including the Pit and Pipe Works, any existing pit and pipe infrastructure, lead-in conduit, the network termination unit or the power supply unit and related cable at the Development.

"**OSR**" means the office established by the Commissioner of State Revenue and Office of State Revenue.

"**Party**" means LandCorp and the Buyer and, if applicable, any other party to the Contract.

"**Pit and Pipe Works**" means the physical infrastructure, including all pits, pipes, conduits and any other materials to be designed and constructed by LandCorp necessary to properly service the estate in which the Land is located and to properly service the Development with the Network Infrastructure.

"**Practical Completion**" means the completion of the construction of the Development on the Land in conformity with plans and specifications previously approved by any relevant Authority and the Approved Plans. Such practical completion to be evidenced by the handing over by the Buyer to LandCorp of such of the following as LandCorp may require:

- (a) a certificate from the Buyer's architect or builder certifying that the Development has been constructed or completed on the Land according to plans and specifications as approved by any relevant Authority and the Approved Plans; and/or
- (b) a copy of written permission from the Local Authority for the occupation of the Development.

"**Prescribed Rate**" means the rate defined as the "Prescribed Rate" in the latest version of the Real Estate Institute of WA (Inc) and Law Society of WA Inc Joint Form of General Conditions for the Sale of Land.

"**Purchase Price**" means the purchase price (inclusive of GST) mentioned in the Schedule.

"**Repurchase Costs**" means the costs mentioned in Condition 17.3.

"**Repurchase Notice**" means the notice given in accordance with Condition 17.1.

"**Repurchase Price**" means the repurchase price as defined in Condition 17.2.

"**Schedule**" means the schedule to the Contract.

"**Settlement**" means settlement of the purchase of the Land by the Buyer in accordance with the terms of the Contract.

"**Settlement Date**" means the date mentioned in the Schedule.

"**Services**" means all services to the Land including water, drainage, sewerage, gas, electricity and telecommunications.

"**Tax Invoice**" has the meaning given in Section 195-1 of the GST Act.

"**Taxable Supply**" has the meaning given in Section 195-1 of the GST Act.

"**Valuer**" means a natural person who:

- (a) is licensed under the Land Valuers Licensing Act 1978 (WA);
- (b) has not less than five (5) years experience in Western Australia;
- (c) is a member of the Australian Property Institute (Western Australian Division); and
- (d) has experience in assessing the current market value of residential land.

**1.2** In these Conditions (and, where applicable, the Contract) unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) other grammatical forms of defined words and expressions have corresponding meanings;
- (d) references to persons include corporations and bodies politic;
- (e) references to a person include the legal personal representatives successors and assigns of that person;

- (f) a reference to a Statute Ordinance Code or other Law includes regulations and other statutory instruments under it and consolidations amendments re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (g) references to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the parties;
- (h) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (i) an obligation of two or more parties binds them jointly and severally;
- (j) if a word or expression is defined cognate words and expressions have corresponding definitions;
- (k) references to an association body or authority which is reconstituted amalgamated reconstructed or merged or the functions of which have become exercisable by any other person association body or authority in its place shall be taken to refer to the person association body or authority established or constituted in its place or by which its functions have become exercisable;
- (l) reference to any thing (including without limitation any amount or the Land) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (m) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the first day of the next succeeding calendar month;
- (n) references to the Contract or these Conditions includes any schedules and annexures;
- (o) headings are inserted for ease of reference only and shall be ignored in construing these Conditions or the Contract;
- (p) references to time are to local time in Perth Western Australia;
- (q) where time is to be reckoned from a day or event that day or the day of that event shall be excluded;
- (r) the word "include" used when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind; and
- (s) a provision of these Conditions or the Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Contract or the inclusion of the provision in these Conditions or the Contract.

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## **2 PAYMENT OF PURCHASE PRICE AND SETTLEMENT**

### **2.1** The Buyer shall pay:

- (a) the Deposit in the manner mentioned in the Schedule; and
- (b) the balance of the Purchase Price (being the Purchase Price less the Deposit together with any adjustments due at Settlement) on the Settlement Date by an unendorsed Bank Cheque payable to LandCorp or as LandCorp may nominate.

### **2.2** LandCorp shall be entitled (but not bound) to invest or to cause the investment of any Deposit in an interest bearing bank account and all interest accrued shall belong to LandCorp unless the Deposit is repaid to the Buyer as a result of the default of LandCorp in which case interest (less any bank charges and taxes) shall be payable to the Buyer.

### **2.3** If the Buyer:

- (a) does not pay the Deposit in full as required by the Contract; or
- (b) pays the Deposit by cheque and that cheque is dishonoured on presentation,

then LandCorp may give the Buyer a notice requiring the Deposit to be paid or the cheque to be honoured within 48 hours of service of such notice.

### **2.4** If a notice issued under Condition 2.3 is not complied with (in the prescribed time), then unless otherwise provided in the notice:

- (a) the Buyer is in default; and
- (b) the Contract shall be terminated without further notice and without prejudice to the rights and remedies available to LandCorp

under the Contract, common law or in equity.

(b) Settlement shall be effected on the basis of a "follower dealing" if an application for a new Certificate of Title to the Land has already been lodged with Landgate.

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### **3 INTEREST ON LATE SETTLEMENT AND DEFAULT COSTS**

**3.1** If for any reason not attributable to LandCorp the purchase shall not be completed on the Settlement Date, the Buyer shall pay to LandCorp on Settlement interest at the Prescribed Rate per annum on the balance of the Purchase Price and other moneys payable on Settlement.

**3.2** The interest shall be calculated on a daily basis from and including the Settlement Date but excluding the actual date of payment and shall be in full settlement of any claim LandCorp may have against the Buyer arising from such delay subject to the provisions of Condition 18.

**3.3** It shall not be necessary for LandCorp to give to the Buyer a notice requiring payment of interest under this Condition. In all other respects this Condition is without prejudice to the rights of LandCorp under these Conditions or at common law or in equity.

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### **4 RISK**

As from the Settlement Date the Land sold shall be at the sole risk of the Buyer in respect of any loss or damage by accident, act of God or otherwise.

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### **5 TITLE**

**5.1** The Certificate of Title in respect of the Land or the parent Certificate of Title to the property of which the Land forms part may be inspected by search at Landgate and the Buyer shall not require LandCorp to produce an abstract of title or any other evidence of LandCorp's title or right to sell the Land.

**5.2** LandCorp shall not be required to answer any objections to or requisitions on title.

**5.3** In the event that an application has been or is to be made by LandCorp at Settlement or immediately thereafter for a separate Certificate of Title to the Land then the Buyer acknowledges and agrees that if required by LandCorp:

(a) Settlement shall be effected on the basis that the transfer of the Land to the Buyer shall be preceded by an application for a new title to be lodged by LandCorp together with the parent title to the Land; and

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### **6 ERROR IN AREA**

**6.1** If there is any mistake in or omission from this Contract with respect to the description boundary or measurements of area of the Land or any other similar matter:

- (a) the same shall not invalidate the sale; and
- (b) if notified to the other Party within seven (7) days of the date of this Contract the same shall be the subject of compensation to be paid or received by LandCorp as the case may require.

**6.2** An error or misdescription as mentioned in Condition 6.1 shall not entitle a Party to terminate the Contract or to delay Settlement.

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### **7 PREPARATION OF TRANSFER AND SETTLEMENT**

**7.1** Prior to the Settlement Date the Buyer shall prepare or cause to be prepared a transfer of the Land in registrable form (which shall contain the terms of any restrictive covenant, easement, notification or other document to be created or registered under this Contract in such form as LandCorp shall require) and after proper execution of such transfer and having such transfer stamped shall deliver such transfer to LandCorp or its solicitor or settlement agent within a reasonable time prior to Settlement (being not less than five (5) Business Days prior to the Settlement Date) for the purposes of the transfer being executed by LandCorp and being held by it or on its behalf pending Settlement.

**7.2** The Buyer shall be entitled to request in writing that LandCorp sign and return the land transfer for the Land prior to the land transfer being duly endorsed at the OSR provided that accompanying such written request is an assessment of duty payable on the Contract issued by the OSR or if duty payable on the Contract is to be assessed and paid through the Revenue Online system developed by the OSR ("**Revenue Online**"), a Transaction Summary generated through Revenue Online ("**Transaction Summary**"). The Buyer shall hold such land transfer in escrow pending Settlement. If the Buyer or its representative is registered for, and has elected to have duty on the Contract assessed and paid through, Revenue Online, then the Buyer or its representative shall:

- (a) advise LandCorp that it has elected to have duty on the Contract assessed and paid through Revenue Online;
- (b) the Buyer must within five (5) business days after the Transaction Summary is generated provide to LandCorp a copy of the Transaction Summary; and
- (c) on Settlement, the Buyer must provide to LandCorp a copy of the Certificate of Duty issued by the OSR for duty paid on the Contract.

**7.3** Settlement shall take place on the Settlement Date at the offices of LandCorp in Perth or at such other place in Perth as LandCorp appoints.

**7.4** At Settlement, the Buyer will deliver to LandCorp in accordance with Condition 2.1(b) an unendorsed Bank Cheque or Bank Cheques for the balance of the Purchase Price and any adjustment of rates and taxes due to LandCorp and against receipt of the balance of the Purchase Price and adjustment of rates and taxes or otherwise, LandCorp will provide to the Buyer, subject to Condition 5.3 and the Buyer's compliance with Condition 7.1 the transfer duly executed for and on behalf of LandCorp together with the duplicate Certificate of Title to the Land (if issued) (or will make the duplicate Certificate of Title available for registration of the transfer in accordance with Condition 5.3).

**7.5** If for any reason a Bank Cheque tendered as or towards the money payable by the Buyer on Settlement is not honoured on first presentation, the Buyer will remain liable to pay the amount of that money, without prejudice to any other rights, remedies or powers of LandCorp under the Contract.

**7.6** The Buyer shall provide to LandCorp either prior to Settlement or after Settlement (as specified by LandCorp) a copy of the stamped Contract including these Conditions.

**7.7** Immediately after Settlement, the Buyer shall cause the transfer in respect of the Land to be lodged at Landgate for registration and use its best endeavours to have the transfer registered as soon as possible. In the event of a requisition notice being issued by Landgate, then unless the requisition arises from a document prepared by LandCorp, the Buyer must do all things necessary to satisfy the requisition and pay all fees in respect of the requisition.

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**8 COSTS**

The Buyer shall bear the cost of the preparation of the transfer, all duty under the Duties Act 2008 (WA) and duty penalties on the Contract and

registration or other fees in respect of the transfer with Landgate.

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**9 DIVIDING FENCE**

**9.1** All fences and walls purporting to be on the boundaries of the Land shall as between LandCorp and the Buyer be deemed to be upon their true boundaries and if any fence or wall shall be found not to be on its true boundary the Buyer shall not be entitled to any compensation or have any claim against LandCorp or any right to terminate the Contract.

**9.2** The Buyer will not make any claim against LandCorp pursuant to the Dividing Fences Act 1961 or however else concerning:

- (a) the construction of, or contribution to the cost of construction of, any dividing fences or walls; or
- (b) any other liability in respect of a dividing fence or wall including any liability LandCorp may have incurred with any adjoining owners.

**9.3** The Buyer acknowledges and agrees that this Condition may be pleaded as an absolute bar to any relief, compensation or claim sought by the Buyer against LandCorp.

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**10 POSSESSION**

Possession of the Land shall be and shall be deemed to have been given and taken upon the date upon which the balance of the Purchase Price and any adjustments due at Settlement to LandCorp are actually paid by the Buyer to LandCorp subject to the Buyer having performed all of the Buyer's Obligations arising prior to Settlement.

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**11 ADJUSTMENT OF RATES**

**11.1** All rates taxes assessments and other outgoings in respect of the Land shall be borne and paid by the Buyer as from the Settlement Date (subject to Condition 11.2) and the same shall if necessary be apportioned between LandCorp and the Buyer. Land Tax shall be adjusted on the basis that the Land is the only land owned by LandCorp. Where under the Act LandCorp is not liable to pay rates and taxes to any Authority in respect of the Land but is obliged to pay the equivalent of such rates and taxes to the State then this Condition shall apply as if such payment was a payment due to a Local Authority or other Authority for rates, taxes and outgoings and an adjustment shall if necessary be effected.

**11.2** Where there is any delay in Settlement due to the act or default of the Buyer then:

- (a) rates, taxes and outgoings shall be adjusted as between LandCorp and the Buyer on the Settlement Date and not the actual date; and
- (b) if any increase in Land Tax or any other rates and taxes payable by LandCorp (either to an Authority or an equivalent amount is payable by LandCorp to the State) occurs (for example, by the Settlement being delayed until after 1 July in any year), the Buyer shall be liable for all such additional payments (including any increase in Land Tax calculated on a multi ownership basis) which amount shall be due and payable to LandCorp at Settlement.

**11.3** If Land Tax is payable on the Land at Settlement, the Buyer agrees that LandCorp may, at its election, require that the Buyer pays for its proportion of Land Tax at Settlement on the basis that LandCorp undertakes to pay the Land Tax payable on the Land for the relevant financial year at a later date.

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**12 COMPLIANCE WITH LEGISLATION**

As from the date of the Contract the Buyer shall comply with and observe all provisions orders by-laws and regulations of and under any legislation in respect of or in any way affecting the Land.

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**13 ENCUMBRANCES**

**13.1** The Land is sold subject to:

- (a) all easements, positive covenants, restrictive covenants and memorials;
- (b) any condition or statement contained in a memorial (including, but not limited to, memorials under Section 58 of the Contaminated Sites Act 2003 (WA));
- (c) all rights, reservations, conditions, notifications under Section 70A of the Transfer of Land Act 1893 (WA) or Section 165 of the Planning & Development Act 2005 (WA);
- (d) all interests, orders, tenancies, public roads and encroachments; and
- (e) all claims, demands, conditions (including building conditions) or restrictions whatsoever imposed or made on the Land by any Authority or under any legislation,

(if any) affecting the Land and which are mentioned in the Certificate of Title or which will be mentioned or registered upon lodgement of the transfer of the Land to the Buyer at Landgate.

**13.2** If any document or interest mentioned in Condition 13.1 is to be registered on the title to the Land at Settlement due to:

- (a) the requirements of the Commission;
- (b) any Authority having jurisdiction over the Land; or
- (c) as a result of the requirements of LandCorp,

then the Buyer acknowledges and agrees that such document or interest will be registered either immediately before or after the registration of the transfer of the Land to the Buyer.

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**14 DISPOSITION OF LAND**

**14.1** Until the Buyer has completed the Development in accordance with Condition 15 the Buyer shall not sell assign transfer or otherwise dispose of or lease sub-lease mortgage charge encumber or part with possession of the Land or any part of the Land or any estate or interest in the Land ("a Disposition") without first obtaining the consent in writing of LandCorp and if such consent is given then only subject to such conditions as may be imposed by LandCorp PROVIDED THAT LandCorp shall not unreasonably withhold its consent to a mortgage or other encumbrance if:

- (a) the person or company to whom the mortgage, charge or encumbrance is to be effected ("the Mortgagee") executes a deed of covenant to which the Buyer is a Party in a form reasonably required by LandCorp or in the form annexed;
- (b) the mortgage or other encumbrance is to secure a loan for the purpose of assisting with the purchase of the Land or in undertaking the Development; and
- (c) all moneys then due and payable by the Buyer to LandCorp under the Contract have been paid and there shall not then be any existing unremedied breach of the Buyer's Obligations.

**14.2** If the Buyer is a corporation (other than a company listed on the Australian Stock Exchange) any change in:

- (a) the beneficial ownership of the shareholding in the corporation or any related corporation by which any change in the control of the corporation occurs (whether by the transfer of shares or the

- issue or allotment of further shares or otherwise); and
- (b) the beneficial interests of any trust if the Buyer is acting as trustee so as to change the control of such trust,

shall be deemed to be a Disposition of the Land for the purposes of this Condition and Condition 14.1 must be complied with. The Buyer must also notify LandCorp in writing prior to such proposed event occurring.

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**15 DEVELOPMENT OF LAND**

**15.1** The Buyer shall cause Practical Completion of the Development to be effected in accordance with the Approved Plans within the period mentioned in the Schedule or such later period as may be approved in writing by LandCorp.

**15.2** The Buyer shall ensure that the Development shall be completed:

- (a) with all proper care skill and diligence;
- (b) in accordance with good industry practice;
- (c) in compliance with all applicable laws and regulations of any Authority;
- (d) in a proper and workmanlike manner; and
- (e) using materials which are in good condition of high quality and suitable for the purpose for which they are intended.

**15.3** If required by LandCorp the Buyer shall submit to LandCorp all proposed plans and specifications for the Development prior to such plans and specifications being approved by any relevant Authority. LandCorp shall, within fifteen (15) Business Days of receipt, use its reasonable endeavours to either approve (conditionally or otherwise) or reject the plans and specifications and, if rejected, inform the Buyer the grounds of rejection. In the event that the plans and specifications are rejected or approved conditionally, then the Buyer shall amend such plans and specifications and resubmit to LandCorp as reasonably required by LandCorp such amended plans and specifications for approval. The Buyer shall not undertake the Development other than in accordance with the Approved Plans.

**15.4** Upon LandCorp approving the plans and specifications submitted to LandCorp in accordance with Condition 15.3, the Buyer shall use its best endeavours to submit such plans and specifications as soon as possible to the relevant Authorities (if necessary) for approval.

**15.5** If any Authority requires the Buyer to amend all or any of the plans and specifications submitted in accordance with Condition 15.4, then the Buyer shall amend such plans and specifications in accordance with the requirements of any Authority and the Buyer shall re-submit such amended plans and specifications to LandCorp for approval as soon as possible. Condition 15.3 shall also apply in respect of any amended plans and specifications submitted to LandCorp for approval in accordance with this Condition 15.5.

**15.6** If plans and specifications approved by LandCorp in accordance with Condition 15.3 are rejected by any Authorities, then the Buyer shall submit new plans and specifications for the Development to LandCorp for approval in accordance with Condition 15.3 and the provisions of Condition 15 shall apply to such new plans and specifications.

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**16 CHARGE**

**16.1** In order to secure the Buyer's Obligations the Buyer hereby charges its interest in the Land in favour of LandCorp and agrees that LandCorp may lodge an absolute caveat pursuant to such charge as equitable mortgagee over the title to the Land.

**16.2** Subject to compliance with Condition 14.1 LandCorp shall, at the cost of the Buyer, withdraw any absolute caveat lodged over the title to the Land pursuant to Condition 16.1 to enable a dealing in respect of the Land to be registered in favour of any approved Donee or Mortgagee PROVIDED THAT LandCorp shall be entitled to contemporaneously lodge a new absolute caveat after such dealing pursuant to Condition 16.1.

**16.3** Upon completion of all of the Buyer's Obligations as determined by LandCorp (acting reasonably), LandCorp shall withdraw the absolute caveat lodged over the title to the Land pursuant to Condition 16.1

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**17 OPTION TO REPURCHASE**

*In accordance with the objectives of the Act, LandCorp seeks to facilitate the provision and development of land in a range of localities to meet the social and economic needs of the State. In fulfilling these objectives, LandCorp seeks to ensure that land (including the Land sold by LandCorp) is developed within a reasonable timeframe and the Buyer otherwise meets its obligations due after Settlement. Accordingly, if the Buyer fails to complete the Development on the Land within the period mentioned in the Schedule to this Contract or otherwise fails to perform any of the Buyer's Obligations, then LandCorp may, at its election, exercise its option to repurchase the Land in accordance with the provisions of this Condition 17 in order for LandCorp to be able to sell the Land to*

*another buyer who will also be required to undertake a development on the Land within agreed timeframe.*

- 17.1** If at any time after Settlement the Buyer:
- (a) fails to complete the Development in accordance with Condition 15; or
  - (b) otherwise fails to observe or perform any Buyer's Obligations
- (any of which is called "**the Default**")

then LandCorp shall, having become aware of the Default, have the option to be exercised upon giving the Buyer a Repurchase Notice to repurchase the Land for an unencumbered estate in fee simple for the Repurchase Price, and the following provisions of this Condition shall apply.

- 17.2** The Repurchase Price shall be calculated at the election of LandCorp as follows:
- (a) the Purchase Price of the Land under the Contract; or
  - (b) the current market value of the Land as determined by a Valuer appointed by LandCorp,

and the Repurchase Costs shall be deducted from and offset against the Repurchase Price.

- 17.3** The Buyer agrees that the Buyer shall be liable for the following costs of LandCorp on the repurchase of the Land:
- (a) LandCorp's solicitor's or settlement agent's costs and disbursements incurred upon the repurchase of the Land by LandCorp (including all duty payable in respect of the repurchase);
  - (b) All costs incurred in respect of the sale of the Land to the Buyer pursuant to the Contract including all real estate agent's fees and other sales costs;
  - (c) All amounts incurred by LandCorp arising from the breach of the Buyer's Obligations including all legal and other costs of notices and repurchase;
  - (d) If Condition 17.4 applies, the GST payable by LandCorp on the Purchase Price of the Land; and
  - (e) If Condition 17.6 applies, the cost or estimated cost of removal of all structures constructed or partly constructed on the Land.

- 17.4** If GST was payable on the Purchase Price of the Land under the Contract and the Buyer is not

registered for GST purposes as at the date of the Repurchase Notice or does not supply a Tax Invoice prior to the Repurchase Settlement, then the Buyer agrees to LandCorp including an amount representing the GST payable on the Purchase Price as a cost payable by the Buyer when determining the Repurchase Costs in accordance with Condition 17.3.

- 17.5** If LandCorp elects that the Repurchase Price will be calculated based on the current market value of the Land, LandCorp shall provide with the Repurchase Notice a copy of a valuation obtained by LandCorp determining the current market value of the Land.

- 17.6** LandCorp may in its absolute discretion direct the Buyer prior to the date of the Repurchase settlement to remove all structures constructed or partly constructed on the Land and make good the land to the reasonable satisfaction of LandCorp at the Buyer's cost. In the event that the Buyer fails to remove such structures within 30 days from the date of the Repurchase Notice, then LandCorp may remove such structures and add the cost of removal to the Repurchase Costs or add a reasonable estimate of the cost of the removal to the Repurchase Costs. If the costs or estimated costs of removal of any structures as specified within Condition 17.6 together with any other Repurchase Costs determined in accordance with Condition 17.3 are greater than the Repurchase Price, then the differential shall be a debt owing by the Buyer to LandCorp payable on demand.

- 17.7** Settlement of the repurchase shall be effected on the date being thirty (30) days after the date of issue of an assessment of duty in relation to the repurchase ("**the Repurchase Settlement**").

- 17.8** The Buyer acknowledges and agrees that LandCorp may lodge an absolute caveat against the Certificate of Title to the Land in respect of the option granted to LandCorp pursuant to this Condition and the Buyer shall not take any action to remove such caveat. The option hereby granted shall continue notwithstanding any transfer or other dealing with the Land.

- 17.9** Upon the issue of the Repurchase Notice to the Buyer:

- (a) LandCorp shall prepare and the Buyer shall execute and deliver within 7 Business Days of delivery by LandCorp to the Buyer a registrable transfer of the Land to LandCorp;
- (b) the Buyer shall ensure that the duplicate Certificate of Title (if issued) and any discharge of any mortgage or other encumbrance is provided to LandCorp at the Repurchase Settlement;

- (c) the Repurchase Price shall be paid to the Buyer on the date of the Repurchase Settlement;
- (d) outgoings shall be adjusted as at the date of the Repurchase Settlement; and
- (e) the Buyer shall sell the Land to LandCorp free of all liens charges mortgages caveats or other encumbrances whatsoever over the Land (other than any restrictive covenants, easements or other encumbrances registered over the title to the Land as a requirement of the Commission) and shall cause the withdrawal or removal of any such encumbrance. LandCorp may pay the Repurchase Price or any part of the Repurchase Price to any encumbrancee as may be necessary to allow the withdrawal or removal of any such encumbrance.

**17.10** Notwithstanding any other Conditions, the right of LandCorp to repurchase the Land in accordance with this Condition 17 is without prejudice to LandCorp's Remedies and shall not be prejudiced by or in any way limited by any delay on the part of LandCorp in exercising the option to repurchase and notwithstanding that LandCorp may have been aware of any breach of any of the Buyer's Obligations.

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**18        DEFAULT**

**18.1** Neither LandCorp nor the Buyer may terminate the Contract by reason of the other's failure to observe or perform an obligation imposed on that other Party under the Contract unless:

- (a) that Party has first given a notice to the other Party:
  - (i) specifying the failure;
  - (ii) stating that the other Party must observe and perform that Party's obligations under the Contract within ten (10) Business Days from the date of service of the notice; and
  - (iii) stating that if those obligations are not observed and performed within that time the Party giving the notice may terminate the Contract or that the Contract will be terminated; and
- (b) the Party receiving the notice fails to observe and perform those obligations within the period stated in that notice.

**18.2** Condition 18.1(a) does not apply if:

- (a) either Party repudiates the Contract;

- (b) Condition 2.4 applies;
- (c) a condition precedent or subsequent has not been satisfied; or
- (d) Finance Approval has not been obtained by the due date or if there is a breach of Condition 36.

**18.3** In the event that the Buyer is in breach of the Buyer's Obligations and the Contract is terminated or the Buyer repudiates the Contract that part of the Purchase Price and any other moneys paid by the Buyer to LandCorp under the Contract (including the Deposit) amounting in the aggregate to:

- (a) up to TEN PER CENTUM (10%) of the Purchase Price, will be forfeited to and retained by LandCorp; and
- (b) in excess of TEN PER CENTUM (10%) of the Purchase Price, will be held by LandCorp pending the exercise of LandCorp's Remedies.

**18.4** In the event that the Buyer is in breach of the Buyer's Obligations or repudiates the Contract, LandCorp without prejudice to LandCorp's Remedies may:

- (a) affirm the Contract and sue the Buyer for damages for breach of contract;
- (b) sue the Buyer for specific performance of the Contract;
- (c) subject to Condition 18.1 (if applicable):
  - (i) if the notice given under that Condition states that unless the default is remedied within the time stated in the notice the Contract may be terminated; and
  - (ii) the default is not remedied within the time stated,  
  
terminate the Contract and:
  - (iii) sue the Buyer for damages for breach of contract; and
  - (iv) without further notice to the Buyer resell the Land in such manner as LandCorp thinks fit.

**18.5** If LandCorp resells the Land:

- (a) LandCorp may retain absolutely:
  - (i) any surplus arising from the resale in excess of:

- (A) the Purchase Price; and
  - (B) losses and expenses incurred by LandCorp in the resale and resulting from the Buyer's default; and
- (ii) any interest paid by the Buyer;
- (b) Any amount by which the Purchase Price exceeds the proceeds of the resale and all losses and expenses incurred by LandCorp in the resale and resulting from the Buyer's default are recoverable by LandCorp from the Buyer as liquidated damages; and
- (c) The rule of law known as the rule in *Bain v Fothergill* is excluded and does not apply to the Contract.

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**19 NOTICE**

**19.1** Any notice given or required to be given under the Contract:

- (a) must be in writing addressed to LandCorp or to the Buyer (as the case may be), to LandCorp's or the Buyer's address shown in the Contract (or to any other address specified by the Buyer to LandCorp or LandCorp to the Buyer by notice);
- (b) must be signed by the sender or an officer of, or under the common seal of the sender or by the sender's lawyer, conveyancer or other authorised representative (as the case may be); and
- (c) is to be regarded as being given by the sender and received by the addressee:
  - (i) if by delivery in person, when delivered to the addressee;
  - (ii) if by post (which posting must be by pre-paid security post), 3 business days from and including the date of posting to the addressee; and
  - (iii) if by facsimile transmission:
    - (A) on the date the notice or communication is transmitted in its entirety by a facsimile machine; and
    - (B) that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

but if the delivery or transmission by facsimile is on a day which is not a business day or is after 5.00 p.m. (addressee's time) it is to be regarded as being given at 9.00 a.m. (addressee's time) on the next succeeding business day.

**19.2** Where the Buyer comprises 2 or more persons or corporations, or any combination of the same, notice to either 1 person or to 1 corporation is deemed notice to all persons and corporations comprising the Buyer.

**19.3** A notice served on the Buyer's Conveyancer in accordance with this Condition will be treated for all purposes as if the notice had been served on the Buyer.

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**20 TIME OF ESSENCE**

Time shall in all respects be of the essence of the Contract.

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**21 INSPECTION OF PEGS**

**21.1** The Buyer acknowledges and agrees that:

- (a) the Buyer has inspected the Land; and
- (b) as at the date of the Contract where any pegs marking the boundaries of the Land (if any) are in place such pegs may or may not mark the true boundaries of the Land.

**21.2** LandCorp shall not be liable to the Buyer where no pegs mark the boundary of the Land or the pegs have been removed or do not mark the true boundaries of the Land.

**21.3** In the event that any pegs are removed from the Land prior to the Settlement Date for any reason LandCorp shall not be obliged to resurvey the Land or to replace any such pegs or in any manner be liable for such removal.

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**22 WARRANTY**

**22.1** The Buyer covenants and warrants with LandCorp (which warranty the Buyer acknowledges has induced LandCorp to enter into this Contract) that the Buyer has full power and capacity to enter into the Contract and the Buyer has obtained all relevant approvals necessary to enter into and complete the Contract.

**22.2** The Buyer acknowledges and agrees with LandCorp that if LandCorp on reasonable grounds considers that there has been a breach of any of the warranties contained in Condition 22.1

then LandCorp may without notice immediately terminate this Contract.

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**23 NO REPRESENTATIONS**

**23.1** The Buyer shall be taken to have satisfied itself:

- (a) by physical examination and inspection and all other necessary enquiries including, but not limited to, enquiries as to the classification status of the Land under the Contaminated Sites Act, and relying on the opinion or advice of such experts as the Buyer may wish to consult as to the state, condition, quality and quantity of the Land;
- (b) by enquiry of all relevant authorities as to the zoning of the Land and the use to which the Land or any other land adjoining or in the vicinity of the Land may be put;
- (c) as to the easements, restrictive covenants, notifications or other agreements or encumbrances to which the Land may be or become subject;
- (d) as to the requirements of each and every Authority which has control or jurisdiction over the Land and the current and prospective use and development of the Land;
- (e) by independent valuations or reports as to the value of the Land and as to the present and future feasibility, liability and economic return that may be derived from the Land; and
- (f) by survey and physical examination as to the area of the Land and not relying on the position of any pegs purporting to mark the boundary,

and shall be deemed to purchase the Land in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice and not upon any or any alleged statement, warranty, condition or representation whatsoever made or alleged to have been made to the Buyer by LandCorp or any employee, contractor or agent of LandCorp.

**23.2** This Condition shall apply notwithstanding the contents of any brochure, document, letter or publication made, prepared or published by LandCorp or by any other person with or without the authority of LandCorp whether express or implied.

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**24 NO LIABILITY OF LANDCORP**

The Buyer shall have no right to make any objection or requisition or claim against LandCorp for compensation or to rescind the Contract and LandCorp shall not be liable to indemnify the Buyer whatsoever or howsoever arising by reason of:

- (a) the prior use of the Land;
- (b) the Land being unsuitable for any particular purpose;
- (c) the area of the Land being different from the area indicated on any plan, brochure, document, letter, material or other publication issued or published by or on behalf of LandCorp which does not form part of the Contract or as indicated on the Certificate of Title to the Land;
- (d) the provision of, or a lack of, or lack of an available connection to, water, drainage, sewerage, gas, electricity, telecommunication or other services or connections to the Land, or in respect of the fact that any services or connections may be joint services to any other land, or because any facilities for services for any other land pass through the Land;
- (e) any encroachment onto the Land by any improvement which does not form part of the Land, or the encroachment onto adjoining land of any improvement which forms part of the Land;
- (f) the location of any sewerage, water or drainage or other pipes or cables or services affecting the Land, or that any pipes or cables pass through, or penetrates the Land; or
- (g) the fact that the current use of the Land may not be an authorised use under any applicable zoning or use law, scheme or regulation.

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**25 BUYER'S ACKNOWLEDGEMENTS**

**25.1** The Buyer acknowledges and agrees that:

- (a) no warranty or representation has been given or made to the Buyer or anyone on the Buyer's behalf by LandCorp or any agent, employee or contractor or consultant of LandCorp or any other person on LandCorp's behalf as to:
  - (i) the title to the Land;

- (ii) any encumbrance, restriction or right in favour of any third party affecting the Land;
  - (iii) the condition or state of repair, order or condition of the Land;
  - (iv) the suitability of the Land for any use or purpose of any kind;
  - (v) the fences (if any) purporting to be on the boundaries of the Land being on the proper boundaries of the Land; or
  - (vi) the provisions of, or lack of, or the lack of an available connection to, water, drainage, sewerage, gas, electricity, telecommunication or other services or connections to the Land;
- (b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in, the Contract and any such representation or warranty is excluded to the extent permitted by law;
- (c) the Land is sold as it stands with all existing faults, defects, omissions or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on LandCorp to disclose or particularise any faults, defects, omissions or characteristics known to LandCorp;
- (d) LandCorp will not be liable under any circumstances to make any allowance or compensation to the Buyer nor will the Purchase Price be affected by the exclusion of warranties or representations in this Condition or for any fault, defect or characteristic in the Land; and
- (e) this Condition will apply despite the contents of any brochure, document, letter or publication made, prepared or published by LandCorp or by any other person or consultant with or without the express or implied authority of LandCorp.

**25.2** The Buyer acknowledges that it shall be solely liable for all site clearance and building preparation costs on the Land which should be determined by the Buyer prior to entering into this Contract.

**25.3** Whilst not limiting any other provision in these Conditions, the Buyer acknowledges and agrees that:

- (a) it shall be solely responsible at its cost for complying with and implementing all fire protection, water pressure or other requirements imposed on or affecting the Land by any Authority whether or not as a

result of the Buyer's proposed use of the Land or whether generally required (including but not limited to requirements for fire protection, waste disposal, sewerage or other requirements) and that the Buyer may be required at its cost to undertake a detailed site specific assessment of the Land at the stage of applying for development approval and a building licence for the Development; and

- (b) prior to entering into the Contract the Buyer should undertake its own independent enquiries and investigations with any relevant Authority in order to determine what fire protection, water pressure and other requirements are likely to be imposed in relation to the Land.

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## 26 PLANNING AND OTHER MATTERS

The Buyer acknowledges that the Land is sold subject to the following as at the Settlement Date:

- (a) the provisions of any town planning scheme, zoning by-laws and other laws affecting the Land;
- (b) any order or requisition affecting the Land;
- (c) any proposal or scheme for the widening, realignment, closure, siting or alteration of the level of any road or right of way adjacent to or in the vicinity of the Land by any Authority or person;
- (d) any resumption or proposal to resume the Land or any adjoining or other land; and
- (e) any easement, memorial (and any condition or statement contained in the memorial), notification, positive covenant or restrictive covenant or other encumbrance mentioned in Condition 13.1 affecting the Land or which will affect the Land on registration of the transfer of the Land to the Buyer,

and the Buyer will take title subject to the above and will not be entitled to make any objection, requisition or claim for compensation, nor to rescind this Contract in respect of any matter mentioned in this Condition.

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## 27 MAINTENANCE OF LANDSCAPING AND STRUCTURES

- 27.1** The Buyer acknowledges that any landscaping, retaining walls, entry statements and other structures established by LandCorp in the estate of which the Land forms part may not be maintained by LandCorp after the date of the Contract.

**27.2** In the event that a landscaped street verge adjoining the Land has been provided by LandCorp the Buyer acknowledges that:

- (a) the irrigation for such street verge may be supplied from a temporary source which may be disconnected by LandCorp in its absolute discretion; and
- (b) the Buyer shall in such event reconnect such irrigation to the water supply from the Land and shall undertake ongoing maintenance and watering of the landscaped verge.

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**28 DELAY IN SETTLEMENT**

**28.1** The Buyer acknowledges that a separate Certificate of Title in respect of the Land may not be available as at the date of this Contract or on the Settlement Date. LandCorp shall not be obliged to notify the Buyer of the date of issue of the title where Settlement is subject to the issue of title.

**28.2** The Buyer shall not be entitled to any compensation as a result in any delay in Settlement as a result of the Certificate of Title not being available.

**28.3** Without limiting Condition 28.2, the Buyer acknowledges that the construction of any Development upon the Land may not be able to commence until Settlement has been effected and that any building contract entered into or other costs incurred by the Buyer prior to the date of actual Settlement shall be at the sole risk of the Buyer.

**28.4** The Buyer acknowledges that LandCorp has no liability for any costs or damages arising as a result of the Buyer entering into any building contract or incurring any other costs prior to actual Settlement (including but not limited to any increase in the construction cost).

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**29 SUBDIVISION OF LAND**

**29.1** If the Land comprises part of a lot and is accordingly not a lot as defined in the Planning and Development Act 2005 (WA) then the Contract is subject to and conditional upon the approval of the Commission to the subdivision of the land of which the Land forms part being obtained in order to create a separate lot or lots in respect of the Land in accordance with Section 140(1) of the Planning and Development Act 2005 (WA) and this Condition shall apply.

**29.2** If it has not already done so LandCorp shall at its cost make an application to the Commission for the approval of subdivision to create a separate lot

for the Land within three (3) months from the date of the Contract.

**29.3** For the purposes of Section 140(3) of the Planning and Development Act 2005 (WA) the Contract shall be subject to and conditional upon the Commission giving its approval to the subdivision of the Land on or before six (6) months from the date of the lodgement of the application mentioned in Condition 29.2.

**29.4** In the event that any conditions are imposed by the Commission or any other relevant Authority in relation to the subdivision of the Land which are not acceptable to LandCorp in its absolute discretion then LandCorp may by giving written notice to the Buyer within thirty (30) days of such conditions being imposed terminate this Contract whereupon the Deposit shall be repaid to the Buyer without interest.

**29.5** If a separate title for the Land has not issued from Landgate by the date mentioned in the Schedule, the Buyer may, at any time prior to the date of issue of the title from Landgate, by written notice to LandCorp terminate this Contract whereupon the Deposit shall be refunded to the Buyer (without accrued interest) and neither Party shall have any further claim against the other.

**29.6** The Buyer shall not be entitled to any compensation and LandCorp shall not be liable for any costs, expenses or damages (whether direct or indirect) arising as a result of the Buyer commissioning the preparation of any building design or specification or incurring any costs prior to final survey and the issue of a separate Certificate of Title for the Land.

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**30 SERVICES AND CONTAMINATION**

**30.1** The Buyer acknowledges and confirms that:

- (a) the Land has or will be provided with Services to the boundary of the Land by LandCorp or a relevant Authority in accordance with conditions imposed by the Commission;
- (b) the Land may be filled and/or levelled by LandCorp to meet the requirements of the Commission and that any additional earthworks that may be required will be at the sole cost of the Buyer;
- (c) it has made its own enquiries in relation to all servicing required to be effected to the Land for its proposed use and will meet all such servicing requirements (other than as mentioned in paragraph (a)) at its cost;
- (d) LandCorp shall not be liable to the Buyer for any costs or charges which may be charged

or levied in relation to the Land or the provision of Services either before or after Settlement (including, but not limited to, any headworks charges) imposed by any Authority or any service provider; and

- (e) where Settlement is due under the Contract and where any Services required to be provided by LandCorp or any Authority in accordance with conditions imposed by the Commission pursuant to this Condition 30.1 have not been provided or a connection to any of the Services is not available for any reason, the Buyer shall nevertheless effect Settlement on the Settlement Date.

**30.2** The Buyer acknowledges and agrees that:

- (a) the Buyer shall ensure that the Building Ready Specifications and appropriate building wiring specifications are complied with in respect of the Development in order to enable connection to the Network Infrastructure; and
- (b) a failure to comply with the Building Ready Specifications will prevent the Development being able to be connected to the Network Infrastructure or will require the Buyer to incur additional costs in order to connect to the Network Infrastructure.

**30.3** Other than where the Land has been reported to the Department of Environment and Conservation under the Contaminated Sites Act as being Contaminated or suspected of being Contaminated, LandCorp is not aware of any Contamination on or below the surface of the Land which will materially affect the use of the Land for residential purposes.

**30.4** The Buyer agrees that it shall make its own enquiries as to whether any condition or Contamination on or below the Land will affect the particular use of the Land proposed by the Buyer and agrees to purchase the Land subject to any Contamination or sub-surface conditions that may exist.

**30.5** If as at the date of the Contract the Land has not been connected to any Services then the Buyer shall meet all costs relating to such connection.

**30.6** If at the date of the Contract a relevant Authority has determined that underground power or any other Services will be installed to or applied to the Land and a charge has been imposed on LandCorp for that installation or connection then the cost of that installation or connection shall be met by LandCorp. The Buyer shall pay any assessment or liability that may apply subsequent to the date of the Contract in relation to the installation of underground power or any other Services.

**30.7** If at the date of the Contract there is a septic tank on the Land which is required to be decommissioned, then the Buyer shall be solely responsible for decommissioning the septic tank.

**30.8** If the Land contains or abuts an electricity transformer, the Buyer shall comply with the requirements of any relevant service provider and shall not construct or install any steel fencing or other steel structure within such distance from the boundary of any electricity transformer and/or switchgear site as specified by the relevant service provider.

**30.9** Without limiting any other Condition, the Buyer acknowledges and agrees that LandCorp is not liable for, and the Buyer shall make its own independent enquiries as to, the Services or connections provided, or to be provided (or the lack of Services), to the Land and whether or not such Services or connections are or will be satisfactory for the Development.

**30.10** The Buyer acknowledges and agrees that telecommunication services to the Land may be installed, owned, operated and/or maintained by a Party other than LandCorp and that the Buyer shall not make any claim against LandCorp in relation to such telecommunication services.

**30.11** The Buyer acknowledges and agrees that connection to the sewer connection (when installed) to the Land shall be effected by the Buyer. Any increase to the flow rate above the standard allowance as required by the Buyer is to be procured by the Buyer at its cost. The depth of the property connection has been designed in accordance with Water Corporation requirements.

**30.12** The Buyer acknowledges and agrees that the Buyer shall accept any soil classification of the Land and agrees that the Buyer shall be solely liable for all costs arising as a result of such classification.

**30.13** The Buyer acknowledges and agrees that it is solely liable as to the requirements to upgrade any Services to the Land, and the capacity of the Services required, in order for the Buyer to use the Land for the Development including, but not limited to, the upgrade of power, water, sewerage or any other Services.

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**31 FACILITATE EXERCISE OF REMEDIES**

**31.1** The Buyer shall facilitate LandCorp in the exercise of LandCorp's Remedies and not claim any compensation for any inconvenience or damage caused by LandCorp PROVIDED THAT LandCorp shall exercise LandCorp's Remedies in good faith.

**31.2** The Buyer shall pay to LandCorp on demand any moneys properly expended by LandCorp

(including legal costs) in connection with the exercise and protection of its rights and powers contained in this Contract and also upon demand pay all LandCorp's reasonable costs fees and expenses of and incidental to:

- (a) any exercise of LandCorp's Remedies;
- (b) any breach of the Buyer's Obligations;
- (c) the withdrawal or attempted withdrawal on default by the Buyer of any caveat lodged by LandCorp over the title to the Land; and
- (d) the perusal and investigation of any request by the Buyer for permission to lease or resell the Land or enter into any other arrangement which shall require the permission or consent of LandCorp pursuant to the Contract or the Act or otherwise howsoever.

**31.3** The Buyer indemnifies and agrees to keep fully and effectually indemnified LandCorp from and against any claim loss or liability whatsoever (whether direct or indirect and whether present or future) which LandCorp may incur in connection with the Contract and in respect of any loss or expense that LandCorp may incur as a consequence of any default by the Buyer in respect of the Buyer's Obligations.

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**32 CHANGE TO LAND**

**32.1** Where the Land is not a subdivided Lot or Lots the Buyer agrees with LandCorp that:

- (a) LandCorp may make any changes modifications variations and amendments to the plan of subdivision as may be required by the relevant Authorities to obtain due registration of the plan of subdivision; and
- (b) the Buyer shall make no objection or requisition or seek to claim any compensation in respect of any such change modification variation or amendment to the plan of subdivision or to the configuration or size of the Land,

PROVIDED THAT such modification variation or amendment shall not materially prejudice or detrimentally affect the size of the Land or the value of the Land.

**32.2** In the event of any dispute as to whether such modification variation or amendment has materially prejudiced or detrimentally affected the size or value of the Land then such dispute shall be determined by a Valuer appointed by the President for the time being of the Australian Property Institute (Inc) Western Australian

Division who shall act as an expert and not as an arbitrator. The parties shall pay the costs of such Valuer equally.

**32.3** If a change, modification, variation or amendment to the:

- (a) plan of subdivision comprising the Land; or
- (b) configuration or size of the Land,

materially prejudices or detrimentally affects the size of the Land or the value of the Land, then the Buyer may within thirty (30) days of notice of such change, modification, variation or amendment terminate this Contract by written notice to LandCorp whereupon the Deposit shall be refunded to the Buyer and neither Party shall have any claim on the other.

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**33 GOODS AND SERVICES TAX**

**33.1** The parties acknowledge and agree that LandCorp is considered to be the State under the GST Act and it has previously obtained a private ruling from the Australian Taxation Office to this effect.

**33.2** LandCorp and the Buyer agree that the Purchase Price is inclusive of GST.

**33.3** LandCorp and the Buyer agree that the Margin Scheme will apply and will be used in relation to the supply of the Land under this Contract to calculate GST on the Purchase Price and the Buyer agrees to LandCorp adopting the Margin Scheme.

**33.4** Where a Party or parties to this Contract provides non-monetary consideration and the provision of this non-monetary consideration is a Taxable Supply, the Party providing the non-monetary consideration shall provide a Tax Invoice to the other Party for the GST inclusive market value of that non-monetary consideration. The Party receiving the Tax Invoice shall pay to the other Party the GST detailed on the Tax Invoice.

**33.5** This Contract and supporting material is not a document notifying any obligation to make payment and is not considered an invoice under the GST Act. The deposit (if any) paid is held as security for the performance of an obligation in accordance with Division 99 of the GST Act.

**33.6** If a party is entitled under the Contract to be reimbursed or indemnified by a party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an Input Tax Credit may be claimed by the party, as the case may be, entitled to be reimbursed or indemnified.

<b>34</b>	<b>CONSENTS</b>	<b>35.8</b>	Without limitation to the extent that any obligations under the Contract have not been complied with on or before Settlement, those obligations survive Settlement and continue until complied with.
<b>34.1</b>	The Contract and any transfer of the Land or any part thereof (including pursuant to any repurchase by LandCorp hereunder) shall be subject to any consent required under the Act or any other applicable statute.	<b>35.9</b>	Each Party is to pay its own solicitor's costs in respect of the Contract and the completion of the transaction evidenced by the Contract. Any document recording a variation to the Contract requested by the Buyer and agreed by LandCorp will be at the cost of the Buyer. The Buyer shall pay all stamp duty assessed on this Contract.
<b>34.2</b>	The Buyer shall use best endeavours to obtain any consent required under the Act or any other applicable statute.	<b>35.10</b>	The Contract comprises the whole agreement between the parties and subject only to any provision expressly to the contrary supersedes all prior agreements and understandings between the parties.
<b>35</b>	<b>MISCELLANEOUS</b>	<b>35.11</b>	The Contract may consist of a number of counterparts. The counterparts taken together constitute one instrument.
<b>35.1</b>	The Contract is to be governed by, and construed according to the laws of Western Australia.	<b>35.12</b>	Where any consent or approval under these Conditions is to be given by LandCorp, that consent or approval must be given by LandCorp in writing.
<b>35.2</b>	Unless application is mandatory by law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to the Contract or these Conditions so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise affect prejudicially rights, powers, privileges, remedies or discretions given or accruing to a Party.	<b>36</b>	<b>SUBJECT TO FINANCE</b>
<b>35.3</b>	If a condition, covenant or stipulation of the Contract or the application of them to a person or circumstances is, or becomes, invalid or unenforceable the remaining covenants, conditions and stipulations are not to be affected by the invalidity or enforceability, and each covenant, condition and stipulation of these Conditions and the Contract will be valid and enforceable to the fullest extent permitted by law.	<b>36.1</b>	If the Contract includes provision for Finance Approval, the Contract is conditional upon the Buyer receiving written Finance Approval on or before the Latest Date for Loan Approval to a loan of not less than the amount mentioned in the Schedule to assist in the purchase of the Land but this Contract is deemed to be in force pending the fulfilment of this condition.
<b>35.4</b>	The Buyer may not assign or transfer its rights under the Contract without the prior written consent of LandCorp, which consent may be withheld in the absolute discretion of LandCorp.	<b>36.2</b>	For the purpose of Condition 36.1 and subject to Conditions 36.3 and 36.4, Finance Approval means a written approval from a lender for an application for finance or an offer of finance which is either unconditional or conditional.
<b>35.5</b>	A provision of, or a right created under, the Contract may not be: <ul style="list-style-type: none"> <li>(a) waived except in writing signed by the Party granting the waiver; or</li> <li>(b) varied except in writing signed by all parties.</li> </ul>	<b>36.3</b>	For the purposes of Condition 36.2, an approval of finance or an offer of finance shall be deemed to be unconditional if the Finance Approval is subject to usual terms and conditions required by the lender (such as effecting insurance of the property and execution of mortgage and other security documents) or any conditions are accepted by the Buyer.
<b>35.6</b>	The failure on LandCorp's part at any time to enforce any of its rights or to exercise any option to repurchase or discretion in accordance with the Contract will not be construed as a waiver of the provisions of the Contract or prejudice LandCorp exercising such rights or the exercise of any such option or discretion.	<b>36.4</b>	If Finance Approval is subject to conditions which have not been accepted by the Buyer or which the lender requires to be satisfied (for example, an applicable valuation of the Land or additional security), then Finance Approval shall not be approved until such conditions are satisfied. In such case, the Buyer must use its best endeavours to satisfy such conditions of Finance Approval as soon as practicable and those conditions must be
<b>35.7</b>	LandCorp and the Buyer agree to sign, execute and complete all further assurances and documents and to do all things reasonably required to complete the matters set out in, or contemplated by the Contract.		

satisfied no later than ten (10) Business Days after the date of the conditional approval or such further period as may be agreed by LandCorp.

**36.5** Where Finance Approval is obtained or deemed to be obtained in accordance with these conditions, then Condition 36.1 shall be satisfied and this Condition 36 shall no longer apply to the Contract notwithstanding that any financier may subsequently withdraw the Finance Approval for any reason or the loan shall not be completed for any reason.

**36.6** The Buyer shall:

- (a) make application for Finance Approval not later than seven (7) days after the date of this Contract and use its best endeavours and so far as is reasonably practicable do all things necessary to obtain the Finance Approval; and
- (b) notify LandCorp or its solicitor or settlement agent in writing of the Finance Approval within forty-eight (48) hours after obtaining that approval or such application having been refused.

**36.7** The Buyer may waive the benefit of this Condition at any time before the Latest Date for Loan Approval by giving written notice to LandCorp to that effect and thereupon the condition specified in this Condition shall be deemed to have been fulfilled.

**36.8** Subject to the Buyer having complied with Condition 36.6(a) if Finance Approval is not obtained by the Latest Date for Loan Approval, the Contract comes to an end without further notice.

**36.9** If the Contract comes to an end pursuant to Condition 36.8 LandCorp shall forthwith refund to the Buyer the Deposit and all other moneys (if any) paid in accordance with this Contract and there shall be no further claim under the Contract by either LandCorp or the Buyer against the other either in law or in equity.

**36.10** If required by LandCorp the Buyer shall provide to LandCorp full details of the application for finance made by the Buyer.

**36.11** If the Buyer fails to provide written notice to LandCorp by the Latest Date for Loan Approval specifying that Finance Approval has either been obtained or rejected in accordance with this Condition 36 or otherwise fails to comply with this Condition 36, then LandCorp shall be entitled by written notice to immediately terminate this Contract.

The Special Conditions (if any) included in the Schedule to the Contract shall apply to and form part of this Contract. In the event of any inconsistency between the Special Conditions and the Conditions, the Special Conditions shall prevail.