

Deed of Settlement and Release

Date	
Parties	<hr/> <div style="text-align: right;">(“Applicant”)</div> <hr/> <div style="text-align: right;">(“Respondents”)</div> <div style="text-align: center;">(together “the Parties”)</div>
Recitals	<p>A. On _____ (Proceedings).</p> <p>B. Without admission as to liability, the Applicant and the Respondents have agreed to settle Proceedings on the terms set out in this Deed of Settlement.</p>

DEED OF SETTLEMENT AND RELEASE

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1. Definitions

The following definitions apply in this document:

- (a) **Australian Dollars, A\$ or AUD** means the lawful currency of Australia;
- (b) **Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made;
- (c) **Claims** includes all actions, proceedings, suits, causes of action, arbitrations, debts, liabilities, dues, costs, claims, demands, directions, orders, verdicts and judgments either at law or in equity or arising under a statute in respect of or relating to the subject matter of the Debt;
- (d) **Day** means a calendar day and includes any weekday, Saturday, Sunday or any other day that is a public holiday or bank holiday;

- (e) **Deed** means this deed (including the recitals, schedules, annexures, appendices and exhibits to it), as it may later be amended or supplemented by the Parties in writing;
- (f) **Default** has the meaning given at clause 3 of this Deed;
- (g) **Debt** means the sum of \$ _____ inclusive of any GST amounts;
- (h) **First Settlement Sum** means the sum of \$ _____ inclusive of any GST amounts;
- (i) **Government Authority** means:
- (i) any person, body politic or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
 - (ii) any public authority constituted by or under a law of any country or political subdivision of any country; and
 - (iii) any person deriving a power directly or indirectly from any other Government Authority;
- (j) **GST** means Goods and Services Tax;
- (k) **Party means** either of the parties as the context requires;
- (l) **Proceeding** means the proceedings commenced in the Queensland Civil and Administrative Tribunal (Brisbane Registry) by the Applicant to recover the Debt from the Respondents and the Respondents' counterclaim for liquidated damages and defective works;
- (m) **Property** means _____.
- (n) **Rectification Works** means any rectification works performed by the Applicant and/or subcontractor instructed by the Applicant in relation to the Property, being limited to:
- (i) _____.
- (o) **Second Settlement Sum** means the sum of \$ _____ inclusive of any GST amounts;
- (p) **Settlement Sum** means the First Settlement Sum and Second Settlement Sum.

1.2. Interpretation

- (a) Reference to:
- (i) one gender includes the other genders;
 - (ii) the singular includes the plural and the converse;

- (iii) a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) any agreement or instrument includes that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) a clause is to a clause of this Deed; and
 - (vii) legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (b) "Including" and similar expressions are not words of limitation.
 - (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (d) Headings are for convenience only and do not affect the interpretation of this Deed.
 - (e) If a party consists of more than one person, this Deed binds them jointly and each of them severally.
 - (f) If an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day.
 - (g) All monetary amounts are in Australian dollars, unless otherwise stated.

2. SETTLEMENT SUM

2.1. The Respondents must to pay the First Settlement Sum to the Applicant in cleared funds within thirty (30) days of the execution of this Deed by all parties.

2.2. The Respondents must to pay the Second Settlement Sum, _____.

3. SETTLEMENT OF THE PROCEEDING

3.1. The Respondents must pay the First Settlement Sum, in cleared funds, to the Applicant's solicitors Trust Account via electronic funds transfer:

Account Name
BSB
Account Number
Reference

3.2. Within seven (7) days of receipt of the First Settlement Sum in cleared funds, the Applicant agrees to promptly sign and file a Notice of Withdrawal in the Proceeding.

- 3.3.** Within thirty (30) days of receipt of the First Settlement Sum in cleared funds, the Applicant agrees to promptly perform the Rectification Works at the Property.
- 3.4.** Subject to clause 2.2, the Respondents must pay the Second Settlement Sum, in cleared funds, to the Applicant's bank account via electronic funds transfer, as follows:

Account Name
BSB
Account Number
Reference

- 3.5.** The Respondents cannot suspend payment of any of the Settlement Sums for any reason.
- 3.6.** Each Party hereby agrees to bear their own costs of the Proceeding.
- 3.7.** The Parties agree that the Respondents' payment of the First Settlement Sum and Second Settlement Sum is in full and final settlement of the Proceeding without admission of liability.
- 3.8.** The Parties agree that the Rectification Works is carried out by the Applicant is without the admission of liability and in full and final settlement of the Proceeding.

4. DEFAULT

- 4.1.** The Respondents acknowledge and agree that a default will be committed under this Deed by failing to make payment of a Settlement Sum pursuant to clause 2.1 and 2.2.
- 4.2.** In the event that the Respondents default in making payment of a Settlement Sum pursuant to clause 4.1 herein:
- (a) The Applicant is immediately released from their obligations under the Deed;
 - (b) The full and remaining outstanding balance of the combined Settlement Sums shall immediately become due and owing and the Applicant shall be at liberty to take any such step to recover the outstanding balance, interest and legal costs and disbursements incurred in the Proceeding;
 - (c) Should the Respondents fail to strictly comply with any of their obligations under this Deed, the Respondents must reimburse the Applicant for all costs and expenses (including without limitation legal costs and disbursements on an indemnity basis) consequential to or associated with the Respondents' default;
 - (d) The Respondents must pay all money payable by it under this Deed unconditionally and in full without any set-off, counterclaim or other deduction.
 - (e) The Applicant may apply for consent Judgment or an order of a court in the Proceedings that Respondents immediately pay the Settlement Sum, less

any part payment thereof made after the date of this Deed (“**the Default Claim**”); and

- (f) Upon the Applicant proceeding with the Default Claim:
 - (i) The Respondents irrevocably releases and forever discharges the Applicant from all or any Claims or actions, whether at law, equity or otherwise which they have or might have against it arising out of or in connection with the Proceeding (except for any Claims they may have to enforce this Deed); and
 - (ii) The Respondents agrees that the Applicant may plead and/or use the terms of this Deed as a bar to any Claim made by the Respondents against the Applicant or any defence, setoff, counterclaim or opposition by the Respondents in respect of the Default Claim, or any other such claim to enforce the Applicant’s rights under this Deed as existing at the time of execution and exchange of this Deed by the Parties.

5. ACKNOWLEDGMENT, MUTUAL RELEASE AND DISCHARGE AND BAR

5.1. From the date of this Deed, pending payment of the Settlement Sum in accordance with clause 2.1:

- (a) the Applicant will not take any further steps against the Respondents in respect of the Proceeding; and
- (b) the Respondents will not take any further steps against the Applicant in respect of the Proceeding.

5.2. Release and discharge by the Applicant

- (a) the Applicant hereby irrevocably releases and discharges the Respondents and any associated entities, including its directors, employees, agents, assignees or successor from any liability past, present or future from any and all claims, actions, proceedings, complaints, contracts, suits, demands, costs, damages and expenses related to the Proceedings, except for any Claims they may have to enforce this Deed;
- (b) the Applicant agrees that the Respondents may plead and/or use the terms of this Deed as a bar and/or complete defence to any Claims that they may make, take or bring against the Respondents, except for any Claims to enforce this Deed.

5.3. Release and discharge by the Respondents

- (a) the Respondents hereby irrevocably release and discharge the Applicant and any associated entities, including its directors, employees, agents, assignees or successor from any liability past, present or future from any and all claims, actions, proceedings, complaints, contracts, suits, demands,

costs, damages and expenses related to the Proceedings, except for any Claims they may have to enforce this Deed;

- (b) the Respondents agree that the Applicant may plead and/or use the terms of this Deed as a bar and/or complete defence to any Claims that it may make, take or bring against the Applicant, except for any Claims to enforce this Deed.

6. COSTS

- 6.1. The Parties agree to bear their own costs of and incidental to the Proceeding, including the negotiation, execution of and compliance with this Deed.

7. CONFIDENTIALITY

- 7.1. Each party to this Deed irrevocably agrees:

- (a) to keep this Deed (including the terms herein) confidential as they are commercially sensitive;
- (b) to keep the information exchanged in the Proceeding and negotiations preceding this Settlement confidential as they are commercially sensitive; and
- (c) not to disclose any such information to any person (other than their legal advisers for whatever reason, commercial collection agents for whatever reason or accountant for the purposes of their financial statements or taxation returns being prepared and insurers) unless:
 - (i) required to do so by law or any government authority;
 - (ii) if the written consent of all Parties to this Proceeding is first received; or
 - (iii) to enforce the Deed.

8. INDEPENDENT ADVICE

- 8.1. The parties acknowledge that prior to the execution of this Deed, that they have obtained, or were given an opportunity to obtain, independent legal advice regarding the content and the effect of this Deed and that they entered this Deed voluntarily.

9. WAIVERS

- 9.1. No failure, delay, relaxation or indulgence by any party in exercising any right conferred on such party by this Deed will operate as a waiver of such right, nor will any single or partial exercise of such right, nor any single failure to do so, this Deed.

10. VARIATIONS AND WAIVERS TO BE IN WRITING

- 10.1. No variation, modification or waiver of any provision in this Deed, nor consent to any departure by any party from any such provision, will be of any effect unless it is in

writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

11. GST

- 11.1.** The Settlement Sums are inclusive of any goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12. GENERAL

12.1. Time of the essence

In this Deed, time is of the essence unless otherwise stipulated.

12.2. Entire understanding

- (a) This Deed contain the entire understanding between the parties and supersedes, terminates and replaces all prior agreements and communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Deed, that Parties have not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Deed.

12.3. No adverse construction

This Deed and any clauses therein are not to be construed to the disadvantage of a party because that party was responsible for its preparation.

12.4. Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Deed.

12.5. No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or rights conferred on the party by this Deed does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Deed.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

12.6. Severability

- (a) Any provision of this Deed which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (i) be read down to the minimum extent necessary to achieve its validity, if applicable; and
 - (ii) be severed from this Deed in any other case,
- without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

12.7. Successors and assigns

This Deed binds and benefits the Parties and their respective successors and permitted assigns under clause 12.8.

12.8. No assignment

A Party cannot assign or otherwise transfer the benefit of this Deed without the prior written consent of the other party.

12.9. Governing law and jurisdiction

- (a) This Deed is governed by and must be construed in accordance with the laws in force in Queensland.
- (b) The Parties submit to the non-exclusive jurisdiction of the Courts of Queensland.

12.10. Counterparts

If the Deed consist of a number of signed counterparts, each is an original (including PDF and facsimile copies of such counterparts) and all of the counterparts together constitute the same document.

12.11. Execution and delivery

- (a) By executing this Deed, that party intends:
 - (i) to be immediately bound by the Deed; and
 - (ii) for such execution to constitute a deliverance of the Deed to each party.

Nothing in clause 12.11 should be taken to exclude any statutory or common law principle applicable to the proper execution and delivery of the Deed.

12.12. Conflicting provisions

If there is any conflict between the main body of the Deed and any schedules or annexures comprising it, then the provisions of the main body of the Deed prevails.

12.13. No merger

A term or condition of, or act done in connection with, the Deed does not operate as a merger of any of the undertakings, warranties and indemnities in this Deed or the rights or remedies of the parties under the Deed which continue unchanged.

12.14. No right of set-off

Unless this Deed expressly provides otherwise, the Parties have no right of set-off against any payment due to another Party.

12.15. Relationship of parties

Unless this Deed expressly provides otherwise, nothing in this Deed should be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

12.16. Giving effect to this document

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

12.17. Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Executed as a Deed of Settlement: ____ / ____ / ____

EXECUTED by _____)
_____ in)
accordance with section 127 of the *Corporations*)
Act 2001 (Cth):)
_____)

Signature of Director

Signature of Director/Secretary

Name of Director
(Please print)

Name of Director/Secretary
(Please print)

SIGNED, SEALED AND DELIVERED by _____)
_____ in)
the presence of:)
_____)
_____)

Signature of

Signature of Witness

Dated
(Please print)

Name of Witness
(Please print)

Signature of

Signature of Witness

Dated
(Please print)

Name of Witness
(Please print)