**Data Disclosure Deed**

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| --- | --- |
| **Between** | The State of Queensland acting through…  (**Department)** |
| **And** | (**Recipient)** |

**Table of Contents**

[1 Background 3](#_Toc373400754)

[2 Definitions and Interpretation 3](#_Toc373400755)

[3 Term 3](#_Toc373400756)

[4 Department’s Obligations 3](#_Toc373400757)

[5 Recipient’s Obligations 3](#_Toc373400758)

[6 Confidentiality 3](#_Toc373400759)

[7 Personal Information 3](#_Toc373400760)

[8 Return or Destruction of Data 3](#_Toc373400761)

[9 Compliance with Laws 3](#_Toc373400762)

[10 Notification of Breach 3](#_Toc373400763)

[11 Intellectual Property 3](#_Toc373400764)

[12 Payment and GST 3](#_Toc373400765)

[13 Insurances 3](#_Toc373400766)

[14 Indemnity 3](#_Toc373400767)

[15 Dispute Resolution 3](#_Toc373400768)

[16 Termination 3](#_Toc373400769)

[17 Legal Relationship 3](#_Toc373400770)

[18 Assignment and Novation 3](#_Toc373400771)

[19 Trusts 3](#_Toc373400772)

[20 Notices 3](#_Toc373400773)

[21 Governing Law 3](#_Toc373400774)

[22 Severability 3](#_Toc373400775)

[23 Variation 3](#_Toc373400776)

[24 Waiver 3](#_Toc373400777)

[25 Costs 3](#_Toc373400778)

[26 Further Assurances 3](#_Toc373400779)

[27 Entire Agreement 3](#_Toc373400780)

[29 Clauses Surviving this Deed 3](#_Toc373400782)

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| **Data Disclosure Deed** | |
| **Between** | The State of Queensland acting through  (**Department)** |
| **And** |  |

1. Background
   1. The Department is the holder of the Data.
   2. The Recipient proposes to use and/or disclose the Data for [defined]; and
   3. The Department has agreed to disclose the Data to the Recipient on the terms contained in this Deed.

**THE PARTIES AGREE AS FOLLOWS**

1. Definitions and Interpretation

**Definitions**

* 1. In this Deed the following definitions apply:
     1. **Authorised Recipient means the entity described in Item 3 of Schedule 1.**
     2. **Authorised Third Party**:means a party listed in Schedule 3.
     3. **Business Day**: means any day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.
     4. **Claim**: includes (and is not limited to) any claim, action, demand, application, proceeding, judgment, enforcement hearing and enforcement order.
     5. **Commercialisation**: means to develop, manufacture, sell, hire or otherwise exploit for financial gain or other advantage any:
        1. product;
        2. process or information;
        3. service;
        4. licence or sub-licence;
        5. joint venture;
        6. any arrangement similar to the preceding sub-paragraphs involving a third party.
     6. **Commencement Date**: means the date the Deed is entered into
     7. **Deed**: means this document and all schedules and attachments to it.
     8. **Department**: means the State of Queensland represented by and any officers, employees, agents and contractors of.
     9. **Fee**: means any monetary amount (if applicable) that is required to be paid under this Deed, as described in Item 5 of Schedule 1.
     10. **GST Law**: means A New Tax System (Goods and Services Tax) Act 1999 (Cth), any regulations passed under that Act or any rulings or determinations made by the Australian Tax Office about its interpretation.
     11. **In Confidence Information**: means any information in the possession or control of the Department which:
         1. by its nature is confidential;
         2. is received on the understanding that it is confidential; or
         3. is marked as being confidential.

In Confidence Information may include:

* + - 1. confidential information as defined by …
      2. Intellectual Property Rights belonging to the Department;
      3. any other information which can be classified under the law of equity as confidential information; and
      4. the terms of this Deed;

but does not include information:

* + - 1. that is in the public domain as at the date of this Deed;
      2. that is subsequently placed in the public domain other than by breach of this Deed; or
      3. that is subsequently obtained by a third party and which is not otherwise governed by an obligation of confidence.
    1. **Intellectual Property Rights**: means all registered and unregistered rights in Australia and throughout the world for:
       1. copyright;
       2. trade or service marks;
       3. designs;
       4. patents;
       5. semiconductors or circuit layouts;
       6. source codes and object codes;
       7. trade, business or company names;
       8. indications of source or appellations of origin;
       9. trade secrets;
       10. know-how and confidential information;
       11. the rights to registration of any of the above; and
       12. the right to bring an action for infringement of any of the above;

but excludes moral rights.

* + 1. **Law**: means:
       1. common law;
       2. the law of equity; or
       3. Federal, State or Local Government statute, regulation, ordinance in force from time to time.
    2. **Loss**: includes (and is not limited to) any loss, liability, tax, prohibition, penalty, fine, expense, injury or damage to persons or property.
    3. **Personal Information**: has the same meaning as personal information in section 12 of the *Information Privacy Act 2009 (Qld*).
    4. **Project**: means the project described in Item 1 of Schedule 1.
    5. **Purpose**: means the purpose described in Item 2 of Schedule 1 for which the Data is required.
    6. **Recipient**: means …and includes officers, employees and agents
    7. **Tax Invoice**: has the meaning given to it under GST Law.
  1. In this Deed (unless the context otherwise requires):
     1. words importing a gender include any other gender;
     2. words in the singular include the plural and vice versa;
     3. all dollar amounts refer to Australian currency;
     4. a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
     5. a reference to an individual or person includes a corporation, authority, association, joint venture (whether incorporated or unincorporated), partnership, trust or other legal entity;
     6. a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
     7. a reference to “consent” means prior written consent;
     8. a reference to “includes” in any form is not a word of limitation;
     9. clause headings have been included for convenience only and are not intended to affect the meaning or interpretation of this Deed;
     10. if any expression is defined, other grammatical forms of that expression will have corresponding meanings; and
     11. unless the context otherwise requires, if there is any inconsistency between:
         1. the operative provisions in this Deed; and
         2. any schedules or attachments to the operative provisions or any document incorporated into the Deed,

the operative provisions in this Deed will prevail to the extent of any inconsistency.

1. Term
   1. This Deed will commence on the Commencement Date and will remain in force until terminated under clause 16 of this Deed.
2. Department’s Obligations
   1. Subject to the Recipient’s strict compliance with the terms of this Deed, the Department agrees to:
      1. disclose the Data to the Recipient for the Project during the Term; and
      2. allow the Recipient to use the Data only for activities directly related to carrying out the relevant Purpose (and no other purpose).
   2. The Department may use its own software to provide the Data to the Recipient in a format the Recipient is able to accept.
3. Recipient’s Obligations
   1. The Recipient agrees to:
      1. undertake the Project;
      2. use the Data only for activities directly related to carrying out the relevant Purpose (and no other purpose);
      3. pay any Fee to the Department that may otherwise be payable (if applicable); and
      4. do all things and execute all documents necessary to ensure that any employees, officers, agents, contractors and subcontractors acting on its behalf in connection with the relevant Purpose, adhere to and are bound by the terms of this Deed.
   2. The Recipient acknowledges and agrees that the Department does not provide any express or implied warranty, condition or undertaking in relation to the quality, performance or fitness for purpose of the Data.
4. Confidentiality

**Recipient’s Acknowledgment**

* 1. The Recipient acknowledges that the Data provided by the Department under this Deed contains In Confidence Information.

**In Confidence Information**

* 1. The Recipient must ensure that all In Confidence Information belonging to the Department is kept confidential, and must not directly or indirectly use and/or disclose any In Confidence Information provided under this Deed except where the use and /or disclosure:
     1. is directly related to carrying out the relevant Purpose under this Deed;
     2. is to an Authorised Third Party;
     3. is otherwise consented to by the Department;
     4. is required under the administration of any Law;
     5. is made to an adviser of the Recipient under a professional relationship that is governed by an obligation of confidence; or
     6. the information is already readily available in the public domain or is obtained from another source under terms that are not otherwise governed by an obligation of confidence.

**Reproduction of Data**

* 1. The Recipient must not:
     1. use, copy, reproduce, communicate or otherwise deal with the In Confidence Information (in whole or in part) unless it is directly related to the Purpose; and
     2. allow any unauthorised third party to use, disclose or have access to (either directly or indirectly) the relevant Confidential Information.

**Security**

* 1. The Recipient must:
     1. store and protect the In Confidence Information in its possession or control with appropriate security measures, having regard to:
        1. the nature of the information;
        2. the medium in which it is found; and
        3. any instructions provided by the Department; and
     2. undertake bi-annual data security audits of the Project to evaluate the security, completeness and accuracy of the Data stored in the Recipient’s database; and
     3. provide a copy of any reports produced from bi-annual data security audit to the Department within 30 days of completing each audit.

1. Personal Information
   1. This clause applies if the recipient will in any way deal with Personal Information belonging to the Department when carrying out the relevant purpose.
   2. The Recipient acknowledges that it is a bound contracted service provider under the *Information Privacy Act* *2009*.
   3. Unless authorised by law, the Recipient must:
      1. when carrying out the Purpose, comply with parts 2 and 3 of Chapter 2 of the *Information Privacy Act* *2009* as if they were a government agency;
      2. ensure that Personal Information belonging to the Department is securely stored and appropriately protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
      3. not use Personal Information belonging to the Department other than for the purposes directly related to carrying out the Purpose;
      4. except as permitted under this Deed, not disclose Personal Information belonging to the Department without the prior written consent of the Department;
      5. except as permitted under this Deed, not transfer any Personal Information belonging to the Department outside of Australia without the prior written consent of the Department;
      6. ensure that access to Personal Information belonging to the Department is restricted to those persons who require access for purposes directly related to carrying out the Purpose;
      7. ensure that its officers, employees, agents, contractors and sub-contractors comply with the same or equivalent obligations as those imposed on the Recipient under this clause;
      8. fully and promptly cooperate with the Department to enable the Department to respond to any access applications or privacy complaints which require access to, or amendment of any document containing a person’s Personal Information;
      9. immediately notify the Department if the Recipient becomes aware of any unlawful use or disclosure of Personal Information belonging to the Department;
      10. comply with such other privacy and security measures required by the Department as advised in writing from time to time; and
      11. if requested by the Department (and upon the expiry or termination of this Deed) promptly return or destroy any record, document or file which contains Personal Information belonging to the Department in accordance with the Department’s instructions.
   4. If requested by the Department, the Recipient must obtain from its sub-contractors a deed of privacy in a form acceptable to the Department.
   5. For the avoidance of doubt, the Recipient warrants that all of its officers, employees or agents, engaged or involved in carrying out the Purpose, whether directly or indirectly, will be bound by this clause 7.
   6. The Recipient must immediately notify the Department upon becoming aware of any breach of this clause 7 disclosure of Personal Information is required by law, before such disclosure is made.
   7. For the purposes of clause 7.3(e), the Recipient is permitted to transfer Personal Information to the Authorised Recipient provided that:
      1. the Personal Information is being transferred for the Purpose; and

the Recipient will not transfer the Personal Information overseas unless the Recipient can comply with section 33 of the *Information Privacy Act 2009*. The Recipient retains responsibility for any transfer of the Personal Information overseas by its subcontractor(s).

7.8 If requested, the Recipient must provide the Department with documentation demonstrating the Recipient’s compliance with paragraph 7.7.

* 1. The Recipient agrees to indemnify the Department in respect of any Loss suffered or incurred by the Department (including, but not limited to any award, order or similar judgement or direction by the Queensland Civil and Administrative Tribunal) which arises directly or indirectly from a breach of any of the obligations upon the Recipient under this clause 7 or a breach by the Recipient’s officers, employees, agents, contractors or subcontractors under this clause.
  2. For the sake of clarity, the Recipient may only disclose Data from the Project to external third parties if the Personal Information and/or In Confidence Information contained within the Data is not identifiable, meaning that an individual’s identity is NOT apparent or cannot reasonably be ascertained, from the information.
  3. Subject to clause 7.3, if the recipient wishes to disclose any part of the Data that allows an individual’s identity to be apparent or reasonably ascertained from the information, the Recipient must obtain the prior written consent of the Department.

1. Return or Destruction of Data
   1. The Recipient must (either at the end of the Term, or at an earlier time if it receives a written request from the Department) and at all times at the Recipient’s own expense:
      1. cease to use and/or disclose the Data for the relevant Purpose;
      2. unless otherwise agreed permanently destroy all materials in its possession or control which contain the Data including all copies, extracts and reproductions whether they be in hard copy or electronic form;
      3. confirm in writing to the Department within any timeframes nominated by the Department, that this clause has been fully complied with; and
      4. comply with any instructions or directions given by the Department for the return, destruction or cessation of use of all or any part of the Data.
2. Compliance with Laws
   1. The Recipient must comply with:
      1. all applicable Laws; and
      2. subject to receiving notice of the same, all policies and directions of the Department in relation to the use and/or disclosure of the In Confidence Information and Personal Information.
   2. The Recipient must not engage in any act or omission which may cause the Department or any person to be in breach of any Law or policy that applies to the use and/or disclosure of In Confidence Information or Personal Information.
3. Notification of Breach

**Data Notification Breach**

* 1. If the Recipient:
     1. is required under any Law [whether that be through a court order, subpoena, warranty, notice of non-party disclosure or discovery to disclose all or any part of the Data; or
     2. becomes aware of any breach of this Deed;

the Recipient must immediately notify the Department so the Department can determine and take whatever action it considers necessary to protect the Department’s interests.

* 1. The Recipient must also (and at all times at its own expense)
     1. fully co-operate with the Department when dealing with any unauthorised use and/or disclosure under this Deed; and
     2. use its best efforts to prevent the reoccurrence of any such breaches.

**Privacy Breach**

* 1. If the Recipient becomes aware of any breach - that involves loss, or unauthorised access, use, modification and/or disclosure or any other misuse of Personal Information, the Recipient must:
     1. immediately notify the Department as soon as it becomes aware of the breach;
     2. fully co-operate with the Department when dealing with any unauthorised use and/or disclosure of Personal Information under this Deed (e.g. privacy complaints); and
     3. use its best efforts to immediately rectify the breach and prevent the reoccurrence of any such breaches.

1. Intellectual Property

**New Material**

* 1. Title to, and ownership of, all Intellectual Property Rights in any material developed after the Commencement Date while carrying out the relevant Purpose (**New Material**) will vest in the Department unless specified otherwise in Item 3 of Schedule 1.

**Existing Material**

* 1. This Deed does not affect the ownership of Intellectual Property Rights in any material:
     1. in existence before the Commencement Date (**Existing Material**); and
     2. which is used in the course of developing New Material while carrying out the relevant Purpose.

**Licenses**

* 1. For Existing Material belonging to the Department, the Department grants the Recipient a non-exclusive, non-transferable, royalty-free licence to use the Department’s Existing Material:
     1. for the Term; and
     2. only for activities directly related to carrying out the relevant Purpose that does not involve commercialisation.
  2. For Existing Material and New Material belonging to the Recipient, the Recipient grants the Department a perpetual, non-exclusive, non-transferable, royalty-free licence to use any Existing Material and New Material belonging to the Recipient, including the right to sub-licence for:
     1. purposes directly related to enabling the Department to discharge its obligations under this Deed; and
     2. any other internal purpose relating to the use of the New Material.

1. Payment and GST
   1. Undefined terms used in this clause have the meaning given to them in GST Law and all amounts payable under this Deed are excluding GST.
   2. Where this Deed provides that a Fee is payable, the Recipient must pay the Fee to the Department within 30 days of receiving a Tax Invoice compliant with GST Law from the Department.
   3. Where a Tax Invoice rendered under this Deed is for:
      1. a Taxable Supply; and
      2. consideration for a supply that excludes GST,

the Recipient must pay an amount equal to the GST in addition to the consideration payable for the Taxable Supply.

* 1. The amount of GST will be calculated at the prevailing GST rate.
  2. If the GST rate is varied, the consideration payable for any Taxable Supply under this Deed will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.
  3. Where GST applies to a Taxable Supply made under this Deed, the Department will deliver to the Recipient a valid Tax Invoice or Adjustment Note at, or before the time payment for the supply is required.
  4. If an Adjustment Event occurs in connection with any Taxable Supply made under this Deed:
     1. the amount payable by the Recipient will be recalculated to reflect the Adjustment Event; and
     2. payment for the Adjustment Event will be made by the Recipient to the Department or by the Department to the Recipient (as the case may be).
  5. Where a party is required under this Deed to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed will be the sum of:
     1. the amount of the expense or outgoing less any Input Tax Credits for the expense or outgoing to which the other party is entitled; and
     2. if the payment or reimbursement is subject to GST, an amount equal to that GST.

1. Insurances
   1. The Recipient must ensure it has coverage for following insurances for the Term of this Deed:
      1. workers’ compensation insurance under the *Workers’ Compensation and Rehabilitation Act* *2003* (Qld) or such other workers’ compensation insurance policies that may apply if the Recipient’s business activities are located outside of Queensland;
      2. public liability insurance for not less than $20 million per occurrence;
      3. professional indemnity insurance for not less than $20 million per occurrence;
      4. any other insurances nominated in Item 6 of Schedule 1.
   2. The Recipient must also ensure that third parties engaged by the Recipient to assist in carrying out the relevant Purpose are adequately insured for their activities in a way that is consistent with paragraph 13.1.
   3. The Recipient must promptly give the Department copies of any certificates of currency for any insurances that are required under this clause upon receiving a written request by the Department to do so.
   4. If the Recipient does not organise for the relevant insurances to be taken out and maintained in accordance with this clause, the Department:
      1. may take out and maintain the relevant insurances; and
      2. recover the cost of any insurance premiums as a debt due and payable to the Department.
2. Indemnity
   1. To the fullest extent permitted by Law, the Recipient indemnifies the Department for all Loss resulting from any Claim related to:
      1. any act or omission which amounts to a breach of the Recipient’s obligations under this Deed, including without limitation, a breach of the personal information provisions in clause 7 of this Deed;
      2. any unlawful act or omission connected with a Recipient’s actual or attempted performance of its obligations under this Deed;
      3. any neglect or default connected with the Recipient’s, actual or attempted performance of its obligations under this Deed;
      4. any exercise of rights by the Department as a result of the Recipient’s neglect or default; and
      5. all costs (including legal costs on an indemnity basis) that are reasonably and properly incurred by the Department because of any breach of sub-paragraphs **(a)-(d)** .
   2. Liability under this clause will be proportionately reduced to the extent that the Department has contributed to the Loss that is the subject of the Claim.
3. Dispute Resolution
   1. Under this clause, a dispute will have arisen when a party gives notice in writing to that effect to the other parties.
   2. The parties agree to work towards settling any dispute as follows:
      1. by negotiation at first instance (to be carried out in good faith);
      2. if an acceptable resolution cannot be achieved within 14 days of commencing negotiations (or such longer period if agreed by the parties), by attending mediation with a mediator approved by the President of the Queensland Law Society; and
      3. the parties will share the cost of the mediator equally
   3. Nothing in this clause affects the rights of the parties to pursue their rights at Law.
4. Termination
   1. The Department may terminate this Deed by giving written notice to the Recipient if:
      1. the Recipient or any third party involved in carrying out the relevant Purpose breaches a material term of this Deed that cannot be remedied (including those terms where time is of the essence);
      2. the Recipient or any third party involved in carrying out the relevant Purpose any other term of this Deed that is not remedied within 30 days of the Recipient receiving written notice about the breach;
      3. the Recipient does not comply with the insurance obligations under this Deed;
      4. the Recipient:
         1. becomes bankrupt or insolvent;
         2. becomes subject to any form of external administration;
         3. enters into an arrangement with its creditors or takes advantage of any laws in force in connection with insolvent debtors; or
         4. is wound up either voluntarily or involuntarily.
   2. Upon this Deed being terminated under paragraph 16.1 the Recipient must:
      1. immediately suspend dealing with all or any part of Data in its possession or control; and
      2. only deal with the Data in accordance with the directions given by the Department.
   3. The Department may terminate this Deed at any time by giving the Recipient 30 days written notice.
   4. Termination of this Deed will not:
      1. affect any claim or action either party may have against the other by reason of any prior breach of this Deed; or
      2. relieve either party of any obligation under this Deed that survives its early termination or expiry.
5. Legal Relationship
   1. The relationship of the parties under this Deed is:
      1. one of principal and contractor; and
      2. not an employment relationship between the parties.
6. Assignment and Novation
   1. The Recipient must not assign or novate all or any part of its rights under this Deed at anytime.
   2. The Department may assign or novate all or any part of its rights under this Deed at anytime by giving the Recipient written notice.
7. Trusts
   1. This clause applies if the Recipient is at any time a trustee of any trust.
   2. This Deed extends to all rights of indemnity the Recipient has, or will have, against the trust and the trust fund.
   3. The Recipient warrants that it:
      1. it has the power to enter into this Deed as trustee and that the Recipient has entered into this Deed in the due administration of the trust; and
      2. has full rights to claim against the assets of the Trust for all liabilities incurred for the Project and that those rights have not been, and will not be, changed or lost.
   4. Despite any other document or law, the Recipient is, and will remain, personally liable for complying with the Deed.
   5. The Recipient must not, without the consent of the Department:
      1. be removed, replaced, or retire as trustee of the trust;
      2. alter or vary the terms of the trust;
      3. advance or distribute any capital of the trust;
      4. resettle the property of the trust; or
      5. commit a breach of trust.
8. Notices
   1. Any notice under this Deed must be in writing, and served by hand delivery or by courier with tracking capabilities or by facsimile (confirmed by receipt of the original) to the address or facsimile number of the relevant party detailed in Item 6 of Schedule 1.
   2. A notice will be deemed to be given:
      1. if posted - two days after the date of posting;
      2. if delivered - on the date of delivery;
      3. if faxed - on the date the sender’s facsimile machine notes a complete and successful transmission; or
      4. if emailed - on the date of the email.
   3. Despite the preceding paragraphs in this clause, any fax or email that is received after 5:00 pm will be deemed to be given on the next Business Day.
9. Governing Law
   1. This Deed is governed by the laws of Queensland and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts in that State.
10. Severability
    1. If any part of this Deed is determined to be invalid, unlawful or unenforceable for any reason, then to the full extent permitted by law:
       1. the offending provision will be severed from the rest of the Deed; and
       2. the remaining terms and conditions will continue to be valid and enforceable.
11. Variation
    1. This Deed may only be varied in writing by way of a deed of variation that is signed by both parties.
12. Waiver
    1. A party does not waive a right, power or remedy if it:
       1. fails to exercise the right, power or remedy; or
       2. is delayed in exercising the right, power or remedy.
    2. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that right, power or remedy.
    3. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
13. Costs
    1. Each party agrees to pay their own costs associated with the negotiation, preparation and execution of this Deed.
14. Further Assurances
    1. Each party must do all things and execute all documents reasonably required to give effect to this Deed.
15. Entire Agreement
    1. This Deed constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements (written or oral) and agreements between them.
    2. By entering into this Deed, the Recipient also confirms that they have not relied on any additional statement, representation, warranty or condition:
       1. outside of this Deed; and
       2. that is imposed by the Department,

connected with the subject matter of this Deed.

1. Clauses Surviving this Deed
   1. The following clauses survive this Deed:
      1. clause 6 (Confidentiality);
      2. clause 7 (Personal Information);
      3. clause 8 (Return and Destruction of Data);
      4. clause 9 (Compliance with Laws);
      5. clause 10 (Notification of Breach);
      6. clause 11 (Intellectual Property);
      7. clause 14 (Indemnity); and
      8. clause 15 (Dispute Resolution).

Schedule 1 – Particulars

Schedule 2 – Data

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**Signatures**

**Executed** as a deed by the parties below:

**SIGNED** for and on behalf of the **STATE** )

**OF QUEENSLAND** acting through ) ……………………………………

**…** by ) *(signature)*

)

)

..................................................................... *(name)*, )

..................................................................... *(position)*, )

a duly authorised person, in the presence of: ) ……./……./…….

*(date)*

…………………………………………….

*(signature of witness)*

**SIGNED** for and on behalf of ………………………………………

) *(signature)*

)

)

..................................................................... *(name)*, )

..................................................................... *(position)*, )

a duly authorised person, in the presence of: ) ……./……./…….

*(date)*

…………………………………………….

*(signature of witness)*