**Sample Document**

**SBB Joint Development Phase Agreement**

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| **What is this sample document usually called?** | SBB Joint Development Phase Agreement. |
| **Who will sign it?** | State of Queensland (acting through a named Queensland Government Department).Proponent. |
| **When is it used?** | All Social Benefit Bond transactions. |
| **What does it do?** | Provides for the joint development between the State (as defined below) and a Proponent of a Social Benefit Bond arrangement (“**SBB arrangement**”).  |
| **What areas does it cover?** | * Summary of the scope, objectives and purpose of the interactive SBB Joint Development Phase.
* Commitments between the State and the Proponent.
* Conditions for engagement, conduct and termination.
* Intellectual property and use of information.
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| **What drafting options does it include?** | Drafting instructions are included in the sample document to assist in drafting for the inclusion (or removal) of these and other optional features. |
| **What should we do before we use this sample document?** | This sample document contains general provisions and other information only and does not take into account the objectives, needs or financial arrangements of any particular transaction. Before using this sample document, you should:* carefully consider and make your own assessment of whether it is appropriate for the SBB arrangement or other transaction that you are considering;
* perform your own independent investigation and analysis of the suitability and appropriateness of this sample document for any SBB arrangement or other transaction that you are considering;
* consult your own legal, tax and other professional advisers as part of your assessment of this sample document and its suitability for your transaction; and
* satisfy yourself that cross references in the sample document to other provisions of the sample document, or to any provisions or the names of other documents, are correct.
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| **Why is this sample document available?** | This sample document is intended to provide a guide for, and to streamline the development of, the documentation (and specific provisions) that is used for an SBB arrangement. Parties are advised that the relevant Queensland Government department will be responsible for the initial preparation and any re-drafting of the SBB Joint Development Phase Agreement in connection with any SBB arrangement, and this sample document is intended to be used as the basis for preparing that document. The State (as defined below) would expect to take into account in any evaluation of a proposed SBB arrangement any requests for material departures from the sample document and the reasons for the departures and the possible implications for time, cost and efficiency. The acceptance of the final form of this document by the Queensland Government and the State of Queensland (including all departments, agencies and other State bodies and personnel) (together, the “**State**”) will be a key condition for any agreement of the terms of an SBB arrangement. However, it may not be suitable in all circumstances and the State reserves the right to require a departure from this sample document in order to address the specifics of a particular SBB arrangement, to address then current market practice and conditions and otherwise as necessary to protect the interests of the relevant department, agency or other State body and the State. |
| **Where can I get further information?** | If you have any questions in relation to this sample document, or any specific provision or other related information, queries can be directed to socialbenefitbonds@treasury.qld.gov.au. |

**Legal matters**

This sample document has been prepared by King & Wood Mallesons at the request of, and in consultation with, Queensland Treasury and its advisers. It forms part of a suite of sample transaction documents that has been developed by Queensland Treasury for use in connection with SBB arrangements involving private investors in the Australian wholesale capital market.

No reliance may be placed for any purposes whatsoever on the provisions and other information contained in this sample document (or any other communications or materials separately provided or discussed verbally in connection with this sample document) or on its completeness, accuracy or fairness. No representation or warranty, expressed or implied, is given by, or on behalf of, the State, King & Wood Mallesons or any other person as to the provisions and other information included in this sample document being acceptable to the State in all circumstances, that it is suitable for any particular SBB arrangement or as to the accuracy or completeness of the provisions or other information contained in this sample document and no liability whatsoever is accepted by the State or King & Wood Mallesons for any loss howsoever arising, directly or indirectly, from any use of such provisions or other information or otherwise arising in connection with it. The provisions and other information in this sample document are subject to negotiation, verification, completion and change.

***Parties are advised that the relevant Queensland Government department will be responsible for the initial preparation and any re-drafting of this document in connection with any SBB arrangement. Any request for a change to a provision of this document must be accompanied with suggested drafting amendments for that change and, where the change is material, by reasonable detail of the reason for the request. Whilst the intention is to use this sample document as the basis for preparing the actual SBB Joint Development Phase Agreement for each relevant SBB arrangement, it may not be suitable in all circumstances and there is no obligation for the State to do so. The State reserves the right to amend or to depart from this sample document in order to address the specifics of a particular SBB arrangement, to address then current market practice and conditions and otherwise as necessary to protect the interests of the relevant department, agency or other State body and the State. All cross-references to provisions in this document and to provisions and names of other documents should be carefully checked.***



**SBB Joint Development Phase Agreement**

**[*Project name*]**

Between

**State of Queensland acting through
[*Department’s name*]**

and

**[*Legal name of Proponent*]**

[*Department’s name*]
[*Building name*]
[*Street address*]
BRISBANE QLD 4000
Telephone: [*phone number*]
Facsimile: [*fax number*]

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This document has been derived in part from the Joint Development Phase Agreement of the NSW Office of Social Impact Investment, prepared by the NSW Crown Solicitor’s Office in consultation with Trevor Danos AM, available at <http://www.dpc.nsw.gov.au/programs_and_services/social_impact_investment/social_benefit_bonds> (**NSW OSII Website**). That work, (apart from any State arms, symbols or trademarks or third party material) is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia Licence (https://creativecommons.org/licenses/by-nc-sa/3.0/au/legalcode).

This document has been prepared by the State of Queensland in consultation with Trevor Danos AM and King & Wood Mallesons (and its preparation should be so attributed). To the extent that this document is a Derivative Work of the Joint Development Phase Agreement, the document is made available by the State of New South Wales to you under clause 9 of the Attribution - Non-Commercial - ShareAlike 3.0 Australia Creative Commons Licence (CC-BY-NC-SA 3.0 AU) granted by the State of New South Wales to the State of Queensland which may be sighted on Office of Social Impact Investment https://www.treasury.qld.qov.au/budqet-finance/fiscal-projects/social-benefitbonds.php. To the extent that this document is not a Derivative Work, this document is licensed by the State of Queensland to you under an Attribution - Non-Commercial - ShareAlike 3.0 Australia Creative Commons Licence (CC-BY-NC-SA 3.0 AU) (see <http://creativecommons.org/licenses/by-nc-sa/3.0/au/legalcode>).

If you participate in the Request for Proposal phase of the Queensland Social Bond Pilot Program, your conduct will constitute acceptance by conduct of the offer of the relevant licence and you will be bound by the terms of such licence.

To: [*insert name of Proponent*][*insert address of Proponent*]

(**Proponent**)

Attention: [*insert name and title of Authorised Representative for the Proponent*]

Date: [*insert date letter issued*]

Dear Sir/Madam

**Development of a Social Benefit Bond Transaction under the Social Benefit Bonds Pilot Program (Pilot Program)**

## Background

1.1 The State of Queensland and the Queensland Government (including all departments, agencies and other state bodies and personnel), (together, the **State**) acting through [*Department’s name*] wish to undertake a social benefit bond transaction (**SBB transaction**).

1.2 The State issued a Request for Proposals entitled "[*insert title of the RFP*]" on [*insert date of issue of the RFP*] (**RFP**, which term includes each and every document governing the process by which the State advanced the competitive tender process for the Pilot Program beyond the Expression of Interest process).

1.3 The Proponent and others (**Consortium Members**) have submitted a proposal in response to the RFP.

1.4 The Proponent has been selected by the State to participate in the interactive SBB joint development phase, as described in the RFP in accordance with the terms of this letter agreement and the RFP (**SBB Joint Development Phase**).

1.5 The Proponent has represented to the State that the Proponent has full authority to speak for and to represent the interests of Consortium Members in negotiations with the State during the SBB Joint Development Phase.

**2. Objectives, purpose and scope of SBB Joint Development Phase**

2.1 The SBB Joint Development Phase will commence on the date on which a copy of this letter agreement signed on behalf of the Proponent is received by the State (**Commencement Date**) and will terminate 9 calendar months from the date on which the Proponent submitted its Proposal (being [*insert date*]) unless otherwise extended by the State in writing or unless terminated earlier in accordance with the terms of this letter agreement.

**Objectives**

2.2 The objectives of the SBB Joint Development Phase are:

(a) to further develop and/or design the overall approach to the implementation of an SBB transaction;

(b) negotiate arrangements for the implementation of the SBB transaction; and

(c) ensure resource plans and other agreements are in place to support the SBB transaction's implementation,

(together, the **Objectives**)

**Purpose and Scope**

2.3 The purpose and scope of the SBB Joint Development Phase is to develop the Proposal submitted by the Proponent under the RFP Process to a level of feasibility suitable for contracting including (without limitation):

(a) specification of the following matters for the SBB transaction:

(i) cohort;

(ii) program outcomes;

(iii) evidence base for program;

(iv) measurement of outcomes and unintended consequences;

(v) duration of the program, its assessment and the return to investor(s);

(vi) extension/variation provisions;

(vii) return to the State;

(viii) social benefits/impacts;

(ix) government relationship with investor(s), Proponent, Consortium Members and program provider (if different);

(x) risk allocation;

(xi) structure of the SBB transaction;

(xii) process for appointment of independent evaluators or similar for both the program and payments;

(xiii) monitoring process;

(xiv) communication strategy;

(xv) risk management strategy;

(xvi) roles and responsibilities of the parties for the duration of the program; and

(xvii) such other matters as the parties may reasonably agree; and

(b) terms and conditions of the primary agreement to implement the SBB transaction (as specified in accordance with clause 2.3(a)) to be entered into by the relevant government agency and the Proponent in the event that the Proposal is developed to an acceptable level of feasibility and the Proponent is chosen as a successful proponent under the RFP (**Implementation Agreement**).

**Successful Proponent**

2.6 The Proponent acknowledges and agrees that nothing in this letter agreement may be construed as an indication or representation to the Proponent or the Consortium Members by the State that the State will enter into an Implementation Agreement. The State is not liable for any loss or damage suffered by the Proponent or any Consortium Member arising out of or in connection with the State not entering into an Implementation Agreement.

**3. Commitments**

**Good faith, co-operation and collaboration**

3.1 Each of the parties agrees to act in good faith during the SBB Joint Development Phase. This means that the parties will act honestly and reasonably having regard to the terms of this letter agreement and the RFP and co-operatively by doing everything properly and reasonably within a party's control which is necessary to enable the other party to perform its obligations under this letter agreement.

3.2 The parties agree to work collaboratively throughout the SBB Joint Development Phase in accordance with the following principles:

 (a) all efforts by the parties will be open, transparent and collaborative;

(b) to the extent possible, all estimates of outcomes, milestones, measurements, timeframes and costs will be validated by competitive market testing or will otherwise be established by benchmarking by the Proponent to a standard reasonably acceptable to the State;

(c) all innovations and technical solutions identified by the Proponent will be incorporated into the Implementation Agreement and considered in evaluating the SBB transaction;

(d) there will be a genuine commitment to innovation and continuous improvement in the development of the SBB transaction, the Implementation Agreement and to satisfying the State's requirements as set out in the RFP and the Objectives;

(e) the terms of the Implementation Agreement will be developed as part of the SBB Joint Development Phase but will as far as reasonably possible be consistent with relevant precedent documentation (if any) published by the State; and

(f) the SBB transaction will be delivered in accordance with the Implementation Agreement.

3.3 The parties agree they will each exercise proper professional skill and due diligence in the SBB Joint Development Phase and will ensure that their respective, officers, employees, contractors, consultants, advisers and agents, and additionally in the case of the Proponent, the Proponent will ensure that its Consortium Members and their respective, officers, employees, contractors, consultants, advisers and agents) are appropriately qualified, skilled and experienced and also exercise professional skill, care and diligence.

3.4 Each party will as soon as reasonably practicable after the Commencement Date nominate in writing a working group to represent that party during the SBB Joint Development Phase.

**Sharing of information**

3.5 Each party will maintain and make their records and other information and documentation relevant to the SBB Joint Development Phase and an SBB transaction available to each other (and/or each other's nominated auditor) on request. A party will not be required to make records, information or documentation available if these are subject to confidentiality obligations or are unable to be lawfully disclosed by a party.

**Negotiations with investors**

3.6 It is the Proponent's responsibility to negotiate with the investors in the development of the SBB, the SBB transaction and the Implementation Agreement. The State may, where the State considers it reasonable and appropriate to do so, assist the Proponent in these negotiations.

**Disputes**

3.7 The Proponent acknowledges that the SBB Joint Development Phase is one of the steps in the procurement process set out in the RFP and this letter agreement is subject to the terms and conditions of the RFP.

3.8 If a dispute arises between the parties in relation to the SBB Joint Development Phase and or this letter agreement, each party agrees to use all reasonable efforts to settle the dispute by discussions between their nominated senior representatives. If the nominated senior representatives are unable to resolve the dispute then the dispute will be referred to the State's Steering Committee for the RFP for advice as to how the SBB Joint Development Phase is to proceed, including in the event that the dispute cannot be resolved, whether the SBB Joint Development Phase is to be terminated under clause 4.2.

**Consortium Members**

3.9 The Proponent is responsible to ensure that Consortium Members take all necessary action to enable the Proponent to fulfil its obligations in a timely manner under this letter agreement.

**4. Term**

4.1 Subject to clause 4.2, this letter agreement will commence on the Commencement Date and will terminate on the first to occur of the following dates:

(a) the date the Implementation Agreement is executed by the relevant government agency and the Proponent;

(b) if the State determines that it will not enter into an Implementation Agreement, the date of written notification to the Proponent of that fact;

(c) if the Proponent or a Consortium Member commits a material breach of the terms and conditions, or rules, contained in the RFP or the Invitation for Expressions of Interest issued by the State on [*insert* date] in relation to the Pilot Program, the date of written notification to the Proponent of that fact; or

(d) if the State and the Proponent by mutual agreement decide that this letter agreement is to terminate, the date agreed in writing as the termination date.

4.2 The State may at any time in its absolute discretion and with immediate effect terminate this letter agreement by giving the Proponent written notice of termination.

4.3 On termination or expiry of this letter agreement each party agrees to:

(a) return to the other party all copies of information, documentation and material provided by the other party for the purposes of this letter agreement and in whatever form the information, documentation and material is held by that party; or

(b) alternatively, if permitted by the other party, destroy all copies of the information, documentation and material referred to in clause 4.3(a).

4.4 The State may, on termination or expiry of this letter agreement, at no cost, use any of the work, documentation or information developed under this letter agreement for any purpose whatsoever and the Proponent must provide any such work, documentation or information to the State, to enable the State's use, within 10 business days of a written request.

4.5 The Proponent must not do, or omit to do, anything which prevents the State from carrying out a SBB transaction including without limitation, the State contracting with any other person or persons to implement a SBB transaction.

4.6 Termination or expiry of this letter agreement does not affect the continued operation of clauses that by their nature should survive termination or expiry, including without limitation, consequences of termination or expiry, intellectual property, confidentiality and access to records.

**5. Confidentiality**

5.1 Each party (**Recipient Party**) agrees:

(a) not to disclose the Confidential Information of the other party (**Disclosing Party**) to any person except:

(i) on a confidential basis to the officers, employees, contractors, consultants, advisers or agents of the Recipient Party requiring the information for the purposes of performing this letter agreement;

(ii) on a confidential basis to the Recipient Party's legal or professional advisers;

(iii) with the prior written consent of the Disclosing Party;

(iv) in the case of the State of Queensland, a Minister or the Queensland Parliament; or

(v) if required to do so by law, State or Commonwealth government policies, procedures or protocols or for public accountability purposes to the extent required in those circumstances or in connection with legal proceedings;

(b) to ensure that all Confidential Information of the Disclosing Party in the custody of the Recipient Party is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person.

5.2 For the purposes of this agreement **Confidential Information** means:

(a) any information exchanged between the parties before, on or after the date of this letter agreement regarding the business affairs of either party that is not publicly available;

(b) this letter agreement and its terms;

(c) any information that is marked confidential by either party; and

(d) any information disclosed to, or acquired by, the parties during the course of this letter agreement that is by its nature confidential.

5.3 For the purposes of this clause 5, Confidential Information of the Proponent includes Confidential Information of a Consortium Member.

**6. Insurance**

The Proponent must continue to maintain all existing insurances which it is required to hold and maintain under existing service provider agreements with government agencies.

**7. Intellectual Property**

7.1 **Ownership of Intellectual Property Rights**

(a) Intellectual Property Rights in the Proponent’s Material that is Existing Material vests in the Proponent.

(b) Intellectual Property Rights in the Proponent’s Material that is developed solely by, or on behalf of, the Proponent, or jointly by or on behalf of the parties, in the course of the parties performing their obligations under this letter agreement, or is developed by or on behalf of any other Consortium Member and vests in the Proponent under the terms of the applicable arrangements with that Consortium Member, vests in the State, or otherwise is assigned or transferred to the State without the need for further assurance, and forms part of the State’s Material.

If ownership of Intellectual Property Rights referred to in this clause 7.1(b) is not capable of being vested in the State because the Proponent does not own or is unable at a reasonable cost to obtain ownership of those Intellectual Property Rights, the Proponent must, at its own cost ensure that the State is suitably and irrevocably licensed to use and to sub-license the use of those Intellectual Property Rights in connection with:

(i) the implementation and evaluation of this letter agreement and the Implementation Agreement; and

(ii) any SBB transaction or similar other products, services or programmes within Australia and overseas.

(c) Intellectual Property Rights in the State’s Material vest in the State.

7.2 **Licence of Intellectual Property Rights to the State**

(a) The Proponent grants to the State a perpetual, irrevocable, royalty-free, world wide and non-exclusive licence (including a right to sub-licence) to use, communicate, reproduce, publish, adapt and modify the Proponent’s Material that is Existing Material.

(b) The State licences the Proponent to use the State’s Material (including copying it and supplying it to others) but only for the purposes of performing services under this letter agreement.

7.3 **Documentation**

If requested by the State, the Proponent will sign, execute, or otherwise complete any document that may be necessary or desirable to give effect to this clause 7.

7.4 **Use of Intellectual Property Rights**

(a) The Proponent represents and warrants that it is entitled, or will be entitled at the required time, to deal with the Intellectual Property Rights in the Proponent’s Material in the manner provided for in this clause 7.

(b) The State represents and warrants that it is entitled, or will be entitled at the required time, to deal with the Intellectual Property Rights in the State’s Material in the manner provided for in this clause 7.

7.5 **Protection of Intellectual Property and Moral Rights**

(a) The Proponent agrees to take all reasonable steps to protect the Intellectual Property Rights in the Proponent’s Material and to comply with the warranties in clause 7.4(a).

(b) The Proponent will ensure that, in delivering the services and performing its obligations under this letter agreement, the Proponent (including its officers, employees, contractors, consultants and) do not:

(i) infringe any person’s Intellectual Property Rights or an individual’s Moral Rights; or

(ii) authorise the infringement of any such rights.

7.6 **Aboriginal and Torres Strait Islander cultural sensitivity**

In addition to clause 7.5, the Proponent agrees that, in delivering all services it will:

(a) respect the cultural and spiritual significance of Aboriginal and Torres Strait Islander people;

(b) refrain from incorporating any elements derived from Aboriginal and Torres Strait Islander cultural heritage into any material created under this letter agreement without the informed and written consent of the cultural custodians, clan or language groups and community representatives deemed acceptable by each community; and

(c) inform the State in writing about any elements derived from Aboriginal and Torres Strait Islander cultural heritage which the Proponent incorporates into any material which it creates and delivers to the State under this letter agreement, and of any consents which the Proponent has obtained relating to the use of such elements.

7.7 For the purposes of this clause 7:

(a) **Intellectual Property Rights** includes copyright, except for copyright in “artistic works” as that expression is defined in the Copyright Act 1968 (Cth), rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how), and other rights resulting from the intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights**;**

(b) **Existing Material** means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data that has been incorporated in, or supplied as part of, the Proponent’s Material that was either:

(i) in existence prior to the Commencement Date; or

(ii) produced on or after the Commencement Date independently of this letter agreement;

(c) **Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968 (Cth), and the rights of a similar nature anywhere in the world whether existing before, on or after the commencement of this letter agreement;

(d) **State’s Material** means any information, document, file, record, electronic image, cinematographic film, video, equipment, software or data stored by any means which is given to the Proponent by the State for the purposes of performing services under this letter agreement, including all copies and extracts;

(g) **Proponent’s Material** means any information, document, electronic image, cinematographic film, video, equipment, software or data stored by any means which is created by the Proponent or on the Proponent’s behalf in performing services under this SBB Joint Development Phase Agreement; and

(h) the Intellectual Property Rights of the Proponent and the Moral Rights of the Proponent include those of the Consortium Members.

**8. Machinery of Government**

 (a)For the purposes of this clause:

### Machinery of Government Change means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body; and

**Queensland Government Body** means any of:

(i) a body corporate or an unincorporated body established or constituted for a public purpose by the legislation of the State of Queensland, or an instrument made under that legislation (including a local authority);

(ii) a body established by the State through the Governor or a Minister; or

(iii) an incorporated or unincorporated body over which the State exercises control;

(b)If there is a Machinery of Government Change, the State may assign or transfer the SBB Joint Development Phase Agreement, or any of the benefits or obligations under the SBB Joint Development Phase Agreement, to a Queensland Government department or agency or Queensland Government Body without the consent of the Proponent.

**9. Costs**

 Each party will bear its own costs arising out of or in connection with this letter agreement.

**10. Deed**

 This letter agreement is executed and, upon being countersigned by the Proponent, takes effect as a deed.

**11. Governing Law**

 This letter agreement is governed by and construed in accordance with the laws of Queensland.

**12.** **Acceptance**

Please sign and return to the State the enclosed copy of this letter to indicate agreement and acceptance of its terms.

Yours faithfully

**[*Insert name of person on behalf of State that is authorised to enter into this Agreement*]**

**[*insert title of the State's authorised representative*]**

**signed for and on behalf of the State of Queensland
acting through [*Department’s name*]**

The terms of this letter agreement are accepted and agreed by the Proponent for and on behalf of the Proponent and the Consortium Members.

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| --- | --- | --- |
| **Executed for and on behalf of [*insert name of Company that is Proponent*] ACN [*insert ACN*]** in accordance with s. 127(1) of the *Corporations Act 2001* (Cth):..……………………………….……(insert name of Director)……..…………………………..……(insert name of Director/Company Secretary)**Date**:………………………………. | )))))))))))))) | ………….…………………………(signature of Director)………….…………………………(signature of Director/Company Secretary) |