



DHA Lease Agreement

Lease Terms with
DHA Property Care

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Reference Schedule

- Item 1 Lessor**
[Insert Lessor's name]
ABN: (if applicable)
Attention: (if applicable)
Address:
Telephone No:
Facsimile No:
- Item 2 Defence Housing Australia**
ABN: 72 968 504 934
Attention: **[Insert DHA Contact Name and Position]**
Address: **[Insert HMC Address]**
Telephone No:
Facsimile No:
- Item 3 Property**
Address:
Title reference:
- Item 4 Initial Term**
[Insert] years
- Item 5 Commencement Date**
- Item 6 Expiry Date**
[Insert Expiry Date of original term. NB: do not amend even if term is extended pursuant to clause 3.]
- Item 7 Variable Extension Period**
[Insert Variable Extension Period – eg 36 months]
- Item 8 Commencing Rent**
\$**[Insert]** per week
- Item 9 Rent Review**
- | | |
|---------------------------------------|---|
| <i>First review date</i> | <i>Method of rent review</i> |
| 31 December of the year in which this | Greater of market rent or the rent at the |

Agreement commences, or if the Commencement Date
Commencement Date is later than 30
September in that year, then 31
December in the following year

Second and subsequent review dates *Method of rent review*
Every 31 December for the term of this As above
agreement

Item 10 Service Fee

[**Insert**] % (GST inclusive)

Item 11 The Act [Delete non-applicable Acts**]**

Residential Tenancies Act 1997 (ACT)

Residential Tenancies Act 2010 (NSW)

Residential Tenancies Act 1999 (NT)

Residential Tenancies and Rooming Accommodation Act 2008 (QLD)

Residential Tenancies Act 1995 (SA)

Residential Tenancy Act 1997 (TAS)

Residential Tenancies Act 1997 (VIC)

Residential Tenancies Act 1987 (WA)

[Drafting Notes: The Act will not apply in

(a) **Victoria – if the term of the lease is for a period of more than 6 years (this takes into account DHA's ability to reduce the lease by 12 months); and**

(b) **Tasmania – if the term of the lease is for a period of more than 3 years and the lease is registered.**

(c) **Queensland – DHA to clarify that it falls within the s 38 'employee headlease' exemption. Until then, treat as applicable.**

In these cases, all of the Acts referred to above should be deleted and this Item completed with the words 'Not applicable'.

Details

Date

Parties

Name As shown in **Item 1** of the Reference Schedule
Short form name **Lessor**

Name As shown in **Item 2** of the Reference Schedule
Short form name **DHA**

Background

- A The Lessor acknowledges that this agreement assists DHA in performing its statutory function under the *Defence Housing Australia Act 1987* (“DHA Act”).
- B DHA leases the Property to support its functions, by allowing members of the Defence Force and other specified persons under the DHA Act to occupy the Property.
- C While the DHA Property Care Services are distinct from the tenancy provisions of this agreement, they are linked so that neither component can operate in isolation.

1. The agreement

1.1 Lease and DHA Property Care Services

This is an agreement by which the Lessor:

- (a) leases to DHA the Property described in Item 3 of the Reference Schedule, including any fixtures and fittings; and
- (b) appoints DHA to perform the DHA Property Care Services specified in *clause* 6 for the duration of this agreement. DHA accepts this appointment, and neither party may revoke it.

1.2 Lessor's acknowledgement

The Lessor acknowledges that:

- (a) it relies on its own independent legal, financial, taxation and other advice before entering into this agreement;
- (b) it will comply with any notice, reporting or other requirements under the Act; and
- (c) there is no bond payable by DHA to the Lessor.

2. Term

This agreement is for an initial term of years shown in Item 4 of the Reference Schedule from the Commencement Date set out in Item 5 of the Reference Schedule to the Expiry Date set out in Item 6 of the Reference Schedule.

3. Variation of Term

3.1 DHA's need for flexibility

To ensure that DHA has the flexibility it requires to enable it to meet operational needs, DHA has the right to vary this agreement by extending or reducing the term under this *clause*.

3.2 Changing the duration of this agreement

DHA may by written notice to the Lessor, exercise each of the following rights once (in any order):

- (a) extend the term by a period up to the Variable Extension Period specified in Item 7 of the Reference Schedule;
- (b) extend the term by a period up to 12 months;
- (c) reduce the term by a period up to 12 months.

3.3 Notice of change of duration

A notice under this *clause* must:

- (a) in the case of an extension under either *clause* 3.2(a) or 3.2(b), be given at least 3 months before the date, which but for that extension, would have been the expiry date of this agreement;
- (b) in the case of a reduction under *clause* 3.2(c), be given at least 3 months before the date which, as a result of the reduction, would be the new expiry date of this agreement;
- (c) specify which sub-*clause* of *clause* 3.2 is invoked;
- (d) specify the period by which the term is to be extended or reduced; and
- (e) specify the new expiry date of the term.

3.4 Effect of giving notice

After giving the notice pursuant to this *clause* 3, the Expiry Date specified in Item 6 of the Reference Schedule is varied accordingly.

4. Rent

4.1 Payment of rent

- (a) The commencing rent is stated in Item 8 of the Reference Schedule.
- (b) DHA will pay the rent by electronic funds transfer. The Lessor must make adequate arrangements to enable payment by this method.
- (c) Rent payments (other than the first and last) will be paid monthly in advance on the first day of each calendar month. DHA elects to pay monthly in advance although it may have no obligation to do so under the Act.
- (d) The first rent payment, which includes a partial rent payment in arrears and the first full month rent payment in advance, will be paid:
 - (i) where the Commencement Date is before the twenty-third day of the month, on the first day of the following month; or
 - (ii) where the Commencement Date is on or after the twenty-third day of the month, within 7 business days of the first day of the following month.
- (e) The last rent payment is payable in arrears. DHA may hold this payment while DHA arranges to calculate and offset any amount due to DHA by the Lessor (if any) under this agreement.
- (f) Prior to making rent payments, DHA may deduct any monies due from the Lessor to DHA, whether under this agreement or otherwise.

4.2 Calculation of rent

- (a) The rent accrues from day to day.

- (b) The monthly payment is calculated as follows:
monthly payment = weekly rent x 4.3482.
- (c) If the first or last rent payment is for a period of less than a full calendar month, the rent for the broken rent period is calculated on a daily basis as follows:
daily rent = weekly rent x 0.1429.

5. Rent Review

5.1 When and how rent will be reviewed

The rent under this agreement will be automatically reviewed as at each Review Date, in the manner shown in Item 9 of the Reference Schedule. DHA will undertake the rent review process under DHA Property Care in accordance with *clause* 6.6.

5.2 Date from which new rent applies

If the rent review:

- (a) is completed by the Review Date - the new rent takes effect the day after the Review Date,
- (b) is not completed by the relevant Review Date:
 - (i) DHA must continue to pay rent at the rate applicable for the previous period until the rent review process has been completed and the new rent determined; and
 - (ii) the parties will make any required rent review adjustments in accordance with *clause* 6.6.5.

6. DHA Property Care and Service Fee

6.1 Nature of DHA Property Care

- (a) DHA will, throughout the term of this agreement, look after the Property by providing “DHA Property Care”, which is comprised of the following five services:
 - (i) Property Management Service (described in *clause* 6.2);
 - (ii) Repair and Maintenance Service (described in *clause* 6.3);
 - (iii) Emergency Repair Service (described in *clause* 6.4);
 - (iv) Restoration Service (described in *clause* 6.5); and
 - (v) Market Rent Review Service (described in *clause* 6.6).
- (b) DHA Property Care is provided by DHA in return for a Service Fee equivalent to the percentage of the rent specified in Item 10 of the Reference Schedule.

- (c) The Service Fee is payable by the Lessor and will be deducted by DHA from the monthly rent payments.
- (d) The parties acknowledge that DHA's role in respect of DHA Property Care is separate and distinct from DHA's role as a tenant under this agreement.

6.2 Property Management Service

DHA must manage the Property by performing the following activities:

- (a) carrying out inspections of the Property at periodic intervals;
- (b) itemising monthly rent receipts, outgoings and other expenses (other than those covered by the Service Fee) paid on the Lessor's behalf, and, if required by the Lessor, provide relevant information on an annual basis;
- (c) provided DHA receives relevant notices and accounts in sufficient time to enable payment by the due date, paying on the Lessor's behalf outgoings in respect of the Property (eg rates, charges, property insurance premiums), unless the Lessor elects to assume the responsibility. DHA may recoup amounts paid as a debt due by the Lessor, or by deduction from the monthly rent payments; and
- (d) arranging compliance, at the Lessor's expense (by deduction from monthly rent payments), with any of the Lessor's retained responsibilities under *clause* 7, if requested by the Lessor and DHA agrees to do so.

6.3 Repair and Maintenance Service

- (a) DHA must repair and maintain the Property (fair wear and tear excepted), for items such as:
 - (i) doors and windows;
 - (ii) locks and latches;
 - (iii) window coverings eg, blinds, curtains, vertical drapes;
 - (iv) security and/or insect screens;
 - (v) built-in appliances eg, stoves, ovens, rangehoods, air conditioning, hot water systems, dishwashers, heaters;
 - (vi) gas appliances;
 - (vii) lights and light fittings;
 - (viii) power points and switches;
 - (ix) walls and ceilings;
 - (x) wet areas eg, plugs, tiles, vanity units, cabinets, shower screens, towel rails;
 - (xi) floor coverings eg, carpet, vinyl, slate, timber, tiles, linoleum;

- (xii) cupboards, serveries, bench tops and shelving;
- (xiii) gutters, downpipes, gates, garage doors, letterbox and clothes line;
- (xiv) general upkeep of grounds and gardens (eg plants and mulch); and
- (xv) smoke detectors,

except where the need for repair or maintenance is within, or is caused by matters falling within, the lessor's retained responsibilities under *clause 7*.

- (b) In performing its obligation under *clause 6.3(a)*, DHA will maintain the Property, internally and externally, in a condition which reflects contemporary community standards and the standards of the locality where the Property is situated. DHA may replace appropriate items to an equivalent standard where, in DHA's opinion, a repair is impractical or not cost effective.
- (c) DHA must not otherwise carry out work which:
 - (i) will significantly change the appearance of the Property; or
 - (ii) involves structural alteration or additions,
 without the prior consent of the Lessor. The Lessor must not unreasonably withhold this consent.
- (d) Works arranged by DHA under this clause must be made by a licensed or suitably qualified tradesperson (holding the appropriate insurances).

6.4 Emergency Repair Service

- (a) DHA will, immediately on becoming aware of it, arrange any emergency works where such work is essential to preserve the Property and/or protect human health, safety and security.
- (b) If the emergency arises from a repair and maintenance item for which DHA is responsible pursuant to this agreement, DHA must bear the cost of the works.
- (c) If the emergency is within, or is caused by matters falling within, the Lessor's retained responsibilities under *clause 7*, the Lessor must bear the cost of the works .
- (d) The maximum amount that may be incurred for emergency repairs arranged by DHA without the Lessor's prior consent is the amount (if any) specified in the Act.

6.5 Restoration Service

- (a) At the end of this agreement, DHA will provide a restoration service. The restoration service relates to this agreement only and varies according to the duration of its term.
- (b) In all cases, DHA will ensure that:
 - (i) internally, the Property is professionally cleaned;

- (ii) appliances are clean and in good working order; and
 - (iii) externally, the dwelling, grounds and landscaping are in a neat and tidy condition, except where this is the obligation of a Body Corporate.
- (c) If the term of this agreement is 6 years or more, DHA will repaint the Property internally to a similar standard and toning as existed at the Commencement Date.
- (d) If the term of this agreement is 9 years or more, DHA will also:
- (i) recarpet previously carpeted areas, and replace vinyl on floors previously covered with vinyl, to a similar standard and toning as existed at the Commencement Date;
 - (ii) repolish any previously polished timber floors to a similar standard as existed at the Commencement Date; and
 - (iii) repaint external surfaces of building structures to a similar standard and toning as existed at the Commencement Date, except where external painting is the obligation of a Body Corporate.
- (e) DHA's Restoration Service obligations:
- (i) are not affected by any period of reduction in the term of this agreement pursuant to *clause* 3.2(c); and
 - (ii) do not apply where this agreement is terminated pursuant to *clause* 18.1(b) (eg, the Property is destroyed or no longer lawfully useable as a residence).

6.6 Market Rent Review Service

6.6.1 Review Process

- (a) DHA must manage the rent review process in accordance with *clause* 5 by:
- (i) before each Review Date, arranging a market rent valuation by a valuer appointed by DHA (the "Market Valuer");
 - (ii) ensuring the Property is physically inspected as part of the rent review process at least every 3 years;
 - (iii) bearing the costs of the valuation by the Market Valuer;
 - (iv) providing the Lessor with a written notice of the outcome of the valuation by the Market Valuer; and
 - (v) making available to the lessor a valuation certificate of market rent from the Market Valuer.
- (b) Subject to the parties' rights under the Secondary and Tertiary Review Processes below and the Act, the valuation of market rent by the Market Valuer is final and conclusive.

6.6.2 Secondary Review Process

- (a) If the Lessor is dissatisfied with the valuation of market rent made by the Market Valuer, the Lessor may initiate the following process (the “Secondary Review Process”) by providing DHA within 30 days of service of DHA’s written notice of the outcome of the Market Valuer’s valuation:
 - (i) written notice of its intent to pursue the Secondary Review Process; and
 - (ii) a valuation of market rent which exceeds the market rent assessed by the Market Valuer, made by a valuer (the “Secondary Valuer”) appointed and paid by the Lessor.
- (b) The Lessor must ensure that the Secondary Valuer is available to consult with the Market Valuer.
- (c) Promptly after receiving the Secondary Valuer’s valuation, the Market Valuer will either accept such valuation or consult with the Secondary Valuer and seek to reach agreement as to the valuation of market rent.
- (d) Subject to the parties rights under the Tertiary Review Process below, if within 30 days of being instructed to consult (the 'Consultation Period'), the Market Valuer and the Secondary Valuer notify the parties in writing that they agree on the valuation of market rent, that agreed valuation is final and conclusive.

6.6.3 Tertiary Review Process

- (a) If the Market Valuer and Secondary Valuer are unable to agree, or either party is dissatisfied with the outcome of the Secondary Review Process, DHA or the Lessor may initiate the following process (the “Tertiary Review Process”) . The Tertiary Review Process must be invoked within 7 days of the expiry of the Consultation Period, by providing:
 - (i) written notice to the other party of its intent to invoke the Tertiary Review Process; and
 - (ii) a written request to the President of the local Division of the Australian Property Institute in the State or Territory in which the Property is located to appoint a valuer (the “President’s Valuer”) to assess the market rent.
- (b) The costs of the President’s Valuer must be met by the Lessor and DHA equally.
- (c) The valuation of market rent by the President’s Valuer is final and conclusive.
- (d) If the Tertiary Review Process is not invoked within 7 days of the expiry of the Consultation Period the original valuation of market rent by the Market Valuer is final and conclusive.

6.6.4 Valuer Requirements

All valuers appointed under this *clause* 6.6 must be:

- (a) a registered member of the Australian Property Institute in the State or Territory in which the Property is located; and
- (b) instructed to assess the market rent of the Property as at the Review Date in accordance with the following principles:
 - (i) have regard to the estimated amount for which the Property should rent, between a willing lessor and a willing lessee in an arms length transaction, in which the parties have acted knowledgeably, prudently and without compulsion, having regard to the usual market terms and conditions for leases of similar premises;
 - (ii) take no account of any higher rent which might be paid by a lessee with a special interest, or any lower rent which might be acceptable to a lessor with a special interest; and
 - (iii) give proper consideration to the impact of fixtures, fittings, furnishing, landscaping and other such items.

6.6.5 Adjustments following review

For the purposes of *clause* 5.2(b)(ii), DHA will calculate the necessary adjustments after a concluded rent review so as to place the parties in the same position as if the final determined rent took effect the day after the relevant Review Date, either by:

- (a) DHA paying the Lessor the amount of any underpayment within 14 days of the determination of rent; or
- (b) the Lessor refunding within 14 days of demand, or DHA deducting from its monthly rent payments, the amount of any overpayment.

7. Lessor's retained responsibilities

7.1 Extent of responsibilities

Except as set out in *clause* 7.2, the Lessor retains full responsibility for all matters that are not covered by DHA Property Care. This includes:

- (a) essential services such as water, electricity, gas, sewerage, and drainage within the Property;
- (b) structural damage and structural defects of any improvement on the Property;
- (c) damage (including to the structure or infrastructure) directly or indirectly caused by:
 - (i) subsidence, heaving and/or other movement of the earth;
 - (ii) pest infestation of the Property;

- (iii) fire, lightning, flood, storm, tempest; or
- (iv) any other factor outside the control of DHA;
- (d) landscaping of a major, non-recurring nature, including:
 - (i) large tree removals (requiring work to be done by a professional arborist or as classified by council guidelines);
 - (ii) drainage works, such as installation of stormwater drainage; and
 - (iii) replacement of fencing, retaining walls, and garden edging;
- (e) pest inspection programs or treatments required to protect from, or treat, infestation of the Property, or which are undertaken for the purpose of producing or maintaining pest control certificates;
- (f) work which is or would be covered by any insurance which the Lessor is required to maintain under this agreement and payment of any excess applying to such insurance;
- (g) work covered by any warranty held by the Lessor;
- (h) work which is the obligation (at law or by resolution or agreement) of a Body Corporate or other third party whether arising before or after the Commencement Date;
- (i) work which is specified in any Special Conditions attached to this agreement or which was specified in any Letter of Offer from DHA to the Lessor before the Commencement Date;
- (j) works or improvements required to ensure DHA is able to continue to enjoy its rights under this agreement;
- (k) compliance with environmental law and other law; and
- (l) capital and interest rate risk.

7.2 DHA's responsibility for negligent or malicious acts

DHA will be responsible for repairing any damage to the Property to the extent it arises from a breach of this agreement, or the negligence, or malicious acts, by DHA, its employees, agents, or permitted occupants.

7.3 Lessor elects to undertake work

The Lessor may request DHA to carry out any of the Lessor's responsibilities under *clause 7.1*. If DHA agrees to do so, it does so on the Lessor's behalf and at the Lessor's cost. Where the Lessor elects to perform its responsibilities itself, the Lessor:

- (a) may inspect the Property for the purpose of carrying out repair and maintenance and other works, after giving DHA reasonable notice and if the Act applies, complying with the Act; and

- (b) must ensure works arranged by the Lessor are completed by a licensed or suitably qualified tradesperson (holding the appropriate insurances).

7.4 Enforcement of Lessor's rights

In respect of action required under *clause* 7.1, the Lessor must sign any documents and attend to any matters as may be necessary to facilitate enforcement of the Lessor's rights under any relevant warranty or insurance policy, or against any third party.

7.5 Step-in rights

If the Lessor does not fulfil its responsibilities under *clause* 7.1 within a reasonable time, DHA may:

- (a) on 30 day's notice, carry out the actions required; and
- (b) recoup its reasonable costs as a debt due by the Lessor, or by deduction from monthly rent payments.

8. Occupancy and Surrender

8.1 Occupancy arrangements

Provided that DHA continues to pay rent in accordance with this agreement, the Lessor consents to DHA:

- (a) allowing Defence Force personnel to occupy the Property;
- (b) if DHA does not require the Property for housing Defence Force personnel:
 - (i) subletting the Property on the private rental market; or
 - (ii) leaving the premises unoccupied.

8.2 Surrender of surplus property

If the Property becomes surplus to DHA's requirements, the Lessor may elect, within 30 days of receipt of a written offer by DHA, to surrender this agreement at a date agreed by the parties.

9. Use of the Property

9.1 Vacant possession

Unless the Property is already under the management of DHA, the Lessor must give vacant possession of the Property on the Commencement Date.

9.2 Enjoyment of Property

The Lessor:

- (a) warrants that, as at the Commencement Date, there is no legal impediment to the use of the Property for residential purposes, of which the Lessor knows or ought reasonably to know;

- (b) is satisfied that, as at the Commencement Date, the state and condition of the Property is fit for use for residential purposes; and
- (c) must, throughout the term, give DHA quiet enjoyment of the Property and must not interfere with the reasonable peace, comfort, or privacy of DHA in using the Property.

9.3 Permitted uses

DHA may use the Property for:

- (a) residential purposes;
- (b) a home business of the type usually permitted on property of the nature of the premises (unless the Lessor has provided written notice otherwise prior to the Commencement Date); and
- (c) any other purpose permitted by the relevant local authority.

9.4 Prohibited uses

DHA must not use the Property in any manner which:

- (a) is illegal;
- (b) causes a nuisance;
- (c) interferes (or allows another person on the Property to interfere) with the reasonable peace, comfort or privacy of the neighbours; or
- (d) if the Property is part of a Strata Scheme, breaches the by-laws or rules of the Strata Scheme.

9.5 Pets

The Lessor consents to the keeping of pets on the Property where not otherwise prevented by any law or by-law, provided that DHA:

- (a) uses reasonable endeavours to ensure that pets do not damage the Property; and
- (b) repairs, or bears the cost of repair of, any pet damage prior to vacating the Property.

9.6 Technology and communication services

The Lessor consents to the installation of technology and communication services and the like (including cable and satellite television and broadband internet services).

10. Inspections

10.1 DHA inspection service

DHA, as service provider of DHA Property Care, will undertake the majority of inspections on behalf of the Lessor under *clause* 6.2 and will, if requested, arrange one personal inspection of the Property by the Lessor in each year of the term.

10.2 Lessor's inspections

Without waiving any rights under the Act, due to the unique nature of the occupancy, the Lessor elects to keep inspections to a minimum.

11. Abatement of Rent

If, other than due to DHA's breach of this agreement, the Property is:

- (a) made wholly or partly unfit for human habitation; or
- (b) affected so that there is a significant impact on DHA's ability to enjoy the Property or any of its amenity;

DHA is entitled to either cease to pay rent for the period or reduce the rent, to the extent that the Property is so affected.

12. End of the Term

12.1 DHA's general obligations

At the end of this agreement, DHA must:

- (a) give vacant possession of the Property to the Lessor; and
- (b) subject to fair wear and tear, having regard to the age and condition of the Property on the Commencement Date, leave the Property in good and substantial repair and condition.

12.2 Tenant's fixtures

DHA may seek the Lessor's permission to leave any tenant's fixtures or fittings in place. However:

- (a) in the case of tenant installed technology and communication services, which are an enhancement to the Property, the Lessor agrees that removal is at DHA's discretion; and
- (b) on removal of any tenant's fixtures, DHA will repair any damage caused by the removal.

12.3 Payments outstanding to DHA

If, following the end of this agreement, any money is owing from the Lessor to DHA, the Lessor must pay DHA within 14 days of demand.

12.4 Holdover period

If the Lessor consents to DHA continuing to occupy the Property after the end of the term ("holdover period"):

- (a) the provisions set out in this agreement (other than those regarding the term of this agreement) continue to apply; and
- (b) this agreement may be terminated by no less than:
 - (i) 1 month's written notice from DHA to the Lessor; or
 - (ii) 60 days written notice from the Lessor to DHA,
or such lesser time frame as is permitted under the Act.

13. Sale of the Property

13.1 Notice of intention to sell

If the Lessor intends to list the Property for sale, the Lessor must give DHA at least 7 business days written notice.

13.2 Disclosure to prospective purchasers

The Lessor must ensure that prospective purchasers are fully informed that if the Property is sold, this agreement does not end but is to remain in place with the new owner.

13.3 Access 'by appointment'

The Lessor agrees that inspections and access for the purpose of sale will:

- (a) only be conducted when appointments are made with DHA at reasonable times and on reasonable notice; and
- (b) be for genuine prospective purchasers only, and therefore, there must be no "open house" inspections.

13.4 Special considerations

When selling the Property, for privacy and security reasons, the Lessor agrees that it will not:

- (a) affix or erect any "For Sale" signage on or adjacent to the Property; or
- (b) when advertising the Property for sale:
 - (i) take or use photographs of the furnishings or possessions within or on the Property; or
 - (ii) publish the street number (but may use the street and suburb name).

13.5 Auctions to be held off site

If the Property is to be submitted for sale by auction, the auction must not be held on or adjacent to the Property.

13.6 Precondition to sale

If the Property is sold, the new owner must be substituted for the Lessor in respect of this agreement, and therefore:

- (a) if this agreement is registered, this substitution is automatic; or
- (b) if this agreement is unregistered, the Lessor must, as a condition precedent to the sale or transfer, procure the transferee to enter into a deed with DHA to be bound by the terms and conditions of this agreement. The deed must be reasonably acceptable to DHA, and be delivered to DHA duly executed and (if applicable) stamped.

13.7 Requirements on sale

- (a) In order to facilitate the Lessor's adjustments on completion of sale, immediately after the Contract of Sale has been signed, the Lessor must provide DHA with written notice advising:
 - (i) the date that the Contract of Sale was signed;
 - (ii) the expected date of settlement; and
 - (iii) full details of the Lessor's solicitor in respect of the sale.
- (b) The Lessor must, on or before settlement, reimburse DHA for all amounts it owes to DHA, including outgoings and amounts paid on the Lessor's behalf.
- (c) Following the sale of the Property, DHA reserves the right to use all available avenues to recover from the Lessor:
 - (i) any money still owing from the Lessor to DHA; and
 - (ii) any misapplied rent properly payable to the new owner.

14. Lessor's insurance obligations

14.1 Lessor to maintain policies

The Lessor must, for the duration of DHA's occupation of the Property, maintain insurance cover with a reputable insurance company to cover:

- (a) the Property (including all fixtures, fittings and chattels owned by the Lessor) for their full insurable value on a re-instatement basis, except to the extent this type of property protection insurance is held by a Body Corporate;
- (b) accidental damage to the Property (including all fixtures, fittings and chattels owned by the Lessor);
- (c) damage by flood (if reasonably attainable), fire, storm, tempest, explosion, impact damage and other such factors outside the control of the Lessor or DHA;
- (d) public liability cover in respect of the Lessor's exposure in relation to the Property and this agreement for not less than \$10,000,000; and
- (e) any use permitted under this agreement.

14.2 Certificate of currency

If DHA requests it, the Lessor must provide DHA with a copy of the relevant certificate of currency or insurance policy specified in *clause* 14.1.

14.3 Lessor bears insurance risk

The Lessor bears all risk associated with failure to take out insurance cover, and, to the extent such cover is required under *clause* 14.1, the Lessor indemnifies DHA for any loss or damage to the Property (including all fixtures, fittings and chattels owned by the Lessor).

15. DHA's insurance obligations

DHA must maintain, during the term of this agreement and any holdover period, public liability insurance or indemnification with Comcover or other reputable insurance company to cover its public liability exposure in respect of the Property (whether or not the policy also covers other properties) for at least \$10,000,000.

16. Rates and charges

16.1 DHA to pay for usage

DHA must pay (or procure payment of) all accounts for:

- (a) excess water, water usage or water consumption; and
- (b) the supply of gas, electricity, telephone, technology and communication services (such as cable and satellite television, and broadband internet services), and other such services to the Property.

16.2 Lessor to pay council rates, land tax and other charges

The Lessor must promptly pay all:

- (a) taxes and Local Government rates;
- (b) charges for the provision of water and sewerage services (except charges for excess water, water usage or metered water consumption);
- (c) levies and charges payable in respect of the Property under any Strata Scheme or other legislation; and
- (d) other statutory and council charges in respect of the Property.

16.3 Reimbursement to Lessor

Where the Lessor pays any account for which DHA must pay under *clause* 16.1, DHA must reimburse the Lessor for the payment, if:

- (a) the reimbursement is sought within 18 months of payment; and
- (b) the Lessor provides DHA with written notice and proof of payment.

17. Strata Schemes and Bodies Corporate

17.1 Special definitions

In this agreement:

- (a) “Strata Scheme” means a title system giving ownership rights over a lot or lots, however described, in a registered strata plan, building units plan, group titles plan or neighbourhood plan, or a similar strata title or community title scheme; and
- (b) “Body Corporate” means the owner's corporation, governing body or relevant body of the Strata Scheme.

17.2 Application of this clause

If the Property forms part of a Strata Scheme, the provisions of this *clause* 17 apply.

17.3 DHA to comply with Strata requirements

DHA must comply with the relevant legislation and by-laws of the Strata Scheme which relate to or affect the Property and/or the land and buildings where the Property is located.

17.4 Lessor's role under Strata Scheme

The Lessor agrees:

- (a) to keep itself generally informed as to the Strata Scheme issues affecting the Property;
- (b) to consult and cooperate with DHA in good faith in respect of any proposed resolutions or actions adversely affecting the Property or DHA's use and enjoyment of the Property and its amenity; and
- (c) to vote in a manner which preserves DHA's interest or rights under this agreement, and against any additional restrictions or requirements on the use of the Property and common areas under the Strata Scheme by DHA.

17.5 Resolution of Strata Scheme matters

Where the Body Corporate does not, in DHA's reasonable opinion, provide a satisfactory service, including failure to:

- (a) appoint a diligent Body Corporate manager that holds the appropriate qualifications and licence (if any) required by the relevant authority;
- (b) maintain appropriate insurances, such as building replacement and public liability insurance;
- (c) repair and maintain the common areas under the Strata Scheme; or
- (d) resolve matters promptly,

then the parties will cooperate to, and the Lessor must, take any action required to resolve the situation.

18. Default and Termination

18.1 Right to terminate

Subject to clause 18.2, this agreement may only be terminated if:

- (a) DHA and the Lessor agree in writing;
- (b) the Act does not prohibit termination on the basis that, and the Property is:
 - (i) destroyed or made wholly or partly unfit for human habitation;
 - (ii) no longer lawfully useable as a residence; or
 - (iii) appropriated or acquired compulsorily by government;and one party gives to the other at least 7 days written notice of termination;
- (c) a party is in breach of one of the tenancy provisions of this agreement, and that breach remains unremedied after 30 days from a written notice from the other party specifying the breach and requesting rectification, and that other party gives no less than 14 days written notice of termination;
- (d) a party is in material breach of one of the provisions relating to DHA Property Care and that breach remains unremedied after 30 days from a written notice from the other party specifying the breach and requesting rectification, and subject to the Act, that other party gives no less than 14 days written notice of termination; or
- (e) a situation arises which would allow either party to terminate on another ground under the Act, and the appropriate conditions and requirements are met.

18.2 Timeframes for Notices

If a timeframe is specified in clause 18.1 and a different timeframe is required by the Act, then the requirements in the Act will apply.

18.3 Agreement to compensation

It may be sufficient rectification for DHA to compensate the Lessor for damages in respect of any unremedied breach, if mutually agreed.

18.4 Simultaneous Tenancy and DHA Property Care

It is an essential term of this agreement that both the tenancy and DHA Property Care Services run concurrently and end simultaneously to enable DHA to meet Defence requirements.

19. Dispute Resolution

19.1 Good faith negotiations

The parties must negotiate in good faith to resolve any potential dispute which may arise under this agreement.

19.2 Alternative dispute resolution

The parties agree that, where a dispute cannot be resolved by negotiation, it is desirable to undertake alternative dispute resolution before commencing any formal litigation process. The cost of the alternative dispute resolution will be borne equally by the parties unless resolved otherwise.

20. General Provisions

20.1 Lease Registration

- (a) The Lessor must, if permitted by law and at the Lessor's cost:
 - (i) register this agreement; and
 - (ii) register a variation of this agreement if the term of this agreement is extended; and
 - (iii) deliver a copy of each registered document to DHA within 4 weeks of the final execution of the document.
- (b) If properly authorised in writing by the Lessor, DHA may assist with obtaining registration, at the Lessor's cost.
- (c) If the Lessor does not complete the registration in time it appoints DHA as its attorney to do whatever is necessary to obtain registration, at the Lessor's cost.
- (d) If at the end of the term, the Lessor wishes to remove any notification of this agreement from the certificate of title for the Property, the Lessor must bear the associated costs.

20.2 Caveatable interest

Subject to any requirements of Federal, State or Territory legislation, if, for any reason, this agreement (or its extension or variation) is not registered by the date for delivery referred to in *clause* 20.1(a):

- (a) DHA may, at the Lessor's cost, lodge a caveat to protect its leasehold interest;
- (b) the Lessor will not raise any objection to the lodgement of the caveat; and
- (c) DHA may recoup its costs in preparing, lodging, registering and removing the caveat, from the Lessor.

20.3 Mortgagee's consent

The Lessor must, at the Lessor's cost, obtain any mortgagee consent required to lease, or vary a lease of, the Property.

20.4 Other legal costs

- (a) The Lessor must pay any applicable stamp duty in relation to this agreement or its registration.

- (b) The parties must bear their own costs in relation to the execution of this agreement and the performance of their obligations under this agreement.

20.5 GST

- (a) In this *clause*:
 - (i) “GST Law” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended) and all related ancillary legislation which provides for a broad based consumption tax on the supply of Goods and Services which becomes operative in respect of the provisions of this agreement;
 - (ii) “GST” means any tax imposed on the supply of goods or services which is imposed or assessed under the GST Law; and
 - (iii) “Supply” means any supply, as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth), made by a party under this agreement.
- (b) The Service Fee is expressed in this agreement as a GST inclusive amount.
- (c) If this agreement or any Supply under or in respect of this agreement becomes subject to GST, and if the recipient of the consideration is liable for GST in relation to any Supply under this agreement, the parties agree that the amount payable for any Supply under or in respect of this agreement by any party shall be adjusted by the amount of the GST.
- (d) Each party agrees to do all things, including providing invoices or other documentation in such form and detail, that may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this agreement or in respect of any Supply under this agreement.
- (e) As required by any applicable legislation, where identifiable cost adjustments are realised by virtue of the enactment of the GST Law, those cost adjustments will be reflected in the calculations of the consideration under this agreement.

20.6 No waiver

A failure by a party to exercise any right arising under this agreement is not a waiver of that right or any other right under this agreement.

20.7 Entire agreement

This agreement:

- (a) supersedes all prior understandings or agreements between the parties and any prior condition, warranty, indemnity or representation given or made by a party in connection with that subject matter;
- (b) may be varied only by an instrument in writing signed by or on behalf of both the Lessor and DHA; and

- (c) subject to the Act, constitute the entire agreement between the Lessor and DHA as to its subject matter.

20.8 No merger

None of the terms and conditions of this agreement or any other agreement between the parties, nor any act, matter or thing done in relation to this agreement or any other agreement, will operate as a merger of any of the rights and remedies of the parties in or under this agreement or any other agreement, all of which will continue in full force and effect.

20.9 No partnership

Nothing in this agreement is intended to create a relationship of partnership, principal and agent and/or joint venturers between the parties.

20.10 Notices

- (a) A notice given under this agreement must be:
 - (i) in writing;
 - (ii) signed by the party giving the notice, or on that party's behalf by its manager, secretary, other authorised officer, or solicitors; and
 - (iii) directed to the recipient's address for service as specified in the Details section of this agreement (or as varied by written notice from time to time), by hand delivery or by prepaid post.
- (b) The Lessor must promptly notify DHA in writing of any change of address for service.
- (c) A notice given in accordance with *clause* (a) is taken to be received:
 - (i) if hand delivered, on delivery; and
 - (ii) if sent by prepaid post, 3 days after the date of posting.

20.11 Good faith

The parties must exercise good faith in their dealings with each other and use all reasonable endeavours to establish and maintain a cordial commercial relationship during the term of this agreement.

20.12 Severability

- (a) All provisions of this agreement will, so far as possible, be construed so as not to be invalid, illegal or unenforceable in any respect.
- (b) If any provision of this agreement (or part thereof) is invalid, illegal, or unenforceable, that provision (or part) will be severed and the remaining provisions will continue in force.

20.13 Interpretation

- (a) The parties intend, subject to the Act, that the provisions of this agreement be interpreted, so far as possible:

- (i) to be in or to the effect of the form or terms of the tenancy agreement required by the Act;
 - (ii) such that any extension is considered part of the term;
 - (iii) such that the DHA Property Care Services provided by DHA, are separate and distinct from the tenancy provisions of this agreement and are thereby unaffected by the Act.
- (b) Unless the context otherwise precludes it:
- (i) where any expressions are defined in the text of this agreement, those expressions shall have the meanings ascribed to them;
 - (ii) the singular includes the plural and vice versa, and a reference to one gender includes all genders;
 - (iii) a reference to a person generally includes a reference to a corporation, firm, partnership, joint venture, association, authority, trust, government, statutory entity or any other legal entity, and vice versa;
 - (iv) a covenant, agreement or undertaking on the part of two or more parties shall bind those parties jointly and each of them severally;
 - (v) a reference to a statute includes all amendments made to that statute, and to any statute passed in substitution, and all regulations made under those statutes;
 - (vi) headings are for guidance only and do not affect interpretation; and
 - (vii) where this agreement requires something to be done on a day which is a Saturday or Sunday or is a Public Holiday in the State or Territory in which the Property is situated, then that thing may be done on the next day which is not a Saturday, Sunday or Public Holiday.

21. Federal, State and Territory Laws

21.1 Definition

In this agreement, “the Act” means the Residential Tenancy Act specified in Item 11 of the Reference Schedule.

21.2 Act paramount

Nothing in this agreement is intended by the parties to exclude, modify or restrict the operation or application of provisions of the Act, except to the extent permitted by the Act.

21.3 Agreement with respect to the Act

Where the Act permits the parties to exclude or modify statutory provisions or requirements by agreement, then the parties acknowledge that this document records the extent of their agreement to do so.

21.4 Mandatory provisions of the Act

Where the Act implies terms in this agreement or gives rise to rights or obligations on the part of the Lessor or DHA which cannot be excluded, modified or restricted (“mandatory provisions”):

- (a) the Act overrides any term of this agreement which is inconsistent with the mandatory provisions; and
- (b) the mandatory provisions are deemed to be incorporated into this agreement to the extent of the inconsistency.

22. Special Conditions

This agreement incorporates the special conditions set out in any Attachment to this agreement.