



PROPERTY CARE CONTRACT

NEW SOUTH WALES

Between

Defence Housing Australia
ABN 72 968 504 934

And

Marketing Version

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PROPERTY CARE CONTRACT

NEW SOUTH WALES

Date

This Contract is made on

Parties

This Contract is made between and binds the following parties:

1. **Defence Housing Australia** ABN 72 968 504 934
(the **Property Care Provider**)
2. _____
(the **Landlord**)

Context

This Contract is made in the following context:

- A. The Landlord and the Tenant have entered into the Lease.
- B. The Landlord wishes to engage the Property Care Provider to perform the Property Care Services as a contractor for the Landlord.
- C. The parties have agreed that the Landlord will pay the Service Fees to the Property Care Provider, on the terms and conditions set out in this Contract.

Operative Provisions

1. Interpretation

1.1. Definitions

1.1.1. In this Contract, unless the context indicates otherwise:

Act	means the <i>Residential Tenancies Act 2010</i> (NSW), and includes the <i>Residential Tenancies Regulations 2019</i> (NSW);
Business Day	means a day which is not a Saturday, Sunday, bank holiday or public holiday in New South Wales;
Commencement Date	means the Commencing Date of the Lease;
Contract Particulars	means the particulars of this Contract, as set out in Schedule 1 of this Contract;
DHA	means Defence Housing Australia ABN 72 968 504 934;
DHA Act	means the <i>Defence Housing Australia Act 1987</i> (Cth);

GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
Landlord's Assessment	means the Landlord's assessment of the New Rent Amount payable for the period of 12 months from the relevant Review Date;
Landlord's Valuation Guide	means the Landlord's Valuation Guide on the DHA website (as may be amended from time to time);
Lease	means the lease of the Premises, as described in Item 1 of the Contract Particulars;
Lease Term	means the term of the Lease, as may be extended in accordance with its terms;
Mid-Lease Sale	means a sale by the Landlord of the Premises to a Third Party Purchaser at any time during the Term of the Lease;
New Rent Amount	means the current market rent for the Premises payable for the period of 12 months from the relevant Review Date determined in accordance with the process set out in paragraph 5 of Schedule 2;
Personnel	means, in relation to the Property Care Provider, any natural person who is an officer, employee, agent or professional advisor of the Property Care Provider or of its contractors;
Premises	means the premises set out in Item 2 of the Contract Particulars;
Property Care Services	means the services to be carried out by the Property Care Provider as contractor for the Landlord, as set out in Schedule 2 of this Contract;
Rent	means the rent payable by the Tenant to the Landlord under the Lease;
Service Fees	means the fees payable by the Landlord to the Property Care Provider for the Property Care Services, as set out in Item 3 of the Contract Particulars;
Tenant	means DHA, acting in its capacity as tenant under the Lease; and
Third Party Purchaser	means a third party purchaser of the Premises.

1.2. Interpretation

1.2.1. In this Contract, unless the contrary intention appears:

- a. words in the singular include the plural and words in the plural include the singular;

- b. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- c. a reference to dollars is a reference to Australian dollars;
- d. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- e. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- f. the Schedules and any attachments form part of this Contract;
- g. if any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of the Schedules (including any attachments), the terms and conditions of the clauses prevail;
- h. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form; and
- i. words or phrases used in this Contract and defined in the Lease (and not otherwise defined in this Contract) have the same meaning as they have in the Lease.

1.3. Guidance on construction of Contract

- 1.3.1. This Contract and the Lease records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. A provision of this Contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and expiry

- 1.4.1. The terms of this Contract:
 - a. apply on and from the Commencement Date; and
 - b. expire on the Terminating Date or any earlier termination of the Lease, (the **Term**).

2. References to DHA in this Contract

- 2.1.1. The parties acknowledge that:
 - a. the Property Care Provider and the Tenant are the same entity;
 - b. DHA acts in 2 different capacities, namely as the Property Care Provider under this Contract and as the Tenant under the Lease; and
 - c. DHA will be referred to in this Contract by either the name "Property Care Provider" or "Tenant" (as appropriate) to clarify the relevant capacity in which DHA is acting.

3. Relationship between the Lease and this Contract

- 3.1.1. The parties agree that it is an essential term of this Contract that the Lease and this Contract run concurrently and end simultaneously to enable DHA to carry out its statutory functions under the DHA Act.

4. Property Care Services

4.1. Property Care Provider not an agent

- 4.1.1. The parties acknowledge and agree that the Property Care Provider is being engaged by the Landlord as a contractor for the provision of services and not as an agent.
- 4.1.2. The Property Care Provider is not by virtue of this Contract an officer, employee, partner or agent of the Landlord, nor does the Property Care Provider have any power or authority to bind or represent the Landlord.

4.2. Performance of Property Care Services

- 4.2.1. The Property Care Provider will perform the Property Care Services in accordance with this Contract.

4.3. Responsibility for Landlord's other obligations under the Lease

- 4.3.1. Subject to the terms of this Contract, the parties acknowledge and agree that the Landlord retains full responsibility for, and will bear all costs in relation to, all of the Landlord's obligations and liabilities under the Lease.

5. Service Fees

- 5.1.1. In consideration of the Property Care Provider performing the Property Care Services, the Landlord will pay, or will procure the payment of, the Service Fees to the Property Care Provider.
- 5.1.2. In addition to the Service Fees, the Landlord will pay to the Property Care Provider all costs, expenses or disbursements incurred by the Property Care Provider in performing the Property Care Services as specified in Schedule 2, within 10 Business Days of receipt of an invoice issued by the Property Care Provider.

6. Taxes, duties and government charges

- 6.1.1. Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.
- 6.1.2. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- 6.1.3. No party may claim or retain from the other party any amount in relation to a supply made under this Contract for which the first party can obtain an input tax credit or decreasing adjustment.

7. Insurance

7.1. By Property Care Provider

- 7.1.1. The Property Care Provider will maintain, during the Lease Term (including any holdover period):
- a. workers compensation insurance as required by law; and
 - b. public liability insurance or indemnification with Comcover or other reputable insurance company to cover its public liability exposure in respect of the Premises (whether or not the policy also covers other properties) for at least \$10,000,000.
- 7.1.2. Where the Property Care Provider engages a contractor to carry out work at the Premises, the Property Care Provider will ensure that the contractor holds the necessary insurances to cover the performance of that work, including public liability insurance and (where appropriate) construction works insurance.

7.2. By Landlord

- 7.2.1. The Landlord must take out and maintain, at its cost, all insurances required to be taken out and maintained by the Landlord under the Lease.
- 7.2.2. The Landlord acknowledges and agrees that there may be occasions where the Property Care Provider will require the Landlord to make a claim under the Landlord's insurance policies, including in instances where:
- a. the Property Care Provider has incurred costs or expenses on behalf of the Landlord in carrying out urgent repairs; and
 - b. the Property Care Provider's own insurance policies do not respond to a particular event.
- 7.2.3. The Landlord must provide evidence of the currency of its insurance policies to the Property Care Provider within 7 Business Days of a request in writing by the Property Care Provider.
- 7.2.4. The Landlord agrees to notify the Property Care Provider promptly if any of the insurances required by this clause lapse or become void, voidable or otherwise unenforceable.

8. Indemnity

- 8.1.1. The Landlord indemnifies, and will keep indemnified, the Property Care Provider from and against any:
- a. cost, expense or liability incurred by the Property Care Provider;
 - b. loss of or damage to property of the Property Care Provider; and

- c. loss or expense incurred by the Property Care Provider in dealing with any actions, suits, proceedings and claims against it, including legal costs and expenses on a solicitor/own client basis and consultant's costs,

arising in connection with:

- d. the proper performance by the Property Care Provider of the Property Care Services;
 - e. a breach by the Landlord of this Contract;
 - f. the exercise or purported or attempted exercise by the Property Care Provider of its rights under this Contract;
 - g. the Property Care Provider obtaining or attempting to obtain payment of money payable by the Landlord to the Property Care Provider under this Contract; or
 - h. an act or omission involving fault on the part of the Landlord in connection with this Contract.
- 8.1.2. The Landlord's liability to indemnify the Property Care Provider under clause 8.1.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Property Care Provider or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 8.1.3. The right of the Property Care Provider to be indemnified under this clause 8 (Indemnity) is in addition to, and not exclusive of, any other right, power or remedy provided by law or in equity, but the Property Care Provider is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

9. Mid-Lease Sale

9.1. Limits on advertising for privacy reasons

- 9.1.1. To the extent permitted by law, for privacy and confidentiality reasons and to protect the occupants of the Premises, the Landlord agrees that, in the event the Landlord wishes to sell the Premises, the Landlord will not (and will ensure that its agents and contractors do not):
- a. affix or erect any signage relating to the sale of the Premises on or adjacent to the Premises;
 - b. publish the house number of the Premises; or
 - c. hold auctions on or adjacent to the Premises.

9.2. Deed of Novation

- 9.2.1. The Landlord agrees that, in the event of a Mid-Lease Sale, the Landlord will ensure that any Third Party Purchaser executes a deed of novation of this Property Care Contract:

- a. substantially in the form provided by the Property Care Provider; and
- b. prior to the date on which the transfer of the Lease to the Third Party Purchaser takes place.

9.2.2. The:

- a. Landlord and the Property Care Provider will bear their own costs; and
 - b. Landlord will bear, or will ensure that the Third Party Purchaser bears, the costs of the Third Party Purchaser,
- of complying with this clause 9 (Mid-Lease Sale).

9.3. **Payment of amounts owing to the Property Care Provider**

9.3.1. The Landlord agrees that, on or before settlement or completion of any Mid-Lease Sale, the Landlord will pay to the Property Care Provider any amounts owing to the Property Care Provider, or which will become owing to the Property Care Provider prior to the date of settlement, under this Property Care Contract, including:

- a. any outstanding Service Fees; and
- b. all fees for any Additional Services carried out by the Property Care Provider in accordance with Schedule 2.

10. **Force majeure**

10.1. **Definition**

10.1.1. In this Contract, 'Force Majeure Event' means any event or occurrence, whether known or unknown at the date of the Contract, that:

- a. prevents, hinders or delays the Property Care Provider from performing its obligations under this Contract;
- b. is beyond the reasonable control of the Property Care Provider; and
- c. the Property Care Provider could not have prevented, or limited the effect of, by taking those steps which a prudent, experienced and reasonable person in the circumstances of the Property Care Provider would have taken.

10.2. **Notice of Force Majeure Event**

10.2.1. Where a Force Majeure Event occurs, the Property Care Provider may give the Landlord prompt written notice (**Notice**) of the Force Majeure Event specifying in reasonable detail:

- a. the nature of, reasons for, and estimated duration of the Force Majeure Event;
- b. the obligations affected and the extent of the Force Majeure Event's effect on the ability of Property Care Provider to comply with those obligations

under the Contract, including the provision of the Property Care Services;
and

- c. the steps required to address or mitigate the impact of the Force Majeure Event.

10.3. Effect of giving Force Majeure Event Notice

10.3.1. Where a Notice is issued under clause 10.2:

- a. the obligations of the Property Care Provider specified in the Notice are suspended from the date of the Notice for so long as, and to the extent, they are affected by the Force Majeure Event (**Force Majeure Period**); and
- b. no failure or omission by the Property Care Provider to perform such obligations will be a breach of this Contract in so far as the failure or omission is caused by the Force Majeure Event,

subject to the Property Care Provider otherwise complying with the requirements of this clause 10.

10.4. Actions by Property Care Provider

10.4.1. Following the issue of a Notice under clause 10.2 and during the Force Majeure Period, the Property Care Provider must:

- a. use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible;
- b. unless otherwise advised by the Landlord, give updates to the Landlord on the status of matters referred to in clause 10.2 when reasonably practicable and in any case, within 14 days after written request is received from the Landlord; and
- c. notify the Landlord in writing as soon as the Force Majeure Period ceases.

10.4.2. If a Notice under clause 10.4.1.c is issued, the Property Care Provider must as soon as reasonably possible resume performance of any suspended obligation.

10.5. Reduction in Service Fees

10.5.1. During the Force Majeure Period, the Service Fees will be reduced in proportion to the Property Care Services provided by the Property Care Provider.

10.6. No limitation

10.6.1. Nothing in this clause limits the parties' rights under this Contract.

11. Dispute resolution

11.1. Definitions

11.1.1. In this clause 11 (Dispute resolution):

Expert means an appropriate practising professional appointed at the request of either party by:

- a. the chairperson for the time being of the Resolution Institute ABN 69 008 651 232 in New South Wales; or
- b. if there is no such body in existence at the time of the request, the chairperson for the time being of an equivalent body.

11.2. Procedure for dispute resolution

11.2.1. Subject to paragraph 7 of Schedule 2, the parties agree that a dispute arising under this Contract must be dealt with as follows:

- a. the party claiming that there is a dispute agrees to give the other party a notice setting out the nature of the dispute;
- b. within 5 Business Days (or such other period as agreed by the parties in writing) each party agrees to nominate a representative;
- c. within 10 Business Days of receiving a notice under clause 11.2.1a (or such other period as agreed by the parties in writing), the representatives will try to settle the dispute by direct negotiation between them;
- d. failing settlement of the dispute within a further 15 Business Days following the direct negotiation (or such other period as agreed by the parties in writing), or failure of one or both parties to nominate a representative within the period set out in clause 11.2.1.b, the parties may agree that the dispute may be referred by either party for determination by an Expert and in that event clause 11.3 (Expert determination) applies; and
- e. if the parties have been unable to agree to refer the dispute to an Expert either party may commence legal proceedings in a court of competent jurisdiction.

11.3. Expert determination

11.3.1. If an Expert is appointed by the parties in accordance with clause 11.2.1.d, each party may make a submission either orally or in writing to the Expert within 10 Business Days after the date of appointment of the Expert.

11.3.2. In making a determination, the Expert will:

- a. act as an expert and not as an arbitrator;
- b. consider any submission made by a party; and

- c. provide the parties with a written statement of reasons for the determination.

11.3.3. Subject to clause 11.6 (Exemption), to the extent permitted by law, the determination of the Expert will be conclusive and binding on the parties.

11.3.4. The costs of the Expert will be shared equally between the parties.

11.3.5. If the Expert fails to deliver a determination within 20 Business Days after the date of appointment, either party may commence legal proceedings in a court of competent jurisdiction.

11.4. Costs

11.4.1. Subject to any award of costs made by an Expert or a court, each party will bear its own costs of complying with this clause 11 (Dispute resolution).

11.5. Continued performance

11.5.1. Despite the existence of a dispute, the Property Care Provider will (unless requested in writing by the Landlord, acting reasonably, not to do so) continue to perform the Property Care Services where it is reasonably able to do so.

11.6. Exemption

11.6.1. This clause 11 (Dispute resolution) does not apply to:

- a. action by either party under or purportedly under clause 12.2 (Termination for fault);
- b. a dispute which involves the question of whether the dispute should properly be resolved in accordance with the dispute resolution provisions of the Lease or this Contract;
- c. a dispute which involves the interpretation of federal legislation such as the DHA Act; or
- d. legal proceedings by either party seeking urgent interlocutory relief.

12. Termination of Contract

12.1. Automatic termination if Lease terminates

12.1.1. The parties agree that this Contract will terminate with immediate effect, and without either party being required to take any action, upon the expiry or earlier termination of the Lease.

12.1.2. In the event of termination under clause 12.1.1, the Landlord will be liable to:

- a. pay any Service Fees relating to Property Care Services completed before the effective date of termination; and
- b. to reimburse any expenses the Property Care Provider unavoidably incurs relating entirely to Property Care Services not covered under clause 12.1.2a,

and must pay these to the Property Care Provider within 10 Business Days of termination.

12.2. Termination for fault

12.2.1. If a party fails to satisfy any of its obligations under this Contract, then the other party - *if it considers that the failure is:*

- a. *not capable of remedy* - may, by notice, terminate the Contract immediately; or
- b. *capable of remedy* - may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the Contract immediately by giving a second notice.

12.2.2. The Property Care Provider may by notice terminate this Contract immediately if the Landlord:

- a. *being a corporation* - comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*, or has an order made against it for the purpose of placing it under external administration; or
- b. *being an individual* - becomes bankrupt or enters into a scheme of arrangement with creditors.

12.2.3. Termination of the Contract under this clause 12.2 (Termination for fault) is without prejudice to any prior right of action or remedy which either party has or may have against the other.

12.3. Termination of Lease if Property Care Contract is terminated

12.3.1. Further to clause 3 (Relationship between the Lease and this Contract), the parties acknowledge and agree that if the Property Care Provider terminates this Contract under clause 12.2.1 or clause 12.2.2, the Tenant may terminate the Lease in accordance with section 81(4)(e) of the Act by giving up possession of the Premises to the Landlord, and the Landlord is deemed, by entering into this Property Care Contract, to have consented to the termination of the Lease under this clause 12.3 (Termination of Lease if Property Care Contract is terminated) for the purposes of section 81(4)(e) of the Act.

12.4. Termination without prejudice

12.4.1. The termination of this Contract is without prejudice to any prior claim or remedy either party has against the other.

13. Notices

13.1. Format, addressing and delivery

13.1.1. A notice under this Contract is only effective if it is in writing, and addressed in accordance with the address for service of notices in Item 4 of the Contract Particulars.

- 13.1.2. A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

13.2. When effective

- 13.2.1. A notice is deemed to be effected:
- a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by post* - upon the date which is 3 Business Days after the date on which the notice is posted; and
 - c. *if transmitted electronically* - upon actual receipt by the addressee.
- 13.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

14. General

14.1. Waiver

- 14.1.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.
- 14.1.2. The exercise or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

14.2. Variation

- 14.2.1. A variation of this Contract is binding only if agreed in writing and signed by the parties.

14.3. Severability

- 14.3.1. To the extent permitted by law, all provisions of this Contract will, so far as possible, be construed so as not to be invalid, illegal or unenforceable in any respect.
- 14.3.2. If any provision of this Contract (or part thereof) is invalid, illegal, or unenforceable:
- a. that provision (or part) will be severed to the extent it is invalid, illegal or unenforceable, and the remaining provisions will continue in force; and
 - b. the parties must do all things reasonably necessary, including the execution and registration of any documentation, to give effect to this Contract.

14.4. Assignment

- 14.4.1. Subject to clause 14.4.2, neither party can assign their obligations and both parties agree not to assign their rights under this Contract without the other party's prior written approval.
- 14.4.2. In circumstances where the Premises are sold and the Lease is assigned or novated to a third party:
- a. for the purposes of clause 14.4.1, the parties are taken to have approved an assignment or novation of this Contract by the Landlord to that third party; and
 - b. the Landlord agrees to do all things necessary, at its cost, to assign or novate this Contract to the third party (effective at the same time as the assignment or novation of the Lease).

14.5. Survival

- 14.5.1. Unless the contrary intention appears, the expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to an indemnity or any other provision which expressly or by implication from its nature is intended to continue.

14.6. Counterparts

- 14.6.1. This Contract may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

14.7. Applicable law

- 14.7.1. This Contract is to be construed in accordance with and any matter related to it is to be governed by the laws of the State of New South Wales, but nothing in this Contract is to be construed as binding the Property Care Provider to comply with laws that do not apply to it of their own force.
- 14.7.2. The parties submit to the jurisdiction of the courts of New South Wales.

SCHEDULE 1 CONTRACT PARTICULARS

1.	Lease	The lease between the landlord and the tenant commencing on
2.	Premises	
3.	Service Fees	Including GST
4.	Address for service of notices	<p>Property Care Provider:</p> <p>or other person as notified to the Landlord in writing from time to time.</p> <p>Landlord:</p>

Marketing Version

SCHEDULE 2 PROPERTY CARE SERVICES

1. Scope of the Property Care Services

1.1.1. The Property Care Provider will provide the following services to the Landlord as Property Care Services:

	Type of service	To be carried out in accordance with	Cost of service
A.	Vacancy Management Services	Paragraph 2 of this Schedule 2	Included in the Service Fees.
B.	Repair Services	Paragraph 3 of this Schedule 2	Included in the Services Fees except for the cost of any emergency repairs carried out by the Property Care Provider on the Landlord's behalf (which is additional to the Service Fees).
C.	Scheduling and Facilitation Services	Paragraph 4 of this Schedule 2	Included in the Service Fees.
D.	Rent Review Services	Paragraph 5 of this Schedule 2	Included in the Service Fees.
E.	Additional Services (if any are agreed between the parties)	Paragraph 6 of this Schedule 2	Additional to the Service Fees

1.1.2. The parties agree that any dispute in relation to the scope of the Property Care Services under this Schedule 2 or the interpretation of this Schedule 2 is a Scope Dispute (as defined by paragraph 7 of this Schedule 2). The process in paragraph 7 of this Schedule 2 will apply to the Scope Dispute before either party seeks to have the dispute resolved in accordance with clause 11 (Dispute resolution) of the Property Care Contract.

2. Vacancy Management Services

The Property Care Provider will provide the following services from time to time when the Premises are unoccupied:

	Service to be provided	Requirements for that particular service
1.	Grounds maintenance (watering gardens, pruning trees and mowing lawns from time to time)	Basic upkeep of the grounds so the Premises look tenanted
2.	Managing occupants of the Premises to minimise vacancies	The Property Care Provider will actively manage the Premises with a view to minimising vacancies and to replacing departing occupants with new occupants
3.	Mail collection	Regular collection of the mail so the Premises look tenanted

3. Repair Services

A glossary of terms used in this paragraph is set out in paragraph 8 of this Schedule 2.

The Property Care Provider will provide the following services as required during the Lease Term:

	Service to be provided	Exclusions from the service
1.	<p>Subject to the DHA Repair Work Policy as set out on the Property Care Provider's website or provided to the Landlord (if any), carry out repair work which is Non-Structural and is the responsibility of the Landlord under the Lease to keep the Premises in a tenanted condition (Repair Work).</p> <p>The cost of Repair Work is included in the Service Fees.</p> <p>In carrying out the Repair Work, the Property Care Provider may replace appropriate items to an equivalent or like standard where, in its opinion, it is impractical or not cost effective to fix a breakage.</p> <p>If the Property Care Provider is reasonably unable to repair or replace an item, the Property Care Provider may elect, in its discretion, to pay the Landlord a reasonable amount for the repair or replacement of that item, in</p>	<p>A. Plumbing Repairs</p> <ul style="list-style-type: none"> • blockages where the cause was tree roots or similar, broken pipe or defective drainage. • replacement of irrigation system. • replacement of irrigation system controllers. • repair or replacement of toilet pan or suites. • repair or replacement of baths, basins and sinks. • replacement of water tanks. • replacement of plumbing fixtures at the end of their Expected Lifespan.

Service to be provided	Exclusions from the service
<p>which case the Property Care Provider's obligation to repair or replace that item will be deemed to have been satisfied.</p> <p>Repair Work arranged by the Property Care Provider will be carried out by a licensed or suitably qualified tradesperson (holding the appropriate insurances).</p> <p>Where repair work is defined in the exclusion list as work that the Property Care Provider will not carry out, or is the responsibility of the Landlord, the Property Care Provider and the Landlord may agree that the Property Care Provider will carry out that work as an Additional Service under paragraph 6 of this Schedule 2, and the costs of any such work will be additional to the Service Fees.</p> <p>If at the end of this Lease Term (including any extensions of this Lease Term) the Lease Term is between 6 and 8 years and the Property Care Provider considers, in its absolute discretion, that the interior paint of the Premises is in a state of disrepair that was not caused by Fair Wear and Tear then the Property Care Provider will re-paint the interior of the Premises at its cost before the Premises is handed back to the Landlord</p> <p>If at the end of this Lease Term (including any extensions of this Lease Term) the Lease Term is between 9 years or more and the Property Care Provider considers, in its absolute discretion, that the interior carpet and interior paint of the Premises is in a state of disrepair that</p>	<ul style="list-style-type: none"> • repair or replacement of leaking pipework enclosed in walls, cavities or underground. <p>B. Electrical Repairs</p> <ul style="list-style-type: none"> • repair or replacement of electrical wiring, circuits and/or switchboards. • repair or replacement of home energy storage batteries. • repair or replacement of security or surveillance systems. • replacement of solar panels and inverters. <p>C. Carpentry Repairs</p> <ul style="list-style-type: none"> • replacement of doors. • replacement of door hardware at the end of its Expected Lifespan. • replacement of joinery items such as kitchens, wardrobes and vanities and associated components (eg doors, benchtops, shelving, drawers panels, splashbacks or kickboards). • replacement of timber structures (such as pergolas) at the end of their Expected Lifespan. <p>D. Painting/Plastering Repairs</p> <ul style="list-style-type: none"> • repair of damage to plaster as a result of Structural damage or Defects in the Premises. • painting of pre-finished or pre-painted surfaces in or on the Premises (such as colourbond® or stencilcrete). • repair of damage to render as a result of Movement, Structural damage or Defects in the Premises.

	Service to be provided	Exclusions from the service
	<p>was not caused by Fair Wear and Tear then the Property Care Provider will re-carpet and re-paint the interior of the Premises at its cost before the Premises is handed back to the Landlord</p> <p>Property Care Contract Special Conditions</p>	<p>E. General Items</p> <ul style="list-style-type: none"> • replacement of window furnishings at the end of their Expected Lifespan. • repair or replacement of tiles at the end of their Expected Lifespan and/or bonding failure, whether or not the item is patently or latently Defective or has no Defects. • mould and repairing the cause of mould (unless the cause of the mould was due to occupation of the Premises, in which case repairing the mould and the cause of the mould is the Tenant's responsibility). • repair or replacement of any gate, fence or fences at the Premises. • repair or replacement of driveways, paths, retaining walls and garden edging. • repair or replacement of sheds, lawn lockers or carports. • repair or replacement of wet seals, water proofing and water membranes. • tree removals requiring a professional arborist where the tree causes a danger to the Premises or its occupants or third parties or because of a direction by a local council. • lopping a tree where the tree causes a danger to the Premises or its occupants or third parties or because of a direction by a local council.

		<ul style="list-style-type: none"> • infestation by pest(s) that require pest treatment to remove or that affect the habitability of the Premises. • any damage to the Premises, including damage caused by termites, borers, earthworms and other pests. <p>F. Roofing Repairs</p> <ul style="list-style-type: none"> • repair or replacement of fascias, guttering, downpipes, roof sheeting, ridge capping. • repair or replacement of roof tiles, ridge capping, bedding and pointing. <p>G. Miscellaneous Exclusions</p> <ul style="list-style-type: none"> • fire, lightning, flood, storm, tempest or any other factor or event which the Property Care Provider could not have prevented by acting in accordance with its obligations in this Contract. • damage to the Premises caused by any circumstance, event or factor that affects the habitability of the Premises or impacts on the ability of the Tenant to occupy the Premises. • all strata matters. • ensuring that swimming pools comply with relevant legislation and providing updated compliance certificates in accordance with relevant legislative requirements. • repair or replacement of swimming pools, pool fencing, shade sails and associated swimming pool equipment. • repair or replacement of smoke alarms.
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		<ul style="list-style-type: none"> • repairs or replacement of items required to ensure that the Premises comply (or continue to comply) with legislative requirements (including any codes of practice and applicable Australian or international standards). • repairs to items where the Property Care provider reasonably assesses the damage as having been caused by Fair Wear and Tear. • repairs that are the responsibility of the Tenant under the Lease. • repairs to items where damage was caused by Accidental Damage. • repairs that involve any Structural Improvements (including any Structural alterations or additions). • repairs that involve rectifying any Structural damage or Defects in the Premises. • emergency repairs (unless these emergency repairs are necessary to make safe the Premises, in which case they will be carried out in accordance with Item 2 below). • repairs that involve any Capital Works (or major components of Capital Works). • repair or replacement of Fixtures and Fittings that have Defects. • repair or replacement of items that were not fit for purpose when they were installed in the Premises. • Maintenance Work. <p>The Property Care Provider will not be responsible for satisfying any warranty or defect liability periods in relation to the construction of the Premises or</p>
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	Service to be provided	Exclusions from the service
		notifying the Landlord of Warranties expiring on the Premises.
2.	<p>Carrying out, or facilitating the carrying out by the Landlord, at the Property Care Provider's discretion, of emergency repairs which are the responsibility of the Landlord under the Lease as necessary to make safe the Premises (Emergency Repairs).</p> <p>In most circumstances, the Property Care Provider will attempt to obtain the Landlord's consent before carrying out the Emergency Repairs.</p> <p>However, in circumstances where the Landlord cannot be contacted in advance to give consent for the Property Care Provider to carry out (or have carried out) those Emergency Repairs, the Property Care Provider will carry out those Emergency Repairs on behalf of the Landlord.</p> <p>By signing this Contract, the Landlord acknowledges and agrees that:</p> <ul style="list-style-type: none"> a) the Property Care Provider will be listed as the nominated contact for Emergency Repairs for any occupants of the Premises; b) the Landlord consents to the Property Care Provider carrying out (or having carried out) on behalf of the Landlord, Emergency Repairs on the Premises at the Property Care Provider's discretion, provided these Emergency Repairs are reasonable in the circumstances; c) the Property Care Provider acts as a contractor and not as an agent of the Landlord in carrying out (or having carried out) any Emergency Repairs; 	

	Service to be provided	Exclusions from the service
	<p>d) the Landlord will pay all of the Property Care Provider's costs and expenses in relation to any such Emergency Repairs, within 10 Business Days from the date of receipt of an invoice issued by the Property Care Provider;</p> <p>e) payment of any costs and expenses of the Property Care Provider in carrying out any Emergency Repairs will be additional to payment of the Service Fees; and</p> <p>f) the Landlord will do all things necessary (including signing documents), at its cost, to claim under any of the Landlord's insurance policies in relation to the Emergency Repairs, and to repay any costs and expenses incurred by the Property Care Provider in carrying out the Emergency Repairs from the proceeds of that insurance claim.</p>	

4. Scheduling and Facilitating Services

1.	Carrying out inspections of the Premises as required of the Landlord under the Lease	<p>The Property Care Provider will carry out inspections of the Premises at periodic intervals and provide an inspection report to the Landlord.</p> <p>Without waiving any rights under the Act, due to the unique nature of DHA's occupancy under the Lease, the Landlord elects to keep inspections to a minimum.</p> <p>In addition to the periodic inspections undertaken by the Property Care Provider, if requested by the Landlord (with not less than 10 Business Days' notice), the Property Care Provider will arrange one personal inspection of the Premises by the Landlord or its representative in each year of the Lease Term, provided the Landlord or its representative is accompanied by a representative of the Property Care</p>
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		Provider and complies with any security requirements of DHA (as Tenant).
2.	Facilitating ad hoc inspections requested by the Landlord (including to carry out inspections by insurers) or its contractors or insurers	The Property Care Provider will communicate with the occupant of the Premises to arrange appropriate times for these inspections with the parties involved. The Property Care Provider will not be responsible for carrying out the actual inspections.
4.	Providing statements to the Landlord	The Property Care Provider will provide: a) monthly statements showing the total Rent paid and the Service Fees; and b) statements monthly and annually in DHA's Online Services program.

5. Rent Review Services

The Property Care Provider will carry out Rent Reviews prior to the time for Rent Reviews set out in the Lease, and will provide the Landlord with a recommended amount of Rent for each year of the Lease (which may involve a recommended increase or decrease or a recommendation that there be no change to the Rent of the previous year).

The parties acknowledge and agree that the Property Care Provider carries, and will carry, out the Rent Review Services as a contractor for the Landlord and not as an agent.

Rent Reviews will be carried out by the Property Care Provider in accordance with the following process:

Item	Action to be taken	Party responsible
1.	Prior to the relevant Review Date, the Property Care Provider will obtain a current market rent valuation from a contractor of the Property Care Provider who is a certified practising and registered valuer with the Australian Property Institute or the Australian Valuation Institute in New South Wales.	Property Care Provider
2.	The Property Care Provider will notify the Landlord in writing of its assessment of the New Rent Amount based on the current market valuation referred to in Item 1 above.	Property Care Provider
3.	If the Landlord agrees with the New Rent Amount proposed by the Property Care Provider, the Landlord will promptly issue a Landlord's Assessment in writing to the Tenant based	Landlord

Item	Action to be taken	Party responsible
	<p>on the New Rent Amount proposed by the Property Care Provider and advising the Tenant of the proposed new Rent payable under the Lease, and the date from which it is payable.</p> <p>For the avoidance of doubt, the Landlord (and not the Property Care Provider) will be responsible for issuing any notice of a Rent increase (if applicable) to the Tenant in accordance with section 41 of the Act.</p>	
4.	<p>(a) If the Landlord disagrees with the New Rent Amount proposed by the Property Care Provider, the Landlord must notify the Property Care Provider in writing (which may be by electronic form) within 10 Business Days (Landlord Rent Dispute Notice).</p> <p>(b) If the Landlord fails to issue a Landlord Rent Dispute Notice within this 10 Business Day period, the Landlord will be deemed to have accepted the New Rent Amount proposed by the Property Care Provider, in which case Item 3 above will apply.</p> <p>(c) The Landlord must within 15 Business Days after issuing a Landlord Rent Dispute Notice, at its cost:</p> <ul style="list-style-type: none"> (i) procure a valuer who is a certified practising and registered valuer with the Australian Property Institute or the Australian Valuation Institute in New South Wales (Landlord's Valuer) to assess the appropriate current market rent that will form the basis of the New Rent Amount in accordance with the Landlord's Valuation Guide, and the Landlord will bear all the costs of obtaining the report from the Landlord's Valuer; and (ii) provide a copy of the report of the Landlord's Valuer to the Property Care Provider. <p>(d) The Landlord must if requested by the Property Care Provider, ensure that the Landlord's Valuer confers with the Property Care Provider's valuer to discuss and attempt to agree the New Rent Amount in accordance with the Landlord's Valuation Guide promptly after the issue of the report of the Landlord's Valuer to the Property Care Provider.</p> <p>(e) If the Landlord's Valuer and the Property Care Provider's valuer agree the New Rent Amount in accordance with the Landlord's Valuation Guide, the Property Care Provider will issue a revised New Rent Amount in accordance with Item 2 above, and the</p>	<p>Landlord</p> <p>Landlord</p> <p>Landlord</p> <p>Property Care Provider</p>

Item	Action to be taken	Party responsible
	<p>Landlord will promptly issue a Landlord's Assessment in accordance with Item 3 above.</p> <p>(f) If the Landlord's Valuer and the Property Care Provider's valuer do not agree the New Rent Amount in accordance with the Landlord's Valuation Guide, the Landlord may issue its own Landlord's Assessment to the Property Care Provider and to the Tenant, based on the report issued by the Landlord's Valuer.</p> <p>(g) The Landlord (and not the Property Care Provider) will be responsible for issuing any notice of a rent increase (if applicable) to the Tenant in accordance with section 41 of the Act.</p>	<p>Landlord</p> <p>Landlord</p>

6. Additional Services

From time to time, the Landlord may request that the Property Care Provider perform additional services that are not already being provided by the Property Care Provider under this Contract and are not an obligation of the Tenant under the Lease (**Additional Services**).

The Property Care Provider may in its discretion, but is not obliged to, agree in writing with the Landlord the nature and scope of any such Additional Services. The parties agree that nothing in this Contract (or otherwise) limits the ability of the Property Care Provider to decide whether or not to perform any Additional Services and agree the terms on which these will be performed.

If the parties do not agree in writing to the provision of particular Additional Services, the Property Care Provider will not be required to provide those Additional Services.

The Landlord agrees to pay all of the Property Care Provider's expenses (whether incurred in advance or as disbursements) in relation to any agreed Additional Services, within 10 Business Days from the date of receipt of an invoice issued by the Property Care Provider.

Where the Additional Services involve the Property Care Provider obtaining a written report in relation to the Premises on behalf of the Landlord (eg obtaining a termite report), the Landlord acknowledges and agrees that the Property Care Provider will have no responsibility for the contents of that report, and has no obligations in relation to the report or its contents, or actioning the report's recommendations, beyond forwarding the report to the Landlord upon receipt of payment.

If the Landlord wishes the Property Care Provider to carry out any repairs or work at the Premises as a result of the contents of any report, the Landlord must agree these repairs or work with the Property Care Provider as a separate Additional Service under this paragraph.

7. Disputes regarding inclusions or exclusions in the Property Care Services

In the event that any dispute arises regarding the scope of the Property Care Services or the proper interpretation of this Schedule 2 (**Scope Dispute**), the parties agree that, before they commence any dispute resolution process under clause 11 (Dispute Resolution) of the Contract, they will follow the process set out in this paragraph 7 in respect of that Scope Dispute.

	Action to be taken	Party responsible
1.	The disputing party will submit a notice in writing to the other party advising that there is a Scope Dispute and giving details of the nature of the Scope Dispute (Scope Dispute Notice).	Landlord or Property Care Provider (depending on which party has the dispute).
2.	Within 10 Business Days of receiving a Scope Dispute Notice (or such other period as agreed by the parties in writing), the parties will attempt to resolve the Scope Dispute by direct negotiation between their nominated representatives.	Both parties
3.	Failing settlement of the dispute within a further 15 Business Days following the direct negotiation (or such other period as agreed by the parties in writing), either party may refer the dispute to either of the following (the Scope Expert): <ul style="list-style-type: none"> • a qualified, experienced and reputable tradesperson in the industry or trade in which the Scope Dispute has arisen (or a closely-related industry or trade) as agreed between the parties; or • failing any such agreement, an Expert as defined in clause 11.1.1 of the Contract. 	The party who issued the Scope Dispute Notice.
4.	If a Scope Expert is appointed, each party may make a submission either orally or in writing to the Scope Expert within 10 Business Days after the date of appointment of the Scope Expert.	Both parties
5.	In making a determination, the Scope Expert will: <ul style="list-style-type: none"> • act as an expert and not as an arbitrator; • consider any submission made by a party; and • provide the parties with a written statement of reasons for the determination. 	The Scope Expert

	Action to be taken	Party responsible
6.	The costs of the Scope Expert will be shared equally between the parties. Each party will bear its own costs of complying with this process.	Both parties
7.	If the Scope Expert fails to deliver a determination within 20 Business Days after the date of appointment or if either party considers that the determination of the Scope Expert does not resolve the Scope Dispute to their satisfaction, that party may commence dispute resolution proceedings under clause 11 (Dispute resolution) of the Contract.	Either party

8. Glossary

Accidental Damage means damage that occurs to the Premises or a part of the Premises as a result of an unexpected and non-deliberate action or circumstance.

Capital Works means:

- Structural Improvements;
- extensions, renovations, alterations or improvements to Structural Improvements; and
- improvements to items that are considered to be permanently fixed to the Premises.

Defective means having, or being affected by, Defects.

Defects means any defects, errors, inconsistencies or omissions in the design of, the workmanship of, and/or the materials or systems in, the Premises (or any part of the Premises).

Expected Lifespan means the period within which the Premises, a component or part of the Premises, or any Fixtures and Fittings are expected to remain in a useful, liveable and/or serviceable condition, whether in accordance to manufacturers' recommendations or industry expectations for Premises, components or parts of the Premises or Fixtures and Fittings in a similar location and of a similar construction and/or type.

Fair Wear and Tear means the deterioration that occurs over time with the use of the Premises even when the Premises receives reasonable care and maintenance, and:

includes:	does not include:
<ul style="list-style-type: none"> • faded curtains or frayed curtain cords; • furniture indentations and traffic marks on the carpet; • scuffed up wooden floors; 	<ul style="list-style-type: none"> • missing curtains or tears in the curtains; • stains or burn marks on the carpet; • badly scratched or gouged wooden floors;

<ul style="list-style-type: none"> • faded, chipped or cracked paint (provided the paint job was approved by the Landlord or the Property Care Provider); • wear to kitchen benchtops; • loose hinges or handles on doors or windows and worn sliding tracks; • cracks in the walls from movement; and • water stains on carpet from rain through leaking roofs or faulty plumbing. 	<ul style="list-style-type: none"> • paint jobs that were not approved by the Landlord or the Property Care Provider; • burns or cuts in kitchen benchtops; • broken glass in doors or windows; • holes in walls left from removing picture hooks or attached shelving units, etc; • water stains on carpet caused by overflowing bath or indoor pot plants; • Capital Works • Maintenance Work; • Fixtures and Fittings; and • Emergency Repairs.
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Fixtures and Fittings means items that are secured or bolted to the walls or floor of the Premises (fixtures) and free-standing items including goods and appliances (fittings).

Maintenance Work means taking preventative steps to extend the life of the Premises or any part of the Premises.

Movement means any shift in the position, or the components, of the Premises (or a part of the Premises), and includes subsidence, settlement, heave, sway, bouncy floors, bulging walls, cracks, expansion and contraction.

Non-Structural means not relating to the Structure.

Structural means relating to the Structure.

Structural Improvements means improvements and/or repairs:

- of, or to, the Structure of the Premises; and
- which involve interference with, or alteration to, the Structure of the Premises.

Structure means in relation to:

- the Premises, all walls (whether load-bearing or not), floors, floor slabs, doors, windows, gutters, downpipes, facades, foundations, support columns, ceilings (including ceiling tiles) and roofs;
- installations that have been constructed within the structure of the Premises; and
- areas other than the Premises, car parks, driveways, swimming pools, paving, fencing and other fixed items.

Warranties means warranties from manufacturers or suppliers for any item, equipment, materials or Fixtures and Fittings contained within, or incorporated as part of, the Premises.

Signatures

SIGNED for and on behalf of Defence Housing Australia ABN 72 968 504 934 by its delegate duly authorised pursuant to s.65 of the *Defence Housing Australia Act 1987* (Cth):

Name of signatory

Signature

Position

In the presence of:

Name of witness

Signature of witness

SIGNED for and on behalf of

by:

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness