

# Government Employee Residential Program

## Lease Agreement

### Lease Terms with DIT Total Asset Care Plan

**Residential Tenancies Act 1995 (SA)**

*This document is a residential tenancy agreement.  
All parties to this agreement should consider seeking  
legal advice about their rights and obligations*

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## Reference Schedule

<b>Item 1</b>	<b>Lessor</b>
	Name:
	ABN:
	Contact Details:
	Address:
	Telephone:
	Email:
<b>Item 2</b>	<b>Lessee</b>
	Name: Minister for Infrastructure and Transport, a body corporate pursuant to the <i>Administrative Arrangements Act 1994</i> (SA), acting through the Department for Infrastructure and Transport ( <b>DIT</b> )
	ABN: 38 127 895 313
	Attention:
	Address:
	Telephone:
	Email:
<b>Item 3</b>	<b>Property</b>
	Address:
	Certificate of Title:
<b>Item 4</b>	<b>Initial Term</b>
	Ten (10) years
<b>Item 5</b>	<b>Commencement Date</b>
	[INSERT]
<b>Item 6</b>	<b>Initial Term Expiry Date</b>
	The date ten (10) years from the Commencement Date
<b>Item 7</b>	<b>Renewal Term</b>
	Five (5) years from the Initial Term Expiry Date
<b>Item 8</b>	<b>Renewal Term Expiry Date</b>
	The date five (5) years from commencement of the Renewal Term
<b>Item 9</b>	<b>Variable Extension Period</b>
	Three (3) months
<b>Item 10</b>	<b>Commencing Rent</b>
	\$[INSERT] per week comprised of the following:
	<u>Market Rent:</u> \$[INSERT] per week
<b>Item 11</b>	<b>Rent Review</b>
	<u>Market Rent:</u>
	<i>Fixed Rent Review</i>
	Fixed Review Dates: End of each year during the Initial Term and any Renewal Term but excluding any Market Rent Review Dates
	Review Method: Fixed annual increase of 2.5%
	<i>Market Rent Review</i>
	Market Rent Review Dates: End of years 1, 4, 7 and 10 of the Initial Term and end of year 3 of any Renewal Term
	Review Method: Refer to clause 6.6
<b>Item 12</b>	<b>Service Fee</b>
	13.0% (GST inclusive) of the rent

**Item 13      The Act**  
*Residential Tenancies Act 1995 (SA)*

## Agreement Details

### Date:

### Parties:

The party described in Item 1 of the Reference Schedule (**Lessor**) and the party described in Item 2 of the Reference Schedule (**DIT**).

### Background:

- A. The Lessor leases the Property to DIT and engages DIT as a contractor to provide the DIT Total Asset Care Plan in accordance with the terms of this agreement.
- B. DIT leases the Property from the Lessor for the purpose of performing its statutory functions under the *Public Employee Housing Act 1987* by subletting the Property to tenants who are members of the South Australian Public Service for residential accommodation.
- C. This agreement is a residential tenancy agreement under the *Residential Tenancies Act 1995* (SA).
- D. The parties acknowledge that while the DIT Total Asset Care Plan is distinct from the leasing provisions of this agreement, they are linked so that neither component can operate in isolation.

# Agreement Terms and Conditions

## 1. THE AGREEMENT

### 1.1 Lease and DIT Total Asset Care Plan

This is an agreement by which the Lessor:

- (a) leases to DIT the Property described in Item 3 of the Reference Schedule, including any fixtures and fittings; and
- (b) engages DIT as a contractor to perform the DIT Total Asset Care Plan specified in clause 6 in respect of the Property for the duration of this agreement.

### 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 DIT to the Lessor.

## 2. TERM

### 2.1 Initial term

This agreement is for the Initial Term shown in Item 4 of the Reference Schedule from the Commencement Date set out in Item 5 of the Reference Schedule to the Initial Term Expiry Date set out in Item 6 of the Reference Schedule.

### 2.2 Right of renewal

- (a) Subject to paragraph (b), DIT may renew this agreement for the Renewal Term shown in Item 7 of the Reference Schedule from the day after the Initial Term Expiry Date set out in Item 6 of the Reference Schedule to the Renewal Term Expiry Date set out in Item 8 of the Reference Schedule by giving written notice to the Lessor at least three (3) months before the Initial Term Expiry Date shown in Item 6 of the Reference Schedule.
- (b) The Lessor may exclude the right of renewal in paragraph (a) by giving written notice to DIT not less than two (2) years before the Initial Term Expiry Date set out in Item 6 of the Reference Schedule.

### 2.3 Variation of term

- (a) DIT may, by giving written notice to the Lessor, either:
  - (i) extend the Initial Term set out in Item 4 of the Reference Schedule; or
  - (ii) if the right of renewal under clause 2.2 has been exercised, extend the Renewal Term set out in Item 7 of the Reference Schedule,
 by a period up to the Variable Extension Period specified in Item 9 of the Reference Schedule.
- (b) A notice under this clause must:
  - (i) be given at least three (3) months before the date, which but for that extension, would have been the expiry date of this agreement;

- (ii) specify the period by which the term is to be extended; and
- (iii) specify the new expiry date of the term.

(c) After DIT gives a notice pursuant to this clause 2.3, either:

- (i) the Initial Term Expiry Date specified in Item 6 of the Reference Schedule; or
- (ii) the Renewal Term Expiry Date specified in Item 8 of the Reference Schedule, as the case may be, is varied to be the expiry date specified in the notice.

### 3. RENT

#### 3.1 Payment of rent

- (a) The rent as at the Commencement Date is stated in Item 10 of the Reference Schedule and is comprised of the Market Rent.
- (b) DIT 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 four-weekly in advance. DIT elects to pay the rent four-weekly in advance despite having 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 four week rent payment in advance, will be paid at the commencement of the first four-week rent cycle following the Commencement Date.
- (e) The last rent payment is payable in arrears. DIT may hold this payment while DIT arranges to calculate and offset any amount due to DIT by the Lessor (if any) under this agreement.
- (f) Prior to making rent payments, DIT may deduct any monies due from the Lessor to DIT, whether under this agreement or otherwise.

#### 3.2 Calculation of rent

- (a) The rent accrues from day to day.
- (b) The four-weekly payment is calculated as follows:
- (c) four-weekly payment = weekly rent x 4.
- (d) If the first or last rent payment is for a period of less than four (4) weeks, the rent for the broken rent period is calculated on a daily basis as follows:  
daily rent = weekly rent x 0.1429.

### 4. RENT REVIEW

#### 4.1 When and how rent will be reviewed

The rent under this agreement will be automatically reviewed at each relevant Review Date as specified in Item 11 of the Reference Schedule. DIT will undertake the rent review process under the DIT Total Asset Care Plan in accordance with clause 6.6. The Lessor may not increase the rent except in accordance with this agreement.

#### 4.2 Date from which new rent applies

If the rent review:

- (a) is completed by the Review Date, then the new rent takes effect the day after the

Review Date; or

(b) is not completed by the relevant Review Date then:

- (i) DIT 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.

#### **4.3 Market Rent not to be less than at Commencement Date**

Notwithstanding anything else in this agreement, if following a rent review the new Market Rent would be less than the amount it was as at the Commencement Date, then unless the parties agree otherwise, the new Market Rent will instead be the amount it was at the Commencement Date.

### **5. COMMUNITY TITLE**

#### **5.1 Special definitions**

In this clause 5, expressions which are defined in the *Community Title Act 1996* (SA) have the meaning given to them in that Act unless the context requires otherwise.

#### **5.2 Application of this clause**

This clause 5 applies where the Property comprises or includes a community lot.

#### **5.3 Maintenance of Common Property**

DIT shall not be responsible for the maintenance and repair of any common property. This includes, but is not limited to, service infrastructure as defined in that Act, driveway surfacing, lighting and irrigation.

#### **5.4 Lessor's role under Community Scheme**

The Lessor agrees:

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

### **6. DIT TOTAL ASSET CARE PLAN**

#### **6.1 Nature of the DIT Total Asset Care Plan**

- (a) DIT will, throughout the term of this agreement, look after the Property by providing the "DIT Total Asset Care Plan", 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) Refresh Service (described in clause 6.5); and
- (v) Market Rent Review Service (described in clause 6.6).

- (b) The DIT Total Asset Care Plan is provided by DIT in return for a Service Fee equivalent to the percentage of the rent specified in Item 12 of the Reference Schedule.
- (c) The Service Fee is payable by the Lessor and will be deducted by DIT from the four-weekly rent payments.
- (d) The parties acknowledge that DIT's role in respect of the DIT Total Asset Care Plan is separate and distinct from DIT's role as lessee under this agreement.

## **6.2 Property Management Service**

DIT must manage the Property by performing the following activities:

- (a) carrying out annual tenancy inspections of the Property; and
- (b) arranging compliance, at the Lessor's expense (by deduction from four-weekly rent payments), with any of the Lessor's retained responsibilities under clause 7, if requested by the Lessor and DIT agrees to do so.

## **6.3 Repair and Maintenance Service**

- (a) DIT 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 e.g., blinds, curtains, vertical drapes;
  - (iv) security and/or insect screens;
  - (v) built-in appliances e.g., stoves, ovens, rangehoods, air conditioning, hot water systems, water softeners, heaters;
  - (vi) gas appliances if any;
  - (vii) lights and light fittings;
  - (viii) power points and switches;
  - (ix) walls and ceilings;
  - (x) wet areas e.g., plugs, tiles, vanity units, cabinets, shower screens, towel rails;
  - (xi) floor coverings e.g., carpet, vinyl, slate, timber, tiles, linoleum;
  - (xii) cupboards, serveries, bench tops and shelving;
  - (xiii) gutters, downpipes, gates, garage doors, letterbox and clothesline;
  - (xiv) general upkeep of grounds and gardens, including common landscaped areas and amenities, if applicable (e.g., 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) For the avoidance of doubt, in this agreement "fair wear and tear" means the deterioration that occurs over time with the use of the Property and forces of nature and includes:

- (i) cracking, fading and flaking of paint;
- (ii) fading and fraying of curtains and curtain cords;
- (iii) discolouration, fading, scuffing and traffic marks to carpet and wooden floors;
- (iv) chipping, indentations and scratches to cabinetry, furniture and kitchen benchtops; and
- (v) loose handles, hinges and sliding tracks of doors and windows.

(c) In performing its obligation under clause 6.3(a), DIT 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. DIT may replace appropriate items to an equivalent standard where, in DIT's opinion, a repair is impractical or not cost effective.

(d) DIT 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.

(e) Works arranged by DIT under this clause must be made by a licensed or suitably qualified tradesperson (holding the appropriate insurances).

#### **6.4 Emergency Repair Service**

- (a) DIT will, immediately on becoming aware of the need for 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 DIT is responsible pursuant to this agreement, DIT 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 DIT without the Lessor's prior consent is the amount (if any) specified in the Act.

#### **6.5 Refresh Service**

- (a) At the end of this agreement, DIT will provide a refresh service in respect of the Property.
- (b) In all cases, DIT will ensure that:
  - (i) internally, the Property is professionally cleaned;
  - (ii) appliances in the Property are clean and in good working order;
  - (iii) the Property is repainted internally to a similar standard and toning as existed at the Commencement Date;
  - (iv) previously carpeted areas in the Property are recarpeted to a similar standard and toning as existed at the Commencement Date;
  - (v) externally, the dwelling, grounds and landscaping of the Property are in a neat and tidy condition; and
  - (vi) external surfaces of building structures (namely, facias and eaves but

excluding the roof, walls, colorbond steel surfaces, masonry, rendered surfaces and cladding) at the Property are repainted to a similar standard and toning as existed at the Commencement Date.

- (c) DIT's Refresh Service obligations:
  - (i) do not apply where this agreement is terminated pursuant to clause 16.1(b) (e.g., the Property is destroyed or no longer lawfully useable as a residence);
  - (ii) do not include the replacement of fixtures, fittings, air conditioning units or in-built appliances; and
  - (iii) do not include the repaving or resealing of driveways or the repair of common infrastructure (e.g., stormwater infrastructure).

## 6.6 Market Rent Review Service

### 6.6.1 Review Process

- (a) DIT must manage the rent review process in accordance with clause 4 by:
  - (i) before each Market Rent Review Date, arranging a market rent valuation by a valuer appointed by DIT (the "Market Valuer") for the purpose of determining the Market Rent;
  - (ii) ensuring the Property is physically inspected as part of the Market Rent review process at least every three (3) years;
  - (iii) bearing the costs of the valuation by the Market Valuer;
  - (iv) providing the Lessor with a written notice of the valuation by the Market Valuer; and
  - (v) making available to the Lessor a valuation certificate of market rent.
- (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 DIT within thirty (30) days of service 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 thirty (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, DIT or the Lessor may initiate the following process (the "Tertiary Review Process"). The Tertiary Review Process must be invoked within seven (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 South Australia 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 DIT 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 seven (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 by either party under this clause 6.6 must be:

- (a) a registered member of the Australian Property Institute in South Australia; 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 arm's 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 4.2(b)(ii), DIT 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) DIT paying the Lessor the amount of any underpayment within fourteen (14) days of the determination of rent; or
- (b) the Lessor refunding within fourteen (14) days of demand, or DIT deducting from its four-weekly 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 in respect of the Property that are not covered by the DIT Total Asset Care Plan. This includes:

- (a) Essential services such as water, electricity, gas, sewerage (including any septic system), and drainage within or for the Property;
- (b) Replacement of major air-conditioning components or system if required and where repair is not economical;
- (c) Replacement of hot water system if required and where repair is not economical;
- (d) structural damage to and structural defects of any improvement on the Property;
- (e) 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 DIT;
- (f) 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;
- (g) providing and maintaining locks and other devices so that the Property is reasonably secure;
- (h) 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;
- (i) 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;
- (j) work covered by any warranty held by the Lessor;
- (k) work which is the obligation (at law or by resolution or agreement) of the Lessor or another party whether arising before or after the Commencement Date;
- (l) work which is specified in any Special Conditions attached to this agreement or which was specified in any Letter of Offer from DIT to the Lessor before the Commencement Date;
- (m) works or improvements required to ensure DIT is able to continue to enjoy its rights under this agreement;
- (n) compliance with environmental law and other law;
- (o) capital and interest rate risk; and
- (p) works to common property as described in clause 5.

## **7.2 DIT's responsibility for negligent or malicious acts**

DIT 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 DIT, its employees, agents, tenants or permitted occupants.

## **7.3 Lessor elects to undertake work**

The Lessor may request DIT to carry out any of the Lessor's responsibilities under

clause 7.1. If DIT agrees to do so, it does so on the Lessor's behalf and at the Lessor's cost. Where the Lessor performs its responsibilities under clause 7.1 itself, the Lessor:

- (a) may inspect the Property for the purpose of carrying out repair and maintenance and other works, after giving DIT 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 any of its responsibilities under clause 7.1 within a reasonable time, DIT may:

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

### **8. TENANCY AND OCCUPANCY**

#### **8.1 Tenancy arrangements**

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

- (a) subletting or otherwise allowing South Australian Government personnel to occupy the Property; and
- (b) if DIT does not require the Property for housing South Australian Government personnel:
  - (i) subletting the Property on the private rental market; or
  - (ii) leaving the Property unoccupied.

### **9. USE OF THE PROPERTY**

#### **9.1 Vacant possession**

Unless the Property is already under the management of DIT, the Lessor must give vacant possession of the Property to DIT 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 DIT quiet enjoyment of the Property and must not interfere with the reasonable peace, comfort, or privacy of DIT in using the Property.

### **9.3 Permitted uses**

DIT 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**

DIT 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 Community Scheme, breaches the by-laws or rules of the Community Scheme.

### **9.5 Cleaning**

DIT will ensure that the Property is kept in a reasonable state of cleanliness.

### **9.6 Notice of damage**

DIT will notify the Lessor of damage to the Property.

### **9.7 Pets**

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

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

### **9.8 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) at the Property by or on behalf of DIT.

### **9.9 Solar energy systems**

The Lessor consents to the installation of solar energy systems (within the meaning given by the Act) at the Property by or on behalf of DIT where not otherwise prevented by any law or by-law, which may include electrical vehicle charging equipment and the connection of the solar energy systems to a virtual power plant network.

## **10. INSPECTIONS**

### **10.1 DIT inspection service**

DIT, as service provider of the DIT Total Asset Care Plan, will undertake inspections of the Property 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 tenancy arrangement in respect of the Property, the Lessor elects to keep inspections of the Property to a minimum.

## **10.3 Lease asset/building inspections**

If requested by the Lessor giving reasonable prior notice, DIT will arrange for an asset/building inspection of the Property on or about the date five (5) years after the Commencement Date and/or, if the right of renewal under clause 2.2 has been exercised, on or about the Initial Term Expiry Date.

## **11. ABATEMENT OF RENT**

If, other than due to DIT'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 DIT's ability to enjoy the Property or any of its amenity,

then DIT is entitled to either cease to pay rent for the relevant period or to reduce the rent in proportion to the extent that the Property is so affected.

## **12. END OF THE TERM**

### **12.1 DIT's general obligations**

At the end of this agreement, DIT must:

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

### **12.2 Tenant's fixtures**

DIT may seek the Lessor's permission to leave any tenant's fixtures or fittings in place at the end of this agreement. However:

- (a) in the case of any technology and communication services or solar energy systems installed by or on behalf of DIT under clause 9.8 or clause 9.9 which are an enhancement to the Property, the Lessor agrees that removal is at DIT's discretion; and
- (b) on removal of any tenant's fixtures or fittings, DIT will repair any damage caused by the removal.

### **12.3 Payments outstanding to DIT**

If, following the end of this agreement, any money is owing from the Lessor to DIT, the Lessor must pay DIT the amounts owing within fourteen (14) days of demand by DIT.

### **12.4 Holdover period**

If DIT continues to occupy the Property after the end of the term with the Lessor's consent ("holdover period"):

- (a) the provisions set out in this agreement (other than those regarding the term of this agreement) continue to apply;
- (b) subject to clause 3, the rent payable during the holdover period is the Market Rent

which was payable immediately prior to the holdover period; and

- (c) this agreement may be terminated by no less than:
  - (i) one (1) month's written notice from DIT to the Lessor; or
  - (ii) two (2) months' written notice from the Lessor to DIT,
- (d) 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 sell the Property or list the Property for sale, the Lessor must give DIT at least fourteen (14) days' prior 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 becoming the lessor.

### **13.3 Access 'by appointment'**

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

- (a) only be conducted when appointments are made with DIT at reasonable times and on reasonable notice; and
- (b) be for genuine prospective purchasers by appointment 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 without the prior written consent of DIT:

- (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 DIT to be bound by the terms and conditions of this agreement. The deed must be in terms reasonably acceptable to DIT, duly executed by the transferee and delivered to DIT.

### 13.7 Requirements on sale

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

## 14. INSURANCE OBLIGATIONS

### 14.1 Lessor to maintain policies

The Lessor must, for the duration of the agreement, 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;
- (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 DIT;
- (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 DIT requests it, the Lessor must provide DIT 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 adequate insurance cover, and, to the extent such cover is required under clause 14.1, the Lessor indemnifies DIT for any loss or damage to the Property (including all fixtures, fittings and chattels owned by the Lessor).

### 14.4 DIT's insurance obligations

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

## 15. RATES AND CHARGES

### **15.1 DIT to pay for usage**

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

- (a) 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.

### **15.2 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 metered water consumption);
- (c) levies and charges payable in respect of the Property under any other legislation; and
- (d) other statutory and council charges in respect of the Property.

### **15.3 Reimbursement to Lessor**

Where the Lessor pays any account for which DIT must pay under clause 15.1, DIT must reimburse the Lessor for the payment, if:

- (a) in the case of charges for metered water consumption, the Lessor provides DIT with a tax invoice within three months from the date of the relevant SA Water invoice and attaches a copy of such SA Water invoice; and
- (b) in the case of other accounts, the reimbursement is sought within eighteen (18) months of payment and the Lessor provides DIT with written notice, a copy of the relevant invoice and proof of payment.

## **16. DEFAULT AND TERMINATION**

### **16.1 Right to terminate**

Subject to clause 16.2, this agreement may only be terminated if:

- (a) DIT 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 seven (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 thirty (30) days from a written notice from the other party specifying the breach and requesting rectification, and that other party gives no less than fourteen (14) days written notice of termination;
- (d) a party is in material breach of one of the provisions relating to the DIT Total Asset Care Plan and that breach remains unremedied after thirty (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 fourteen (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.

## **16.2 Timeframes for Notices**

If a timeframe is specified in clause 16.1 and a different timeframe is required by the Act, then the requirements in the Act will apply.

## **16.3 Agreement to compensation**

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

## **16.4 Simultaneous Tenancy and DIT Total Asset Care Plan**

It is an essential term of this agreement that both the lease and the DIT Total Asset Care Plan run concurrently and end simultaneously to enable DIT to meet State Government requirements.

# **17. DISPUTE RESOLUTION**

## **17.1 Good faith negotiations**

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

## **17.2 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.

# **18. GENERAL PROVISIONS**

## **18.1 Lease Registration**

(a) The Lessor must, if permitted by law and at the Lessor's cost:

- (i) register this agreement as a lease; and
- (ii) register any variation of this agreement if the term of this agreement is extended; and
- (iii) deliver a copy of each registered document to DIT within four (4) weeks of the final execution of the document.

(b) If properly authorised in writing by the Lessor, DIT may assist with obtaining registration, at the Lessor's cost.

(c) If the Lessor does not complete the registration of this agreement within the time specified above, it appoints DIT 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 the registration of this agreement from the certificate of title for the Property, the Lessor must bear the associated costs.

## **18.2 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 18.1(a):

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

### **18.3 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.

### **18.4 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.

### **18.5 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.

### **18.6 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.

### **18.7 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) except as provided in clause 2.3, may be varied only by an instrument in writing signed by or on behalf of both the Lessor and DIT; and
- (c) subject to the Act, constitute the entire agreement between the Lessor and DIT as to its subject matter.

#### **18.8 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.

#### **18.9 No partnership**

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

#### **18.10 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 Reference Schedule (or as varied by written notice from time to time), by hand delivery, email or by prepaid post.
- (b) The Lessor must promptly notify DIT in writing of any change of address for service.
- (c) A notice given in accordance with clause 18.10(a) is taken to be received:
  - (i) if hand delivered, on delivery;
  - (ii) if sent by email, at the time specified in the *Electronic Communications Act 2000* (SA); and
  - (iii) if sent by prepaid post, three (3) Business Days after the date of posting.

#### **18.11 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.

#### **18.12 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.

## 18.13 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 DIT Total Asset Care Plan provided by DIT, are separate and distinct from the leasing 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 Reference Schedule or 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.

## 19. RESIDENTIAL TENANCIES ACT

### 19.1 Definition

In this agreement, "the Act" means the Residential Tenancy Act specified in Item 13 of the Reference Schedule.

### 19.2 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.

### 19.3 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.

### 19.4 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 DIT 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.

## **EXECUTED AS AN AGREEMENT**

## **Lessor**

[INSERT]

## **Lessee**

**THE COMMON SEAL of MINISTER FOR  
INFRASTRUCTURE AND TRANSPORT**  
was hereunto affixed by the authority of  
the Minister in the presence of:

### Signature of Witness

Print name of Witness

*Affix Seal Above*

## Position held

## Address

### Business hours phone number

Date: