

Office Accommodation Management Framework

Guideline 2: Space

Guideline 4: Occupancy

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Occupancy Agreement for government accommodation between Department of Public Works and agencies [agency name]

Mal Grierson
Director-General
Department of Public Works
Date:

Name:
Title:
Agency:
Date:

Between:

Department of Public Works (as 'Landlord').
 Level 6, 80 George Street
 Brisbane Qld 4000

and

The department or agency shown on the cover of this Occupancy Agreement (as 'Tenant').

1. Role of Department of Public Works

As a result of a decision by the Executive Government of the State of Queensland, the Landlord is responsible for:

- the control of government office accommodation
- the determination and review of government office accommodation and rental in buildings controlled by the Landlord,

on behalf of the State of Queensland.

2. This Occupancy Agreement

In accordance with the decision referred to, the Tenant agrees to lease from the Landlord certain premises on the terms and conditions as are set out in this Occupancy Agreement. Specific details in regard to particular premises will be detailed in a Lease Details Schedule (referred to as 'the Schedule'). The Occupancy Agreement and the Schedule comprise the documentation regulating the terms of occupancy of particular premises. The Schedule will be the prevailing document in the event of any inconsistency or conflict.

This Occupancy Agreement applies only to owned and major leased office/commercial buildings under the control of the Landlord. It does not apply to other office space leased from the private sector.

3. Binding agreement

The Landlord and the Tenant are both agencies of the State of Queensland. Accordingly, they do not have the capacity to enter into this Occupancy Agreement so that it is legally binding. However, the Landlord and the Tenant intend to act as if this Occupancy Agreement is legally binding.



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Part 1: Definitions and interpretation

1.1 Meaning of words

In this Occupancy Agreement, the following words have the following meanings:

Air-conditioning equipment	means all of the plant, controls and ductwork used for the supply of conditioned air in the building.
Building	means all buildings, structures and other improvements on the land.
Claim	means any action, claim, demand, damage, cost, loss or expense.
Commencement date	means the date given in the Schedule.
Common areas	means the areas of the land and the building designed or set aside by the Landlord for common use, for example, the foyers, walkways, passageways, staircases, escalators, lifts, common area toilets and kitchens/tearooms, and driveways (if any).
Elevators	means the lifts and escalators and all other related equipment in the building.
Fitout	means partitions, screens, doors, decorative items, built-in and loose furniture, and other associated items. Fitout does not include office equipment belonging to the Tenant.
Floor coverings	means all loose coverings on the floor of the Premises and includes fixed coverings such as carpets and tiles.
Land	means the lot on which the building (if any) is situated and includes all improvements and fixtures on the land.
Laws	includes statutes and subordinate legislation, ordinances and by-laws.
'Major Leased' buildings	means those major buildings in Brisbane where the majority of the building's space is leased by the State of Queensland from the private sector. Currently these are: State Law building, Capital Hill, 46 Charlotte St, 160 Ann St, Health, Forestry and Transport Houses.
Normal business hours	means the hours of 8 am to 6 pm Monday to Friday, except for public holidays.
Plant room	means a room or area constructed or reserved for plant and/or equipment which is required to operate the building or the building's services.
Premises	means that part or parts of the building leased to the Tenant as shown on the plan(s) attached to the Schedule.
Rent	means the monthly amount or amounts specified in the Schedule subject to review as stated in Part 3 of this Occupancy Agreement or the Schedule. This is a fully gross rent, being inclusive of normal outgoing expenses paid by the Landlord.
Rent review date	means the rent review dates specified in the Schedule.
Schedule	means the Lease Details Schedule which contains specific details regarding a lease of particular premises.
Services	means the services to or of the building, land or both provided by the Landlord or by any authority (including water, gas and electricity supply, air-conditioning, elevators and toilets) and includes grease traps and telecommunication equipment.



1.2 Meaning of phrases

In this Occupancy Agreement, unless a contrary intention appears:

- (a) including when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind
- (b) a reference to a statute, ordinance, by-law, code or other law includes regulations and other instruments made under it and any consolidation, amendment, re-enactment or replacement of it occurring at any time
- (c) where there is any inconsistency between the provisions of this Occupancy Agreement and the *Property Law Act 1974* and the *Land Title Act 1994*, the provisions of this Occupancy Agreement prevail, to the extent allowed at law.

1.3 Headings

Headings to parts, clauses and sub-clauses of this document are inserted for convenience and do not affect the meaning of this Occupancy Agreement.

Part 2: Term

2.1 Term of Occupancy Agreement

This Occupancy Agreement will continue from the date of signing until it is reviewed and altered by agreement between both parties.

The Landlord leases the premises to the Tenant on a continuing basis, subject to Parts 13 and 17.

Part 3: Rent and rent review

3.1 Rent

3.1.1 Tenant to pay rent: the Tenant must pay rent to the Landlord.

The rent will be determined according to the category of the space (e.g., office, basement storage, and car parking) on a whole-of-building approach, so the same rental rate will apply to that category, throughout the building. Retail space (if present) will be subject to separate rental rates.

3.1.2 Instalments of rent

The Tenant must pay the rent in monthly installments, in advance. Invoices for a month will normally be issued at the beginning of that month, with credit terms of fourteen (14) days.

3.1.3 Adjustments for occupation and vacation dates

If occupancy of any particular premises is taken up other than at the commencement of the month, then the rent will commence on the first day of the month following the date of occupancy. If occupancy of any particular premises ceases other than at month's end, then rent will cease at the end of the month following the date of vacating.



3.2 Rent review

Rents are reviewed periodically to market. It is assumed that each building is occupied by the State as a single tenant on an ongoing basis, and that an appropriate incentive (usually by way of the Office Accommodation Program) has been provided to the tenant.

In exceptional circumstances another method of rent review may be applied, if agreed and specified in the Schedule.

The rent for ‘Major Leased’ buildings leases is negotiated in accordance with the head lease between the building owner and the Department of Public Works (DPW) on behalf of the State of Queensland. Tenants in ‘Major Leased’ buildings may not dispute the negotiated rent.

The following clauses of this Part 3 do not apply to ‘Major Leased’ buildings.

3.2.1 Timing of rent reviews

The rent review date will be shown in the Schedule. Generally, rent will be reviewed on 1 July 2001 and every two years thereafter.

3.2.2 Method of rent review

From each rent review date the rent will be the greater of:

- (a) the independently assessed market rent for the premises and other spaces leased, such as car parking bays, at the rent review date as agreed or determined pursuant to clauses 3.2.4 and 3.2.5
or
- (b) the rent paid by the Tenant during the previous year for the lease of the premises or other particular spaces.

However, if there is a general downturn in the property market—indicated by the rents for the majority of the buildings in a particular geographic region being assessed to fall—those lower assessed rents will be applied.

3.2.3 Landlord must notify Tenant of proposed rent

The Landlord must give notice to the Tenant of what it considers to be the rent at the rent review date, at least six (6) months before that date. If requested by the Tenant, supporting evidence of the rental amount will be provided.

3.2.4 Agreement on rent

The Tenant may accept the Landlord’s proposed market rent under clause 3.2.3, in which case it becomes the rent. In the event that the Tenant does not make a written request to the Landlord pursuant to clause 3.2.5(a), within two (2) months of notification of the proposed rent, the Tenant is deemed to have accepted the market rent proposed by the Landlord.

3.2.5 No agreement

Where the Tenant disagrees with the rent notified by the Landlord under clause 3.2.3 the following procedure will apply:

- (a) The Tenant may submit a written request to the Landlord to have the rental reassessed. The submission must include the Tenant’s assessment of market rental together with supporting evidence. This request must be made within two (2) months of notification of the proposed rent.
- (b) The Landlord will consider the Tenant’s assessment and report back in writing within one (1) month of receiving the request or such extended period as agreed between the parties.

- (c) Should the Tenant be dissatisfied with the Landlord’s decision, written advice should be forwarded to the Landlord seeking the appointment of a valuer as an independent expert to determine the rent.
- (d) Within fourteen (14) days of receiving a request for the appointment of an valuer, the Landlord will submit to the Tenant a panel of three valuers with details of their fee proposals. The Tenant will choose a valuer from the panel. The Landlord is prepared to provide another panel of three valuers if the Tenant is not satisfied with the initial panel.
- (e) The valuer will hear and accept written and oral submissions from both parties. Where possible a joint briefing meeting will be arranged.
- (f) The valuer will be required to present the findings in writing to both parties (where possible at a joint meeting). The valuer’s decision will be final and must be accepted by both parties with no right to further appeal.
- (g) The valuer’s fees shall be borne in total by the Tenant.

3.2.6 The valuer

The valuer is bound by the provisions of this Part 3 and will:

- (a) determine the market rent for the premises as at the rent review date
- (b) be registered with the Valuers Registration Board of Queensland, be a member of the Australian Property Institute and have not fewer than five years experience carrying out rental valuations of premises of the same nature as the premises
- (c) take no account of any increase in the rental value of the premises due to the fitout by either the Landlord or the Tenant.

3.2.7 The premises

For the purposes of this clause, the area of the premises (and any other leased space) is to be accepted to be the area or areas stated in the Schedule. This area is determined in conformance with the Property Council of Australia’s *Method of Measurement for Lettable Area* guidelines, effective 1 March 1997.

3.2.8 Rent pending determination

Pending determination of the market rent, the Tenant will continue paying rent at the rate applying immediately before the rent review date.

Part 4: Other payments by the tenant

4.1 Electricity

4.1.1 Paying for electricity

The Tenant must pay the Landlord for the electricity supplied to the premises.

4.1.2 Lowest Tariff

The Landlord will use its best endeavours to arrange for the lowest cost of electricity available.

4.2 Service charges

4.2.1 Special and unusual services

The Tenant must pay the cost of all agreed special and unusual cleaning, refuse or other services provided to the premises.

4.2.2 Water, cleaning and refuse services

The Tenant is not required to pay for:

- (a) water meter rental and charges
- (b) assessments for reasonable water use in the premises
- (c) costs or charges relating to common area cleaning, refuse or other services for the premises unless they come within clause 4.2.1.

4.2.3 Cleaning costs

The Landlord requires the Tenant to use cleaning services supplied by the Landlord and:

- (a) the Tenant must pay the Landlord for the cost of cleaning the premises
- (b) the Landlord's cleaners must have reasonable access to the premises for cleaning purposes
- (c) if the cleaning service provided is not of a satisfactory commercial standard, the Tenant may give seven (7) days notice in writing to the Landlord requiring the service to be of a satisfactory commercial standard, failing which requirement after seven (7) days:
 - (i) the Tenant is not required to pay the cleaning costs of the premises
 - (ii) the Tenant may refuse access for the Landlord's cleaners to the premises.

4.2.4 Legal costs

Each party will bear their own costs in relation to the preparation and signing of this Occupancy Agreement and the Schedule(s).

The Tenant must pay the Landlord's reasonable legal costs relating to litigation commenced by or against the Tenant as the tenant of the premises and to which the Landlord is made a party, unless the Landlord is at fault. Conversely, the Landlord must pay the Tenant's reasonable legal costs relating to litigation commenced by or against the Landlord as the Landlord of the premises and to which the Tenant is made a party, unless the Tenant is at fault.

4.2.5 After-hours air-conditioning costs

Where the building is air conditioned, the Landlord will air-condition the premises outside normal business hours following a reasonable request by the Tenant. The Tenant must pay for the cost of operating the air-conditioning equipment outside normal business hours at a rate set by the Landlord having regard to operation costs and comparable market rates. That rate may be reviewed at any time:

- (a) by the parties, who may agree on a new rate
or
- (b) by an expert appointed by the current chairperson of the association of Consulting Engineers Australia, who may determine a new rate and whose costs must be borne equally by the parties.

4.2.6 Security

If security services are provided in accordance with government policy or at the Tenant’s request, the Landlord requires the Tenant to use those services supplied by the Landlord and to pay the cost of those services.

4.3 Other payments

4.3.1 Payments to others

The Tenant must make payments payable under this part to persons other than the Landlord, promptly.

4.3.2 Goods and services tax

From the date when the Landlord becomes liable for goods and services tax in respect of rent, operating expenses or any other services or facilities or supply provided by the Landlord to the Tenant under this Occupancy Agreement, the Landlord shall be entitled to be reimbursed by the Tenant upon demand.

4.3.3 Late payments to the Landlord

If the Tenant does not pay:

(a) rent within fourteen (14) days of the due date for payment

or

(b) any other payment due to the Landlord within one (1) month of its due date,

the Tenant must pay interest at a rate equal to the current Commonwealth Bank indicator lending rate (or a similar rate reasonably selected by the Landlord, if the Commonwealth Bank rate is not published) plus 2 per cent per annum on that amount from the due date until it is paid.

4.3.4 Disputed charges

Disputed charges advised by the Tenant will be investigated and resolved as soon as possible, and within twenty-one (21) days from the notification of the dispute. Payment of that element of the charges that is disputed may be withheld by the Tenant until the issue is resolved. Charges not disputed must be paid on time or the charges become subject to clause 4.3.3.

Part 5: Tenant’s obligations

5.1 Tenant’s use of the premises

The Tenant must not use the premises for any purpose other than as agreed without the Landlord’s consent. Consent will not be unreasonably refused, regard being had to, amongst other things, any other Tenants and the value and amenity of the building.

5.2 Compliance with laws

The Tenant must comply with all laws relating to the Tenant’s use of the premises and this Occupancy Agreement.

5.3 Tenant's conduct

The Tenant must:

- (a) comply with all rules made by the Landlord relating to the building's occupation and use unless:
 - (i) the Landlord has not notified the Tenant about them
 - or
 - (ii) they are inconsistent with this Occupancy Agreement
- (b) comply with all reasonable rules made by the Landlord about fire drills
- (c) not do anything in the premises or on the land, which is, in the Landlord's reasonable opinion, annoying, dangerous or causes a nuisance to the Landlord or any other person
- (d) accept the Landlord's need to conduct annual integrated tests of building services, provided reasonable notice (normally one month) is given by the Landlord and the tests do not impact unreasonably on the Tenant's business. Services may be interrupted during the testing, but this will be minimised as much as possible.

5.4 Condition of the premises

5.4.1 Tenant must maintain premises

- (a) The Tenant must:
 - (i) maintain the premises in good and tenable repair and condition, having regard to the condition of the premises at the commencement date, and fair wear and tear, fire, explosion, flood, storm, inevitable accident, act of God, riot, civil commotion or war excepted
 - (ii) repair the premises where damage is caused to the premises by the Tenant's negligence or deliberate act
- (b) However, despite any other clause in this Occupancy Agreement, the Tenant is not obliged to:
 - (i) make structural alterations, additions or repairs to the premises or building
 - (ii) install or replace capital items, unless they are required because of the Tenant's negligence or deliberate act.
- (c) In addition, the Tenant must maintain and if necessary replace any equipment, fixtures and fittings that are required by the Tenant for its use of the premises and which are not standard office fitout. This equipment, fixtures or fittings could include such items as a particular security system, air conditioning system or power supply. Should the Tenant want the Landlord to be responsible for the maintenance and replacement of these items, the Tenant must accept that this shall be reflected in a higher rent rate. The Landlord will determine a reasonable cost for the service (to be incorporated in the rent). If the Tenant does not accept the cost, the Landlord may not provide the service.

5.4.2 Cleaning and painting

The Tenant must:

- (a) keep the premises clean and free of rubbish
- (b) act reasonably to keep the premises free of vermin
- (c) paint the parts of the premises that have been previously painted:
 - (i) when painting is reasonably required
 - (ii) at the end of the occupancy, if reasonably required.

5.4.3 Tenant not to interfere with services

The Tenant must:

- (a) not interfere with any services without the Landlord's consent
- (b) clear any blockages in pipes or drains:-
 - (i) which start in the premises, or
 - (ii) between the premises and the entry of the pipes or drains into any trunk drain, and
 - (iii) if required, use tradesmen nominated by the Landlord for this purpose.

5.4.4 Prohibited actions

The Tenant must not:

- (a) while observing the maximum floor loading when advised by the Landlord, allow the floors of the premises to be damaged by overloading
- (b) paint or attach any signs or notices to the premises or building without the Landlords' consent, which consent will not be unreasonably withheld, having regard to the design, appearance and presentation of the building
- (c) use any castors on furniture in the premises that are likely to cause excessive wear or damage to the floor coverings
- (d) bring into the building any explosive, radioactive, flammable or corrosive chemicals unless they are normally used by the Tenant and they are confined in containers suitable for retail sale
- (e) do anything in the premises likely to make any insurance policy void or voidable or raise the insurance premium
- (f) use auxiliary electricity or gas supplies unless electricity or gas supplied through meters installed on the land has failed or is restricted.

5.5 Replacement of glass and light fittings

Re-lamping the premises is the Landlord's responsibility, and this will normally be done on a six-year cycle. The Tenant must replace all:

- (a) defective or inoperable light bulbs, starters and tubes in the premises, if the last identified re-lamping was less than six years before
- (b) broken glass in the premises that has been damaged by the Tenant's negligence or deliberate act.

The Tenant is not liable for damage caused by:

- (i) inherent defect in the glass or the building
- (ii) the fitting of the glass
- (iii) the Landlord's negligence or deliberate act.

5.6 Notice of damage

The Tenant must promptly notify the Landlord in writing of any damage to the premises or to any of the services, of which the Tenant is aware or ought to be aware.

5.7 Obstruction of common areas and passageways

The Tenant shall not obstruct or permit to be obstructed by its employees, service suppliers and others over whom it may have control, any part of the common areas and passageways by leaving or placing therein any article or thing, or by any meeting of persons.

Part 6: Alterations required by the tenant

6.1 Landlord’s consent for work

6.1.1 The Tenant must not alter the premises or do any other work without the Landlord’s prior written consent. Such consent may not be unreasonably withheld. In ‘Major Leased’ buildings the building owner’s consent will also be required. When seeking the Landlord’s consent to work, the Tenant must provide the Landlord with detailed drawings and particulars of the work proposed, including mechanical, fire and electrical services drawings as appropriate.

6.1.2 In this part, ‘work’ includes:

- (a) the installation and removal of partitions and any associated work
- (b) alterations to the premises or services to the premises needed because of:
 - (i) the Tenant’s use of the premises
 - (ii) the number or gender of the employees
 or
 - (iii) requirements of any laws.

6.1.3 The Tenant must:

- (a) ensure that the work:
 - (i) is in accordance with the detailed drawings and particulars approved by the Landlord
 - (ii) is carried out in a professional manner
- (b) provide at its own cost a plan of the premises including alterations
- (c) pay the Landlord’s reasonable costs of consenting to the work.

6.2 Work affecting electrical and other services

6.2.1 The Tenant must not install any equipment in the premises that may overload the electrical and other building services (which includes cables, electricity boards or sub-boards and air conditioning) without the prior written consent of the Landlord.

6.2.2 The Landlord’s consent will not be withheld if:

- (a) the Tenant pays the Landlord’s reasonable costs of alterations to the building services so that they are not overloaded
- (b) the Tenant pays the costs of compliance with any laws.

6.3 Indemnity for Landlord

The Tenant indemnifies the Landlord against all loss and damage to the premises and the building relating to the work.

Part 7: Tenant’s rights

7.1 Quiet enjoyment

Except where this Occupancy Agreement provides otherwise, the Landlord must not disturb or interrupt the Tenant’s occupation and use of the premises.

7.2 The Tenant's use of the common areas

The Tenant may reasonably use the common areas for their intended purposes.

7.3 Cabling

7.3.1 The Tenant may use risers or spaces within the building provided for the running of computer and other electrical cabling for the Tenant's use, for the running of that cabling. The Tenant must comply with government policy regarding cabling—currently contained in Queensland Information Standard Number 32.

7.3.2 The Tenant must ensure:

- (a) the existing penetrations and cable trays are used, and the running of computer and other electrical cables in the building does not cause irreparable damage to the building
- (b) the integrity of the fire ratings is maintained
- (c) the building is secured and fire stopping is reinstated where the computer and other electrical cables are run
- (d) the use of the building for the running of the computer and other cabling is reasonable, having regard to the needs of the other tenants or prospective tenants
- (e) all cables are to be labelled with sufficient detail to identify the tenant using the cables and the particular premises connected to the cables
- (e) all redundant cables belonging to the Tenant are removed.

Part 8: Landlord's obligations

8.1 Suitability of premises

The Landlord will use its best endeavours to ensure that the premises are reasonably fit for the agreed use(s).

8.2 Capacity of electrical supply

The Landlord must not reduce the capacity of the electrical supply available to the premises below the level at the commencement date.

8.3 Maintenance of the building

The Landlord:

- (a) will take reasonable steps to maintain the building and the common areas in a good, clean and safe condition
- (b) will not be in breach of its obligations under this clause because of:
 - (i) any temporary breakdown or fault in the services
 - or
 - (ii) any damage to the building caused by the Tenant.

8.4 Elevator and air-conditioning services

8.4.1 Where air-conditioning and elevators service the building and premises, the Landlord will:

- (a) use its best endeavours to provide and maintain in effective operational condition:
 - (i) elevators to the building
 - (ii) conditioned air to the premises during normal business hours, except when the relevant equipment is shut down for maintenance or repairs
- (b) bear the cost of providing the elevators and air-conditioning equipment, including electricity costs, except in 'Major Leased' buildings where the electricity costs may be borne by the Tenant.

8.4.2 If a Tenant requires specialised air-conditioning to temperature and humidity tolerances more stringent than for normal office space, then the cost of providing such services, if feasible, will be reflected in the rent paid by the Tenant.

8.5 Maintenance of air-conditioning equipment

The Landlord must:

- (a) clean, maintain and treat the air-conditioning equipment:
 - (i) in a reasonable manner
 - (ii) to a suitable working standard
- (b) when asked by the Tenant, provide written information about that cleaning, maintenance (which must comply with AS3666 *Air Handling and Water Systems of Buildings—Microbial control* and any other relevant Australian Standard) and treatment.

8.6 Failure of building services

Notwithstanding any implication or rule of law to the contrary, the Landlord will not be liable to the Tenant for any loss, damage or claim suffered by the Tenant for the malfunction, failure or interruption to the water, gas, electricity, air conditioning equipment or elevators or any other service in the premises or to the building or for the blockage of any drains, gutters, downpipes or sewerage course. If there is any malfunction or failure, the Landlord will use its best endeavours to restore the affected services within industry accepted timeframes.

8.7 Installation by Tenant

Clauses 8.4, 8.5 and 8.6 do not apply to air-conditioning if the Tenant has installed its own air-conditioning equipment. If the Tenant has installed its own air-conditioning equipment, then the obligations under clause 8.5 apply to the Tenant.

8.8 Moisture penetration

8.8.1 Repair by Landlord

If there is moisture penetration into the premises which causes the Tenant's enjoyment of the premises to be unreasonably affected or interrupted, the Landlord must, following notification to it by the Tenant about the moisture penetration, repair and, if necessary, modify the building to stop the moisture penetration re-occurring.



8.8.2 Damage

Notwithstanding any implication or rule of law to the contrary the Landlord will not be liable for any damage claim or loss to the Tenant in relation to any moisture penetration within the premises or the building.

8.9 Asbestos

The Landlord, at the Landlord’s cost, must promptly and safely remove (if reasonably required), or treat all asbestos in the building or the premises so that it is not a health hazard.

8.10 Floor coverings in the premises

8.10.1 This clause 8.10 applies if there are floor coverings in the premises not laid by the Tenant.

8.10.2 If the Tenant requests the Landlord to replace the floor coverings for reasons other than fair wear and tear, then all costs associated with the replacement will be paid by the Tenant. If the floor coverings need to be replaced because they are worn due to fair wear and tear then the Landlord will do so at the Landlord’s cost. In these circumstances the Landlord will pay the reasonable costs for double handling furniture, and equipment.

8.11 Environmental matters

The Landlord must comply with all environmental laws.

8.12 Rates and taxes

The Landlord must pay all rates, taxes, charges and other outgoings relating to the land, except as provided under clause 4.2.1.

8.13 Landlord must provide plan

The Landlord will provide at its own cost one copy of the relevant floor plan(s) of the premises for attachment to the Schedule. The provision of extra copies may be subject to a fee to reimburse costs.



Part 9: Landlord’s rights

9.1 Landlord’s entry to the premises

The Landlord may, after giving reasonable notice to the Tenant (except in an emergency, if it is impracticable to do so) enter the premises to:

- (a) inspect them to ensure the Tenant’s compliance with its obligation to maintain the premises under clause 5.4.1
- (b) do repairs, building works or testing of building services that are:
 - (i) required by law
 - (ii) necessary to ensure that:
 - A. the building or the premises is safe
 - B. services continue to operate
- (c) show the premises, at any time during the occupancy to:
 - (i) potential purchasers of the building
 - (ii) potential tenants.

9.2 Landlord’s control of common areas

The Landlord controls the common areas.

9.3 Landlord’s right to exclude others

The Landlord may exclude any person from the Land and Building unless that person is:

- (a) the Tenant
- (b) on the land or in the building at the Tenant’s invitation.

9.4 Landlord may make rules

The Landlord may make and amend rules relating to the occupation and use of the building and the land. The rules should not unreasonably hinder the tenant in going about its business.

9.5 Building work by Landlord

The Landlord may undertake building work relating to the building and in doing so:

- (a) may interrupt the services
- (b) must minimise, as far as is reasonably possible, any inconvenience or interruption to the Tenant, and give reasonable notice of any interruptions to services.

9.6 Easements

The Landlord may enter into any agreements relating to the land or building (including the granting of easements) for the benefit of other persons, which are reasonably required for:

- (a) access to the land or adjacent land
- (b) the provision of services
- (c) the support of structures on adjacent land.

9.7 Landlord’s rights subject to Occupancy Agreement

The Landlord’s rights under this Part 9 are subject to the Occupancy Agreement and the Landlord will not do anything that substantially and permanently affects the Tenant’s enjoyment of its rights under the Occupancy Agreement.

9.8 Notice required

Despite anything contained in this Occupancy Agreement, the Landlord is not liable for any loss or damage that the Tenant suffers because of a matter relating to the premises or building unless:

- (a) the Landlord has actual or constructive knowledge of that matter relating to the premises or building that is likely to cause loss or damage to the Tenant
- or
- (b) the Tenant gives notice of it to the Landlord within a reasonable time (where the Tenant has knowledge of that matter).

9.9 Roof and exterior sides

The Landlord expressly reserves the sole and exclusive right to the use of the roof and exterior sides of the building, including the right to erect and display advertising or other signs thereon. The Tenant shall not be permitted to place or erect any antennae or other apparatus on the sides or roof of the building unless prior approval of the Landlord is obtained. Such approval will not be unreasonably withheld.

9.10 Plant room

The Landlord expressly reserves the sole and exclusive right to the use and occupation of the plant room. Tenant access to the plant room is prohibited.

9.11 Structures in common areas

The Landlord expressly reserves the right from time to time to erect, remove and re-erect kiosks, free standing signs, seats and other structures in any part of the common areas, and to grant to any person the exclusive use of any such kiosks or structures for such purposes for such periods and upon such terms and conditions as the Landlord in its absolute discretion may think fit.

Part 10: Damage to the premises or building

10.1 Termination because of damage

- 10.1.1** The Landlord may terminate a lease of premises by written notice to the Tenant if the building is damaged by any cause so that the Tenant is unable to occupy or use the premises (or any part of it) for its business.
- 10.1.2** The Tenant may terminate a lease of premises by written notice to the Landlord if, within a reasonable time after the damage to the building occurred (but no longer than six (6) months), the Landlord has not substantially commenced restoring the premises or the building.
- 10.1.3** Termination of a lease of premises under clause 10 does not affect claims by the Landlord or the Tenant, arising because of prior breaches of the Occupancy Agreement.



10.2 Tenant's obligations on termination

If a lease of premises is terminated under clause 10.1, the Tenant is not required to:

- (a) make good or repair the premises
- (b) remove any property from the land.

10.3 Suspension of Tenant's obligations

10.3.1 Where the building or the premises are wholly or partially unfit for occupation or use by the Tenant in its business because of damage to the building or to the premises, the Tenant's obligations to:

- (a) pay rent (or a part of the rent, according to the extent of the damage)
 - (b) repair and maintain the premises
- are suspended.

10.3.2 The Landlord may not enforce the Tenant's obligations in clause 10.3.1 until the building and premises have been restored to:

- (a) a condition fit for the Tenant's use
- (b) a standard not less than as at the commencement date.

10.3.3 This clause 10.3 does not apply if the damage to the building or the premises is caused by the Tenant's negligence or deliberate act.

Part 11: Dealings with the land or the premises

11.1 Sale of the land

The Landlord may decide to dispose of its interest in the premises or the building at any time in which case a lease in respect of those premises will cease to have effect and will be at an end. Normally at least six (6) months notice will be given to the Tenant in these circumstances.

11.2 Occupancy following sale

Any subsequent occupancy of the premises or the building by the Tenant may be subject to those commercial lease terms and conditions which may form part of the sale conditions between the purchaser and the Landlord.

11.3 Tenant's dealings with a lease of premises

The Tenant may not sub-lease, transfer or assign a lease of premises or in any way part with possession or licence the premises.

Part 12: Risk and Indemnities

12.1 Risk

The Tenant occupies the premises at the Tenant's own risk with regards to loss and damage, unless any loss or damage is caused or contributed to by the Landlord's negligence or deliberate act.



12.2 Indemnities

The Tenant indemnifies the Landlord against any claim made because of:

- (a) damage to property or injury to persons in the building and the premises caused by the Tenant's failure to comply with:
 - (i) its obligations under this Occupancy Agreement
 - (ii) any rules relating to the building that are binding on the Tenant under clause 5.3
- (b) the Tenant's negligent use of any services
- (c) the overflow, leakage or escape of water, gas, electricity, fire or other substances from the premises caused or contributed to by the Tenant
- (d) the Tenant's failure to notify the Landlord of any defect in the Landlord's fire equipment, or property in the premises of which the Tenant knew or should have known
- (e) loss or damage to property, or injury to persons caused by the Tenant's negligent use of the premises
- (f) any personal injury to any person in or about the premises, unless the Landlord caused or substantially contributed to the injury because of its negligence or deliberate act.

Part 13: Tenant's default

13.1 Termination for default

The Landlord may terminate a lease of premises if the Tenant:

- (a) has breached any of the Occupancy Agreement's terms
- (b) fails to rectify the breach within a reasonable time after service of a notice on it by the Landlord that:
 - (i) specifies the breach
 - (ii) requires the Tenant to rectify the breach.

13.2 Landlord's method of termination

The landlord may act to terminate a lease of premises pursuant to clause 13.1 by:

- (a) re-entry of the premises without any further demand or notice to the Tenant
or
- (b) notice of termination to the Tenant.

13.3 Tenant's property after termination

Following re-entry of the premises under clause 13.2(a), the Landlord:

- (a) may remove the Tenant's property from the premises
- (b) may store that property at the Tenant's cost and risk
- (c) must use reasonable care in moving and storing that property.

13.4 Landlord's rights following abandonment

If the Tenant abandons the premises before the end of the occupancy, it must pay rent and any other sums payable under this Occupancy Agreement until the Landlord terminates the lease.



13.5 Other reasons allowing termination by the Landlord

- 13.5.1** The Landlord may, by notice to the Tenant, terminate a lease of premises and require the Tenant to vacate the premises at any time provided that:
- (b) there is a change in the Government's accommodation strategy with respect to the building, requiring the movement of the Tenant from the premises
 - or
 - (c) there is a change in government policy requiring the Tenant to vacate.
- 13.5.2** The lease of Premises will terminate six (6) months from the date of service on the Tenant of that notice or as otherwise agreed. The Landlord will, when terminating pursuant to this clause:
- (b) contribute to the reasonable costs of moving the Tenant's chattels to an alternative premises
 - (c) support the Tenant in any approach it may make to government for funding supplementation to meet any difference in rental charged to the Tenant in the alternative premises to which the Tenant moves provided that those premises are not greater in area than the current premises and that the rental payable by the Tenant in the alternative premises is reasonable in all of the circumstances; and
- 13.5.3** The Tenant will not be obliged to 'make good' the premises in accordance with clause 14.1 (unless otherwise agreed).

Part 14: End of occupancy

14.1 Tenant's obligations at end of occupancy

At the end of a lease of premises, the Tenant must leave the premises in the State described in clause 5.4.1 (a)(i).

14.2 Tenant's removal of property

- 14.2.1** Subject to clause 14.2.3, the Tenant must remove its property, (including fitout) from any premises at the end of a lease of premises within one month of being given notice to do so by the Landlord. The notice must not be given earlier than one month before the end of the lease. If the landlord and incoming tenant(s) agree, serviceable fitout may remain for the incoming tenants' use.
- 14.2.2** The Tenant must repair any damage to the premises caused by removal of its property.
- 14.2.3** Unless directed by the Landlord, the Tenant is not required to remove property at the end of the lease if that removal will require structural repairs to be made to the building, or cause substantial damage to the premises.

14.3 Consequences of Tenant's failure to remove property

- 14.3.1** If the Tenant does not remove its property at the end of the lease of premises, the property becomes the property of the Landlord.
- 14.3.2** The Tenant must pay to the Landlord all costs associated with removal of that property by the Landlord and with repair of any damage to the premises caused by the removal.





Part 15: Other matters

15.1 Smoking in the building

The Landlord and Tenant will both take reasonable steps to ensure that no person smokes in the building.

15.2 Disputes

15.2.1 Parties to try to resolve the dispute

If there is a dispute between the Landlord and the Tenant they will try to resolve that dispute in good faith and on a commercially realistic basis within fourteen (14) days of written notice having been given by one party to the other that the dispute exists.

15.2.2 Failure to resolve dispute

If the parties cannot resolve the dispute then the Landlord and Tenant will each appoint one person to meet and attempt to resolve the dispute in an atmosphere of good faith and on a commercially realistic basis. If agreement still cannot be reached in a reasonable time, then the matter will be escalated to the appropriate level in the respective departments/agencies. The Government Office Accommodation Committee can, if all previous efforts fail, be requested by either party to arbitrate on the dispute.

15.3 Waiver

The Landlord's failure to enforce any of the Tenant's obligations under this Occupancy Agreement, is not a waiver of the Landlord's right to require the Tenant to comply with all of its obligations, and waiver by the Landlord of a particular obligation at a particular time does not amount to waiver of the Landlord's right to require the Tenant to comply with this Occupancy Agreement's provisions.

15.4 Heritage building

15.4.1 Application of this clause

This clause 15.4 will only apply if:

- (a) the building or any part of it is listed on the Heritage Register pursuant to the *Queensland Heritage Act 1992*
- or
- (b) the Landlord notifies the Tenant that the building is of heritage significance.

15.4.2 Maintenance and repair

Notwithstanding any other clause in this Occupancy Agreement any works relating to the premises, the repair and maintenance of the premises, the repair and replacement of any fixtures and fittings (collectively 'any works') shall be carried out:

- (a) by or under the direction and control of the Director-General for the time being of the DPW or such other government departments as the Landlord may nominate
- (b) unless specifically stipulated to the contrary any works shall be attended to by the DPW.





15.5 Conflict of provisions – ‘Major Leased’ buildings

Where there is a conflict between the provisions of this Occupancy Agreement and the headlease for a Major Leased building, the provisions of the headlease shall prevail. A Tenant in a Major Leased building must comply with the terms, conditions and covenants of the headlease.

Part 16: Car parking

16.1 Parking rights

16.1.1 The Landlord grants to the Tenant, during the term of the lease of Premises, a Licence to:

- (a) park a motor vehicle in each of the car parks specified in the Schedule
- (b) together with all other persons having the same right, to use the driveways, entrances and exits in and to the car parks, for access to the licensed car parks.

16.1.2 Where applicable, the Tenant will pay a licence fee for rights granted by the Landlord under this Part 16 agreed between the Landlord and the Tenant at the commencement of the lease of premises. The licence fee will be reviewed at the same time and in the same manner as rent is reviewed under Part 3, or in the headlease of a ‘Major Leased’ building.

Part 17: Tenancy changes

17.1 Changes

Any changes to the premises (location or size, but not car parking) or to the Tenant’s name, must be documented through a new Schedule, and agreed and signed off by the Tenant and the Landlord.

17.2 Additional area

17.2.1 If a Tenant requires additional area then the Tenant must formally advise the Landlord of the additional area required and the proposed commencement date.

17.2.2 The Landlord will use its best endeavours to provide the additional area by the nominated commencement date:

- (a) adjacent to the existing premises
 - (b) within the same building
- or
- (c) in another suitable building; provided that available space in government-owned buildings or in existing leased non-government buildings is to be occupied by the Tenant in preference to space obtained by the acquisition of a new non-government lease.

17.2.3 If the additional area is not functionally suitable for government office accommodation, the Landlord must carry out remedial works within a reasonable time.

17.2.4 If the Landlord does not undertake to carry out appropriate remedial work, or fails to carry out the work within a reasonable time, the Landlord must offer the Tenant alternative premises which are functionally suitable for government office accommodation, subject to the provisions of clause 17.2.2.



17.3 Vacating premises

17.3.1 Prior notice by Tenant

If the Tenant proposes to vacate its premises, then the Tenant will provide prior notice of the proposal to the Landlord:

- (a) at least six (6) months in advance of the proposed vacation for areas smaller than 1000m² or
- (b) at least twelve (12) months in advance of the proposed vacation for areas 1000m² or greater.

17.3.2 Proposal assessment

The Landlord will consider the proposal, consult with the Tenant, and assess the proposal for:

- (a) its consistency with government policy and/or Cabinet decisions
- (b) its costs and benefits to the Tenant
- (c) its cost and benefits to government as a whole
- (d) its consistency with the Government’s current strategic accommodation planning objectives
- (e) its consistency with the Tenant’s service delivery requirements.

Following the above assessment, the Landlord will either:

- (i) reject the proposal and provide reasons to the Tenant or
- (ii) approve the proposal and advise the Tenant of any conditions which apply.

17.3.3 Continuity of rent

If continuity of rent is a condition which the Landlord applies to an approval to vacate a premises then the Landlord will determine and advise the Tenant of the period for which rent must continue to be paid for the vacated premises. The Landlord will determine the period for continuity of rent as that period which represents the time reasonably required to obtain a new Tenant for the space vacated. This period will normally be no more than twelve (12) months from the Tenant’s formal notification of its proposed vacation date. During this time, the Landlord will take all reasonable steps to secure a new Tenant. The Tenant’s rental continuity will cease at the time that the new tenant’s rental commences, or upon expiry of the notified period, whichever is the sooner.

17.3.4 Consultation and determination

If the Tenant disagrees with the Landlord’s decision, then the Tenant may further consult with the Landlord and/or refer the proposal to the Government Office Accommodation Committee for determination.

17.3.5 Prior notice by Landlord

If the Landlord proposes that the Tenant vacates its premises, then the Landlord will normally provide prior notice of the proposal to the Tenant at least six (6) months in advance of the proposed vacation.

The Landlord will include in its proposal any associated conditions or contributions and will normally contribute to or fund any reasonable fitout or direct relocation costs associated with the proposal.

17.3.6 Consultation and determination

If the Landlord and Tenant cannot reach agreement through consultation in relation to the Landlord’s proposal, then either party may refer the proposal to the Government Office Accommodation Committee for determination.



17.4 Rent changes

17.4.1 Tenant’s rent

The Tenant will pay the rent applicable to the premises occupied following any relocation and will comply with any conditions associated with the vacation of the original premises. Additional budget supplementation for the Tenant’s rent, or revenue retention of saved rent are matters for resolution between the Tenant and Queensland Treasury, in the budget context. The Landlord will provide information clarifying the Tenant’s rental changes if requested.

17.5 Fitout

17.5.1 Ownership

Fitout paid for by the Tenant or provided to the Tenant by the Landlord normally becomes the property of the Tenant. The Landlord will provide an annual statement of the value of fitout contributed to the Tenant through the Office Accommodation Program in that financial year.

17.5.2 Fitout maintenance

The Tenant will pay the cost of maintaining the Tenant’s Fitout in the premises.

