

# **Housing Provider Framework Lease and Property Management Agreement**

**Between the**

**Director of Housing ("Director")**

**and**

**The party specified in Item 2 of the Schedule  
("Agency")**

# Table of Contents

---

- TABLE OF CONTENTS..... I**
- AGREEMENT SCHEDULE..... 1**
- EXECUTION BY THE PARTIES..... 3**
- 1. DEFINITIONS AND INTERPRETATION ..... 4**
- 2. SURRENDER OF EXISTING AGREEMENTS AND CREATION OF NEW LEASE .....11**
- 3. DURATION OF THE AGREEMENT.....11**
  - 3.1 Term.....11
  - 3.2 Over holding .....12
- 4. PAYMENTS TO BE MADE BY THE AGENCY .....12**
  - 4.1 Rent.....12
  - 4.2 Maintenance Fund Fee .....12
  - 4.3 Asset Management Fund Fee.....12
  - 4.4 Agency's Outgoings.....12
  - 4.5 Review of Asset Management Fund Fee and Maintenance Fund Fee .....12
  - 4.6 Acknowledgment in relation to Fund Fees .....13
- 5. USE OF PREMISES .....13**
- 6. SUBLETTING THE PREMISES .....14**
  - 6.1 Consistent occupation during Term.....14
  - 6.2 Target Groups .....14
  - 6.3 Property Types.....14
  - 6.4 Maximum Rent.....14
  - 6.5 Sub-Leases .....15
  - 6.6 Tenancy Register .....15
  - 6.7 Standard of Performance .....15
  - 6.8 Warranties Unaffected .....15
- 7. MAINTENANCE AND REPAIRS GENERALLY.....15**
  - 7.1 Damage.....15
  - 7.2 Cleaning .....16
  - 7.3 Maintenance of garden areas .....16
  - 7.4 Specific Maintenance and Repair Obligations .....16
- 8. MAINTENANCE OPTION 1 – MAINTENANCE AND REPAIRS BY DIRECTOR.....16**
- 9. MAINTENANCE OPTION 2 – MAINTENANCE AND REPAIRS BY AGENCY .....17**
  - 9.1 Warranties by Agency .....17
  - 9.2 Maintenance and Repairs to be carried out by Agency.....17

9.3	Structural Repairs to be carried out by Director .....	17
9.4	Other Repairs to be Carried out by the Director .....	18
9.5	No Major Works Without Consent.....	18
<b>10.</b>	<b>CHANGE TO MAINTENANCE OPTION .....</b>	<b>18</b>
10.1	Change to Maintenance Option at Agency's Request.....	18
10.2	Change to Maintenance Option during the Term at Director's Discretion .....	19
<b>11.</b>	<b>PROPERTY CONDITION REPORT AND ASSET PLAN.....</b>	<b>19</b>
11.1	Preparation of Property Condition Report .....	19
11.2	Asset Plan .....	20
11.3	Works by the Director.....	20
<b>12.</b>	<b>NOTICES TO BE GIVEN TO THE DIRECTOR.....</b>	<b>21</b>
<b>13.</b>	<b>WORKS AND ALTERATIONS .....</b>	<b>21</b>
13.1	Standard of Works Carried out by the Agency .....	21
13.2	Provision of Report to the Director .....	22
<b>14.</b>	<b>OTHER OBLIGATIONS OF THE AGENCY.....</b>	<b>22</b>
14.1	Compliance with Legislative Requirements.....	22
14.2	Licences and Permits .....	22
14.3	Security .....	22
14.4	Nuisance.....	22
14.5	Storage of Dangerous Goods.....	22
14.6	Fire Protection and Safety.....	23
14.7	Endanger Premises.....	23
14.8	Agency's Employees .....	23
14.9	Withdrawal of caveat .....	23
14.10	Signs and Advertising .....	23
<b>15.</b>	<b>ASSIGNMENT AND SUB-LETTING.....</b>	<b>23</b>
15.1	No Dealing with Interest in Agreement Without Consent.....	23
15.2	No Deemed Consent .....	24
15.3	Consent to Sub-letting or Licensing for Permitted Use.....	24
<b>16.</b>	<b>INSURANCE.....</b>	<b>24</b>
16.1	Insurance Options .....	24
16.2	Insurance Option 1.....	24
16.3	Insurance Option 2.....	24
16.4	Agency Must Not Invalidate Policies.....	25
16.5	Production of Evidence of Insurance.....	25
<b>17.</b>	<b>RELEASE AND INDEMNITY BY AGENCY .....</b>	<b>25</b>
17.1	Release.....	25
17.2	Indemnity.....	25
<b>18.</b>	<b>OTHER OBLIGATIONS OF THE DIRECTOR.....</b>	<b>26</b>
18.1	Peaceful Enjoyment.....	26
18.2	Director's Outgoings.....	26
18.3	Essential Safety Measures .....	26
18.4	Standard of Works.....	26

<b>19.</b>	<b>COMMUNITY CAPACITY BUILDING PROJECTS</b> .....	<b>26</b>
19.1	Identification of Annual CCB Budget.....	26
19.2	CCB Projects.....	26
19.3	Submission of CCB Project Plan.....	27
19.4	Expenditure of Annual CCB Budget.....	27
<b>20.</b>	<b>REPORTS AND PLANS</b> .....	<b>28</b>
20.1	Submission of Periodic Reports.....	28
20.2	Submission of Incident Reports.....	29
20.3	Use of Standard Forms and Software Program.....	29
20.4	Information Requested by the Director.....	30
<b>21.</b>	<b>PERFORMANCE REVIEW OF AGENCY</b> .....	<b>30</b>
<b>22.</b>	<b>AGENCY'S OBLIGATIONS ON EXPIRY OR END OF AGREEMENT</b> .....	<b>30</b>
22.1	Condition of Premises on Expiry.....	30
22.2	Removal of Property.....	30
22.3	Return of Keys.....	31
<b>23.</b>	<b>ENTRY BY DIRECTOR</b> .....	<b>31</b>
<b>24.</b>	<b>DEALING WITH THE PREMISES</b> .....	<b>31</b>
<b>25.</b>	<b>VARIATION TO DEFINITION OF PREMISES</b> .....	<b>32</b>
25.1	Addition and Removal of Premises by Agreement.....	32
25.2	Partial Termination.....	32
25.3	Alteration to Maintenance Fund Fee and Asset Management Fund Fee.....	32
<b>26.</b>	<b>VARIATION OF BENCHMARKS</b> .....	<b>33</b>
<b>27.</b>	<b>TERMINATION OF AGREEMENT</b> .....	<b>33</b>
27.1	Director's Right to End the Agreement.....	33
27.2	Default Events.....	34
27.3	Damages following a Default Event.....	34
27.4	Rectification by Director.....	34
27.5	Essential Terms and Repudiation.....	35
<b>28.</b>	<b>TERMINATION WITHOUT FAULT</b> .....	<b>35</b>
<b>29.</b>	<b>DAMAGE TO PREMISES</b> .....	<b>35</b>
29.1	Reinstatement or Termination by Director.....	35
29.2	Relocation of Premises.....	35
29.3	Variation.....	35
29.4	No compensation.....	36
29.5	Reduction of payments.....	36
<b>30.</b>	<b>RELOCATION DURING WORKS</b> .....	<b>36</b>
<b>31.</b>	<b>DISPUTE RESOLUTION</b> .....	<b>37</b>
<b>32.</b>	<b>GST</b> .....	<b>38</b>

<b>33.</b>	<b>GENERAL</b> .....	<b>38</b>
33.1	Notices.....	38
33.2	Approvals and Consent.....	39
33.3	Exclusion of Statutory Provisions.....	39
33.4	Payments .....	39
33.5	Parties' Relationship.....	39
33.6	Validity.....	39
33.7	Governing Law and Jurisdiction .....	39
33.8	Waiver .....	39
33.9	Entire Agreement.....	40
<b>34.</b>	<b>PRIVACY AND WHISTLEBLOWERS ACTS</b> .....	<b>40</b>
34.1	Information Privacy Principles.....	40
34.2	Whistleblowers Act .....	41
<b>35.</b>	<b>OPENNESS IN GOVERNMENT CONTRACTING AND CONFIDENTIALITY</b> .....	<b>41</b>

# Agreement Schedule

---

- Item 1: Director:** The Director of Housing, being a body corporate constituted under the *Housing Act* 1983 of 50 Lonsdale Street, Melbourne Victoria 3000.
- Item 2: Agency:** *[#insert name and ACN of Agency]* of *[#insert address]*
- Item 3: Premises:** The premises specified in Part 1 of Annexure A of this Agreement.
- Item 4: Term:** The period commencing on the Commencement Date and expiring on the date specified in Clause 3.1.2.
- Item 5: Commencement Date:** *[#insert Commencement Date].*
- Item 6: Rent:** \$2.00 for the Term, including any GST.
- Time for payment:** Payable in advance on or prior to the Commencement Date.
- Item 7: Maintenance Fund Fee:** *[#Note: only applicable where Maintenance Option 1 in Item 11 selected]*  
*[#insert amount]* per annum, (including any GST) payable in 13 equal instalments.
- Time for payment:** in arrears within 10 days after the date nominated by the Director in each month during the Term.
- Item 8: Asset Management Fund Fee** *[#insert amount]* per annum, (including any GST) payable in 13 equal instalments.
- Time for payment:** in arrears within 10 days after the date nominated by the Director in each month during the Term.
- Item 9: Permitted Use:** The provision of residential accommodation to the Target Group.
- Item 10: Authorised Officers and address for service:**
- |                                |  |
|--------------------------------|--|
| Director's Authorised Officer: | Director, Housing Sector Development   |
| Address:                       | Department of Human Services<br>Level 24, 50 Lonsdale Street<br>MELBOURNE VIC 3000 |
| Facsimile:                     | <i>[to be confirmed]</i>   |
| Agency's Authorised Officer:   | <i>[insert name]</i>   |
| Address:                       | <i>[insert address]</i>  |
| Facsimile:                     | <i>[insert number]</i>   |

**Item 11: The Maintenance Option Applying:** *[insert ]*  
*"Maintenance Option 1" or "Maintenance Option 2"]* subject to any change made in accordance with Clause 10.

**Item 12: Insurance Option Applying:** *[insert]*  
*"Insurance Option 1" or "Insurance Option 2"]*

**Item 13: Additional Items to be maintained by Director:** *[insert]*  
*appliances/maintenance items to be maintained by the Director under clause 9.4; or "none"]*

**Item 14: Special Conditions:** *[insert any special conditions]*

# Execution by the Parties

---

Executed as a Deed on the \_\_\_\_\_ day of \_\_\_\_\_ 200

## Executed by the Director

The **CORPORATE SEAL** of the \_\_\_\_\_ )  
**DIRECTOR OF HOUSING** was hereto) )  
affixed on the ..... day of \_\_\_\_\_ )  
.....200 in the presence of: \_\_\_\_\_ )

.....  
Signature of witness

.....  
Name of witness (block letters)

.....  
Signature of authorized person

.....  
Name of authorized person (block letters)

## Executed by the Agency

**THE COMMON SEAL** of [*#insert name and* \_\_\_\_\_ )  
*ACN of Agency*] was affixed in the presence of \_\_\_\_\_ )  
authorised persons: \_\_\_\_\_ )

- ..... Director
- ..... Full name
- ..... Usual address
- ..... Director (or Company Secretary)
- ..... Full name
- ..... Usual address



## Recitals

- A. The Director and the Agency have agreed to work collaboratively and in a manner consistent with the DHS Partnership Agreement to provide affordable, long term social housing that recognises the rights of Sub-Tenants, acknowledges the importance of security of tenure, is suitable and responsive to the needs of a diverse range of clients and is integrated into the community.
- B. The Director, in this context, wishes to lease the Premises owned by it for the purpose of facilitating the provision of social housing by the Agency to targeted priority sectors within the community.
- C. The Agency is an organisation with expertise in the provision of social housing.
- D. The Director agrees to grant a lease of the Premises to the Agency so that the Agency can sub-let the Premises for the purpose of providing affordable, flexible and long term housing to particular sectors within the community in a manner which is generally consistent with the approach taken by the Director in providing public housing.
- E. The parties wish to record their agreement on the terms set out in this Agreement.

## 1. DEFINITIONS AND INTERPRETATION

---

- 1.1 The following words have these meanings in this Agreement unless the contrary intention expressly appears:

**Accumulated CCB Funds** has the meaning given to that term in Clause 19.1.1.

**Adjustment Date** means:

- (a) 1 July in each year of the Term in respect of adjustment of the Maintenance Fund Fee and the Asset Management Fund Fee under Clause 4.5.1; and
- (b) 1 January 2009 in respect of an adjustment of the Maintenance Fund Fee and the Asset Management Fund Fee under Clause 4.5.2.

**Agency** means the agency specified in Item 2.

**Agency's Employees, Agents and Invitees** means persons engaged or employed by the Agency and on the Premises with the consent of the Agency (express or implied) or at the invitation of the Agency.

**Agency's Outgoings** means amounts for:

- (a) the use of utilities at the Premises including, without limitation, electricity, water, sewerage, drainage and telephone usage; and
- (b) all other rates, assessments and charges assessed in respect of the Premises but excluding the Director's Outgoings.

**Agency's Property** means anything installed or placed on the Premises by or on behalf of the Agency that is not a fixture.

**Agreement** means this Housing Provider Framework Lease and Property Management Agreement.

**Alternative Maintenance Option** means the Maintenance Option which is not specified in Item 11.

**Annexure** means an annexure to this Agreement.

**Annual CCB Budget** has the meaning given to that term in Clause 19.1.2.

**Annual Financial Audit Statement** means a financial audited statement in the form specified in Part 5 of Annexure E.

**Annual Financial Statement** means a financial report in the form specified in Part 4 of Annexure E.

**Asset Management Fund Fee** means asset management fee set out in Item 8 of the Schedule (as it may be amended from time to time in accordance with this Agreement).

**Asset Plan** means a plan prepared in accordance with Clause 11.2.

**Authorised Officer** means in the case of either Party, the person referred to in Item 10 of the Schedule (and who may be substituted from time to time by giving notice to the other Party).

**Benchmarks** means the amounts specified in the tables contained in Part 2 of Annexure E (as adjusted from time to time in accordance with Clause 26).

**Benchmark Adjustment Date** means 1 July in each year of the Term.

**Body Corporate** means any body corporate created upon the registration of a plan of subdivision which includes the Premises.

**Building** means the building in which the Premises is situated, but excludes any building or part of a building which is not owned by the Director.

**Business Day** means a day that is not a Saturday or a Sunday or a day that is wholly or partly observed as a public holiday throughout Victoria.

**Category One Incident** means:

- (a) the death of a Sub-Tenant or serious injury to a Sub-Tenant in connection with the Premises; or
- (b) the death of or injury to employee or agent of the Agency which was caused by, on or in connection with the Premises or any Sub-Tenant;

- (c) allegations of, or actual serious sexual or serious physical assault of a Sub-Tenant;
- (d) allegations of or actual serious sexual or serious physical assault of an employee or agent of the Agency on or in connection with the Premises or any Sub-Tenant;
- (e) a serious fire involving death, serious injury, closure or significant damage to parts of the Premises or its contents;
- (f) serious damage to the Premises; or
- (g) any event that has the potential to subject the Minister, DHS or the Agency to high levels of public or legal scrutiny.

**Category Two Incident** means one of the following:

- (a) physical harm or injuries requiring medical attention and assaults that do not constitute Category One Incidents and which occur on or in connection with the Premises;
- (b) serious threats made against Sub-Tenants or employees or agents of the Agency on or in connection with Premises;
- (c) unethical behaviour by employees or agents of the Agency, particularly if it involves taking advantage of Sub-Tenants;
- (d) any behaviour by a Sub-Tenant which may result in potential risk to any person;
- (d) criminal behaviour resulting in police intervention which occurs on or in connection with the Premises;
- (e) any hazard with the potential for injury to any person at the Premises; or
- (f) any other incident on or in connection with the Premises which may have the potential to injure any person or property.

**CCB** means Community Capacity Building.

**CCB Budget Calculation Guidelines** means the guidelines set out in Part 1 of Annexure E.

**CCB Project** has the meaning given to that term in Clause 19.2.2.

**CCB Project Plan** means a CCB project plan in which contains the information set out in Part 1 of Annexure D.

**CCB Project Report** means a report which contains the information set out in Part 2 of Annexure D.

**Clause** means a clause in this Agreement, including any Special Conditions.

**Commencement Date** means the date in Item 5 of the Schedule.

**Consideration** means, except as otherwise provided, any consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of GST.

**Corporate Governance Report** means a report which contains the information set out in Part 1 of Annexure G.

**CPI** means the Consumer Price Index - All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise in the cost of living in Melbourne, as the Director reasonably determines.

**Current CPI** means the CPI number for the quarter ending in March in the year of the Adjustment Date.

**Default Event** has the meaning given to that term in Clause 27.2.

**DHS** means the Department of Human Services of Victoria, including the Director of Housing.

**DHS Partnership Agreement** means the Partnership Agreement between the Secretary to the Department of Human Services, the Victorian Council of Social Services and the Victorian Health Care Association dated 24 November 2005 and any future partnership agreement between the Department of Human Services, the Victorian Council of Social Services and the Victorian Health Care Association which replaces that agreement.

**Director** means the Director of Housing as specified in Item 1 and includes the Director's successors and assigns and where it is consistent with the context includes the Director's employees and agents.

**Director's Outgoings** means all fees payable to any Body Corporate, municipal rates and all water, sewerage and drainage connection charges.

**Director's Property** means a fixture or anything in the Premises that is not the Agency's Property.

**Emergency** means a Category One Incident or a Category Two Incident.

**Essential Safety Measures** has the meaning given to that term in the *Building Regulations 2006*.

**Existing Agreements** means any agreement/s (whether written or oral, express or implied) (if any) between the Agency and the Director governing:

- (a) the Agency's occupation of the whole or any part of the Premises prior to the Commencement Date;
- (b) the provision of funding by the Director to the Agency in connection with the whole or any part of the Premises prior to the Commencement Date; or
- (c) the provision of services by the Agency to persons occupying any part of the Premises prior to the Commencement Date;

but excludes the DHS Partnership Agreement.

**Expiry Date** means the date upon which the Term of this Agreement expires.

**Financial Year** means the period commencing 1 July and ending on 30 June in each calendar year.

**Fire Incident Report** means a fire incident report in the form specified on the DHS Office of Housing website from time to time.

**Four Weekly Financial Summary and Financial Statement** means a financial summary and financial statement in the form specified in Part 3 of Annexure E.

**GST** has the same meaning given to that term in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

**Housing Act** means the *Housing Act 1983*.

**Housing Provider Framework Budget Tool** means the accounting software program prepared by the Director for the purpose of this Agreement.

**HR Act** means the *Health Records Act 2001*.

**Incident Report** means an incident report in the form specified on the DHS Office of Housing website from time to time.

**Insurance Option** means the insurance options specified in Clauses 16.2 and 16.3.

**Item** means an item of the Schedule.

**Legislative Requirements** means:

- (a) any Act, regulation, rule, ordinance, proclamation, by-law, order, award or similar statutory instrument of the Commonwealth or Victoria;
- (b) applicable Australian Standards and Codes of Practice; and
- (c) the rules, certificates, licences, consents, permits, approvals and requirements of any authority having jurisdiction over the Premises.

**Maintenance Fund Fee** means the maintenance fund fee set out in Item 7 of the Schedule (as it may be adjusted from time to time in accordance with this Agreement).

**Maintenance Options** means Maintenance Option 1 and Maintenance Option 2.

**Maintenance Option 1** means the option set out in Clause 8.

**Maintenance Option 2** means the option set out in Clause 9.

**Maintenance Report** means a maintenance report which includes the information set out in Annexure F.

**Management Environment Report** means a report which contains the information set out in Part 2 of Annexure G.

**Major Works** has the meaning set out in Clause 9.5.2.

**Maximum Rent Formula** means the maximum rent formula set out in Part 2 of Annexure C.

**Party** means a party to this Agreement.

**Permitted Use** means the use described in Item 9 of the Schedule.

**Premises** means the premises described in Item 3 of the Schedule and any alterations or additions to the Premises and includes all buildings, fixtures and fittings installed in the Premises by the Director or by the Agency.

**Previous CPI** means the CPI number for the quarter ending immediately prior to the last date that the Maintenance Fund Fee and the Asset Management Fund Fee were reviewed, adjusted or increased, or the Commencement Date (whichever is the later).

**Property Condition Report** means a property condition report which contains the information set out in Clause 11.1.2.

**Registered Agency** has the meaning given to that term in the Housing Act.

**Rent** means the rent specified in Item 6 of the Schedule as it may be reviewed in accordance with this Agreement from time to time.

**Schedule** means the schedule to this Agreement.

**Self Contained Property** means a property which forms part of the Premises and is identified as a "self contained property" in Part 1 of Annexure A.

**Shared Property** means a property which forms part of the Premises and is identified as a "shared property" in Part 1 of Annexure A.

**Special Conditions** means any special conditions forming part of this Agreement and set out in Item 14 of the Schedule.

**Specified Maintenance Option** means the Maintenance Option specified in Item 11.

**Structural Repairs** means repairs to the structure of the Building, including the foundations, floors, walls, roof and load bearing columns.

**Structural Works** means works to the structure of the Building, including the foundations, floors, walls, roof and load bearing columns.

**Sub-Lease** means a sub-lease between the Agency and a Sub-Tenant for any part of the Premises.

**Sub-Tenant** means any person to whom the Agency has granted a Sub-Lease for any part of the Premises.

**Supply** has the same meaning given to that term in the GST Act.

**Target Group** means the target groups specified for each part of the Premises in Part 1 of Annexure A and as defined in Part 2 of Annexure A.

**Taxable Supply** has the same meaning given to that term in the GST Act.

**Tenancy Data Report** has the meaning given to that term in Clause 20.1.1.

**Tenancy Register** means a register which contains the information specified in Part 1 of Annexure C.

**Tenantable Rooms** means the number of bedrooms within a Shared Property available to be sub-let to Sub-Tenants, being:

- (a) all of the bedrooms within a Shared Property; or
- (b) if agreed otherwise in writing by the Parties under Clause 6.3.1, the agreed number of bedrooms.

**Term** means the period specified in Item 4 of the Schedule and includes any over holding.

1.2 In this Agreement, unless the contrary intention appears:

- (a) a reference to any instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code, Australian Standard or other law includes regulations and other instruments under it and consolidations, amendments re-enactments or replacements of any of them occurring at any time before or after the date of this Agreement;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the persons, executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;

- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (i) "including" when introducing an example, does not limit the meaning to which the example relates to that example or examples of that kind.

1.3 If this Agreement prohibits the Agency from doing a thing:

- (a) the Agency must ensure that the Agency's Employees, Agents and Invitees and Sub-Tenants do not do that thing; and
- (b) the Agency may not allow or cause any person to do that thing.

1.4 Headings are inserted for convenience and do not affect the interpretation of this Agreement.

## **2. SURRENDER OF EXISTING AGREEMENTS AND CREATION OF NEW LEASE**

---

2.1 The Agency surrenders the Existing Agreements and the Premises on the Commencement Date.

2.2 Upon the surrender of the Existing Agreements:

2.2.1 the Agency releases the Director from all liability, claims, demands, charges, costs and expenses in connection with the Existing Agreements and the Premises; and

2.2.2 subject to Clause 2.3, the Director releases the Agency from all liability, claims, demands, charges, costs and expenses in connection with the Existing Agreements and the Premises.

2.3 Clause 2.2.2 does not apply in relation to any liability of the Agency to make payments to the Director under the terms of the Existing Agreements.

2.4 From the Commencement Date, the Director agrees to lease the Premises to the Agency for the Term on the terms and conditions set out in this Agreement.

## **3. DURATION OF THE AGREEMENT**

---

### **3.1 Term**

3.1.1 The Term of this Agreement commences on the Commencement Date.

3.1.2 The Term of this Agreement expires on the date which is 5 years and 1 day after the Commencement Date.



### **3.2 Over holding**

- 3.2.1 If, with the Director's consent, the Agency continues to occupy the Premises after the Expiry Date or the date this Agreement ends, it does so as a monthly tenant:
- 3.2.1.1 at a rent, Maintenance Fund Fee and Asset Management Fund Fee equal to one twelfth of the amounts applying before that date;
  - 3.2.1.2 under a tenancy which may be ended upon 30 days notice by either Party expiring on any day; and
  - 3.2.1.3 otherwise on the same terms and conditions as this Agreement with any changes necessary to make this Agreement appropriate to a monthly tenancy.
- 3.2.2 The Director may vary the Rent, the Maintenance Fund Fee and the Asset Management Fund Fee at any time after the Expiry Date or the date this Agreement ends by giving the Agency 30 days' notice expiring on any day.

## **4. PAYMENTS TO BE MADE BY THE AGENCY**

---

### **4.1 Rent**

The Agency must pay the Rent to the Director in the manner provided for in Item 6 of the Schedule.

### **4.2 Maintenance Fund Fee**

Where Maintenance Option 1 applies, the Agency must pay the Maintenance Fund Fee to the Director in the manner provided for in Item 7 of the Schedule.

### **4.3 Asset Management Fund Fee**

The Agency must pay the Asset Management Fund Fee to the Director in the manner provided for in Item 8 of the Schedule.

### **4.4 Agency's Outgoings**

- 4.4.1 The Agency must pay the Agency's Outgoings to the relevant authority when they are due, or, if requested, to the Director.
- 4.4.2 If any of the Agency's Outgoings are not separately assessed in connection with the Premises, the Agency must pay to the Director within 14 days of request the proportion of the Agency's Outgoings that the area of the relevant part of the Premises bears to the total area assessed.

### **4.5 Review of Asset Management Fund Fee and Maintenance Fund Fee**

- 4.5.1 On 1 July in each year during the Term, the Asset Management Fund Fee and the Maintenance Fund Fee will each be adjusted to an amount equal to the Asset Management Fund Fee and the

Maintenance Fund Fee payable immediately prior to the Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

- 4.5.2 Without limiting Clause 4.5.1, the Asset Management Fund Fee and the Maintenance Fund Fee will also be adjusted by the Director by an amount of no more than 10%, effective from 1 January 2009, after:
- 4.5.2.1 meeting with the Agency to discuss in good faith the proposed adjustment with the Agency; and
- 4.5.2.2 taking into consideration the Director's expenditure and the Agency's expenditure on maintenance in respect of properties owned by the Director and used for the purpose of social housing.
- 4.5.3 Where the Asset Management Fund Fee and the Maintenance Fund Fee have been adjusted in accordance with either Clause 4.5.1 or Clause 4.5.2, the Director will give notice to the Agency of the adjustment. On the next due date for the payment of the Asset Management Fund Fee and the Maintenance Fund Fee after receipt by the Agency of such a notice, the Director and the Agency must make any necessary adjustment to apply on and from the Adjustment Date.

#### **4.6 Acknowledgment in relation to Fund Fees**

The parties acknowledge that:

- 4.6.1 the Maintenance Fund Fee and the Asset Management Fund Fee do not form part of the Rent; and
- 4.6.2 the payment of the Maintenance Fund Fee and the Asset Management Fund Fee in accordance with Clauses 4.2 and 4.3 does not in any way alter the scope or nature of the Parties' express obligations in relation to maintenance, repairs, asset management or the provision of works and services under this Agreement.

### **5. USE OF PREMISES**

---

- 5.1 The Agency must use the Premises for the Permitted Use and for that use only.
- 5.2 The Agency acknowledges that it has inspected the Premises prior to the Commencement Date and that nothing in this Agreement is to be interpreted as placing an obligation on the Director to make any alterations to the Premises during the Term for the purpose of improving the suitability of the Premises for the Permitted Use.

## **6. SUBLETTING THE PREMISES**

---

### **6.1 Consistent occupation during Term**

The Agency must use its best endeavours to ensure that the Premises is consistently occupied during the Term by Sub-Tenants.

### **6.2 Target Groups**

6.2.1 The Agency may only enter into a Sub-Lease for the Premises or any part of the Premises with Sub-Tenants who satisfy the criteria for the relevant Target Groups specified in Part 1 of Annexure A.

6.2.2 The Agency must take all reasonable steps to obtain any necessary evidence to reasonably satisfy itself that any proposed Sub-Tenant satisfies the criteria for the Target Group prior to entering into a sub-lease with that proposed Sub-Tenant.

### **6.3 Property Types**

6.3.1 For each Shared Property forming part of the Premises, the Agency must, unless agreed otherwise in writing by the Parties, sub-let each bedroom at the Shared Property to a separate Sub-Tenant under a separate Sub-Lease.

6.3.2 Each Sub-Lease entered into in accordance with Clause 6.3.1 must also grant to the Sub-Tenant a licence to use the common areas of the property (including any kitchen, bathroom and living areas) in the Shared Property in conjunction with other Sub-Tenants occupying any part of that property.

6.3.3 For each Self Contained Property forming part of the Premises, the Agency must, unless agreed otherwise in writing by the Parties, sub-let the whole of the Self Contained Property to one Sub-Tenant (including, where applicable, the Sub-Tenant's partner, carer or family) under one Sub-Lease.

### **6.4 Maximum Rent**

6.4.1 The rent payable by a Sub-Tenant under a Sub-Lease must not exceed the maximum rent set out in Clause 6.4.2.

6.4.2 Subject to Clause 6.4.3, the maximum rent payable by a Sub-Tenant is the maximum rent calculated in accordance with the Maximum Rent Formula set out in Part 2 of Annexure C.

6.4.3 The Agency acknowledges that the Director may, at any time during the Term but not more than once in every Financial Year, amend or vary the Maximum Rent Formula set out in Part 2 of Annexure C by giving notice to the Agency.

6.4.4 The Agency acknowledges that:

6.4.4.1 any time during the term of a Sub-Lease the maximum rent calculated using the Maximum Rent Formula for the purpose of a particular Sub-Tenant may alter as a

result of a change in the Sub-Tenant's financial circumstances; and

- 6.4.4.2 the Agency's obligations under Clause 6.4.1 require the Agency to ensure that at any time during the term of the Sub-Lease, the rent payable by the Sub-Tenant does not exceed the maximum rent, as it may alter from time to time as described in Clause 6.4.4.1.

## **6.5 Sub-Leases**

The Agency must take all reasonable steps to enforce the provisions of any Sub-Lease and the *Residential Tenancies Act 1997*, including recovering any amount payable by a Sub-Tenant under a Sub-Lease.

## **6.6 Tenancy Register**

The Agency must maintain a Tenancy Register which contains the information specified in Part 1 of Annexure C.

## **6.7 Standard of Performance**

In carrying out its obligation to sub-let the Premises in accordance with this Clause 6, the Agency must:

- 6.7.1 exercise due care, skill and judgment;
- 6.7.2 perform its obligations to a standard consistent with the highest social housing industry standards;
- 6.7.3 perform those obligations in a timely manner; and
- 6.7.4 without limiting the generality of Clause 14.1, comply with all Legislative Requirements.

## **6.8 Warranties Unaffected**

The Agency acknowledges the Agency's obligations and warranties under this Agreement remain unaffected notwithstanding:

- 6.8.1 any receipt, review, comment or direction on any aspect of the sub-letting of the Premises by the Director; or
- 6.8.2 any failure by the Director to do any of the things referred to in Clause 6.8.1.

# **7. MAINTENANCE AND REPAIRS GENERALLY**

---

## **7.1 Damage**

The Agency must:

- 7.1.1 not damage the Premises in any way;
- 7.1.2 ensure that the Agency's Employees, Agents and Invitees and Sub-Tenants do not damage the Premises in any way; and

- 7.1.3 give the Director prompt written notice of any material damage to the Premises or anything likely to be risk to the Premises or to any person.

## **7.2 Cleaning**

The Agency must, at its cost:

- 7.2.1 clean the interior and exterior of the Premises regularly and keep the Premises clean and free from dirt, rubbish and vermin; and
- 7.2.2 keep all waste in proper receptacles and arrange for its regular removal from the Premises.

## **7.3 Maintenance of garden areas**

The Agency must, at its cost, cultivate, maintain, keep trim and in good order and condition all garden areas of the Premises including lawns, shrubberies and other landscaped areas and must not, except in the course of proper management, remove any trees or shrubs.

## **7.4 Specific Maintenance and Repair Obligations**

- 7.4.1 The Maintenance Option specified in Item 11 applies for the purpose of this Agreement.
- 7.4.2 Maintenance Option 1 is set out in Clause 8 and Maintenance Option 2 is set out in Clause 9.

## **8. MAINTENANCE OPTION 1 – MAINTENANCE AND REPAIRS BY DIRECTOR**

---

- 8.1 Other than as required to carry out its obligations under Clauses 7.1, 7.2 and 7.3, the Agency must not carry out any maintenance, repairs or other works at the Premises (including any Major Works) without the prior written consent of the Director.
- 8.2 Subject to Clause 8.4, the Director must, at its cost and within a reasonable time of receipt of a request from the Agency to do so, carry out any repairs, maintenance or other works and replace any items required to ensure that the Premises are maintained in good repair and kept in the same condition that they were in on the Commencement Date, fair wear and tear excluded.
- 8.3 When determining what is reasonable time for the purpose of Clause 8.2, the Director must take into consideration the Agency's obligations as a landlord under the Residential Tenancies Act 1997.
- 8.4 The Director will not be in breach of its duty to maintain the Premises in good repair where damage to the Premises is caused by the Agency's failure to comply with its obligations under Clauses 7.1, 7.2 and 7.3.

## **9. MAINTENANCE OPTION 2 – MAINTENANCE AND REPAIRS BY AGENCY**

---

### **9.1 Warranties by Agency**

The Agency warrants that:

- 9.1.1 it is appropriately qualified and is financially capable of carrying out the obligations set out in this Clause 9; and
- 9.1.2 it will carry out the obligations set out in this Clause 9.1 in accordance with the standards prescribed in Clause 13.

### **9.2 Maintenance and Repairs to be carried out by Agency**

Subject to Clause 9.5, the Agency must, at its cost, ensure that the Premises are maintained in good repair including carrying out any repairs, maintenance or other works and replacing any items required to keep the Premises in the same condition it was in on the Commencement Date but excluding:

- 9.2.1 fair wear and tear;
- 9.2.2 Structural Repairs, except where those repairs are required in connection with:
  - 9.2.2.1 the negligent acts or omissions of the Agency, the Agency's Employees, Agents and Invitees or any Sub-Tenant; or
  - 9.2.2.2 a breach of this Agreement by the Agency; and
- 9.2.3 the repair, maintenance and/or replacement of any item specified in Item 13 of the Schedule, except where the repairs, maintenance or replacements are required in connection with one of the causes set out in Clauses 9.2.2.1 or 9.2.2.2.

### **9.3 Structural Repairs to be carried out by Director**

Subject to Clause 9.2, the Director must, at its cost and within a reasonable time of receipt of a request from the Agency to do so, investigate the need for Structural Repairs to the Premises and conclude (acting reasonably) whether:

- 9.3.1 there is a need for Structural Repairs to the Premises in order to protect the immediate health and/or safety of a Sub-Tenant, in which case the Director will carry out the Structural Repairs as soon as reasonably possible after receipt of the request by the Agency;
- 9.3.2 there is a need for Structural Repairs to the Premises in the short term, in which case the Director will carry out the Structural Repairs within 12 months of receipt of the request by the Agency; or
- 9.3.3 there is no need for any Structural Repairs to the Premises.

#### **9.4 Other Repairs to be carried out by the Director**

- 9.4.1 Subject to Clause 9.2, the Director must, at its cost and within a reasonable time of a request by the Agency to do so, repair, maintain and/or replace any item specified in Item 13 of the Schedule required to ensure that the Premises are maintained in good repair.
- 9.4.2 When determining what is reasonable time for the purpose of Clause 9.4.1 the Director must take into consideration the Agency's obligations as a landlord under the *Residential Tenancies Act 1997*.

#### **9.5 No Major Works Without Consent**

- 9.5.1 The Agency must obtain the written consent of the Director prior to carrying out any Major Works at the Premises.
- 9.5.2 For the purpose of this Clause 9.5, "Major Works" means:
- 9.5.2.1 any Structural Works or Structural Repairs;
  - 9.5.2.2 any works requiring a building permit from the municipal council; or
  - 9.5.2.3 any works of a total market value of \$5,000.00 or more.
- 9.5.3 Any request by the Agency pursuant to Clause 9.5.1 must:
- 9.5.3.1 be made in writing; and
  - 9.5.3.2 be accompanied by a detailed description of the proposed Major Works, any plans or specifications relevant to the Major Works and any other information requested by the Director.

### **10. CHANGE TO MAINTENANCE OPTION**

---

#### **10.1 Change to Maintenance Option at Agency's Request**

- 10.1.1 At any time during the Term, the Agency may request that the Director consent to substituting the Specified Maintenance Option for the Alternative Maintenance Option.
- 10.1.2 Any request by the Agency under Clause 10.1.1 must be:
- 10.1.2.1 in writing; and
  - 10.1.2.2 be accompanied by any information requested by the Director.
- 10.1.3 Subject to Clause 10.1.4, the Director's consent to any request under Clause 10.1.1 must not be unreasonably withheld.

- 10.1.4 Where the Agency has requested that the Director consent to substituting Maintenance Option 1 for Maintenance Option 2, the Director may withhold consent to the request if the Director reasonably concludes that the Agency is likely to be incapable of fulfilling the obligations set out in Clause 9.
- 10.1.5 Any consent by the Director:
- 10.1.5.1 will be granted by notice in writing; and
  - 10.1.5.2 may be granted on any conditions the Director reasonably considers necessary, including any alteration to the amount or requirement for payment of the Maintenance Fund Fee.
- 10.1.6 On and from the date specified in any notice given by the Director under Clause 10.1.5 (and if no date is specified, on and from the date of the notice) the Alternative Maintenance Option will apply and any conditions specified in that notice will form part of this Agreement.

## **10.2 Change to Maintenance Option during the Term at Director's Discretion**

- 10.2.1 Without limiting the Director's rights under this Agreement, where Maintenance Option 2 applies and the Director reasonably believes that the Agency has failed to comply with its obligations under Clause 9, the Director may, by giving at least 30 days notice in writing to the Agency, change the Maintenance Option from Maintenance Option 2 to Maintenance Option 1.
- 10.2.2 Any change to the Maintenance Option by the Director under Clause 10.2.1 may be made on any conditions the Director considers reasonably necessary, including, subject to Clause 10.2.2 an alteration to the amount or requirement for payment of the Maintenance Fund Fee.
- 10.2.3 Any alteration to the amount or requirement for the payment of the Maintenance Fund Fee under Clause 10.2.2 must be determined generally in accordance with the Benchmarks as they apply to the properties forming part of the Premises.
- 10.2.4 On and from the date specified in any notice given by the Director under Clause 10.2.1 (and if no date is specified, 30 days after the date of the notice) Maintenance Option 1 will apply and any conditions specified in that notice will form part of this Agreement.

## **11. PROPERTY CONDITION REPORT AND ASSET PLAN**

---

### **11.1 Preparation of Property Condition Report**

- 11.1.1 At least once every three years during the Term, the Director will prepare a Property Condition Report for the purpose of preparing an Asset Plan for the Premises.



- 11.1.2 The Property Condition Report must, without limitation, identify those parts of the Premises which, in the reasonable opinion of the Director, require works.

## **11.2 Asset Plan**

- 11.2.1 Within a reasonable time after the Property Condition Report has been prepared, the Director must meet with the Agency to prepare an Asset Plan which specifies:
- 11.2.1.1 the nature of the works to be carried out at the Premises;
  - 11.2.1.2 if more than one part of the Premises is identified, the order in which the proposed works should be carried out; and
  - 11.2.1.3 the likely future life span of the Premises and any alternative asset management action for the Premises, such as disposal or redevelopment of the Premises.
- 11.2.2 Upon completion of the Asset Plan, the Director must provide a copy of the agreed Asset Plan to the Agency and discuss the contents of the Asset Plan with the Agency.
- 11.2.3 The Director will endeavour to carry out the works set out in the Asset Plan, subject to:
- 11.2.3.1 the portion of the Asset Management Fund Fee paid by the Agency remaining after the deduction of the cost of the Director's Outgoings, the cost of any Structural Repairs or Structural Works carried out by the Director and the cost of maintaining the essential services at the Premises;
  - 11.2.3.2 the need for works at other properties owned by the Director and which are leased to other agencies for the provision of affordable housing to the public; and
  - 11.2.3.3 the general availability of funding to the Director for that purpose.

## **11.3 Works by the Director**

- 11.3.1 After giving the Agency reasonable notice of its intention to do so, the Director may, in its absolute discretion, enter the Premises and carry out works at the Premises or any part of the Premises for the purpose of carrying out any of the works set out in the Asset Plan.
- 11.3.2 When exercising its rights under Clause 11.3.1, the Director must:
- 11.3.2.1 in determining what is reasonable notice, take into consideration the Agency's obligations as a landlord under the *Residential Tenancies Act 1997*.

11.3.2.2 take all reasonable steps to minimise any disruption to any Sub-Tenants at the Premises.

11.3.3 On request by the Director, the Agency must vacate that part of the Premises in respect of which the Director is exercising its rights under this Clause 11.3 for such reasonable period determined by the Director as is necessary to enable the Director to exercise its rights under this Clause.

## **12. NOTICES TO BE GIVEN TO THE DIRECTOR**

---

Where the Agency:

- 12.1 is served with any notice or order by any agency or authority relating to any health or safety requirements or obligations; or
- 12.2 becomes aware of any concerns or queries raised by any agency or authority, or any non government organisation with an interest in the welfare of any persons who may occupy or frequent the Premises;

it must notify the Director as soon as practicable and in any event within 5 Business Days and promptly upon request by the Director provide to the Director copies of any notices, orders or queries served or raised and follow any direction of the Director in relation to any such order, notice or query.

## **13. WORKS AND ALTERATIONS**

---

### **13.1 Standard of Works Carried out by the Agency**

Any works or alterations which the Agency is permitted to carry out under the terms of this Agreement must be carried out in accordance with this Clause 13.1. The Agency must ensure that:

- 13.1.1 any works or alterations carried out at the Premises are carried out by appropriately qualified tradespersons in a proper manner, in compliance with all Legislative Requirements and to the reasonable satisfaction of the Director;
- 13.1.2 prior to the commencement of any works or alterations, the Agency obtains all permits, licenses and other approvals required for the work and delivers copies to the Director;
- 13.1.3 materials used in carrying out any works or alterations are of the same or similar quality as those in the Premises on the Commencement Date;
- 13.1.4 the works and alterations are carried out in a manner which minimises the need for future maintenance of the works and alterations;
- 13.1.5 the Agency complies with and ensures that its contractors and workers comply with the reasonable directions of the Director in connection with the carrying out of any works or alterations at the Premises;

13.1.6 it immediately notifies the Director of any damage or loss caused to persons or property arising from or in any way in connection with the carrying out of the works or alterations; and

13.1.7 prior to commencing any work or alterations, the Agency obtains appropriate insurance.

### **13.2 Provision of Information to the Director**

The Agency acknowledges that the Director may, at any time during the Term, but not more than once a year, request that the Agency provide to the Director information (including, without limitation, copies of permits, approvals, plans or drawings) in relation to any works or alterations carried out or proposed by the Agency in relation to the Premises. The Agency must comply with any such request within 14 days.

## **14. OTHER OBLIGATIONS OF THE AGENCY**

---

### **14.1 Compliance with Legislative Requirements**

The Agency must comply with all Legislative Requirements in connection with the Premises and the Agency's use and occupation of the Premises.

### **14.2 Licences and Permits**

The Agency must maintain all licences and permits for the Agency's use of the Premises.

### **14.3 Security**

The Agency must:

14.3.1 secure the Premises when the Premises are not occupied; and

14.3.2 promptly indemnify and pay to the Director on request any cost incurred by the Director as a result of the Agency or the Agency's Employees, Agents and Invitees or Sub-Tenants damaging or losing any key or security device provided by the Director.

### **14.4 Nuisance**

The Agency must not, without the Director's consent, do anything in or near the Premises which in the Director's reasonable opinion is noxious, dangerous, offensive or a nuisance.

### **14.5 Storage of Dangerous Goods**

The Agency must not store chemicals, inflammable liquids or dangerous substances upon or about the Premises except such chemicals, liquids or dangerous substances that would reasonably be required to be stored on the Premises for cleaning.

**14.6 Fire Protection and Safety**

The Agency must have for the Premises an emergency control organisation and procedure that meet AS3745-2002, Emergency Control Organisation and Procedures for Buildings - Standards Australia.

**14.7 Endanger Premises**

The Agency must not do or permit anything to be done in connection with the Premises which, in the reasonable opinion of the Director, may endanger the Premises or be a risk to any person or property.

**14.8 Agency's Employees**

The Agency must use all reasonable endeavours to ensure that the Agency's Employees, Agents and Invitees and any Sub-Tenants observe and comply with the Agency's obligations under this Agreement, where appropriate.

**14.9 Withdrawal of caveat**

Where the Agency has lodged a caveat over the land on which the Premises is situated, the Agency must, immediately on request by the Director, consent to any dealing relating to the Premises or the land on which the Premises is situated and provide any documents that are necessary to permit the registration of that dealing.

**14.10 Signs and Advertising**

The Agency must not, without the prior written consent of the Director, erect any display, sign or advertisement to the exterior of the Premises.

**15. ASSIGNMENT AND SUB-LETTING**

---

**15.1 No Dealing with Interest in Agreement Without Consent**

Subject to Clause 15.3, the Agency must not:

- 15.1.1 assign or deal with any interest in the Premises or its rights or powers as Agency under this Agreement;
- 15.1.2 grant any security over this Agreement or the Agency's Property;  
or
- 15.1.3 sub-let or part with or share possession, use or occupation of the Premises;

without the Director's prior written consent.

Section 144 of the *Property Law Act* 1958 does not apply to this Agreement.

**15.2 No Deemed Consent**

The Director's acceptance of rent or other money from any person other than the Agency will not be taken as consent to that person as assignee, sub-tenant or occupier of the Premises.

**15.3 Consent to Sub-letting or Licensing for Permitted Use**

The Director is deemed to have consented to any sub-letting or licensing of the Premises or any part of the Premises by the Agency to individuals seeking accommodation in accordance with the Permitted Use.

**16. INSURANCE**

---

**16.1 Insurance Options**

The Insurance Option specified in Item 12 applies for the purpose of this Agreement.

**16.2 Insurance Option 1**

16.2.1 The Agency must keep in force during the Term insurance coverage for:

16.2.1.1 the Agency's Property for full replacement value; and

16.2.1.2 all other risks which a prudent tenant leasing the Premises for the Permitted Use would maintain.

16.2.2 The Director will, at its cost, maintain during the Term on terms acceptable to the Director in its absolute discretion:

16.2.2.1 a public liability insurance policy for an amount of no less than \$10 million for any one event; and

16.2.2.2 a directors' and officers' liability insurance policy for an amount of no less than \$5 million for any one event;

in the name of the Agency.

**16.3 Insurance Option 2**

The Agency must keep in force during the Term insurance coverage for:

16.3.1 the Agency's Property for full replacement value; and

16.3.2 public liability for at least \$10 million for any one event;

16.3.3 a directors' and officers' liability insurance policy for an amount of no less than \$5 million for any one event; and

16.3.4 all other risks which a prudent tenant leasing the Premises for the Permitted Use would maintain.

**16.4 Agency Must Not Invalidate Policies**

The Agency must:

- 16.4.1 not do or permit anything or not omit to do something which prejudices any insurance effected under the Agreement;
- 16.4.2 promptly rectify anything which may prejudice any insurance;
- 16.4.3 promptly notify the Director when an event occurs which does or might give rise to a claim under or which does or might prejudice an insurance policy; and
- 16.4.4 comply with the requirements of any insurer under the insurance effected for the Premises.

**16.5 Production of Evidence of Insurance**

The Agency must:

- 16.5.1 prior to the Commencement Date;
- 16.5.2 once each year during the Term on a date to be specified by the Director; and
- 16.5.3 upon receipt of a request by the Director to do so (but not more than twice a year);

provide to the Director written evidence to the satisfaction of the Director that the insurance referred to in Clause 16.2 and 16.3 has been effected and is valid.

**17. RELEASE AND INDEMNITY BY AGENCY**

---

**17.1 Release**

The Agency uses and occupies the Premises at its own risk and releases the Director and its agents, contractors and employees, from all claims and demands of every kind in respect of or resulting from any death, damage, loss or injury occurring in connection with the Premises, except to the extent that such claims result from the Director's negligence, default or unlawful act or unlawful omission.

**17.2 Indemnity**

The Agency must indemnify and hold harmless the Director and its agents, contractors and employees against all claims, losses and expenses of any nature in respect of or resulting from any death, damage, loss or injury occurring in connection with the use or occupation of the Premises by the Agency except to the extent that such claims result from the Director's negligence, default or unlawful act or unlawful omission.

## **18. OTHER OBLIGATIONS OF THE DIRECTOR**

---

### **18.1 Peaceful Enjoyment**

Subject to the Director's rights, the Agency may peacefully enjoy the Premises during the Term without interruption by the Director.

### **18.2 Director's Outgoings**

The Director must pay the Director's Outgoings.

### **18.3 Essential Safety Measures**

The Director must provide, maintain and repair all Essential Safety Measures as required under the *Building Regulations* 2006 in relation to the Premises.

### **18.4 Standard of Works**

The Director must ensure that any works carried out by the Director under this Agreement are carried out:

18.4.1 with due care and skill; and

18.4.2 in compliance with all Legislative Requirements.

## **19. COMMUNITY CAPACITY BUILDING PROJECTS**

---

### **19.1 Identification of Annual CCB Budget**

19.1.1 Prior to the Commencement Date, the Agency must inform the Director in writing of the total sum of all funds held by the Agency on that date for a purpose the same as or similar to those purposes set out in Clause 19.2.2 (**Accumulated CCB Funds**).

19.1.2 The Annual CCB Budget:

19.1.2.1 for the first year of the Term will be an amount calculated in accordance with the Annual CCB Budget Calculation Guidelines, plus any Accumulated CCB Funds; and

19.1.2.2 subject to clause 19.1.2, for each consecutive year of the Term, is the amount calculated in accordance with the CCB Budget Calculation Guidelines.

### **19.2 CCB Projects**

19.2.1 Unless agreed by the Parties otherwise in writing, the Agency must undertake at least one CCB Project in each Financial Year of the Term.

19.2.2 A CCB Project is one which is agreed between the Agency and the Director and aims to improve access to social housing, increase Sub-Tenant participation and decision making and improve

outcomes for Sub-Tenants and includes, without limitation, projects which:

- 19.2.2.1 assist the Agency to meet the National Community Housing Standards and/or performance standards for Registered Agencies which are gazetted under the Housing Act;
- 19.2.2.2 assist the Agency to apply for or maintain registration as a Registered Agency;
- 19.2.2.3 increase employment and/or occupational training opportunities for Sub-Tenants;
- 19.2.2.4 increase participation in DHS neighbourhood renewal projects; or
- 19.2.2.5 enhance the capacity of Sub-Tenants to sustain long term housing;
- 19.2.2.6 increase the availability of social housing to the Target Groups; or
- 19.2.2.7 are for capital works at the Premises or part of the Premises.

### **19.3 Submission of CCB Project Plan**

- 19.3.1 Prior to the Commencement Date and within 60 days after 30 June in each year of the Term, the Agency must submit to the Director a duly completed CCB Project Plan.
- 19.3.2 Within a reasonable time after receipt of a CCB Project Plan by the Director, the Director will either:
  - 19.3.2.1 approve the CCB Project Plan by giving notice in writing to the Agency; or
  - 19.3.2.2 consult with the Agency for the purpose of amending the CCB Project Plan so that it is suitable for approval by the Director. The Agency must consult with the Director in good faith and follow any directions of the Director in connection with any amendments to the CCB Project Plan.
- 19.3.3 The CCB Project Plan can be amended at any time during the Term by agreement between the Parties.
- 19.3.4 Upon approval in writing of a CCB Project Plan by the Director, the Agency must implement the relevant CCB Project in accordance with the CCB Project Plan.

### **19.4 Expenditure of Annual CCB Budget**

- 19.4.1 If, upon completion of a CCB Project, the Director reasonably concludes that the Agency has expended less than 75% of that



part of the relevant Annual CCB Budget allocated to that CCB Project, the Director may, in its absolute discretion:

- 19.4.1.1 require the Agency to expend an amount which is equal to the difference between the relevant Annual CCB Budget and the actual amount expended on the CCB Project for a purpose to be determined by the Director; or
  - 19.4.1.2 require the Agency to pay to the Director an amount which is equal to the difference between the relevant Annual CCB Budget and the actual amount expended on the CCB Project.
- 19.4.2 If an Agency fails to complete a CCB Project by the time for completion of that CCB Project under the relevant CCB Project Plan, the Director may, in its absolute discretion:
- 19.4.2.1 require the Agency to expend an amount which does not exceed the relevant Annual CCB Budget for a purpose to be determined by the Director; or
  - 19.4.2.2 require the Agency to pay to the Director an amount which does not exceed the relevant Annual CCB Budget.
- 19.4.3 The Director must, in exercising its rights under Clauses 19.4.1 and 19.4.2, take into consideration any reasonable suggestions made by the Agency in relation to the way in which the amount calculated under those clauses should be expended.
- 19.4.4 Without limiting the generality of Clause 20.4, the Director may, at any time during the Term, require the Agency to provide evidence to the Director of:
- 19.4.4.1 the expenditure of the Annual CCB Budget; and
  - 19.4.4.2 the calculation of the Accumulated CCB Funds in accordance with Clause 19.1.1.

The Agency must, within 14 days of a request to do so, comply with that request.

## **20. REPORTS AND PLANS**

---

### **20.1 Submission of Periodic Reports**

The Agency must submit to the Director:

- 20.1.1 a duly completed Tenancy Data Report which contains the information specified in the Tenancy Register by 28 July in each year of the Term for the previous Financial Year;
- 20.1.2 a duly completed Four Weekly Financial Summary and Financial Statement in the form contained in Part 4 of Annexure E on the same date on which the Asset Management Fund Fee is payable;

- 20.1.3 a duly completed Annual Financial Report and an Annual Financial Audit Statement in the forms contained in Parts 4 and 5 of Annexure E within 90 days of 30 June in each year during the Term;
- 20.1.4 where Maintenance Option 2 applies, a duly completed Maintenance Report in the form contained in Annexure F within 10 Business Days of the last day of each three month period during the Term;
- 20.1.5 a duly completed CCB Project Report within 60 Business Days of 30 June in each year during the Term or at such periods as otherwise agreed in writing between the Parties;
- 20.1.6 a Corporate Governance Report within 90 days of 30 June in each year during the Term where the Agency is not a Registered Agency; and
- 20.1.7 a Management Environment Report within 90 days of 30 June in each year during the Term.

## **20.2 Submission of Incident Reports**

- 20.2.1 Where a Category One Incident has occurred, the Agency must, as soon as possible and no later than the next Business Day after the occurrence of the incident, submit to the Director a duly completed Incident Report.
- 20.2.2 Where a Category Two Incident has occurred, the Agency must, as soon as possible and no later than 3 Business Days after the occurrence of the incident, submit to the Director a duly completed Incident Report.
- 20.2.3 Where a fire has occurred at any part of the Premises, the Agency must, as soon as possible after the fire, submit to the Director a duly completed Fire Incident Report.

## **20.3 Use of Standard Forms and Software Program**

- 20.3.1 The Agency must prepare and submit:
  - 20.3.1.1 the CCB Project Plan and the CCB Project Report by using the Housing Provider Framework Budget Tool, a copy of which will be provided to the Agency by the Director by the Commencement Date; and
  - 20.3.1.2 all other plans and reports under this Agreement in an electronic format and by using a software program compatible with Microsoft Excel, or by using any other software program provided by the Director to the Agency from time to time.
- 20.3.2 At any time during the Term, the Director may amend any of the forms contained in the Annexures by giving 28 days written notice to the Agency.

#### **20.4 Information Requested by the Director**

In addition to the obligations set out in Clause 20.1, 20.2 and 20.3, the Agency must, within 14 days of receipt of a request to do so, provide to the Director any information reasonably requested by the Director in connection with the performance of the Agency's obligations under this Agreement.

### **21. PERFORMANCE REVIEW OF AGENCY**

---

- 21.1 The Director, may, at its own expense, conduct a performance review of the Agency at any time during the Term (but not more than twice during each year of the Term) for the purpose of monitoring and assessing the Agency's performance of its obligations under this Agreement.
- 21.2 The Director must give the Agency 10 Business Days prior notice in writing of its intention to conduct a performance review in accordance with Clause 21.1.
- 21.3 The Agency must:
- 21.3.1 use its best endeavours to co-operate with and provide assistance to the Director in relation to the conduct of any performance review under Clause 21.1; and
  - 21.3.2 make available to the Director (including any auditor, consultant or agent appointed by the Director) all relevant information and documents required for the purposes of the performance review within 30 days of receipt of a written request by the Director to do so.

### **22. AGENCY'S OBLIGATIONS ON EXPIRY OR END OF AGREEMENT**

---

#### **22.1 Condition of Premises on Expiry**

- 22.1.1 The Agency must:
- 22.1.1.1 vacate the Premises on the earlier of the Expiry Date and the date this Agreement ends; and
  - 22.1.1.2 leave the Premises in a condition which is consistent with the Agency complying with its obligations under this Agreement.
- 22.1.2 Unless requested to do so by the Director in writing, in carrying out its obligation under Clause 22.1.1, the Agency must not reverse or remove any of the works carried out by the Agency in accordance with Clauses 8 or 9.

#### **22.2 Removal of Property**

- 22.2.1 The Agency must not remove the Director's Property.

22.2.2 The Agency must remove the Agency's Property from the Premises on the earlier of the Expiry Date and the date this Agreement ends.

22.2.3 If the Agency does not remove the Agency's Property from the Premises in accordance with Clause 22.2.2, the Director may treat the Agency's Property as abandoned and deal with it as the Director sees fit at the cost of the Agency.

22.2.4 The Agency's Property is at the Agency's risk at all times before and after the date this Agreement ends.

### **22.3 Return of Keys**

The Agency must give the Director all keys, access cards and similar devices for the Premises on the earlier of the Expiry Date and date this Agreement ends.

## **23. ENTRY BY DIRECTOR**

---

23.1 Subject to Clause 23.2, after giving reasonable notice to the Agency, the Director or persons authorised by the Director may enter the Premises at reasonable times to:

23.1.1 inspect the Premises;

23.1.2 maintain or repair the Premises in accordance with its obligations under Clauses 8, 9.3 or 9.4; and

23.1.3 rectify any default by the Agency under this Agreement.

23.2 If there is an Emergency, the Director and persons authorised by the Director may enter the Premises at any time without notice.

23.3 In exercising its rights under Clauses 23.1 and 23.2, the Director must:

23.3.1 use reasonable endeavours to minimise any disruption to any Sub-Tenants at the Premises; and

23.3.2 in determining what is reasonable notice, take into consideration the Agency's obligations as a landlord under the *Residential Tenancies Act 1997*.

23.4 On request by the Director, the Agency must vacate that part of the Premises in respect of which the Director is exercising its rights under Clauses 23.1 for such reasonable period determined by the Director as is necessary to enable the Director to exercise its rights under those Clauses.

## **24. DEALING WITH THE PREMISES**

---

The Director may:

24.1 subdivide the land on which the Premises is situated and grant easements and other rights over the Premises; and

- 24.2 with the consent of the Agency (which must not be unreasonably withheld), use the roof and external walls of the Premises for any purpose required by the Director;

except where such a grant or use will materially and adversely affect the Agency's use of the Premises for the Permitted Use.

## **25. VARIATION TO DEFINITION OF PREMISES**

---

### **25.1 Addition and Removal of Premises by Agreement**

- 25.1.1 At any time during the Term the Director and the Agency may, by execution of an agreement in the form set out in Annexure B, amend the definition of Premises specified in Part 1 of Annexure A to:

25.1.1.1 include the additional premises described in the agreement; or

25.1.1.2 remove the premises described in the agreement.

- 25.1.2 On and from the date specified in the agreement, this Agreement will, without limiting any other rights the Director may have:

25.1.2.1 apply to any additional premises specified in the agreement; and

25.1.2.2 cease to apply to any premises specified as being removed in the agreement.

### **25.2 Partial Termination**

- 25.2.1 Where the Director has the power to terminate this Agreement, whether under the terms of this Agreement or otherwise, the Director may, by notice in writing to the Agency and in its absolute discretion, exercise that power in respect of any part of the Premises nominated by the Director.

- 25.2.2 Upon the partial termination of this Agreement in respect of any part of the Premises, this Agreement will continue to apply to the remaining parts of the Premises as if those remaining parts of the Premises were the only premises specified in Part 1 of Annexure A.

### **25.3 Alteration to Maintenance Fund Fee and Asset Management Fund Fee**

- 25.3.1 Without limiting Clause 4.5:

25.3.1.1 on the addition of any premises to the definition of Premises under Clause 25.1, the Director may, by giving notice to the Agency, increase the Maintenance Fund Fee and the Asset Management Fund Fee by an amount determined in accordance with Clause 25.3.2; and

25.3.1.2 on the removal of any premises from the definition of Premises under Clause 25.1 or on the partial termination of this Agreement in respect of any part of the Premises under Clause 25.2, the Director may, by giving notice to the Agency, reduce the Maintenance Fund Fee and the Asset Management Fund Fee by an amount determined in accordance with Clause 25.3.2.

25.3.2 Any increase or decrease in the Maintenance Fund Fee or the Asset Management Fund Fee under Clause 25.3.2 must be determined generally in accordance with the Benchmarks, having regard to the characteristics of the properties being removed or added to the definition of Premises.

## **26. VARIATION OF BENCHMARKS**

---

26.1 On 1 July in each year during the Term, the Benchmarks will each be adjusted to an amount equal to the Benchmarks applicable immediately prior to the Benchmark Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

26.2 Without limiting Clause 26.1, the Benchmarks will be adjusted by the Director by an amount of no more than 10%, effective from 1 January 2009, after:

26.2.1 meeting with the Agency to discuss in good faith the proposed adjustment with the Agency; and

26.2.2 taking into consideration the Director's expenditure and the Agency's expenditure on maintenance in respect of properties owned by the Director and used for the purpose of social housing;

26.3 Where the Benchmarks have been adjusted in accordance with either Clause 26.1 or Clause 26.2, the Director will give notice to the Agency of the adjustment.

## **27. TERMINATION OF AGREEMENT**

---

### **27.1 Director's Right to End the Agreement**

If a Default Event occurs, the Director may:

27.1.1 end this Agreement by re-entering the Premises without notice;

27.1.2 end this Agreement by notice to the Agency;

27.1.3 convert this Agreement by notice to the Agency into a tenancy which may be ended at will by the Director but not by the Agency;

27.1.4 require the Agency to surrender this Agreement to the Director; or

27.1.5 require the Agency to assign or sub-lease (and in the case of a sub-lease on terms substantially similar to this Agreement or as otherwise directed by the Director) its interest under this Agreement to a person nominated by the Director.

The Agency may not take any action against the Director as a result of the Director exercising its rights under this Clause 27.1.

## **27.2 Default Events**

A Default Event occurs if:

- 27.2.1 the Agency does not pay any money as required under this Agreement for a period of 14 days after any day on which it ought to have been paid and does not remedy the breach within 28 days of receipt of a written notice from the Director;
- 27.2.2 the Agency breaches any other obligation under this Agreement and does not remedy the breach within 28 days of receipt of a written notice from the Director;
- 27.2.3 any term of this Agreement is claimed to be wholly or partly void, voidable or unenforceable by the Agency or by anyone on behalf of the Agency;
- 27.2.4 any creditor appoints an agent to take possession of the Agency's interest in this Agreement or the Agency's Property; or
- 27.2.5 the Agency is or becomes registered as a Registered Agency but then ceases to be a Registered Agency for any reason.

## **27.3 Damages following a Default Event**

- 27.3.1 If the Director exercises any of its rights under Clause 27.1, the Agency indemnifies the Director against all cost, liability, loss and damage the Director incurs or suffers in connection with the exercise of the Director's rights under Clause 27.1 including, without limitation, those incurred in connection with:
  - 27.3.1.1 re-entering the Premises; and
  - 27.3.1.2 losing the benefit of the Agency performing its obligations under this Agreement from the date the Agreement ends until the Expiry Date.
- 27.3.2 The Director's rights under this Clause are in addition to its other rights under this Agreement.
- 27.3.3 If the Director exercises a right under Clause 27.1, any cost, liability, loss or damage suffered or incurred by the Director is taken to be caused by the Default Event, not by the Director's action.

## **27.4 Rectification by Director**

The Director may at its option remedy any default on the part of the Agency in complying with any provision of this Agreement and any costs and expenses so reasonably incurred by the Director will constitute a liquidated debt payable by the Agency to the Director on demand.

## **27.5 Essential Terms and Repudiation**

The essential terms of this Agreement are Clauses 4, 5, 6, 7, 8, 9, 12, 13, 14.7, 15 and 16. The breach of an essential term is a repudiation of this Agreement.

## **28. TERMINATION WITHOUT FAULT**

---

This Agreement will expire on 31 December 2008 if, on that date, the Agency is not a Registered Agency.

## **29. DAMAGE TO PREMISES**

---

### **29.1 Reinstatement or Termination by Director**

If the Premises or any part of the Premises are damaged or destroyed so that, in the reasonable opinion of the Director, they cannot be used for the Permitted Use, the Director may, within 60 days of the date of the damage or destruction, give notice to the Agency:

- 29.1.1 terminating this Agreement, if the Director, in its absolute discretion, considers that it is impracticable or undesirable to repair the damage or destruction; or
- 29.1.2 that the Director will commence reinstatement of the Premises to a condition where the Agency can use or have access to the Premises.

Nothing in this Clause 29.1 is to be interpreted as obliging the Director to repair or reinstate the Premises.

### **29.2 Relocation of Premises**

On request by the Director, the Agency must vacate that part of the Premises which has been damaged or destroyed.

### **29.3 Variation**

29.3.1 If the Director:

29.3.1.1 gives notice to the Agency that it intends to reinstate the Premises under Clause 29.3.2 and fails to do so within a reasonable time (having regard to the nature of the damage); or

29.3.1.2 fails to give notice to the Agency under either Clause 29.1.1 or 29.1.2;

the Agency may vary the Agreement to remove the damaged or destroyed property from the definition of Premises by giving 30 days notice to the Director, except where the Agency has caused or contributed to the damage or destruction.

29.3.2 Where the Agency exercises its rights under this Clause 29.3, the Agency and the Director must execute an agreement in the form



set out in Part 1 of Annexure A and the provisions of Clause 25.1.2 and Clause 25.3 will apply.

#### **29.4 No compensation**

If the Agreement is terminated in accordance with this Clause 29, the Agency will not be entitled to any compensation from the Director and each Party will release the other from all rights and obligations under this Agreement, except in relation to any antecedent breach.

#### **29.5 Reduction of payments**

The Agency may reduce its payments under this Agreement by an amount to be determined by the Director for the period from and including the date the damage occurs to and including the date this Agreement is terminated or to but excluding the date the Premises are made fit for the Agency's use. Any reduction must be proportionate to the loss of amenity caused by the damage.

### **30. RELOCATION DURING WORKS**

---

#### **30.1 Relocation during period of Works**

30.1.1 Where the Agency vacates part of the Premises in accordance with Clauses 11.3, 23.4 or 29.2:

30.1.1.1 the Agency must use its best endeavours to relocate any Sub-Tenant occupying the relevant part of the Premises to another property forming part of the Premises;

30.1.1.2 where the Agency is unable to relocate any Sub-Tenant in accordance with Clause 30.1.1.1, the Agency must inform the Director as soon as possible and inquire as to whether the Director can relocate the Sub-Tenant on behalf of the Agency at a property owned by the Director; and

30.1.1.3 subject to Clause 30.1.2, where the Agency is unable to relocate any Sub-Tenant in accordance with Clause 30.1.1.1 and the Director is unable to relocate any Sub-Tenant in accordance with Clause 30.1.1.2, the Agency may take a lease or licence of a property from a third party on reasonable terms for the purpose of accommodating the Sub-Tenant during the period in which the works are carried out.

30.1.2 Prior to relocating any Sub-Tenant in accordance with Clause 30.1.1.3, the Agency must obtain the prior written approval of the Director of the terms of any lease or licence.

30.1.3 Subject to Clause 30.1.4:

30.1.3.1 where any Sub-Tenant is required to vacate part of the Premises in accordance with Clause 30.1, the Director will pay to the Agency within 30 days of receipt of a

written request to do so, the reasonable costs of the removal of any Sub-Tenant's property, mail redirection, telephone re-connection, utility re-connections and transport of the Sub-Tenant to the new property; and

- 30.1.3.2 where any Sub-Tenant is required to vacate part of the Premises in accordance with Clauses 30.1.1.3, the Director will pay to the Agency within 30 days of receipt of a written request to do so, an amount equal to the difference between the rent payable to the Agency by the Sub-Tenant during the period of relocation and the rent payable by the Agency for the premises in which the Sub-Tenant has been relocated.
- 30.1.4 The Director will not be obliged to pay any amount to the Agency under Clause 30.1.3 where:
  - 30.1.4.1 the need for the relocation arises from a breach of this Agreement by the Agency or as a result of any negligence by the Agency; or
  - 30.1.4.2 the Agency has failed to provide evidence to the satisfaction of the Director of the costs incurred by the Agency for which the Agency seeks reimbursement under Clause 30.1.3.
- 30.2 Subject to Clause 30.1.3, the Director is not liable for any loss, cost, damage or liability arising from the exercise by the Director of its rights under this Clause 30 except where such loss, cost, damage or liability is caused by the Director's negligence, default or unlawful act or unlawful omission.

## **31. DISPUTE RESOLUTION**

---

- 31.1 All disputes arising out of this Agreement concerning the performance or non-performance by either party of its obligations under the Agreement or any interpretation of any provision of this Agreement shall be settled as follows:
  - 31.1.1 where one Party considers that a dispute has arisen, that party shall give written notice to the other containing detailed particulars of the dispute (the **First Notice**). Within 7 Business Days of the giving of the notice, the Parties shall meet and discuss and use their best endeavours to settle the dispute;
  - 31.1.2 if the dispute remains unsettled after 21 Business Days of the giving of the First Notice, then either Party may give written notice (the **Second Notice**) to the other Party requesting that a third person (the **Mediator**) be appointed to mediate the dispute;
  - 31.1.3 the Mediator may be appointed either by agreement between the parties or, failing such agreement within 5 Business Days of the giving of the Second Notice, by the president for the time being of the Law Institute of Victoria;

31.1.4 within 14 Business Days of the giving of the Second Notice both parties shall deliver to the Mediator written details of the dispute;

31.1.5 the Mediator shall mediate the dispute as soon as practicable.

31.2 The Parties agree that:

31.2.1 any decision reached by the Parties in respect of the dispute shall be in writing, signed by the Parties and shall be binding on all Parties;

31.2.2 each will bear their respective costs of proceeding under this Clause save that the Mediator's fee, fees for venues and costs of shared equipment facilities and services of the mediation will be shared equally;

31.2.3 the venue for the mediation will be agreed between the Parties or, failing such agreement, will be specified by the Mediator;

31.2.4 each Party may be legally represented if they wish; and the mediation will be conducted without prejudice and complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation.

31.3 In mediating any matter in dispute the Mediator, shall have regard to:

31.3.1 the relevant policies of the Commonwealth and Victorian Governments and the Director in force at the time of mediation; and

31.3.2 the principles of natural justice.

31.4 Prior to the mediation of a dispute, all Parties will continue to perform their obligations under this Agreement.

## **32. GST**

---

All Consideration payable under this Agreement in relation to any Supply is inclusive of GST.

## **33. GENERAL**

---

### **33.1 Notices**

Any notice required to be served under this Agreement must be in writing and must be served by post, facsimile transmission or hand delivered to:

33.1.1 the Director at its address set out in this Agreement; and

33.1.2 the Agency at its address set out in this Agreement.

### **33.2 Approvals and Consent**

The Director may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Agreement provides otherwise. The Agency must comply with each condition imposed by the Director as if it was a provision of this Agreement.

### **33.3 Exclusion of Statutory Provisions**

33.3.1 The covenants, powers and provisions implied in leases by section 67 of the *Transfer of Land Act* 1958 do not apply to this Agreement.

33.3.2 The *Residential Tenancies Act* 1997 and the *Retail Leases Act* 2003 do not apply to this Agreement.

### **33.4 Payments**

33.4.1 The Agency must make payments under this Agreement punctually without set-off or counterclaim and free and clear of any withholding or deduction.

33.4.2 All payments due by the Agency under this Agreement must be paid to the Director or to a person notified by the Director to the Agency.

### **33.5 Parties' Relationship**

This Agreement does not constitute a legal partnership or a joint venture between the Parties nor does it create an agency relationship between the Parties.

### **33.6 Validity**

If any provision of this Agreement is void, voidable by a Party, unenforceable or illegal, it shall be read down so as to be valid and enforceable. If any provision cannot be so read down, the provisions (or, where possible, the offending words) will be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which shall continue to have full force and effect.

### **33.7 Governing Law and Jurisdiction**

33.7.1 This Agreement is governed by the law of Victoria.

33.7.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

### **33.8 Waiver**

If the Director does not exercise or delays in exercising any of the Director's rights under this Agreement, it will not be a waiver of the breach of this Agreement by the Agency or of the Director's rights under this Agreement.

### 33.9 Entire Agreement

This Agreement contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

## 34. PRIVACY AND WHISTLEBLOWERS ACTS

---

### 34.1 Information Privacy Principles

- 34.1.1 The Agency agrees to operate on the basis that it is an 'organisation' within the meaning of the IP Act and the HR Act, and agrees that in carrying out its obligations under this Agreement:
- 34.1.1.1 to use and disclose personal information and health information obtained during the course of carrying out its obligations under this Agreement only for the purposes of this Agreement and in accordance with the IP Act and the HR Act;
  - 34.1.1.2 not to do any act or engage in any practice that would breach an Information Privacy Principle (**IPP**) (as defined in the IP Act), which if done or engaged in by the Director, would be a breach of that IPP;
  - 34.1.1.3 to carry out and discharge the obligations contained in the IPPs as if it were the Director under the IP Act;
  - 34.1.1.4 not to do any act or engage in any practice that would breach a Health Privacy Principle (**HPP**) (as defined in the HR Act);
  - 34.1.1.5 to notify individuals whose personal information the Agency holds, that complaints about acts or practices of the Agency may be investigated by the Victorian Privacy Commissioner or Victorian Health Services Commissioner who has the power to award compensation against the Agency in appropriate circumstances;
  - 34.1.1.6 to notify individuals whose personal information the Agency holds that the Agency may, in the course of meeting its reporting requirements, provide the information held to the Director;
  - 34.1.1.7 to comply with any direction, guideline, determination or recommendation made by the Victorian Privacy Commissioner or the Victorian Health Services Commissioner;
  - 34.1.1.8 to ensure that any employee of the Agency who is required to deal with personal or health information for

the purposes of this Agreement is made aware of the obligations of the Agency set out in this Clause 34; and

- 34.1.1.9 to immediately notify the Director if the Agency becomes aware of a breach or possible breach of any of the obligations referred to in subclauses 34.1.1 to 34.1.1.8 whether by the Agency or any subcontractor.
- 34.1.2 The Agency agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Agency has under Clause 34.1.1.
- 34.1.3 Clause 34.1.1 applies only where the Agency deals with personal information (as defined in the IP Act) and health information (as defined in the HR Act) when, and for the purpose of this Agreement.

## **34.2 Whistleblowers Act**

If the *Whistleblowers Protection Act* 2001 applies to the Agency, the Agency agrees to comply with and be bound by the provisions of that Act.

## **35. OPENNESS IN GOVERNMENT CONTRACTING AND CONFIDENTIALITY**

---

- 35.1 The Agency consents to the Director publishing (on the internet or otherwise) in accordance with the Contracts Publishing System Policy issued by the Victorian Government Purchasing Board, the name of the Agency and the conditions of this Agreement generally.
- 35.2 Notwithstanding any other Clause of this Agreement, the Agency shall:
  - 35.2.1 retain all documents and information relating to this Agreement for a period of 3 years following the expiration of the Term, unless otherwise agreed with the Director; and
  - 35.2.2 when requested by the Director to do so for the purposes of a request for information or the auditing of documents or information relating to the Agreement by:
    - 35.2.2.1 the Auditor General or the Ombudsman for Victoria; or
    - 35.2.2.2 a Parliamentary Committee of the Victorian Parliament,
    - 35.2.2.3 supply, permit the auditing of, or otherwise make available, any document or other information relating to this Agreement.
- 35.3 The Agency's costs of complying with this Clause 35 shall be borne by the Agency. For the avoidance of doubt, the Director is not liable for any costs of conducting any audit referred to in this Clause 35.
- 35.4 The Agency shall comply with any guidelines introduced from time to time by the Director, the Victorian Government Purchasing Board or a relevant

Government department to give effect to any Government policy on transparency or openness in Government contracting.