|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | *Dealing Number* | |  | | | | | |  | |
|  | Barcode Black OFFICE USE ONLY  **Privacy Statement**  Collection of information from this form is authorised by legislation and is  used to maintain publicly searchable records. For more information see  the Department’s website. | | |  | | | | | |  | |
| **1. Lessor** | | | **Lodger** (Name, address, E-mail & phone number) | | | | | **Lodger Code** | |
| **2. Lot on Plan Description** | |  | |  | | | **Title Reference** | | |
|  | |  | |  | | |  | | |
| **3. Lessee** Given names | | Surname/Company name and number | | | | (include tenancy if more than one) | | | |
|  | |  | | | |  | | | |
| **4. Interest being leased** | | | | | | | | | |
| **5. Description of premises being leased** | | | | | | | | | |
| **6. Term of lease**  Commencement date/event:  / /  Expiry date:   /  /     and/or Event:  #Options:  #Insert *nil* if no option or insert option period (eg 3 years or 2 x 3 years) | | | | | **7. Rental/Consideration** | | | | |

**8. Grant/Execution**

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- \*the attached schedule; \*the attached schedule and document no.      ; \* document no.      ; \*Option in registered Lease no.       has not been exercised.

\* delete if not applicable

**Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994**

Signature

full name

qualification / /

**Witnessing Officer Execution Date Lessor’s Signature**

(Witnessing officer must be in accordance with Schedule 1   
of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

**9. Acceptance**

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

signature

full name

qualification / /

**Witnessing Officer Execution Date Lessee’s Signature**

(Witnessing officer must be in accordance with Schedule 1   
of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Reference Table

|  |  |
| --- | --- |
| Lessor name & details(Trustee details should be inserted here) | #1# (Lessor name]  #[Lessor address]  #[Lessor fax no] |
| DOGIT land details (include Community name) | #2# insert full description of Deed of Grant in Trust |
| Lessee name and notice details | #3#[Lessee name]  #[Lessee address]  #[Lessee fax no] |
| Description & area | #5# [ Insert the description of the lease and area as shown on the plan of survey) |

# Interpretation and Definition

## 1.1 Definitions

### In this Lease, unless the context requires otherwise:

### **“the Act”** means the *Aboriginal Land Act 1991 (Qld)* as amended from time to time and if that Act is repealed, any Act which replaces that Act.

### **"Agreed Standard"** means the standard agreed in writing between the parties from time to time or, failing agreement, the higher of:

#### the relevant Australian standard (if applicable); and

#### the relevant industry code or guidelines; and

#### the standard required by law; and

#### generally accepted industry standards and practices; and

#### community accepted standards and practices.

### **“Approvals”** means any consent or approvals required by law.

### **“Business Day”** means any day in the State of Queensland which is not a Saturday, Sunday or public holiday either in the locality of the Premises or in Brisbane.

### **“Commencement Date”** is as defined at Item 6 of the Form 7.

### **"Form 7"** means the Form 7 lease which incorporates by reference the terms of this document.

### **“Improvements”** means all improvements, fixtures and fittings as constructed on the Premises.

### **“Lease”** means a trustee (Aboriginal) lease under the Act and the agreement recorded in this memorandum of Lease, its schedules, plans and attachments and includes any variation which has been duly executed by the Parties and registered in the Queensland Land Registry.

### **“Lessee”** means the Lessee named in Item 3 of the Form 7.

### **"Lessee's Improvements"** means all improvements, fixtures and fittings on the Premises

### **“Trustee”** means the Lessor named in Item 1 of the Form 7.

### **"Trustee's Improvements"** means all improvements, fixtures and fittings provided by the Trustee to the Premises prior to the commencement of the lease. Upon commencement of the lease all improvements shall cease to be the Trustee’s improvements for the duration of the lease.

### **“Minister”** means the Minister administering the Act and as amended from time to time.

### **“Parties”** means the Trustee and the Lessee.

### **“Premises”** means all that land described in Item 5 of the Form 7 (that part of the land described in Item 2 shown on the relevant plan of survey) together with Improvements thereon.

### **“Purpose” [insert the lease purpose]** such as commercial purposes, or as nominated by the Lessee and agreed to by the Trustee (the parties).

### **"Queensland Government"** means the State of Queensland and includes each and every department or other body owned or controlled by the State of Queensland but does not include a Government Owned Corporation under the *Government Owned Corporations Act 1993*.

### **"Reference Table"** means the table and information on pages 2 this Lease.

### **"Registrar"** means the registrar of titles under the *Land Title Act 1994*

### **“Rent”** means the amount payable annually as set out at Item 7 of the Form 7.

### **“Services”** means those services provided by the Local Government Authority and includes potable water, sewerage, stormwater and drainage and formed roads.

### **“Term”** is as defined at clause 4

### **“Trustee”** means the Lessor described in the Reference Table.

### **“Aboriginal Trust Land”** means the land described in Item 2 of the Form 7.

### **“Utilities”** means those services provided by an external provider and for which the Lessee has an account such as electricity and/or telecommunications.

### (z) **“Services”** means those services provided by the Local Government relating to, but not limited to, supply of water, sewerage, refuse collection and disposal.

### **1.2 Interpretation**

### Headings are not included in the operative part of the Lease and should not be used in interpretation of the Lease.

### References to statutes, regulations, ordinances or by-laws are deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

### Unless otherwise specified, a reference to a clause or a schedule is reference to a clause of or a schedule to this Lease and includes any amendment made to the clause or schedule in accordance with this Lease.

# Grant of Lease

This Lease of Premises is conditional upon the terms and conditions set out in the Form 7 and this Schedule and Annexures. This Lease is subject to the provisions of the Act as amended from time to time and if any clause or condition of the Lease is inconsistent with the Act, the provisions of the Act prevail.

# No Warranties

The Trustee gives no warranty as to the suitability of the Premises.

# Commencement and term of lease

### The Term of this Lease is the term described in Item 6 of the Form 7.

This lease is granted for a term of .

# Rent payable for lease

### The rent payable for this Lease is as defined at item 7 of the Form 7. Rent shall be determined by the Trustee.

# Inspection by Trustee

## Inspection

Upon giving 5 Business Day’s written notice, the Trustee and its agents may inspect the Premises annually or at such other time within the Term where a reasonable cause for an inspection is stated in the notice.

## Lessee to be present at inspection

Any inspection under clause 6.1 must be undertaken in the presence of a nominated officer of the Lessee.

## Areas excluded from inspection

Despite clause 6.1, the Lessee may give notice to the Trustee that access to certain areas of the Premises are excluded by law.

## 6.4 Written Report

Where the Lessee has given notice under clause 6.3, the Lessee must provide a written report to the Trustee certifying as to the continuing use being made of that part of the Premises excluded from the inspection and its state of repair.

## 7. Remedy for default

### Subject to the provisions of the Act, if the Defaulting Party defaults on a Condition under this Lease (a Default) then the lease may be forfeited. In addition to any other right the Innocent Party may have, the following provisions apply:

### the Innocent Party issues a written notice to remedy the Default (a Default Notice) on the Defaulting Party The Default Notice must provide reasonable particulars of the default and require the Defaulting Party to remedy the default within 6 months after receiving notice of the breach from the Innocent Party;

### the Defaulting Party must use its best endeavours to remedy the Default as soon as reasonably possible and in any case within the time stipulated in the Default Notice;

### when the Defaulting Party has remedied the Default it must provide reasonable evidence to the Innocent Party that it has done so; and

### if the Defaulting Party has not remedied the default to the Innocent Party’s reasonable satisfaction prior to expiry of the time stipulated in the Default Notice, and if the Innocent Party wishes that the lease be forfeited, then the Innocent Party may forfeit the lease giving the Defaulting Party notice of the intent to default.

#### the Innocent Party may:

##### elect to remedy the Default, in which case the Defaulting Party must pay all of the Innocent Party's reasonable costs and outlays of and incidental to the Default Notice and remedying the Default; or

##### if it is materially prejudiced then the Innocent Party may elect to serve a notice in writing to the Defaulting Party terminating the Lease; and

#### the Innocent Party may claim compensation for the Default from the Defaulting Party.

# 8. Surrender of lease

**8.1** All or part of a trustee (Aboriginal) lease may be surrendered only if each registered mortgagee has given written agreement to the surrender.

**8.2** The Lessee may, after seeking any necessary agreements pursuant to clause 8.1, at any time during the continuance of this Lease surrender its interest in this Lease by giving not less than three (3) month’s written notice to the Trustee of its decision to do so and providing to the Trustee an executed surrender in registrable form. The Trustee must execute the surrender and return it to the Lessee within 14 Business Days for lodgement in the Land Registry and registration.

# 9. Notices

## 9.1 Ways of giving notice

### Any notice demand or other communication to be given or served under this Lease upon a party must only be given by facsimile transmission, prepaid post or delivery to the address or facsimile number of the recipient stipulated in the Reference Table, or such other address or facsimile number as may be notified to the sender by the recipient from time to time in writing. If notice is given by facsimile the original document must be posted on the same day as the transmission is sent.

## 9.2 When notice given

### A notice sent by post shall be deemed to have been received by the addressee at the time it would have been delivered in the published delivery times for the ordinary course of the post, unless the addressee proves otherwise. A notice sent by fax shall be deemed to have been received by the addressee when a successful transmission report is received. If the fax is sent outside of business hours, receipt is deemed to be on the next Business Day.

# 10. Release, indemnity and Insurance

## 10.1 Indemnity

The Lessee indemnifies and agrees to keep indemnified the State of Queensland (represented by the Department of Natural Resources and Mines), the Minister and the Trustee (the "Indemnified parties") against all actions, suits, proceedings, claims, demands, costs, losses, damages and expenses ("Claim") arising out of or in any way connected to or resulting from the granting of this Lease to the Lessee or which is connected to or resulting from the Lessee’s use and occupation of the Premises (all of which are referred to as "the indemnified acts or omissions") save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified parties, however, any negligent act or omission of one of the Indemnified parties does not negate the indemnity to any of the other Indemnified parties.

## 10.2 Release

### The Lessee hereby releases and discharges the Indemnified parties from any claim relating to the indemnified acts or omissions which may be made against the Indemnified parties.

### **Insurance**

(a)The Lessee must effect a public liability insurance policy with an insurer authorised under the *Insurance Act 1973* (Commonwealth) or, in any other case to the satisfaction of the Minister, naming the Lessee as the insured covering legal liability for any loss of or damage to any property and for the injury (including death) to any person arising out of anything done or omitted on or about the Premises and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof. Such policy must:

* + - 1. be for an amount of not less than [state figure - minimum of Twenty Million Dollars ($20,000,000.00)] in respect of all claims arising out of a single event or such higher amounts as the Minister may reasonably require;
      2. be effected on a “claims occurring” basis so that any claim made by the Lessee under the policy after the expiration of the period of policy cover but relating to an event occurring during the currency of the policy will be covered by the policy subject to the claim meeting the policy’s other terms and conditions;
      3. be effected on such other reasonable terms and conditions as may be required by the Minister; and
      4. be maintained at all times during the currency of this Lease.

(b) The Lessee must renew such policy, at the Lessee’s expense, each year during the currency of this Lease and forward a certificate of currency to the Lessor within 14 days of the commencement of each respective renewal period

(c) Upon receipt of a Notice of Cancellation, the Lessee must immediately effect another public liability policy in accordance with the provisions of this condition.

(d) The Lessor must, within 14 days of becoming aware of any of the following occurrences, inform the Minister in writing, of any such occurrences:

### the Lessee's failure to renew the public liability insurance cover as required under the terms and conditions of the Lease agreement between the Lessee and the Lessor ("the agreement");

### the Lessee's failure to forward to the Lessor within 14 days after the commencement of a renewal period for such cover, a copy of the certificate of currency as required under the agreement.

### receipt by the Lessor of a Notice of Cancellation in relation to such cover.

## 10.4 Government Lessee

Clause 10.1 of this clause will be satisfied if the Lessee is the State of Queensland or a statutory authority eligible for cover under the Queensland Government Insurance Fund and is insured and continues to be insured by the Queensland Government Insurance Fund.

## 10.5 Keep Lessor and Minister Informed

The Lessee must, as soon as practicable, inform the Lessor, the Minister and the Minister administering the *Land Act 1994* in writing, of the occurrence of any event that the Lessee considers is likely to give rise to a claim under the policy of insurance effected and must ensure that the Lessor, the Minister and the Minister administering the *Land Act 1994* are kept fully informed of subsequent actions and developments concerning the claim**.**

# 11. Miscellaneous

## 11.1 No waiver

Should there be any delay or indulgence on the part of a party in the exercise by it of any of its rights, powers or remedies under this Lease, such delay or indulgence shall not be deemed to be a waiver of such rights powers or remedies except where specifically communicated to the other party in writing.

## 11.2 Consents

Any permission, consent or approval to be given by the Trustee must not be unreasonably withheld but may be given subject to reasonable conditions.

## 11.3 Property Law Act exclusions

The obligations and powers implied under Sections 105 and 107 of the Property Law Act 1974 are expressly excluded from this Lease.

## 11.4 Superseded Acts etc

Where a law referred to in this Lease is renamed, superseded or replaced with another law, then references in this Lease will be taken to be changed in a corresponding manner, except where the context requires otherwise.

## 11.5 Further assurances

Where a party to this Lease has an obligation or right to do something, then the other party:

### must not unreasonably do anything which prevents the party from performing its obligation or exercising its right; and

### must at the other party's expense sign any documents or do any acts reasonably required to assist the other party performing the obligation or exercising the right, except in circumstances where doing so would materially prejudice the party.

## 11.6 GST

### In this clause, “GST”, “tax invoice”, “supply”, “supplier” and “recipient” have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth).

### All payments to be made by the Lessee under this Lease (including but not limited to rent) are calculated exclusive of GST.

### If GST is or will be assessed on the provision of goods, services or any other supply under this Lease, then the recipient of the supply shall, in addition to all payments whatsoever contracted to be made under this Lease, pay the supplier upon receipt of a valid tax invoice, the relevant GST amount.

## 12. Costs generally

Each party is responsible for its own costs of and incidental to this Lease including the cost of any necessary consents and approvals sought by that party.

## 13. Ownership

The Lessee shall be deemed to be the owner of the Premises for the duration of the lease.

### **14. Use**

### The Lessee must use the premises for **‘Insert purpose’**

The Lessee shall not without the prior written consent of the Trustee during the whole of the Term of this Lease, use or permit the Land to be used for any purpose other than for the carrying on of a **‘Insert purpose’** or other businesses which the Lessee is entitled to carry on the lease land.

## 15. Appearance of Premises

The Lessee must keep the Premises fit for occupation for **‘insert details’** purposes and maintain the outward appearance of the Premises in a state of cleanliness and good repair so as not to unduly diminish the aesthetic appearance of the general locality in which the Premises are situated.

# 16. Transfer of lease

### The Lessee must not transfer this Lease without the prior written consent of the Trustee and where there is a mortgage, in accordance with the mortgagee’s instructions.

# 17. Creation of additional interest in lease

The Lessee may sublease the lease but only with Trustees prior written consent. In the case of a mortgage, in accordance with the mortgagee’s instructions.

**17.1 Term of sublease**

The term of the sublease must not extend beyond the term of this lease and must end 1 day prior to the expiration of this lease.

# 18. Rent

### The Lessee must pay the Rent to the Trustee in accordance with Item 7, Form 7.

### **[Insert a clause concerning the payment of rent, the rental rate, frequency of payments, GST obligations and a rent review mechanism (if applicable) must be included. The terms for this clause are a matter for agreement between the trustee and trustee lessee]**

# 19. Outgoings

## 19.1 Statutory charges

### The Lessee must pay all applicable:

### local government service charges, including those listed at 1.1.(y); and

### other statutory levies and charges on the occupier of the Premises, including those listed at 1.1.(z).

## 20. Reimbursement

### If an amount under clause 19.1 is levied on the Trustee, then the Lessee must reimburse the Trustee or pay at the Trustee's direction the amount by the later of:

### (a) the due date for payment by the Trustee; and

### (b) the date which is 30 Business Days after the Lessee is called upon by the Trustee to pay the amount.

# 20.1 Utilities

# The Lessee is responsible for establishing accounts in its own name wherever possible and paying all fees and charges for the use of the Utilities provided to the premises.

# 21. Compliance with law

### So far as the Lessee is legally bound to observe, the Lessee shall observe all the restrictions as to the use of the Premises imposed by any law for the time being in force in the State of Queensland. These laws include, but are not limited to:

## 21.1 Planning Act 2016

### Before undertaking any development on the leased land the Lessee must obtain any applicable approvals required under the *Planning Act 2016*.

## 21.2 Environmental laws

## 21.2.1 General environmental duty

### The Lessee must not carry out any activity that causes, or is likely to cause, environmental harm unless the Lessee takes all reasonable and practicable measures to prevent or minimise the harm arising from its use of the Premises. The Lessee must use all reasonable endeavours to rehabilitate the Premises if there is damage caused to the Premises as a result of and incidental to the Lessee’s use of the Premises.

# 21.2.2 Pest Plants and Animals

The Lessee is required to control pest plants and animals on the Premises during the term of the Lease in accordance with the *Land Protection (Pest and Stock Route Management) Act 2002* and requirements of the **[insert name local government].**

# 21.2.3 Removal of trees

The Lessee must not destroy any trees on the Premises, unless in accordance with the *Vegetation Management Act 1999* and/or the *Sustainable Planning Act 2009* and in consultation with the Trustee.

## 21.2.4 No pollution

### The Lessee shall not dispose of or permit to be disposed of any garbage, oil, chemical or other substance or thing from the Premises in the sea or on the land in such a way as it may leak, wash or be blown or otherwise enter into any watercourse or the sea.

## 21.2.5 Storage

### The Lessee must store and keep all trade refuse and trade garbage in proper containers and shall dispose of all refuse regularly and hygienically at an approved rubbish dump and shall do so without causing pollution or damage to the surrounding land or sea. For the avoidance of doubt trade refuse and trade garbage includes but is not limited to debris from building works, chemicals from chemical works, medical waste and other waste of this type and does not include general refuse and garbage which is collected by the relevant Local Government Authority.

# 21.3 Nuisance Laws

The Lessee must conduct its operations on the Premises in an orderly and respectable manner and will not do or suffer to be done anything in upon or about the Premises which shall or may be or become an illegal nuisance.

### **22. Cultural heritage**

The Lessee is obligated to carry out any activity on the lease land in accordance with the provisions of the *Aboriginal Cultural Heritage Act 2003.* The Lessee must take all reasonable and practicable measures to ensure their activity does not harm Aboriginal cultural heritage.

# 23. Fees

## 23.1 Registration and survey fees

The Lessee must pay any registration fees and survey fees for this Lease.

## 23.2 Stamp Duty

The Lessee must pay the Stamp Duty (if any) for this Lease.

# 24. Removal of Improvements when Lease ends

## 24.1 Rights and obligations

When this Lease ends for any reason, other than Forfeiture:

### the Lessee may elect to remove any of the Lessee's Improvements and its other property, in which case it must do so within three (3) months of the date the Lease ends and must repair any damage caused by the removal of the Lessee's Improvements;

### the Lessee must leave the Premises in a clean and tidy state; and

### if the Lessee does not remove the Lessee's Improvements then it must leave the Lessee's Improvements in good and tenantable condition.

The Lessee specifically acknowledges and agrees that clause 10 Release and Indemnity applies to the exercise by the Lessee of its rights pursuant to this clause 24.1.

# 25. Quiet Enjoyment

Upon the Lessee paying the rent and observing and performing its covenants and the conditions of this Lease, the Trustee hereby covenants that the Lessee will be entitled to quietly enjoy the Premises without interruption or disturbance by the Trustee or any person claiming under or through the Trustee.

# 26. Access and Services

## 26.1 Access

If there is no access to the Premises directly from a public road, the Trustee hereby grants and confirms reasonable access through the area of the DOGIT land surrounding the Premises by all officers, employees, agents, contractors, consultants and invitees of the Lessee as necessary to attend at the Premises, but subject to the following conditions whenever applicable. The route over the DOGIT land for access to the Premises may be restricted by the Trustee, with the means of access directed to the shortest practical route which both minimises nuisance or interference to the Trustee, adjoining occupiers or neighbours and is culturally appropriate but the Trustee cannot deny reasonable access. Where the Trustee may lawfully restrict access by persons upon the Trust land without its prior knowledge or consent, the Lessee must inform the Trustee of the names or descriptions of persons or types of person required to deliver the Use and the Trustee will not deny access to the named or described persons or types of persons without just cause.

### The Lessee specifically acknowledges and agrees that the provisions of clause 10 Release and Indemnity applies to the exercise by the Lessee of its rights pursuant to this clause 26.1.

## 26.2 Services

### The Trustee must at its cost ensure Services are provided to the Agreed Standard to the boundary of the lease land.

# Liquor

27.1 The Lessee must not store, sell or supply, or allow to be stored, sold or supplied, any liquor on or from the Premises:

1. unless in accordance with any required licence or other authority under the *Liquor Act 1992*.

27.2 The Lessee must not operate the Premises under a gaming machine licence (as defined in the *Gaming Machine Act 1991*)without the prior written consent of the Trustee.

27.3 The Lessee must not operate KENO or TAB facilities on the Premises without the prior written consent of the Trustee and all necessary Approvals first being obtained.

### Annexure A: Survey Plan of Premises