

# Office Accommodation Management Framework

**Guideline 2: Space**

**Guideline 4: Occupancy**

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Occupancy Agreement for Government Accommodation between  
Department of Housing and Public Works and Agencies



**Queensland  
Government**

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## Part 1: Definitions and interpretation

### 1.1 Meaning of words

In this Occupancy Agreement for Government Accommodation between Department of Housing and Public Works and Agencies (as “Occupancy Agreement”), the below words have the following meanings:

Words	Definition
Air-Conditioning Equipment	means all of the plant, controls and ductwork used for the supply of conditioned air to the building.
Building	means all buildings, structures and other improvements on the land.
Building Owner	means the State of Queensland represented by the Department of Housing and Public Works (DHPW) in government-owned buildings. Or; The Head Lessor of privately-owned leased buildings as identified in the head lease.
Claim	means any action, claim, demand, damage, cost, loss or expense.
Commencement Date	means the date given in the Schedule.
Common Areas	means the areas of the land and the building designed or set aside by QGAO for common use, for example, the foyers, walkways, passageways, staircases, escalators, lifts, common area toilets and kitchens/tearooms, and driveways (if any).
Elevators	means the lifts and escalators and all other related equipment in the building.
Fitout	means partitions, screens, doors, decorative items, built-in and loose furniture, and other associated items. Fitout does not include office equipment belonging to the Occupant.
Floor Coverings	means all loose coverings on the floor of the Premises and includes fixed coverings such as carpets and tiles.
Government Employee Housing	a business unit of the Department of Housing and Public Works that enables government agencies to deliver essential services supported by suitable, cost effective employee accommodation in regional areas.
Head Lessee	means the State of Queensland represented by the Department of Housing and Public Works (DHPW).
Land	means the lot on which the building (if any) is situated and includes all improvements and fixtures on the land.
Laws	includes statutes and subordinate legislation, ordinances and by-laws.
Leased Buildings	means all buildings Department of Housing and Public Works (HPW) lease on behalf of the State of Queensland from the Building Owners.
MoG Change	means a Machinery of Government Change which occurs when a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency to another Queensland government department or agency in accordance with an administrative arrangement made under section 44 of the Constitution of Queensland Act 2001 (Qld).
Major Leased	means a leased premises where the State of Queensland leases the majority of the building from a private sector building owner.

Normal Business Hours	means the hours of 8 am to 6 pm Monday to Friday, except for public holidays.
Occupant and / or Agency	means all Queensland Government Departments, and commercialised business units but excludes Queensland Government Corporation.
Office Accommodation Management Framework (OAMF)	The OAMF outlines the operating environment and office accommodation management processes framework which the Queensland Government Office Accommodation operate within. The Office Accommodation Management Framework forms part of this Occupancy Agreement.
Other Leased	means leased premises other than Major Leased office buildings leased by the State of Queensland from private sector building owners.
Owned Buildings	means the various properties owned by the Department of Housing and Public Works (DHPW) and used for the purpose of office accommodation.
Plant room	means a room or area constructed or reserved for plant and/or equipment which is required to operate the building or the building's services.
Premises	means that part or parts of the building which is occupied by the Occupant as shown on the plan(s) attached to the Schedule.
QGAO	means the Queensland Government Accommodation Office (QGAO) business unit within the Department of Housing and Public Works whose responsibility is to manage office accommodation in the role of Head Lessee or Building Owner.
Rent	means the monthly amount or amounts specified in the Schedule subject to review as stated in Part 3 of this Occupancy Agreement or the Schedule.
Rent review date	means the rent review dates specified in the Schedule.
Schedule	means the Occupancy Details Schedule which contains specific details regarding occupancy terms for particular premises.
Services	means the services to or of the building, land or both provided by Building Owner or by any authority (including water, gas and electricity supply, air-conditioning, elevators and toilets) and includes grease traps and telecommunication equipment.

## 1.2 Meaning of phrases

In this Occupancy Agreement, unless a contrary intention appears:

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

## 1.3 Headings

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

## Part 2: Background and term

### 2.1 Background

#### 2.1.1 Role of the Department of Housing and Public Works (as “Building Owner” or “Head Lessee”)

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

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

on behalf of the State of Queensland.

It is the responsibility of QGAO to ensure appropriate utilisation of office space. Therefore, decisions made around allocation of departments and agencies within the portfolio is based on a whole-of-government benefit which is consistent with the Government’s current strategic accommodation objectives. No single agency can take preference when benefits to Government can be realised.

#### 2.1.2 This Occupancy Agreement

In accordance with the decision referred to above, the Occupant agrees to reside in a certain premise from QGAO on the terms and conditions as are set out in this Occupancy Agreement. Specific details in regard to particular premises will be detailed in the Schedule. The Occupancy Agreement and the Schedule comprise the documentation regulating the terms of occupancy of particular premises.

The Schedule will be the prevailing document in the event of any inconsistency or conflict. Exception to this, is any conflicts between the provisions of this Occupancy Agreement and the head lease for a Leased Building, the provisions of the head lease shall prevail. An Occupant in a Leased Building must comply with the terms, conditions and covenants of the head lease.

This Occupancy Agreement applies only to Government owned and leased office/commercial buildings under the control of QGAO. It does not apply to Government Employee Housing.

#### 2.1.3 Prior Occupancy Agreements are superseded

The terms and conditions of this document replaces all prior oral or written terms and conditions for occupying government office accommodation between QGAO and the Occupant. Always refer to the latest Occupancy Agreement on QGAO website.

#### 2.1.4 Binding agreement

QGAO and the Occupant are both agencies of the State of Queensland. Accordingly, neither has the capacity to enter into this Occupancy Agreement that is legally binding. However, QGAO and the Occupant intend to act as if this Occupancy Agreement is legally binding.

#### 2.1.5 Office Accommodation Management Framework (OAMF)

The OAMF outlines the operating environment and office accommodation management processes framework for which the Queensland Government Office Accommodation operate within. The Office Accommodation Management Framework forms part of this Occupancy Agreement. Additional information, assistance and advice is available from QGAO website.

<http://www.hpw.qld.gov.au/FacilitiesManagement/GovernmentFacilities/OAMF/FrameworkPolicy/Pages/default.aspx>

## 2.2 Term

### 2.2.1 Term of Occupancy Agreement

This Occupancy Agreement will continue from the date of signing the Schedule until it is reviewed and altered by QGAO.

QGAO makes available the premises to the Occupant on a continuing basis, subject to Parts 13 and 14.

### 2.2.2 Machinery of Government Change (“MoG”)

The Occupant acknowledges and agrees that If a MoG Change takes effect:

- (i) The Schedule and Occupancy Agreement will continue until such time a modified Schedule is provided to the Occupant by QGAO; and
- (ii) The Occupant is required to continue to meet its obligations as per the terms and conditions for occupancy.

## Part 3: Rent and rent review

### 3.1 Rent

#### 3.1.1 Occupant to pay rent: the Occupant must pay rent to QGAO.

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

#### 3.1.2 Instalments of rent

The Occupant must pay the rent in monthly instalments, in advance. Invoices will normally be issued at the beginning of the month, with credit terms of fourteen (14) days.

#### 3.1.3 Adjustments for occupation and vacation dates in owned properties

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

### 3.2 Rent review

Rent reviews will be performed from time to time as required.

#### 3.2.1 Leased Properties

The rent for Leased buildings is negotiated in accordance with the head lease between the building owner and the Department of Housing and Public Works on behalf of the State of Queensland. Occupants in Leased buildings may not dispute the negotiated rent.

### **3.2.1.1 Relocation rent review in leased properties**

A relocation to another office building may trigger a rent review which will occur from the first day of the month following the date of occupancy and will be outlined in the new Schedule.

## **3.2.2 Owned Properties**

Rents in the Owned Portfolio are reviewed periodically to market. It is assumed that each building is occupied by the State as a single Occupant on an ongoing basis.

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

### **3.2.2.1 Relocation rent review in owned properties**

A relocation to another office building may trigger a rent review which will occur from the first day of the month following the date of occupancy and will be outlined in the new Schedule.

### **3.2.2.2 Timing of rent reviews**

The rent review date will be shown in the Schedule. Generally, rent for Owned Buildings will be reviewed on 31 December 2018, with effect from 1 July 2019 and every two years thereafter.

### **3.2.2.3 Method of rent review for premises owned by QGAO**

From each rent review date, the rent for Owned Buildings will be the greater of:

the independently assessed market rent for the premises and other spaces, such as car parking bays, at the rent review date as agreed or determined pursuant to clauses 3.2.2.5 and 3.2.2.6; or

- the rent paid by the Occupant during the previous year for the premises or other particular spaces.

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

### **3.2.2.4 QGAO must notify Occupant of proposed rent**

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

### **3.2.2.5 Agreement on rent**

The Occupant may accept QGAO's proposed market rent under clause 3.2.2.4, in which case it becomes the rent. In the event that the Occupant does not make a written request to QGAO pursuant to clause 3.2.2.6 (a), within two (2) months of notification of the proposed rent, the Occupant is deemed to have accepted the market rent proposed by QGAO.

### **3.2.2.6 No agreement**

Where the Occupant disagrees with the rent notified by QGAO under clause 3.2.2.4 the following procedure will apply:

- (a) The Occupant may submit a written request to QGAO to have the rental reassessed. The submission must include the Occupant's assessment of market

rental together with supporting evidence. This request must be made within two (2) months of notification of the proposed rent.

QGAO will consider the Occupant's assessment and report back in writing within one (1) month of receiving the request or such extended period as agreed between the parties.

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

#### **3.2.2.7 The valuer**

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

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

#### **3.2.2.8 The premises**

For the purposes of this clause, the area of the premises (and any other space) is to be accepted to be the area or areas stated in the Schedule. This area is determined in conformance with the Property Council of Australia's Method of Measurement for Lettable Area – Commercial 2008 guidelines. Where space is in a retail outlet (such as a Shopping Centre) the area may be determined in conformance with the Property Council of Australia's Method of Measurement for Lettable Area – Retail 2008.

#### **3.2.2.9 Rent pending determination**

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



## **Part 4: Other payments incurred will be recovered from the Occupant**

### **4.1 Electricity**

#### **4.1.2 Paying for electricity**

Where electricity is supplied by the Building Owner, the Occupant must pay or reimburse QGAO for the electricity consumed.

#### **4.1.2 Lowest Tariff**

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

### **4.2 Service charges**

#### **4.2.1 Special and unusual services**

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

#### **4.2.2 Water, cleaning and refuse services**

The Occupant may be required to pay for:

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

#### **4.2.3 Cleaning costs**

QGAO requires the Occupant to use cleaning services supplied by QGAO and:

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

#### **4.2.4 Legal costs**

Each party will bear its own costs in relation to the preparation and signing of the Schedule(s).

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

#### **4.2.5 After-hours air-conditioning costs**

Where the building is air conditioned, the Building Owner will air-condition the premises outside normal business hours following a reasonable request by the Occupant. The Occupant must pay for the cost of operating the air-conditioning equipment outside normal business hours at a rate set by

the Building Owner having regard to operation costs and comparable market rates. That rate may be reviewed at any time:

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

#### **4.2.6 Security**

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

### **4.3 Other payments**

#### **4.3.1 Payments to others**

The Occupant must make payments payable under this part to persons other than QGAO, promptly.

#### **4.3.2 Goods and services tax**

All costs for goods and services tax in respect of rent, operating expenses or any other services or facilities or supply provided to the Occupant under this Occupancy Agreement shall be reimbursed by the Occupant upon demand.

#### **4.3.3 Late payments to QGAO**

If the Occupant does not pay:

- a) rent within fourteen (14) days of the due date for payment or
- b) any other payment due to QGAO within one (1) month of its due date,

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

#### **4.3.4 Disputed charges**

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

## Part 5: Occupant's obligations

### 5.1 Occupant's use of the premises

The Occupant must not use the premises for any purpose other than as agreed without the Building Owner's consent. Consent will not be unreasonably refused, regard being had to, amongst other things, any other Occupants and the value and amenity of the building.

### 5.2 Compliance with laws

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

### 5.3 Occupant's conduct

The Occupant must:

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

### 5.4 Condition of the premises

#### 5.4.1 Occupant must maintain premises

- (a) The Occupant must:
  - (i) maintain the premises in good and Occupiable repair and condition, having regard to the condition of the premises at the commencement date, and fair wear and tear, fire, explosion, flood, storm, inevitable accident, act of God, riot, civil commotion or war excepted
  - (ii) repair the premises where damage is caused to the premises by the Occupant's negligence or deliberate act
- (b) However, despite any other clause in this Occupancy Agreement, the Occupant is not obliged to:
  - (i) make structural alterations, additions or repairs to the premises or building
  - (ii) install or replace capital items, unless they are required because of the Occupant's negligence or deliberate act.
- (c) In addition, the Occupant must maintain and if necessary replace any equipment, fixtures and fittings that are required by the Occupant for its use of the premises including but not limited to fire extinguishers, fire blankets, safety switches specific occupant equipment, fixtures or fittings such as particular security system, air conditioning system or power supply. Should the Occupant wish QGAO to be responsible for the maintenance and

replacement of these items, the Occupant must accept that this shall be reflected in a higher rent rate. QGAO will determine a reasonable cost for the service (to be incorporated in the rent). If the Occupant does not accept the cost, QGAO is not obliged to provide the service and the Occupant accepts all associated risk, cost and responsibility for ensuring the occupied premises are fit for occupation.

#### **5.4.2 Cleaning and painting**

The Occupant must:

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

#### **5.4.3 Occupant not to interfere with services**

The Occupant must:

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

#### **5.4.4 Prohibited actions**

The Occupant must not:

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

### **5.5 Replacement of glass and light fittings**

Where DHPW is the property owner, re-lamping the premises is the Building Owner's responsibility, and this will normally be done on a six- year cycle.

In Leased buildings the Occupant is responsible for re-lamping and must replace all:

- (a) defective or inoperable light bulbs and tubes in the premises as may be necessary broken glass in the premises that has been damaged by the Occupant's negligence or deliberate act.

The Occupant is not liable for damage caused by:

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

## 5.6 Notice of damage

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

## 5.7 Obstruction of common areas and passageways

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

# Part 6: Alterations required by the Occupant

## 6.1 Building Owner's consent for work

- 6.1.1** The Occupant must not alter the premises or do any other work without the Building Owner's prior written consent obtained through QGAO. Such consent may not be unreasonably withheld. When seeking the Building Owner's consent to work, the Occupant must provide detailed drawings and particulars of the work proposed, including mechanical, fire and electrical services drawings as appropriate. In leased properties, QGAO will deal directly with the Building Owner on behalf of the Occupant.
- 6.1.2** In this part, 'work' includes:
- (a) the installation and removal of partitions and any associated work
  - (b) alterations to the premises or services to the premises needed because of:
    - (i) the Occupant's use of the premises
    - (ii) the number or gender of the employees or
    - (iii) requirements of any laws.
- 6.1.3** The Occupant must:
- (a) ensure that the work:
    - (i) is in accordance with the detailed drawings and particulars approved by the Building Owner
    - (ii) is carried out in a professional manner
  - (b) provide at its own cost a plan of the premises including alterations
  - (c) pay the Building Owner's reasonable costs of consenting to the work.

## 6.2 Work affecting electrical and other services

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

**6.2.2** The Building Owner's consent will not be withheld if:

- (a) the Occupant pays the Building Owner's reasonable costs of alterations to the building services so that they are not overloaded
- (b) the Occupant pays the costs of compliance with any laws.

## **6.3 Indemnity for Building Owner**

The Occupant indemnifies the Building Owner against all loss and damage to the premises and the building relating to the work.

# **Part 7: Occupant's rights**

## **7.1 Quiet enjoyment**

Except where this Occupancy Agreement provides otherwise, the Building Owner must not disturb or interrupt the Occupant's occupation and use of the premises.

## **7.2 The Occupant's use of the common areas**

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

## **7.3 Cabling**

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

**7.3.2** The Occupant must ensure:

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

## **Part 8: Building Owner's obligation**

### **8.1 Suitability of premises**

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

### **8.2 Capacity of electrical supply**

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

### **8.3 Maintenance of the building**

The Building Owner:

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

### **8.4 Elevator and air-conditioning services**

**8.4.1** Where air-conditioning and elevators service the building and premises, the Building Owner will:

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

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

### **8.5 Maintenance of air-conditioning equipment**

The Building Owner must:

- (a) clean, maintain and treat the air-conditioning equipment:
  - (i) in a reasonable manner
  - (ii) to a suitable working standard
- (b) when asked by the Occupant, provide written information about that cleaning, maintenance (which must comply with AS3666 Air Handling and Water Systems of Buildings—Microbial control and any other relevant Australian Standard) and treatment.
- (c) Where an Occupant has installed additional air-conditioning equipment, the Occupant is responsible for maintaining and treating equipment.

## **8.6 Failure of building services**

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

## **8.7 Installation by Occupant**

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

## **8.8 Moisture penetration**

### **8.8.1 Repair by Building Owner**

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

### **8.8.2 Damage**

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

## **8.9 Asbestos**

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

## **8.10 Floor coverings in the premises**

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

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

## **8.11 Environmental matters**

The Building Owner and Occupant must comply with all environmental laws.



## 8.12 Rates and taxes

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

## 8.13 Building Owner must provide plan

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

# Part 9: Building Owner's rights

## 9.1 Building Owner's entry to the premises

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

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

## 9.2 Building Owner's control of common areas

The Building Owner controls the common areas.

## 9.3 Building Owner's right to exclude others

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

- (a) the Occupant
- (b) on the land or in the building at the Occupant's invitation.

## 9.4 Building Owner may make rules

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

## 9.5 Building work by Building Owner

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

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

## 9.6 Easements

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

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

## 9.7 Building Owner's rights subject to Occupancy Agreement

The Building Owner's rights under this Part 9 are subject to the Occupancy Agreement and the Building Owner will not do anything that substantially and permanently affects the Occupant's enjoyment of its rights under the Occupancy Agreement.

## 9.8 Notice required

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

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

## 9.9 Roof and exterior sides

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

## 9.10 Plant room

The Building Owner expressly reserves the sole and exclusive right to the use and occupation of the plant room. Occupant access to the plant room is prohibited.

## 9.11 Structures in common areas

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

## Part 10: Damage to the premises or building

### 10.1 Termination because of damage

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

### 10.2 Occupant's obligations on termination

If the Schedule is terminated under clause 10.1, the Occupant is not required to:

- make good or repair the premises
- remove any property from the land.

### 10.3 Suspension of Occupant's obligations

- 10.3.1** Where the building or the premises are wholly or partially unfit for occupation or use by the Occupant in its business because of damage to the building or to the premises, the Occupant's obligations to:
- (a) pay rent (or a part of the rent, according to the extent of the damage
  - (b) repair and maintain the premises are suspended.
- 10.3.2** The Building Owner may not enforce the Occupant's obligations in clause 10.3.1 until the building and premises have been restored to:
- (a) a condition fit for the Occupant's use
  - (b) a standard not less than as at the commencement date.
- 10.3.3** This clause 10.3 does not apply if the damage to the building or the premises is caused by the Occupant's negligence or deliberate act.

## Part 11: Dealings with the land or the premises

### 11.1 Sale of the land

The Building Owner may decide to dispose of its interest in the premises or the building at any time in which case the Schedule in respect of those premises will cease to have effect and will be at an end.

### 11.2 Occupancy following sale

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

### 11.3 Occupant's dealings with a premise

The Occupant may not transfer the entitlement, assign their right, in any way part with possession or licence the premises.

## Part 12: Risk and Indemnities

### 12.1 Risk

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

### 12.2 Indemnities

The Occupant indemnifies the Building Owner against any claim made because of:

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

## Part 13: Occupant's default

### 13.1 Termination for default

The Building Owner may terminate the Occupancy Agreement of a premises if the Occupant:

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

### 13.2 Building Owner's method of termination

The Building Owner may act to end the Schedule pursuant to clause 13.1 by:

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

### 13.3 Occupant's property after termination

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

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

### 13.4 Building Owner's rights following abandonment

If the Occupant abandons the premises before the end of the occupancy, it must pay rent and any other sums payable under this Occupancy Agreement until the Building Owner terminates the Schedule.

## Part 14: End of occupancy by the Building Owner

### 14.1 Vacant possession required by Building Owner

**14.1.1** QGAO may, by notice to the Occupant, require the Occupant to vacate the premises at any time in accordance with the operating principles outlined in the Policy and guidelines for the use of owned and private sector leased government office accommodation. For example:

- there is a change in the Government's accommodation strategy with respect to the building, requiring the movement of the Occupant from the premises;
- where a benefit to government can be realised or cost savings can be achieved; or
- there is a change in government policy requiring the Occupant to vacate.

**14.1.2** The vacation date is as agreed. When managing accommodation for Whole of Government, QGAO will consider:

- a contribution to the reasonable costs of a new fitout and moving the Occupant's chattels to alternative premises;
- support an Occupant in any approach it may make to Government for funding supplementation to meet any difference in rental charged to the Occupant in those alternate premises provided that those alternate premises are no greater in area than the existing premises and the rental payable by the Occupant in the alternative premises is reasonable in the circumstances.

**14.1.3** Costs included in relocating or vacating accommodation may include new fitout costs for alternate accommodation, relocation and "make good" costs for the space being vacated.

Where QGAO proposes to relocate the Occupant, project costs generally will be funded through the Office Accommodation Program. In the case of relocations, funding will be made available on a like-for-like basis to fund an equal standard of accommodation. Upgraded accommodation costs and/or technology are the responsibility of relocating Occupant.

Generally, the cost of relocating and vacating accommodation, when initiated by the Occupant, is the responsibility of the Occupant. However, when these projects produce whole-of-Government benefits, agencies initiating the change may request funding from the Office Accommodation Program.

**14.1.4** The Occupant will not be obliged to 'make good' the premises in accordance with clause 15.1 (unless otherwise agreed).

## **Part 15: End of occupancy term**

### **15.1 Occupant's obligations at end of occupancy**

At the end of the occupancy, the Occupant must leave the premises in the state described in clause 5.4.1 (a)(i). Where there is a lease provision for make-good, the Occupant will be liable for that cost.

### **15.2 Occupant's removal of equipment**

**15.2.1** Subject to clause 15.2.3, the Occupant must remove its equipment, from any premises at the end of the occupancy within one month of being given notice to do so by the Building Owner. The notice must not be given earlier than one month before the end of the occupancy.

**15.2.2** The Occupant must repair any damage to the premises caused by the removal of its property.

**15.2.3** Unless directed by the Building Owner, the Occupant is not required to remove property at the end of their occupancy if that removal will require structural repairs to be made to the building or cause substantial damage to the premises.

### **15.3 Consequences of Occupant's failure to remove equipment**

**15.3.1** If the Occupant does not remove its equipment at the end of the occupancy, it becomes the property of the Building Owner.

**15.3.2** The Occupant must pay to the Building Owner all costs associated with removal of that equipment by the Building Owner and with repair of any damage to the premises caused by the removal.

## Part 16: Other matters

### 16.1 Smoking in the building

The Building Owner and Occupant will both take reasonable steps to ensure that no person smokes in the building.

### 16.2 Disputes

#### 16.2.1 Parties to try to resolve the dispute

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

#### 16.2.2 Failure to resolve dispute

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

### 16.3 Waiver

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

### 16.4 Heritage building

#### 16.4.1 Application of this clause

This clause 16.4 will only apply if:

(a) the building or any part of it is listed on the Heritage Register pursuant to the Queensland Heritage Act 1992

or

(b) the Building owner notifies the Occupant that the building is of heritage significance.

#### 16.4.2 Maintenance and repair

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

(a) by or under the direction and control of the Director-General for the time being of QGAO or such other government departments as the Building Owner may nominate

- (b) unless specifically stipulated to the contrary any works shall be attended to by the Building Owner.

## Part 17: Car parking

### 17.1 Parking rights

**17.1.1** QGAO grants to the Occupant, during the term of occupancy, a Licence to:

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

**17.1.2** Where applicable, the Occupant will pay a licence fee for rights granted by QGAO under this Part 17 agreed between QGAO and the Occupant at the commencement of the occupancy. The licence fee will be reviewed at the same time and in the same manner as rent is reviewed under Part 3, or in the head lease of a Leased building.

## Part 18: Occupancy changes

### 18.1 Changes

Any changes to the Premises (location or size, but not car parking) or to the Occupant's name, must be documented through a new Schedule, and agreed and signed off by the Occupant and QGAO.

### 18.2 Additional area

**18.2.1** If an Occupant requires additional area, then the Occupant must formally advise QGAO of the additional area required, the proposed commencement date and any other relevant information. Agencies must provide adequate advance notice to ensure that the most suitable cost-effective options can be identified.

**18.2.2** QGAO will use its best endeavours to provide the additional area by the nominated commencement date:

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

**18.2.3** If the available existing accommodation offered by QGAO is not functionally suitable for the agency's needs, or has deficiencies related to functionality or condition, then QGAO will either:

- (a) arrange for remedial work to be carried out as soon as reasonably possible
- (b) authorise the acquisition of leased accommodation from the private sector market; or



(c) authorise the acquisition of leased accommodation through a precommitment lease process (if no suitable accommodation is available from the existing private sector market).

**18.2.4** If QGAO does not undertake to carry out appropriate remedial work or fails to carry out the work within a reasonable time, QGAO must offer the Occupant alternative premises which are functionally suitable for government office accommodation, subject to the provisions of clause 18.2.2.

## **18.3 Reducing or Vacating premises**

(i) QGAO and the Occupant agree that while occupancy requirements for the premises may change from time to time, it is ultimately QGAO's decisions as to terms for any request by an Occupant to change its space requirements or seek to vacate the Premises.

### **18.3.1 Continuity of rent**

If it is determined from a whole of government perspective that continuity of rent is a condition to vacate premises, then QGAO will determine and advise the Occupant of the period for which rent must continue to be paid for the vacated premises. QGAO will at its sole discretion determine the period for continuity of rent as that period which represents the time reasonably required to obtain a new Occupant for the space to be vacated. During this time, QGAO will take all reasonable steps to secure a new Occupant. The Occupant's rental continuity will cease at the time that the new Occupant's rental commences, or upon expiry of the notified period for continuity of rent, whichever is the sooner.

### **18.3.2 Consultation and determination**

If the Occupant disagrees with QGAO's decision, then the Occupant may further consult with QGAO and/or refer the proposal to the respective Directors-General for determination.

### **18.3.3 Project costs for area reduction initiatives**

In most cases, costs will be involved in achieving area reductions. These costs can include revision of the existing office layout to reduce space, construction of new inter-occupancy walls and 'make good' to the vacated space.

Generally, the cost of achieving agency-initiated area reductions or rationalisations is the responsibility of that agency. However, when these projects produce whole-of-government benefits, agencies initiating the change may request funding from the Office Accommodation Program.

When area reductions are initiated by QGAO, then the cost of achieving the area reduction will be funded through the Office Accommodation Program.

When agencies propose to undertake major rationalisation projects to reduce area, agencies may negotiate special funding arrangements with Queensland Treasury in the budget context.

## **18.4 Rent changes**

### **18.4.1 Occupant's rent**

The Occupant will pay the rent outlined in the Schedule following any relocation (see 3.2.1.1 and 3.2.2.1 Relocation rent review) and will comply with any conditions associated with the vacation of the original premises. Additional budget supplementation for the Occupant's rent, or revenue retention of saved rent are matters for resolution between the Occupant and Queensland Treasury,

in the budget context. QGAO will provide information clarifying the Occupant's rental changes if requested.

## Part 19: Fitout

### 19.1 Fitout

#### 19.1.1 Control and/or Ownership

QGAO owns the fitout as supplied at the commencement of occupancy by an agency. This includes Fitout paid by QGAO or paid or provided by the head lessor by way of capital lease incentive which will remain under the control of QGAO. The Occupant is not required to recognise these assets.

Ownership of any new items of fitout supplied by the occupant to replace that which was initially provided in the Premises vests in QGAO at the end of the period of occupancy unless otherwise agreed.

Office alterations organised and paid by the Occupant will either be treated as an expense or Property, Plant and Equipment by the Occupant. Any alterations will need to be approved by QGAO and/or Building Owner prior to works being carried out. See 6.1 Building owner's consent for work.

For more information, refer to the Office Accommodation Management Framework - Fitout Policy <http://www.hpw.qld.gov.au/FacilitiesManagement/GovernmentFacilities/OAMF/FrameworkPolicy/Pages/2-5Fitout.aspx>

#### 19.1.2 Fitout maintenance

The Occupant is responsible for maintaining, repairing and/or replacing items of fitout, including but not limited to furniture, fittings and equipment, for the duration of its occupation of the Premises. Any damage to the fitout is to be repaired as soon as practically possible by the Occupant at its cost.

### 19.2 Insurance

QGAO will insure all Standard Office Fitouts within the portfolio through the Queensland Government Insurance Fund (QGIF). Standard Office Fitouts are defined as partitions, screens, doors, decorative items, built-in and loose furniture, and other associated items. Fitout specifically excludes any specialised equipment belonging to the Occupant (e.g. laboratory, workshops, plotters, screens, electronic equipment, computers, monitors, and the like).

It remains the Occupant's responsibility to insure such items.

In the event of damage to the office fitout, the Occupant is responsible to fund the cost of repairs up to the value of its deductible (excess) and is to notify QGAO and QGIF as soon as practically possible of any claims.

**(NOTE: The deductible (excess) is approximately \$10,000 at the date of publication.)**

Where an agency is the sole occupant of the premises, it is the responsibility of the Occupant to liaise with QGIF to make a claim, arrange repairs and pay any associated deductible/excess.

In the case where an insurable event occurs where an agency is collocated in the same building as other State occupants (e.g. a Major Leased building), QGAO will coordinate a claim with QGIF and all affected occupants and may recover the cost of the excess from the Occupants.

For more information or to make a claim, refer to the QGIF website.

<https://www.qgif.qld.gov.au/>