Heads of Agreement

for use with the Commonwealth National Lease

| Item No. | Details |  |
| --- | --- | --- |
|  | **Landlord** (clause [#]) | [Insert full name and ACN/ABN if applicable as per ABN lookup]  Address for service: [insert]  Email: [insert]  Contact: [insert]  Phone: [insert] |
|  | **Tenant** (clause [#]) | Commonwealth of Australia represented by [insert Commonwealth tenant entity name]  for service: [insert]  Email: [insert]  Contact: [insert]  Phone: [insert] |
|  | **Land** (clause [#]) | [insert details of land where the Premises is located] |
|  | **Premises details** (clause [#]) | [insert full street address and state]  Volume [insert] Folio [insert]  Lot [insert] Plan [insert]  Title reference [insert]  Net lettable area: [note if survey required] Approximately [insert]m²  [Option if NLA is subject to survey but the parties have agreed for the NLA to be capped for calculating Rent]: The Net Lettable Area is capped at [Insert area]m² for the purposes of calculating rent [and Outgoings]. |
|  | **Landlord to prepare plans** (clause [#]) | The Landlord at its own cost must provide suitable plans of the premises (in registrable form if required). |
|  | **Car parking** (clause [#]) | [insert] details  The parties agree the car parking arrangements will be included in the Lease.  [Drafting note: 1) the number of car bays to be provided, 2) are they secured, 3) are they reserved, 4) is there a licence fee per car bay, or are they included in the rent for the accommodation, 5) is the licence documented separately or within the Lease] |
|  | **Term** (clause [#]) | [insert] |
|  | **Commencement Date** (clause [#]) | [insert] |
|  | **Expiry Date** (clause [#]) | [insert] |
|  | **Permitted use** (clause [#]) | Office accommodation [including, without limit, a shop front for provision of services directly to the public]. [Drafting note: Ensure this includes a description of the Tenant's intended use for the Premises] |
|  | **Rent** (clause [#]) | Rent (per annum): [insert]  Rent (per month): [insert]  Rent Commencement Date: [insert] |
|  | **Rent review during Term** (clause [#]) | [Select which method and delete the rest]  Rent will be reviewed on each anniversary of the Commencement Date by:  CPI Review Method – (All Groups [insert eg ‑ Sydney]),  Fixed Percentage Review Method – [insert]% increase,  Mixed Review Method – lower of CPI (All Groups [insert eg ‑ Sydney]) and [insert]% increase. |
|  | **Option Term** (clause [#]) | [insert eg]  A minimum [#] months’ notice will be provided by the Tenant if exercising an option. [Drafting note: insert depending on length of term.] |
|  | **Commencing Rent for Option Term** (clause [#]) | [Select which method and delete the rest]  CPI Review Method – (All Groups [insert eg - Sydney]),  Fixed Percentage Review Method – [insert]% increase,  Mixed Review Method – lower of CPI (All Groups [insert eg ‑ Sydney]) and [insert]% increase.  Market Review Method – The Rent will be reviewed to market at exercise of each option (no ratchet). The Lease will specify those matters which the valuer must take into account and matters which the valuer must disregard when market rent review is required. If the Landlord has requested that rent be faced-up in the initial term, the market rent review will have regard to the incentive provided by the Landlord during the initial term so that rent is reviewed to an accurate effective market rent upon review. |
|  | **Review during Option Term** (clause [#]) | [Select which method and delete the rest]  Rent will be reviewed on each anniversary of the Commencement Date by:  CPI Review Method – (All Groups [insert eg - Sydney]),  Fixed Percentage Review Method – [insert]% increase,  Mixed Review Method – lower of CPI (All Groups [insert eg ‑ Sydney]) and [insert]% increase. |
|  | **External signs** (clause [#]) | [***alt***]The Tenant permitted is to install signs external to the Premises without Landlord's consent.  [***alt***]The Tenant will obtain Landlord's consent prior to installing signs external to the premises. |
|  | **Naming rights** (clause [#]) | [***alt***]The Tenant does not have naming rights for the Building.  [***alt***]The Tenant has naming rights for the Building on the following terms:  [Drafting note: 1) if there is a fee for the signage 2) the location 3) any restrictions on the design 4) if prior Landlord approval is required before installation, 5) is the licence documented separately or within the Lease] |
|  | **Rules** (clause [#]) | [Select the applicable option]  The Landlord confirms there are no Rules for the Building at the date of this document.  or  The Landlord confirms the Rules attached to this document will apply to the Lease to the extent that they are not inconsistent with the Lease. |
|  | **Building Outgoings** (clause [#]) | Not applicable. The Tenant requires a fully gross lease which includes the cost to operate Services during Normal Business Hours (refer to item [insert] below).  [***alt***]The Tenant must pay to the Landlord the Tenant’s proportion of Outgoings.  [***alt*** ]The Tenant must pay a proportion of increases in Outgoings over a Base Year, the Base Year being [TBC]. The Parties agree the Base Year will update on the exercise of Option to [TBC].  [Drafting note: A clearly defined list of Outgoings must be agreed on early in negotiations to avoid the risk of the Landlord passing on an excessively broad range of costs. An excessively broad outgoings regime might undermine the value for money assessment of the lease proposal. In negotiation correspondence and heads of agreement, vague references such as “all building outgoings” or “all the usual outgoings” should be avoided and a specific list of heads of outgoings agreed.] |
|  | **Landlord's rights to inspect and enter** (clause [#]) | The Landlord acknowledges that the Tenant's security requirements limit the Landlord from entering the Premises unaccompanied (except in emergencies). See clause [#] of the Lease.  [***opt***]The Landlord acknowledges that the security requirements of the Tenant disclosed to the Landlord apply to the Lease. [Drafting note: Consider whether an alternate, higher level security requirements description is required.] |
|  | **Repainting** (clause [#]) | The Landlord must repaint all base building walls (internal and external) once every [insert number of years] years since last painted.  Last repainting date: [insert if known] |
|  | **Recarpeting** (clause [#]) | The Landlord must at its own expense recarpet as often as may become reasonably necessary due to fair wear and tear, but no less often than every [insert number of years] from the last time the Premises were recarpeted.  Last recarpeting date: [insert].  The Tenant must uplift fittings which are not fixtures at the reasonable cost of the Landlord.  All works must be done outside Normal Business Hours.  A copy of the Tenant's carpet guidelines is enclosed. |
|  | **Cleaning** (clause [#]) | The [Landlord/Tenant] is responsible for cleaning.  Cleaning of windows: The Landlord will clean the windows every [insert frequency]. |
|  | **Building standards** (clause [#]) | The Landlord must comply with the requirements and standards in Schedule [#] of the Lease.  The Landlord warrants that the Premises and the Building do and will at all times throughout the term of the Lease comply with:   * + 1. the standards specified in Schedule [#] of the Lease;     2. the relevant Australian Standards; and     3. the industry standards which apply at the Lease commencement date,   provided that in the event of inconsistency, the higher standard will apply.  The Landlord is required to warrant at clause [#] of the Lease that the Premises are fit for purpose.  The Tenant has rights against the Landlord if the Premises become unfit including payment of relocation expenses. See clause [#] of the Lease. |
|  | **Maintenance contracts** (clause [#]) | The Landlord must enter into and keep maintenance contracts for the Services and must provide information on Services contracts annually or as reasonably requested.  The Tenant requires evidence of compliance with this clause. |
|  | **Additional maintenance** (clause [#]) | [***Drafting example***: Landscape maintenance: The Landlord must maintain all gardens and landscaped areas watertight (where applicable), clean, free of graffiti, in good and substantial repair, working order and condition and pest free.] |
|  | **Normal Business Hours** (clause [#]) | Between the hours of 7.00 am to 7.00 pm Monday to Friday excluding public holidays applicable in the State in which the Premises is located.  [To be amended if required by Tenant] |
|  | **Green Lease Schedule** (clause [#]) | [Mark as not applicable if this does not apply]  The Lease must include a Green Lease Schedule [insert type]. A copy is attached to this document for reference.  There will be no changes made to the Green Lease Schedule [***opt***], other than the following: [insert details of changes]. |
|  | **Building Energy Efficiency Certificate** (clause [#]) | [Drafting note: delete this section if:  a) the NLA is under 1,000m²; or  b) if the NLA is over 1,000m² and the term including options is 1 year or less.  Note that a BEEC must be received before negotiations commence.]  The Landlord must provide the Tenant with a Building Energy Efficiency Certificate (BEEC) under the Commercial Building Disclosure program. The parties acknowledge that this has been received on or before the date the Landlord signed this document. |
|  | **NABERS** (clause [#]) | [Drafting note: delete this section if not required. NABERS is generally required for Premises over 2,000m²]  The Tenant requires that the Premises achieve a minimum of 4.5 base building NABERS rating in accordance with clause 18.6 & Schedule 5 of the Lease. |
|  | **Metering requirements and cost of services** (clause [#]) | The Landlord must pay for all electricity, gas and water consumed in operating the Services, including air conditioning.  The Tenant will pay for all electricity, gas and water consumed by the Tenant on the Premises excluding that which is consumed in the operation of the Services.  [***opt***]If not separately metered already, the Tenant will require the Landlord to install separate digital meters to measure the consumption of electricity, gas and water. [Drafting note: lease negotiators should confirm details of the metering used in the Premises to avoid delays during lease negotiations.] |
|  | **After hours air‑conditioning** (clause [#]) | [***alt***]The Tenant will pay the Landlord for after hours air‑conditioning at a rate of $[10] per hour.  [***alt***]The Tenant will pay the actual cost of the after hours air‑conditioning.  The parties agree that the after hours air‑conditioning [will/will not] increase over the term. [Drafting note: Any agreed increase (for example, if in line with Rent) should be noted at this stage of negotiations.] |
|  | **Health and safety** (clause [#]) | The Landlord is required to warrant that:   * + 1. there is no Combustible Cladding in the Building;     2. there are no materials containing asbestos in the Land or Building or Hazardous Chemicals (unless reasonably required for cleaning and maintenance and appropriately stored); and     3. that the air-conditioning and services will be treated and maintained in accordance with relevant laws and Australian Standards.   In accordance with the Workplace Health and Safety laws, if the building was built prior to 31 December 2003, the Landlord will be required to provide an Asbestos Report and Asbestos Management Plan for the Premises. |
|  | **End of Lease requirements** (clause [#]) | The Tenant is not obliged to make good, reinstate, redecorate, repaint, recarpet or restore the Premises or remove its Fittings or Tenant’s Alterations on or before the expiry or termination of the Lease or any holding over. However, the Tenant will make good any damage caused if fittings or fixtures are removed.  [Drafting note: The Commonwealth's standard make good position is set out above. Any variances to this clause must be itemised] |
|  | **Insurance** (clause [#]) | The Landlord must take out and maintain:  1 Building Insurance;  2 Public Risk Insurance (with a minimum value of [insert minimum insurance value]); and  3 Plate Glass Insurance,  which must be taken out with a reputable insurer, in the general form of policy issued by the insurer for that class of insurance.  The Tenant will only be liable for damage or destruction it causes to the Building to the extent that the Landlord is not entitled to receive indemnity under an insurance policy which the Landlord is required to effect under the Lease, or would not have been so entitled had the Landlord insured in accordance with the Lease.  The Landlord acknowledges that the Tenant has insurance through Comcover.  [***alt***]The Landlord will insure Tenant's Fittings and Tenant's Alterations.  [***alt***]The Landlord is not required to insure Tenant's Fittings and Tenant's Alterations. |
|  | **Indemnity** (clause [#]) | The Landlord acknowledges and agrees that the Tenant's indemnity is limited to situations where the Tenant has been negligent, is capped at $10 million in the aggregate over the term and the Tenant requires reasonable controls over indemnity claims. |
|  | **Assignment** (clause [#]) | The Tenant may assign, sublet, part with possession or deal with its interest in the Lease after obtaining the Landlord’s prior consent.  Consent is not required in the circumstances where the Tenant assigns, subleases, parts with possession or deals with its interest in the Lease to a Commonwealth agency, statutory body or any corporation substantially owned or controlled by the Commonwealth. |
|  | **Set-off rights** (clause [#]) | The Landlord acknowledges that the Lease permits the Tenant to set-off amounts owing by the Landlord to the Tenant against Rent in specified circumstances. See clauses [#]. |
|  | **Resolution of disputes** (clause [#]) | The parties agree that disputes under the Lease will be dealt with by [delete which does not apply] [***alt***] expert determination and/or legal proceedings.  [Drafting note: If alternative dispute resolution arrangements are agreed these are to be noted.] |
|  | **Landlord's incentives** (clause [#]) | The Landlord will provide an incentive of $[Insert amount].  The Tenant may elect to take the incentive as a contribution toward fit out, rent free period or rental rebate over the term. |
|  | **Landlord's Works** (clause [#]) | [Drafting note: delete this section if not required]  Landlord’s Works include:  [insert]  [Drafting note: insert scope of Landlord works here otherwise delete if no works are required].  All Landlord works undertaken must be undertaken in a proper workmanlike manner and be completed to the satisfaction and approval of the Tenant by [insert date]. |
|  | **Tenant's Works** (clause [#]) | [Drafting note: insert proposed Tenant works here otherwise delete if no works are required, eg - The Tenant will be undertaking extensive works to the fit out of the premises which will affect most of the existing office partitioning and all of the work stations. It is likely this will also include an upgrade to the tea room and disabled toilet. Further details will be provided for your approval once the Tenant’s requirements and plans are completed. The Tenant will seek the Landlord’s approval to these works once the full nature and scope have been settled.]  [Insert the following if required:]  [***alt***]Early Access Date is to be granted from [insert]  [***alt***]Handover Date following completion of Landlord’s Works: [insert] |
|  | **Fitout Guide**  (schedule [#]) | The Landlord confirms that it has disclosed the Fitout Guide to the Tenant, a copy of which is attached to this document.  [Drafting note: Fitout Guides can contain onerous provisions or costs. Tenants must ensure that the Fitout Guide is disclosed and reviewed before entering into a Lease so that the Tenant is aware of any restrictions.] |
|  | **Laws that do not apply to the Lease** (clause [#]) | [Insert leasing laws that are not applicable] |
|  | **Prior agreement** (clause [#]) | [Insert details and date of any prior agreement] |
|  | **Landlord trustee details** (clause [#]) | [Yes/No]  If yes, the details of relevant trust are as follows:  Name of trust: [insert]  Parties to trust deed: [insert]  Date of trust deed: [insert]  The Landlord agrees to provide the warranties in clause [#] of the Lease. |
|  | **Ancillary rights** (clause [#]) | Delete if not applicable  [***opt***]Storage - Applicable/not applicable  [Insert] details  [Drafting note: 1) the area of storage to be provided, 2) is there a licence fee for the storage, or is it included in the rent for the accommodation]  [***opt***]Communications Equipment - Applicable/not applicable  [Insert] details  [Drafting note: 1) approvals required for equipment, 2) location and type 2) whether the licence fee is applicable, included in the rent or separately calculated 4) make good requirements] |
|  | **Disclosure** (clause [#]) | The Landlord warrants it has the right to negotiate these terms and they are not subject to Body Corporate/Owners Corporation consents or approvals. The ‘Special Conditions’ below indicate whether the terms and conditions of this document are subject to any Board, Body Corporate/ Owners Corporation consent or approval and any factors (excluding legal advice) which may impact on the Lease term and conditions. |
|  | **Legal costs** (clause [#]) | Each party to bear its own legal costs. |
|  | **Use of email** (clause [#]) | The parties consent to use email as a form of communication in the negotiation and execution of this document. |
|  | **Landlord's solicitor details** | [Note: To be included if known]  Name: [Insert]  Telephone number: [Insert]  Email: [Insert] |

Landlord acknowledgment

The Landlord acknowledges and agrees that:

* 1. it has sought legal advice on this document;
  2. the Lease will be documented by the Commonwealth National Lease in the form attached to this document;
  3. the Commonwealth National Lease incorporates the Tenant's baseline requirements for its leased premises;
  4. the Commonwealth National Lease will only be varied to the extent necessary to reflect the terms and conditions set out in this document and agreed between the parties;
  5. the Landlord has been made aware of the Commonwealth National Lease and the CNL User Guide and has had an opportunity to review it; and
  6. unless this document specifically states otherwise, the Landlord agrees to the Commonwealth National Lease being prepared by the Tenant's lawyers and used in the transaction.

***Please note that the parties will not be bound to the terms and conditions contained within this document until appropriate Commonwealth delegate approval has been received and the lease documentation duly executed.***

The Landlord agrees to the Lease being documented on the terms and conditions contained in this document:

Signed by Landlord

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: