Green Lease Schedule

Schedule D2

For use in a net lease where the premises are less than 1,000 square metres of net lettable area.

Version 2.0

**Note on use of Green Lease Schedule**

This Green Lease Schedule is a general template for use in lease transactions involving Australian Government entities. It does not replace the need to:

* fully consider the implications of the base lease clauses and the Green Lease Schedule; and
* check the interaction of the base lease with the Green Lease Schedule to ensure consistency and compatibility, and to give efficacy to the particular circumstances and requirements of individual transactions.

More information regarding the Green Lease Schedule can be found at: <https://www.finance.gov.au/government/climate-action-government-operations/aps-net-zero-emissions-2030>

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# Part 1 - Green Lease Schedule

This Green Lease Schedule applies where the Rent is net and the net lettable area of the Premises is less than 1,000 square metres.

1. Introduction
	1. Context
		1. Background
	2. This Green Lease Schedule is incorporated into and forms part of the Lease.
	3. This Green Lease Schedule reflects the Parties’ desire to improve and be accountable for energy efficiency in the Premises and the Building wherever possible.
	4. Version 1 of the Green Lease Schedule was initially created under the Energy Efficiency in Government Operations Policy. Version 2 of the Green Lease Schedule is now part of the wider policy of the Australian Government reflected in the Net Zero in Government Operations Strategy which supersedes the Energy Efficiency in Government Operations Policy.
	5. The Net Zero in Government Operations Strategy describes the Australian Government’s commitment to achieve net zero in government operations by 2030. This target was included in Australia’s [Nationally Determined Contribution Communication 2022](https://unfccc.int/sites/default/files/NDC/2022-06/NDC%202022%20Update%20Letter%20to%20UNFCCC.pdf) under the Paris Agreement. Actions by relevant entities under the Net Zero in Government Operations Strategy will inform parts of their climate disclosures under the Commonwealth Climate Disclosure initiative. These include emissions reduction plans and progress towards reaching emissions targets.
	6. As part of the Parties’ commitment to improve energy efficiency, the Parties wish to promote the reduction of greenhouse gas emissions and ensure the environmental sustainability of the Premises and the Building by implementing the measures in this Green Lease Schedule.
	7. The Parties have agreed that they will act in good faith and take a co-operative attitude to issues and initiatives arising under the Green Lease Schedule.
	8. Interpretation and Operational Provisions
		1. In this Green Lease Schedule unless the contrary intention appears:

|  |  |
| --- | --- |
| Australian Government Operations Energy Efficiency Policy | means the policy entitled “Net Zero in Government Operations Strategy” as amended from time to time and which supersedes the policy entitled “Energy Efficiency in Government Operations”. |
| Building | means the building in which the Premises are located as described in the Lease and includes the Premises. |
| Commencement Date | means the commencement date of the Lease. |
| Common Areas | has the same meaning as set out in the Lease. |
| Expert | means an independent third party who is a qualified practising professional and appropriate industry expert appointed at the request of either Party in accordance with this Green Lease Schedule by:* + - 1. the chairperson for the time being of the Resolution Institute ABN 69 008 651 232 in the State or Territory in which the Building is located; or
			2. if there is no such body in existence at the time of the request, the chairperson for the time being of an equivalent body.
 |
| Green Lease Schedule | means this Schedule and includes any attachments to this Green Lease Schedule. |
| Landlord | means the Party described as Landlord or Lessor or other equivalent word under the Lease. |
| Lease | means the lease for the Premises made between the Parties. |
| Month | means calendar month. |
| Notice | includes a notice, consent, request or demand. |
| Outgoings | means all those costs, charges or expenses payable as outgoings by the Tenant under the Lease. |
| Outgoings Provisions | means the terms and conditions of the Lease requiring the Tenant to pay or reimburse the Landlord in respect of the Outgoings. |
| Parties | means the parties to the Lease. |
| Premises | means the premises leased to the Tenant under the Lease and as described in the Lease. |
| Remedial Notice | means a Notice given under clause 5 by a Party where the other Party has breached an obligation under the Green Lease Schedule. |
| Remedial Plan | means a plan agreed or determined under clause 5. |
| Rent | means the net rent payable by the Tenant under the Lease but does not include any Outgoings for which the Tenant is responsible under the Lease. |
| Tenant | means the Party described as Tenant or Lessee or other equivalent word under the Lease. |
| Working Day | means each day other than a Saturday, Sunday, or public holiday in the State or Territory in which the Premises are located. |

* + 1. The singular includes the plural and vice versa.
		2. Unless otherwise provided references to clauses are a reference to clauses of this Green Lease Schedule.
		3. Unless otherwise defined or provided for in this Green Lease Schedule words and phrases used in this Green Lease Schedule will have the meaning ascribed to them in the Lease.
		4. Unless the context otherwise requires the phrase “Lease term” or “term of the Lease” will be interpreted to include any renewal or extension of or overholding under the Lease.
		5. Reference to a right includes a remedy, authority or power.
		6. Headings are for convenience only and do not form part of this Green Lease Schedule or affect its interpretation.
		7. As far as possible all provisions must be construed so as not to be invalid, illegal or unenforceable.
		8. If anything in this Green Lease Schedule is unenforceable, illegal or void then it is severed and the rest of this Green Lease Schedule remains in force.
		9. If a provision cannot be read down, that provision will be void and severable.
		10. Words of inclusion are not words of limitation.
		11. No rule of construction will apply to disadvantage a Party on the basis that it put forward this Green Lease Schedule.
		12. Reference to a thing is a reference to all or part of that thing.
		13. Unless the context requires or is otherwise stated in this Green Lease Schedule, a Party’s obligations under this Green Lease Schedule:
			1. will be performed at its cost;
			2. will be performed throughout the term of the Lease;
			3. where the cost is incurred by the Landlord, must not be passed on directly or indirectly to the Tenant including by way of reliance on the Outgoings Provisions; and;
			4. where the cost is incurred by the Tenant, must not be passed on directly or indirectly to the Landlord.
		14. Unless otherwise stated, if a Party’s consent or approval is required under this Green Lease Schedule:
			1. the requested Party will consider and respond to the request promptly;
			2. the consent or approval will not be unreasonably withheld;
			3. the requested Party may require the requesting Party to comply with reasonable conditions before giving its consent provided that:
				1. the requested Party is not entitled to require the requesting Party to pay its costs in connection with the request;
				2. if the requested Party is the Landlord, it will not pass on any cost incurred in connection with the request or consent directly or indirectly to the Tenant including by way of reliance upon the Outgoings Provisions;
				3. if the requested Party is the Tenant, it will not pass on any cost incurred in connection with the request or consent directly or indirectly to the Landlord; and
				4. all reasonable conditions accompanying or otherwise related to the consent or approval must be in writing; and
			4. the consent or approval is not effective unless in writing.
		15. If any conflict arises between the terms and conditions contained in the Lease and any clauses or parts of the clauses of the Green Lease Schedule, then unless the terms and conditions contained in the Lease expressly provide that they prevail over the Green Lease Schedule, the clauses (or the relevant parts of the clauses) of the Green Lease Schedule prevail to the extent necessary to resolve the conflict.
		16. If any conflict arises between any part of the Green Lease Schedule and any part of an attachment to it, the part of the Green Lease Schedule which does not comprise an attachment prevails.
		17. A reference to the Green Lease Schedule or any provision of it includes the Green Lease Schedule or any of its provisions as amended or replaced from time to time by agreement in writing between the Parties.
1. Green Lease Schedule Forms Part of Lease
	1. Green Lease Schedule Incorporated into Lease
		1. This Green Lease Schedule is incorporated into and forms part of the Lease.

# Part 2 – Green Lease Performance

1. Lighting
	1. Lighting
		1. Subject to clause 3.1.2, the Landlord:
			1. will provide lighting in the Premises; and
			2. will ensure that the lighting provided in the Premises does not consume more than 10 watts per square metre of the net lettable area of the Premises.
		2. Where:
			1. the Tenant undertakes fit-out of the Premises;
			2. the fit-out includes the lighting in the Premises; and
			3. the Tenant owns the fit-out,

the Tenant will ensure that the lighting provided in the Premises does not consume more than 10 watts per square metre of the net lettable area of the Premises.

1. Metering
	1. Separate Metering
		1. The Landlord:
			1. will ensure that from the Commencement Date the Premises are separately metered for electricity (with the meters being digital electricity meters), gas, and water services (both hot and cold);
			2. will ensure that the meters have an accuracy class suitable for customer billing and the meter register is readily accessible for billing;
			3. agrees that if the Tenant requires, management of the meters will reside with the Tenant on installation;
			4. agrees that the Tenant is entitled to purchase its own electricity; and
			5. will not unreasonably withhold any approvals required for the Tenant to install behind-the-meter renewable energy solutions to generate renewable electricity on-site.
		2. The Landlord will ensure that from the Commencement Date there is separate metering for electricity (with the meters being digital electricity meters), gas, and water services (both hot and cold) for the central services in the Building including Common Areas.
		3. The Landlord will not pass on any costs incurred under this clause 4 to the Tenant directly or indirectly including by way of reliance upon the Outgoings Provisions.

# Part 3 – General Provisions Applicable To Green Lease Schedule

1. Remediation
	1. Remedial Action
		1. If:
			1. a Party has breached an obligation under this Green Lease Schedule; or
			2. a Party repeatedly breaches its obligations under this Green Lease Schedule,

the other Party (**Initiator**) may give the defaulting Party (**Recipient**) a Remedial Notice. The Remedial Notice will request the commencement of dialogue or remedial action.

* + 1. The Parties will meet within 15 Working Days of the date of the Remedial Notice and will use their best endeavours to agree a Remedial Plan which:
			1. sets out remedial action; and
			2. contains a timetable for completion of the remedial action.
		2. If the Parties fail to meet within 15 Working Days or fail to agree on a Remedial Plan, then subject to clause 5.2.2.a, the Remedial Plan (or any parts of it which have not been agreed by the Parties) will be determined by an Expert in accordance with clause 6 on the application of either Party.
	1. Compliance with Remedial Plan
		1. The Parties will comply with the Remedial Plan.
		2. If the Recipient does not comply with a Remedial Notice under clause 5.1.1 or with clause 5.2.1 the Initiator:
			1. may Notify the Recipient that it extends the period for remedial action; or
			2. may give Notice (Enforcement Notice) to the Recipient notifying it that the failure to comply with the Remedial Notice or the Remedial Plan is a breach of the Lease (including this Green Lease Schedule) and:
				1. if the breach is capable of rectification, that unless the breach is rectified within the period specified in the Enforcement Notice (which period will be reasonable in the circumstances), the Initiator will be entitled to rectify the breach and claim its reasonable costs of rectification; or
				2. if the breach is not capable of rectification, that the Initiator claims compensation for loss or damage incurred by the Initiator as a direct result of the breach (and the Enforcement Notice in this case will specify in reasonable detail how the amount claimed has been computed).
		3. If clause 5.2.2.b.i applies and the breach is not rectified in the time specified in the Enforcement Notice:
			1. the Initiator may rectify the breach;
			2. the Recipient will allow the Initiator or its contractors access to the relevant parts of the Building or Premises (subject to any prior notice requirements for access contained in the Lease) for the purpose of rectifying the breach; and
			3. the reasonable cost of rectification will be a cost due and payable by the Recipient to the Initiator following written demand from the Initiator specifying the amount claimed and reasonable detail on how the amount claimed has been computed.
		4. Despite the Initiator’s right to rectify the Recipient’s breach under clause 5.2.3, if:
			1. the Initiator is hindered in doing so by the Recipient or any other person; or
			2. the Initiator decides that it is not practicable for it to rectify the Recipient’s breach,

the Initiator may demand compensation for loss or damage incurred by the Initiator as a direct result of the breach (including the cost of any reasonable endeavours in seeking to rectify the breach). A claim for compensation under this clause will specify in reasonable detail how the amount claimed has been computed.

* + 1. If:
			1. an amount is claimed in the Enforcement Notice by the Initiator under clause 5.2.2.b.ii; and
			2. the Recipient has not objected in writing to the amount claimed within 10 Working Days after the Enforcement Notice,

the Recipient will pay the amount claimed in the Enforcement Notice within 40 Working Days after the Enforcement Notice. If the Initiator is the Tenant and the amount is not paid by the Landlord within 40 Working Days after the Enforcement Notice, the Tenant, without prejudice to any other rights and remedies, may set off the amount against payments due under the Lease until the debt has been satisfied in full.

* + 1. If:
			1. an amount is demanded under clause 5.2.3.c or clause 5.2.4; and
			2. the Recipient has not objected in writing to the amount claimed within 10 Working Days after Notice of demand,

the Recipient will pay the amount claimed within 40 Working Days after Notice of demand. If the Initiator is the Tenant and the amount is not paid by the Landlord within 40 Working Days after Notice of demand, the Tenant, without prejudice to any other rights and remedies, may set off the amount against payments due under the Lease until the debt has been satisfied in full.

* + 1. If the Recipient objects to an amount claimed by the Initiator under clause 5.2.2.b.ii, clause 5.2.3.c or clause 5.2.4 within the prescribed time then the dispute will be referred for resolution under clause 6 and any amount determined by the Expert will be paid within 40 Working Days of the Expert’s determination. If the amount determined is payable by the Landlord and is not paid within 40 Working Days of the Expert’s determination, the Tenant, without prejudice to any other rights and remedies, may set off the amount against payments due under the Lease until the debt has been satisfied in full.
		2. If:
			1. an amount is payable and has not been paid by the time required by clause 5.2.5 or clause 5.2.6; or
			2. an amount payable has been referred for resolution in accordance with clause 5.2.7 and has not been paid by the time required by clause 5.2.7,

then the Party to whom the amount is due may institute proceedings in a court of competent jurisdiction to recover the amount. This clause 5.2.8 does not limit the Tenant’s rights of set off under clause 5.2.5, clause 5.2.6, and clause 5.2.7.

* + 1. The rights in clause 5 are in lieu of any of the rights which the Parties may have under the Lease for breach of this Green Lease Schedule. Except for any remedies contained in this clause 5 or elsewhere in this Green Lease Schedule, the Parties will not rely on any other remedies available under the Lease or otherwise for breach of this Green Lease Schedule.
1. Resolution Of Green Lease Schedule Disputes
	1. Dispute Resolution
		1. Any difference or dispute between the Parties arising under the provisions of this Green Lease Schedule which is not resolved within 10 Working Days after Notice by one Party to the other of the nature of the difference or dispute may be referred by either Party for determination by an Expert with the relevant expertise in the subject matter of the difference or dispute.
		2. The Expert will be appointed at the request of either Party, and production of this clause will be sufficient evidence of the right to make the request. The requesting Party will ask for the Expert to be appointed within 10 Working Days of the request.
		3. Each Party may make a submission either orally or in writing to the Expert within 10 Working Days after that appointment.
		4. In making a determination the Expert will:
			1. act as an expert and not as an arbitrator;
			2. consider any submission made to it by a Party;
			3. deliver their determination within 10 Working Days after the last day on which the Parties are entitled to make submissions; and
			4. provide the Parties with a written statement of reasons for the determination.
		5. The determination of the Expert is conclusive and binding on the Parties.
		6. The costs of the Expert will be shared equally between the Parties.
		7. If the Expert fails to deliver a determination within 10 Working Days after the last day on which the Parties are entitled to make submissions, either Party may request the appointment of a further Expert under clause 6.1.1 and clause 6.1.2 to determine the dispute.
2. Notices
	1. Notices
		1. A Notice under this Green Lease Schedule is only effective if it is in writing, and dealt with as follows:
			1. *if given by the Tenant to the Landlord* – given by the Tenant and addressed to the Landlord at the address or email address specified in Item 1 of the Lease or as otherwise notified by the Landlord; or
			2. *if given by the Landlord to the Tenant* – given by the Landlord and addressed to the Tenant at the address or email address specified in Item 2 of the Lease or as otherwise notified by the Tenant.
		2. A Notice is to be:
			1. signed by the person giving the Notice and delivered by hand;
			2. signed by the person giving the Notice and sent by prepaid post; or
			3. sent by email.
		3. A Notice is deemed to be effected:
			1. *if delivered by hand* – upon delivery to the relevant address;
			2. *if sent by prepaid post* – on the day which is 3 Working Days after posting; and
			3. *if transmitted by email* – on the day of sending.
		4. A Notice received after 5:00pm, or on a day that is not a Working Day in the place of receipt, is deemed to be effected on the next Working Day in that place.

# Annexure A – Optional Clauses