

**DEED OF SURRENDER OF CROWN LEASE  
SCHEDULE**

<b>DATE OF THIS DEED</b>			
<b>LEASE DETAILS</b>			
<b>LAND</b>		Block	Section
			Division/District
<b>OCCUPANCY</b>		Vacant Possession	
<b>CO-OWNERSHIP</b>	Mark one	<input type="checkbox"/> Tenants in common <i>(Show shares)</i>	<input type="checkbox"/> Joint Tenants
<b>LESSEE DETAILS</b>			
<b>LESSEE</b>	Full name		
	Address		
<b>LESSEE'S SOLICITOR</b>	Firm		
	Ref		
	Phone		
	Fax		
	Email		
	Postal address		
	Street address		
<b>TERRITORY DETAILS</b>			
<b>TERRITORY</b>	Full Name	<b>AUSTRALIAN CAPITAL TERRITORY</b> , the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth) for and on behalf of ACTPLA C/- Chief Minister, Treasury and Economic Development Directorate	
	Address	GPO Box 158, Canberra City ACT 2601	
<b>TERRITORY'S SOLICITOR</b>	Firm		
	Ref		
	Phone		
	Fax		
	Email		
	Postal address		
	Street address		
<b>SURRENDER DETAILS</b>			
<b>SURRENDER SUM</b>		\$	
<b>DATE FOR SURRENDER</b>		30 days from the Date of this Deed	
<b>FIRST RIGHT OF REFUSAL</b>			
Does the Lessee have a First Right of Refusal? Mark one		<input type="checkbox"/> Yes	<input type="checkbox"/> No
If the Lessee has a First Right of Refusal, is the Lessee electing to retain that right? <i>Note: 'Yes/No' election only required if First Right of Refusal exists</i> Mark one		<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not applicable
<b>STAMP DUTY CONCESSION</b>			
Is the Lessee eligible for a stamp duty concession?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>GST</b>			
The surrender of the Lease is a Taxable Supply <i>Note: Check if correct, otherwise leave blank</i>		<input type="checkbox"/>	
<b>ANNEXURES</b>			
<b>STANDARD ANNEXURES</b>	Documents attached to this Deed	Annexure A – DCL Form Annexure B – Certificate of Independent Legal Advice	
<b>READ THIS BEFORE SIGNING</b>			
Before signing this deed the Lessee should ensure that they understand their rights and obligations. The Lessee should get advice from their solicitor.			
<b>EXECUTED as a deed</b>			
Delegate of the Territory signature:		Lessee signature:	
Delegate of the Territory name:		Lessee name:	
Witness of the Territory Delegate signature:		Lessee signature:	
Witness of the Territory Delegate name:		Lessee name:	
		Lessee witness signature:	
		Lessee witness name:	

**1 ENTIRE AGREEMENT**

The parties agree that this Deed sets out the entire agreement between them on the subject matter of this Deed and supersedes any prior agreement, advice, information or material supplied or notified to the Lessee or any understanding on anything connected with the subject matter of this Deed.

**2 SURRENDER OF LEASE**

The Lessee agrees to surrender the Lease to the Territory, free from all Affecting Interests, on or before the Date for Surrender.

**3 SURRENDER SUM**

The parties agree that the Surrender Sum represents:

- (a) the value of the Lessee's Lease (including Improvements) as agreed between the Lessee and the Territory; plus
- (b) an additional \$1,000 to contribute to the legal costs and disbursements of the Lessee.

**4 ACCEPTANCE OF SURRENDER OF LEASE**

The Territory agrees to accept the surrender of the Lease on or before the Date for Surrender.

**5 OBLIGATIONS ON THE DATE OF THIS DEED AND THE SURRENDER DATE**

- 5.1 On or before the Date of this Deed the Lessee must give the Territory the completed Certificate of Independent Legal Advice.
- 5.2 Within 7 days of the date of this Deed, the Lessee must give to the Territory the completed DCL Form duly executed by the Lessee to be held by the Territory on trust for the Lessee until the Surrender Date only for the purpose of signing it and the Territory must immediately return the DCL Form if the Lessee demands it.
- 5.3 On the Surrender Date:
  - (a) the Lessee must give the Territory:
    - (i) the completed DCL Form, duly executed by the Lessee (if the Lessee has not done so already);
    - (ii) the certificate of title for the Land;
    - (iii) all documents required to remove any Affecting Interests from the title to the Land; and
    - (iv) any other document or consent required to register the completed DCL Form;
  - (b) the Territory must pay the Surrender Sum to the Lessee:
    - (i) by up to 6 bank cheques; and

(ii) as the Lessee directs.

## **6 CONDITION OF THE LAND**

6.1 Subject to clauses 6.2 and 6.3, the Territory accepts the Land.

6.2 The Lessee is responsible for the maintenance of the Land until the Surrender Date, including:

- (a) ensuring that the Land is clean and tidy;
- (b) mowing the grass and clearing gutters to minimise fire risks;
- (c) securing any Improvements on the Land to deter thieves, vandals, squatters and other uninvited persons;
- (d) securing swimming pools and other water features (if any) for safety;
- (e) preventing any person from dumping waste, garbage or any other material on the Land; and
- (f) taking any other steps that the Territory may reasonably direct to secure the Land or minimise the risk of harm.

6.3 The Lessee warrants that it has, from the date of the first valuation performed in accordance with the Program, and will, to the Surrender Date:

- (a) take all reasonable measures to ensure that the Improvements on the Land remain safe (subject to any pre-existing conditions or contamination);
- (b) not knowingly take action that will increase the risk of asbestos fibres being released from the Land or Improvements thereon; and
- (c) take no action that will result in any damage to the structural integrity of the Improvements or expose or penetrate walls, ceilings, roof or other internal or external surfaces.

6.4 If in the reasonable opinion of the Territory the Lessee has not complied with clause 6.2 or 6.3, the Territory may by notice given to the Lessee, in its absolute discretion take any or all of the following actions:

- (a) decline to accept the surrender of the Lease and require the Lessee to rectify the Land to an acceptable state;
- (b) serve a Notice Requiring Surrender;
- (c) seek damages for delay under clause 13; or
- (d) accept the surrender of the Lease subject to a deduction from the Surrender Sum of the Territory's estimate of the reasonable costs necessary to return the Land to an acceptable state; or
- (e) accept the surrender of the Lease, perform the works necessary to return the Land to an acceptable state and require the Lessee to pay the reasonable costs of the Territory in doing so as a debt due and payable by the Lessee to the Territory.

## **7 LESSEE WARRANTIES**

7.1 The Lessee warrants that at the Date of this Deed the Lessee:

- (a) will be able to surrender the Lease and all interest in the Land on the Surrender Date;
- (b) has no knowledge of any unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land; and
- (c) has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land.

7.2 The Lessee warrants that on the Surrender Date:

- (a) the Lessee will have the capacity to surrender the Lease and all interest in the Land;
- (b) there will be no unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land; and
- (c) the Lessee has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land.

## **8 NON MERGER**

If any term of this Deed may be given effect to after the Surrender Date that term will not merge but will continue in force for as long as necessary to give effect to it.

## **9 TERMS OF POSSESSION**

9.1 The Lessee must give the Territory vacant possession of the Land on the Surrender Date.

9.2 The Lessee warrants that any goods and Improvements remaining on the Land at the Surrender Date are not subject to a security interest within the meaning of the *Personal Properties Security Act 2009* (Cth).

9.3 The Lessee agrees that:

- (a) any goods and Improvements remaining on the Land on the Surrender Date may be disposed of by the Territory without notice or compensation to the Lessee; and
- (b) the Territory does not purchase any goods from the Lessee.

9.4 Subject to clause 6, the Territory will dispose of any goods and Improvements remaining on the Land on and from the Surrender Date at no cost to the Lessee.

## **10 INSPECTION OF LAND**

The Territory may on reasonable notice to the Lessee and at reasonable times inspect the Land.

## **11 ADJUSTMENTS**

- 11.1 Subject to clause 11.3, the Territory and the Lessee agree to make all necessary adjustments of amounts payable by the Lessee for Land Charges, on the Surrender Date as if the Territory were responsible for Land Charges arising after the Surrender Date.
- 11.2 If an amount cannot be adjusted because it is not known, the Territory and the Lessee agree that the Territory may retain a reasonable amount from the Surrender Sum for a period of 90 days from the Surrender Date for payment of the outstanding Land Charges, after which any remaining funds must be paid to the Lessee.
- 11.3 Notwithstanding clause 11.1, water rates will not be adjusted. Where the Lessee has paid water rates in advance it may seek a refund directly from Icon Water. Where the water rates have not been paid in advance, a cheque will be drawn on surrender of the Lease to pay those rates up to the Surrender Date (or earlier date of vacation of the Land provided the Lessee has advised Icon Water of that position).

## **12 FIRST RIGHT OF REFUSAL AND STAMP DUTY CONCESSION**

- 12.1 If the Lessee has elected in the Schedule to retain the First Right of Refusal , the Territory shall ensure that, prior to offering a grant of a new Crown lease over the Land, or any part thereof, to any other person, such a grant is offered to the Lessee:
- (a) in accordance with the Program;
  - (b) on terms no less favourable than what will be offered to the market if the Lessee does not accept the offer; and
  - (c) consistent with any laws, regulations or policies of the Territory at the time of making that offer.
- 12.2 The Lessee acknowledges that the terms and conditions of the Crown lease offered pursuant to clause 12.1 may be different to those in the Lease that was surrendered.
- 12.3 The Lessee acknowledges that it is the Lessee's responsibility to ensure that the Territory is provided with the Lessee's address (and any updated address) for correspondence for the purposes of this clause 12.
- 12.4 If indicated in the Schedule, upon the surrender of the Lease the Lessee may be eligible for a stamp duty concession in accordance with the Program.
- 12.5 The rights and entitlements of the Lessee pursuant to this clause 12 are personal to the Lessee.

## **13 DAMAGES FOR DELAY IN SURRENDER**

- 13.1 If, due to any breach of this Deed by the Lessee, the Lessee does not surrender the Lease within 5 Working Days following the Date for Surrender, then the Lessee must pay the Territory as liquidated damages on the Surrender Date the amount of \$440 to be applied towards any legal costs and disbursements incurred by the Territory. The Territory may deduct the \$440 from the Surrender Sum.

- 13.2 The parties agree that the liquidated damages in this clause represent a genuine preestimate of the costs incurred by the Territory arising from a failure of the Lessee to surrender the Lease within 5 Working Days following the Date for Surrender.

#### **14 NOTICE REQUIRING SURRENDER**

- 14.1 If the surrender of the Lease does not take place on or before the Date for Surrender the party not in breach may, at any time after the Date for Surrender, serve the party in breach with a Notice Requiring Surrender.
- 14.2 A Notice Requiring Surrender must appoint a time during business hours and a date (being a date not less than 30 days after service of the Notice Requiring Surrender (excluding the date of service)) by which, and a place in Canberra at which, to effect surrender of the Lease.
- 14.3 Surrender at the time, date and place specified in the Notice Requiring Surrender is an essential term.

#### **15 TERMINATION FOR FAILURE TO SURRENDER**

If the party in breach does not comply with a Notice Requiring Surrender then the issuing party may by notice given to the party in breach either:

- (a) terminate this Deed, effective immediately; or
- (b) immediately seek enforcement of this Deed by means of specific performance.

#### **16 RELEASE BY LESSEE**

- 16.1 Subject to the provisions of this Deed, as and from the Surrender Date, the Lessee:

- (a) releases the Territory (including all authorities and agencies, employees, agents and servants, including but not limited to ACTPLA) and the Commonwealth of Australia (including all authorities and agencies, employees, agents and servants) from; and
- (b) agrees that the Territory (including all authorities and agencies, employees, agents and servants, including but not limited to ACTPLA) and the Commonwealth of Australia (including all authorities and agencies, employees, agents and servants) are not liable for,

any claims, liability or loss arising from, and costs, fees or expenses incurred in connection with:

- (c) the Lease;
- (d) the surrender of the Lease;
- (e) the presence of contaminants on the Land at any time;
- (f) the exposure or possible exposure of goods and Improvements to contaminants on the Land at any time;
- (g) the use and occupation of the Land; or
- (h) any right under the *Planning and Development Act 2007* (ACT) to payment or compensation regarding any Improvements or goods on the Land.

16.2 Nothing in clause 16.1 has the effect of releasing the Territory or the Commonwealth of Australia from liability arising in respect of sickness, physical injury or death from exposure to contaminants on the Land.

## **17 POWER OF ATTORNEY**

Any party who signs this Deed or any document in connection with it under a power of attorney must, on request and without cost, provide the other party with a true copy of the registered power of attorney.

## **18 NOTICES**

All notices or other communications to or by a party to this Deed:

- (a) must be in writing;
- (b) must be signed by an authorised officer of, or lawyer of, the sender;
- (c) are treated as being given or made:
  - (i) if delivered by hand, on delivery;
  - (ii) if sent by prepaid mail, 2 Working Days after the date on which it was sent;
  - (iii) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
  - (iv) if sent by electronic mail, on whichever of the following occurs first:
    - A. the other party's acknowledgment of receipt by any means,
    - B. the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address, or
    - C. expiration of 2 Working Days after the date on which it was sent without receipt of a notification that the delivery failed,but if delivery or receipt is on a day that is not a Working Day or is later than 4.00pm (local time), it is treated as been given or made at the commencement of business on the next Working Day; and
- (d) must be addressed to the recipient at the address, facsimile number or email address specified in the Schedule or such other address, facsimile number or email address notified by a party as its address, facsimile number or email address for service.

## **19 COUNTERPARTS**

This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same.

## **20 GST**

20.1 GST will not be added to the Surrender Sum unless the Deed specifically provides.

- 20.2 If it is stated in the Schedule that the surrender of the Lease is a Taxable Supply:
- (a) The Lessee warrants that it is registered for GST under the GST Act;
  - (b) The Lessee warrants that the surrender of the Lease is a Taxable Supply for the purposes of the GST Act;
  - (c) The Territory must pay to the Lessee on the Surrender Date an amount equal to the GST payable by the Lessee in relation to the Taxable Supply in addition to the Surrender Sum, subject to the Lessee giving to the Territory, on or before the Surrender Date, a tax invoice for any Taxable Supply.
- 20.3 If stated in the Schedule that the Surrender is a Taxable Supply, however the surrender of the Lease is in fact not a Taxable Supply, the Territory shall not pay any amounts referred to in clause 20.2, and to the extent that any such payment is made, the Territory is entitled to recover any amounts paid, together with any interest or costs incurred in respect of recovery of such amounts, on an indemnity basis.

## 21 DEFINITIONS

- 21.1 Unless the context otherwise requires, terms are defined in the Schedule and as follows:

**ACTPLA** means the Planning and Land Authority established under s10(1) of the *Planning and Development Act 2007* (ACT);

**Affecting Interests** means any mortgage, encumbrance, lease, lien, charge, notice, order, caveat, writ or other interest affecting the Land;

**Certificate of Independent Legal Advice** means a certificate in the form at Annexure B;

**DCL Form** means the *Land Titles Act 1925—Form 057-DCL — Determination/surrender of a crown lease* which is annexed to this Deed at Annexure A;

**Deed** means this deed including the Schedule, terms and conditions and any annexure, additional clauses and attachments forming part of this deed;

**First Right of Refusal** has the meaning set out in clause 12.1;

**GST** has the meaning in the GST Act;

**GST Act** the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Icon Water** means Icon Water Limited A.B.N. 86 069 381 960;

**Improvements** means the buildings, structures and fixtures erected on and forming part of the Land;

**Land Charges** means rates, land rent, land tax and other taxes and outgoings of a periodic nature in respect of the Land;

**Lease** means the Crown lease in respect of the Land;

**Notice Requiring Surrender** means a notice issued by a party in accordance with clause 14;

**Program** means the Territory's 'Buyback Program' being part of The Loose Fill Asbestos Insulation Eradication Scheme;



**Surrender Date** means the date on which the Lessee surrenders the Lease to the Territory;

**Schedule** means the schedule to this Deed;

**Supply** has the meaning in the GST Act;

**Taxable Supply** is a Supply that is found to be taxable in accordance with the GST Act;

**Territory** means:

- (a) when used in a geographical sense, the Australian Capital Territory; and
- (b) when used in any other sense, as described in the Schedule; and

**Working Day** means any day other than a Saturday, Sunday, public holiday in the Australian Capital Territory or the 27th, 28th, 29th, 30th or 31st of December.

## **22 INTERPRETATION**

22.1 In this Deed:

- (a) a reference to the Lessee or to the Territory includes the executors, administrators and permitted assigns of any of them, if an individual, and the successors or permitted assigns of any of them, if a corporation;
- (b) the singular includes the plural, and the plural includes the singular;
- (c) a reference to a person includes a body corporate;
- (d) a term not otherwise defined has the meaning in the *Legislation Act 2001 (ACT)*; and
- (e) a reference to an Act includes a reference to any subordinate legislation made under it or any Act which replaces it.

22.2 Headings are inserted for convenience only and are not part of this Deed.

22.3 If the day upon which something to be done or to happen is not a Working Day, the time is extended to the next Working Day.

22.4 If there is more than one Lessee the obligations which they undertake bind them jointly and individually.

22.5 Unless otherwise stated, all sums paid or payable under this Deed are inclusive of any GST paid or payable.

**ANNEXURE A - DCL FORM**

**ANNEXURE B - CERTIFICATE OF INDEPENDENT LEGAL ADVICE**