



## Lease

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**The Honourable Elise Nicole Archer MP**  
(Minister)

and

**Daniel Hackett**  
(Lessee)

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## Details

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Parties	Minister, Lessee	
<b>Minister</b>	Name	<b>The Honourable Elise Nicole Archer MP</b> being and as the Minister for the time being for the State of Tasmania administering the Act (“ <b>Minister</b> ”)
	Address	C/- Parks and Wildlife Service, Department of Primary Industries, Parks, Water and the Environment 134 Macquarie Street, GPO Box 1751 Hobart in Tasmania
	Telephone	(03) 6165 4268
	Facsimile	(03) 6173 0226
<b>Lessee</b>	Name	<b>Daniel Hackett (“Lessee”)</b>
	Address	[REDACTED] in Tasmania [REDACTED]
	Telephone	[REDACTED]
<b>Recitals</b>	<b>A</b>	The Land is Crown land for the purposes of the <i>National Parks and Reserves Management Act 2002 (Tas)</i> .
	<b>B</b>	The Minister, acting under the powers conferred by the Act (and in particular section 48), has agreed to grant the Lessee certain lease and licence rights in respect of the Land respectively upon the terms of this Lease
	<b>C</b>	The Lessee has agreed to accept certain lease and licence rights in respect of the Land respectively upon the terms of this Lease.
<b>Date of Lease</b>	See Signing page	

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# General terms

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## 1 Definitions and interpretation

### 1.1 Definitions

In this Lease unless the contrary is expressed or the context requires otherwise:

“**Act**” means the *National Parks and Reserves Management Act 2002* (Tas);

“**Business Day**” means a day on which authorised deposit-taking institutions (as defined in the *Banking Act 1959* (Cwlth)) in Hobart are open for general banking business excluding Saturdays Sundays and public holidays;

“**Commencement Date**” means 1 September 2017;

“**Insolvent**” means for a natural person:

- (a) having committed an act of bankruptcy;
- (b) being made bankrupt; or
- (c) being subject to an arrangement under part IV of the *Bankruptcy Act 1966* (Cwlth);

and for a corporation:

- (d) being wound up (other than for the purpose of restructure);
- (e) having a controller appointed;
- (f) coming under administration under the *Corporations Act 2001* (Cwlth);
- (g) being subject to an order for winding up or reconstruction; or
- (h) having a receiver a receiver and manager an agent in possession a trustee or guardian appointed to the property of the corporation;

“**Interest Rate**” means the rate prescribed for the purposes of section 36(a)(ii) of the *Crown Lands Act 1976* and advised to the parties as the relevant rate;

“**Land**” means all that parcel of reserved Crown land on Halls Island with the Walls of Jerusalem National Park as the same as shown marked on the Plan which parcel includes the building known as “Halls Hut” and a 5 metre curtilage around that building and all those formed walking tracks over Halls Island necessary to provide access and egress to that building, with the Minister’s decision to be final and binding as to the exact boundaries of such area;

“**Lease**” or “**this Lease**” means this document including all schedules and annexures;

“**Lessee**” means the party listed in the details and where the context requires includes the Lessee’s employees agents authorised contractors and subcontractors licensees and invitees;

**“Lessee’s Improvements”** means the hut building and formed tracks within the Land and any other improvements from time to time, constructed, installed or built by or for the Lessee in accordance with this Lease on the Land.

**“Minister”** means the Minister administering the Act and the Minister’s successors in office;

**“Parks and Reserves Manager”** means the officer of the Parks and Wildlife Service (being a division of the Department of Primary Industries, Parks, Water and the Environment) appointed as the Parks and Reserves Manager for the region of Tasmania containing the Land and includes any person who may be acting in that position or the delegate of the Parks and Reserves Manager;

**“Permitted Purpose”** means the use of the Land for the purposes of:

- (a) a hut site; and
- (b) all reasonably necessary ancillary purposes;

**“Rent”** means the payment referred to in clause 2.2;

**“Term”** means the period of ten (10) years from the Commencement Date; and

**“Valuer”** means:

- (a) a person who is qualified to practise as a land valuer under section 4 of the *Land Valuers Act 2001* (Tas); or
- (b) the person appointed as the Valuer General under the *Valuation of Land Act 2001* (Tas) or his or her nominees.

## 1.2 Interpretation

In this Lease unless the contrary is expressed or the context requires otherwise:

- (a) a reference to this Lease includes schedules appendices and annexures to it and any variation or replacement of any of it;
- (b) the singular includes plural and the plural includes the singular;
- (c) a reference to a gender includes reference to each other gender;
- (d) a reference to a person includes:
  - (i) an individual a firm a body corporate an unincorporated association or a statutory or responsible authority or other authority as constituted from time to time; and
  - (ii) the person’s executors administrators successors and permitted assigns;
- (e) a reference to a statute ordinance code or other legislative requirement includes regulations and other instruments under it and consolidations amendments re-enactments or replacements of any of them;
- (f) the verb “include” (in all its parts tenses and variants) is not used as nor is it to be interpreted as a word of limitation;

- (g) a reference to any thing (including an amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (h) a reference to writing includes a reference to printing typing and each other method of producing words figures or symbols in visible form;
- (i) a reference to a clause paragraph schedule annexure or appendix is a reference to a clause paragraph schedule annexure or appendix in or to this Lease;
- (j) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (k) headings are for convenience only and are to be ignored in construing it;
- (l) if a party consists of more than one person then this Lease binds all or any two or more of them jointly and each of them severally;
- (m) a covenant prohibiting a person from doing anything also prohibits that person from authorising or allowing it to be done by another person; and
- (n) if a day appointed for the payment of money or the performance of an act falls on a day that is not a Business Day then the day for the payment of that money or the performance of that act will instead be the Business Day immediately following the appointed day.

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## **2 Grant of Lease**

### **2.1 Grant**

Subject to clause 2.2, the Minister grants to the Lessee and the Lessee accepts a lease of the Land for the Term upon the terms and conditions contained in this Lease.

### **2.2 Assignment and other dealings require consent**

The Lessee must not assign, sub-lease, share, transfer, grant any mortgage, charge or other security interests in, or otherwise deal with, all or any part of the Lessee's rights, benefits or obligations under this Lease without the Minister's prior written consent which may be given (conditionally or unconditionally), or withheld, entirely within the Minister's discretion (it being acknowledged that should the Lessee wish to assign or transfer this Lease the Lessee must comply with section 49 of the Act).

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## **3 Rent**

### **3.1 Rent**

The Lessee must pay Rent on the Land at the rate of Two Thousand Dollars (\$2,000.00) (exclusive of GST) per annum payable annually in advance with the first payment to be made on the Commencement Date.

### **3.2 Minister to review rent**

The Minister will review the Rent during the Term with a new reviewed Rent to apply from the third anniversary of the Commencement Date and every third anniversary thereafter ("rent review date"). The reviewed Rent will be the amount recommended by a Valuer as being the appropriate rent for the three years from the effective rent review



date. The Minister must provide written notification of the proposed reviewed Rent to the Lessee.

### **3.3 Notification from Lessee**

The Lessee must advise the Minister whether or not the Lessee agrees or disagrees with the reviewed Rent as notified under clause 3.2 it being acknowledged that:

- (a) If the Lessee disagrees with the reviewed Rent then the Lessee must give detailed reasons for such disagreement and details of an alternate appropriate rent amount in writing within 15 Business Days of receiving the Minister's notice under clause 3.2;
- (b) If the Lessee agrees with the reviewed Rent or fails to give notice in accordance with subclause (a) the reviewed Rent will be that proposed under clause 3.2.

### **3.4 Minister to refer Lessee's notice to Valuer-General**

Provided the Lessee has complied with the requirements of clause 3.3(a) then the Minister must refer the Lessee's notice to a Valuer for consideration.

### **3.5 Minister to notify**

The Minister must as soon as practicable upon receiving advice from a Valuer after a referral under clause 3.4 give written notice to the Lessee informing the Lessee whether or not the proposed Rent figure has been altered and if so to what amount.

### **3.6 Expert valuation**

- (a) If the Lessee does not accept the Rent proposed in accordance with clause 3.5 on reasonable grounds then the Lessee must give written notice of such non acceptance and details of the grounds for objection within 10 Business Days otherwise the Rent will be that proposed under clause 3.5.
- (b) If the Lessee has made an objection under clause 3.6(a) then the reviewed Rent will be fixed by a Valuer of at least five (5) years experience acting as an expert appointed at the request of either party by the President of the Australian Property Institute (Tasmanian Division) whose determination will be final and binding on both parties.

### **3.7 Valuation criteria**

In fixing the reviewed Rent the Valuer appointed under clause 3.6 must:

- (a) assume that the Land is capable of being rented by a willing lessor to a willing lessee;
- (b) not take into account any chattels plant and equipment improvements or fixtures (including permanent structural improvements) belonging to or constructed by the Lessee whether those items are capable of being removed at the end of the Term or not; and
- (c) take into account any other factors that are normally reviewed by a Valuer when assessing rents.

### **3.8 Valuer's costs**

The costs of the Valuer appointed under clause 3.6(b) must be paid as determined by the Valuer.

### **3.9 Payment of new Rent**

The Minister may review the Rent at any time for determining a reviewed Rent in accordance with clause 3.2 and the new Rent resulting from a review is taken to apply from the relevant effective rent review date regardless of when the new Rent is finally determined.

### **3.10 Ratchet clause**

Notwithstanding anything else in this clause 3 the new Rent arising from any rent review cannot be fixed at an amount that is less than that for the previous review period.

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## **4 Goods and Services Tax**

### **4.1 GST exclusive**

Subject to any other provision of this Lease expressing a contrary intention if GST is imposed on a supply made under it then the party paying for the supply must pay the amount of the GST to the party making the supply at the same time as and in addition to the amount payable for the supply.

### **4.2 Tax invoice**

A party making a taxable supply under this Lease must give the recipient a tax invoice for the taxable supply when that supply is made.

### **4.3 Defined terms in GST Act apply**

In this clause "GST" refers to goods and services tax under *A New Tax System (Goods and Services) Act 1999* ("GST Act") and the terms used have the meanings as defined in the GST Act.

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## **5 Lessee's covenants**

### **5.1 Covenants**

The Lessee covenants with the Minister as follows:

- (a) to pay the Rent as required by clause 2.2;
- (a) to pay all land tax (on a single holding basis) rates water and sewerage (fixed charges) and other charges levied against the Land and payable by an owner. For the avoidance of doubt the Lessee acknowledges that if such charges are demanded directly of the Lessee then the Lessee must pay that amount punctually to the Council or if demanded of the Minister then the Lessee must pay to the Minister on demand a fair proportion (as assessed by the Minister) of the relevant amounts;
- (b) to comply with the terms of this Lease;

- (c) to pay all charges for excess water electricity telephone sewerage and any other service used by the Lessee on the Land;
- (d) to use the Land only for the Permitted Purpose it being acknowledged and agreed by the Lessee that in no circumstances whatsoever is the Land to be used for residential accommodation and must not be advertised or used as a holiday let;
- (e) to punctually comply with all notices received from the Minister or the Minister's duly authorised agents relating to the Lessee's obligations under this Lease;
- (f) to comply with any directions of the Minister (including in respect of the use of the Land and the possible immediate cessation of such use) in the event of an emergency;
- (g) to, in its use of the Land and in the carrying out of the Permitted Purpose, ensure all activities are undertaken having due regard to the requirements of the Tasmanian Reserve Management Code of Practice 2003;
- (h) to punctually comply with:
  - (i) all notices received from any health, police, municipal, fire, or other authority with respect to the Land or Permitted Purpose or both;
  - (ii) all laws (including the Act and any regulations made under the Act), by-laws, regulations and other requirements of a Federal, State, or local authority that affect the Land or Permitted Purpose or both in any way; and
  - (iii) any management objectives and any management plans approved under the Act that in any way affect the Land or the Permitted Purpose or both (with the Lessee to in particular have regard to such matters in undertaking any maintenance works to the Land and the Lessee's Improvements in accordance with this Lease);
- (i) to give immediate written notice to the Minister of:
  - (i) receipt of any notice referred to in paragraph (i) (unless such notice was provided through the Minister); and
  - (ii) any damage or defect in the Land caused or arising as a result of exercising any of the rights conferred under this Lease or any other damage or defect found to arise or of which the Lessee becomes aware;
- (j) to permit the Minister's agents, with or without workmen, to enter upon the Land at all reasonable times to view its condition and state of repair, the carrying out of the Permitted Purpose and the Lessee's compliance with the terms of this Lease;
- (k) to obtain keep current and comply with the terms of all licences permits and approvals as may be required from time to time by any Commonwealth State or Local Government authority for or in respect of the Permitted Purpose;
- (l) to provide the Minister with details (including copies of relevant documents including all relevant documentation relating to the carrying out of the maintenance obligations under clause 5.1(o)) on request showing the Lessee's compliance with the terms of this Lease;
- (m) to keep the Land:

- (i) in a clean and tidy condition; and
  - (ii) free from noxious weeds, vermin and fire hazards (with the Lessee to actively co-operate and comply with any requirements of the Minister in this respect);
- (n) to maintain and keep the Lessee's Improvements and any other improvements on the Land:
- (i) in good repair and condition consistent with their condition at the Commencement Date; and
  - (ii) in a safe state and condition for everyone who enters onto the Land or uses the Lessee's Improvements or both;

it being acknowledged and agreed by the parties that the Lessee as owner of the Lessee's Improvements is responsible for the maintenance and repair of the Lessee's Improvements including in respect of all structural matters and all costs associated therewith during the Term. For the avoidance of doubt the Lessee may undertake such maintenance and repair works (including those related to fair wear and tear) without the need for prior approval from the Minister provided that such works do not form alterations, extensions, reconstructions, additions or erections of new structures (in which case clause 5.1(r) applies);

- (o) not to do, or permit to be done on the Land anything which, in the Minister's opinion, may be or become a nuisance or annoyance to a occupier or user of adjoining land;
- (p) not to permit any activity on the Land that is not authorised under this Lease without obtaining the Minister's prior written consent;
- (q) (unless expressly allowed for elsewhere in this Lease) not to:
  - (i) make or undertake any alterations, extensions, major upgrades or erect any other buildings or structures on the Land; or
  - (ii) undertake any non-minor maintenance and repair work;
 without obtaining the Minister's prior written consent (and where relevant the consent of the relevant municipal council and any other relevant authority). When seeking the Minister's consent, the Lessee must provide details to the Minister's satisfaction of the proposed alteration, extension, upgrade, erection, non-minor maintenance or repair work for the Minister's consideration;
- (r) not to keep or allow to be kept on the Land any explosive or combustible substances unless required for the Permitted Purpose and then only in quantities permitted by the relevant statutory authorities and in accordance with all relevant legislation and all necessary licences permits and authorisations;
- (s) not do anything in relation to the Land that will or may result, in Contamination of the Land;
- (t) that the Lessee must:
  - (i) not use, or permit to be used, or stored on the Land any radioactive, toxic or hazardous chemicals, wastes or substances, except in concentrations and quantities:

- (A) permitted by the relevant statutory authorities; and
  - (B) in accordance with any licences, permits or authorisations required by law; and
  - (C) in accordance with the conditions imposed by the relevant statutory authorities or under their permission;
- (ii) not permit any petroleum product, oil, grease or any noxious, dangerous or poisonous chemical or substance to be discharged through the pipes of the water or sewerage service on the Land or any adjoining land and waterways or into or under the soil and to discharge them only as:
- (A) permitted by the relevant statutory authorities;
  - (B) required by law; and
  - (C) in accordance with any conditions imposed by the relevant statutory authorities;
- (iii) control and restrict the emission of smoke, dust or odours from the Land in accordance with the applicable legislation, regulations and the requirements of statutory authorities;
- (iv) comply with all demands, notices and requirements of the regulatory authorities in respect of contamination of the Land, caused by the Lessee or by occupiers of the Land; and
- (v) notify the Minister within ten (10) Business Days after receiving any demand or notice from a regulatory authority about Contamination of the Land; and
- (u) not to fit any plate or sign on the Land, except of a size and pattern and in a position, approved by the Minister in writing It Being Acknowledged that the Lessee must at the Lessee's cost:
- (i) erect any signs that are required by legislation or a regulatory authority or that the Minister requires the Lessee to erect on the Land relating to site identification, warnings and security;
  - (ii) remove any plates or signs so fitted on the request of the Minister and at the expiration or sooner determination of this Lease;
  - (iii) make good any damage caused by the removal of plates or signs; and
  - (iv) meet all costs associated with the fitting, removal and making good of damage associated with plates and signs on the Land.

## 5.2 Determination of Lease

- (a) On the expiration or sooner determination of this Lease, the Lessee must deliver up possession of the Land and leave the Land in a condition consistent with the Lessee's obligations under this Lease, it being acknowledged by the parties that immediately before the expiration or sooner determination of this Lease, the Lessee must (unless otherwise agreed with the Minister):
- (i) remove all the Lessee's Improvements and the Lessee's personal property from the Land; and

- (iii) make good all damage caused by removal in accordance with subparagraphs (i);
- (b) The Lessee acknowledges that any Lessee's Improvements and Lessee's personal property remaining on the Land without the Minister's consent following the expiration or sooner determination of the Lease, at the Minister's discretion, may either:
  - (i) become the property of the Minister, without compensation to the Lessee (unless compensation is required to be paid under the Act); or
  - (ii) be removed from the Land at the Lessee's cost and disposed of by the Minister without reference or liability to the Lessee.

### **5.3 Notice to repair**

Upon receipt of notice from the Minister or any Federal State or local authority the Lessee must repair or otherwise make good all defects and lack of repair that are the Lessee's responsibility under this Lease. If the Lessee fails to comply with a notice given under this sub-clause then the Minister or the Minister's agents may but are not bound to undertake the required repairs.

### **5.4 Minister may recover costs**

The Lessee must pay to the Minister on demand all money expended by the Minister to undertake works that are the Lessee's responsibility under this Lease together with interest at the Interest Rate from the date of expenditure by the Minister to the date of payment by the Lessee.

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## **6 Minister's covenants**

The Minister covenants with the Lessee that if the Lessee pays the Rent and observes and performs all the Lessee's obligations contained in this Lease then the Minister will permit the Lessee to quietly and exclusively use and enjoy the Land during the Term without any disturbance by the Minister or any person claiming through the Minister.

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## **7 Lessee's indemnities and waiver**

### **7.1 Lessee indemnifies Minister for third party risk**

The Lessee indemnifies the Minister against all present and future legal liability claims or proceedings for:

- (a) personal injury to or death of a third party;
- (b) either or both loss of or damage to property of a third party; and
- (c) financial loss of a third party;

arising from or attributable to the Lessee's occupation or use of the Land or carrying out of the Permitted Purpose or any combination thereof.

### **7.2 Lessee indemnifies Minister against loss and damage**

The Lessee indemnifies the Minister against all loss and damage to the Land and all property on it arising from or attributable to the Lessee's occupation or use of the Land or carrying out of the Permitted Purpose or any combination thereof.

### **7.3 Waiver of rights of recovery from the Minister**

The Lessee waives all present and future rights to claim against the Minister for:

- (a) personal injury to or death of the Lessee;
- (b) either or both loss of or damage to any of the Lessee's property; and
- (c) financial loss to the Lessee;

arising from or attributable to the Lessee's occupation or use of the Land or carrying out of the Permitted Purpose or any combination thereof.

### **7.4 Lessee's risk**

The Lessee agrees to use and occupy the Land throughout the Term at the Lessee's risk as regards to loss or damage to the Lessee and the Lessee's Improvement and personal property.

### **7.5 Nature of indemnities and waiver**

The indemnities and waiver in this clause 7:

- (a) are continuing obligations of the Lessee separate and independent from any other obligations; and
- (b) survive the expiration or sooner termination of this Lease; but
- (c) do not extend to liability caused by the Minister's wrongful (including negligent) act or omission.

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## **8 Insurance**

### **8.1 Lessee to insure**

The Lessee must hold out and keep current throughout the Term and for as long as the Lessee occupies the Land contracts of insurance with a reputable insurer lawfully carrying on insurance business in Australia indemnifying:

- (a) the Lessee's liability for:
  - (i) personal injury to or death of a third party; and
  - (ii) either or both loss of or damage to the property of a third party;for at least Twenty Million Dollars (\$20,000,000.00) for each individual claim or series of claims arising out of a single occurrence or for such other amount as the Minister reasonably determines; and
- (b) any other risks that the Minister reasonably requires the Lessee to insure against for the amount stipulated by the Minister to the extent that the claim for indemnity is not caused by the Minister's wrongful (including negligent) act or omission.

The liability to be insured against under paragraph (a) is liability arising from or attributable to the Lessee's occupation or use of the Land to the extent that the injury death damage or loss is caused by a wrongful (including negligent) act or omission of the Lessee or the Lessee's employees agents or sub-contractors.

## **8.2 Crown to be insured**

An insurance contract taken out under:

- (a) clause 8.1(a); or
- (b) clause 8.1(b) if the Minister requires this clause to apply to it;

must cover “the Crown in Right of Tasmania” as principal under the insurance contract but only to the extent required under this Lease.

## **8.3 Lessee to notify Minister**

The Lessee must notify the Minister in writing as soon as practicable:

- (a) if an insurance contract taken out under clause 8.1 lapses is cancelled or materially altered; or
- (b) if the Lessee claims or becomes entitled to claim under such an insurance contract for something related to this Lease or the Permitted Purpose.

## **8.4 Evidence of insurance**

The Lessee must give the Minister evidence of:

- (a) the terms of; and
- (b) payment of the premium for;

each insurance contract taken out under clause 8.1 on or before the Commencement Date and each anniversary of the Commencement Date during the Term.

## **8.5 Minister may insure**

If the Lessee fails to take out or renew each insurance contract required to be taken out under clause 8.1 then without being obliged to do so the Minister may:

- (a) take out or renew each such insurance contract that the Lessee has not taken out or renewed; and
- (b) pay any unpaid premium.

The Lessee must pay to the Minister on demand all money that the Minister expends for this purpose together with interest on it at the Interest Rate from the date of expenditure to the date of payment.

## **8.6 Lessee not to prejudice insurance**

The Lessee must not do anything that may result in insurance taken out under clause 8.1 or any part of it becoming invalid or unenforceable.

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# **9 Termination of Lease**

## **9.1 Minister may terminate**

Where:



- (a) the Rent is not paid for a period exceeding one month after it has become due and the Rent remains unpaid at the end of the period specified in a notice served on the Lessee by the Minister:
  - (i) requesting the Lessee to pay the outstanding Rent within the period specified in the notice; and
  - (ii) advising the Lessee that the Lease may be cancelled if the outstanding Rent and interest thereon at the Interest Rate is not paid within the period so specified; or
- (b) the Minister considers that the Lessee has committed a breach of any term of the Lease and upon notice served on the Lessee by the Minister specifying the breach and requiring the Lessee to satisfy the Minister within the period specified in the notice that the Lessee has not committed the breach (or if required by the said notice that the Lessee has rectified or commenced action to rectify the breach) the Lessee fails to so satisfy the Minister; or
- (c) (notwithstanding any other provision of this clause 9.1) the Lessee fails to comply with an essential term of this Lease;
- (d) the Lessee becomes Insolvent; or
- (e) the Lessee is convicted of an offence in relation to the Permitted Purpose or if any business or activity conducted on the Land is closed down by an authority; or
- (f) the Lessee ceases or threatens to cease to use the Land for the Permitted Purpose or otherwise abandons the Land and/or the conduct of the Permitted Purpose;

then the Minister may:

- (g) terminate or cancel this Lease by written notice in which case the Term will cease when the Lessee receives the notice; or
- (h) proceed by appropriate court action to enforce performance by the Lessee of the applicable terms of this Lease or to recover damages for their breach.

## **9.2 Essential terms of Lease**

- (a) The essential terms of this Lease are clauses 2.3, 2.4, 2.5, 2.6, 3.1, 5.1(a), 5.1(b), 5.1(c), 5.1(e), 5.1(i), 5.1(l), 5.1(n)(i), 5.1(o), 5.1(r) and 8.1.
- (b) Without limiting any other part of this clause 9 if the Lessee is in breach of an essential term of this Lease and the Minister re-enters and takes possession of the Land or ends this Lease the Minister may recover all money payable by the Lessee under this Lease for the period from the date of its termination to the end of the Term.
- (c) This clause 9.2 does not prevent any other obligation of the Lessee under this Lease being an essential term.

### **9.3 Requirement of Land for other purposes**

The parties acknowledge that Lease may be cancelled wholly or partially in accordance with section 52 of the Act and in the case of a partial termination the provisions of the said sections of the Act will apply.

### **9.4 No compensation payable**

Except as may be allowed for under the Act no compensation is payable to the Lessee upon cancellation or termination of this Lease.

### **9.5 Antecedent Breach**

A termination or cancellation of this Lease under clause 9.1 or 9.2 is without prejudice to the Minister's rights or remedies for arrears of the Rent for any other moneys owing or for any other antecedent breach of this Lease.

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## **10 Holding over**

On the expiration of the Term if the Lessee continues in possession of the Land the Lessee will occupy the Land from the Minister:

- (a) as a tenant from month to month;
- (b) at the same Rent that is payable immediately prior to the expiration of this Lease calculated on a monthly basis or any other Rent which is agreed by the parties from time to time;
- (c) with Rent to be paid in advance; and
- (d) upon the terms and conditions of this Lease so far as they are applicable to a monthly tenancy.

Such tenancy may be determined by either party giving to the other not less than one (1) months written notice expiring at any time.

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## **11 No representation or warranty**

### **11.1 No representation about suitability**

The Minister does not represent or warrant:

- (a) that the Land is suitable to be used for the Permitted Purpose or for any business or other activity undertaken on the Land;
- (b) that the fittings accessories or services available on the Land are suitable to be used for the Permitted Purpose or for any business or other activity undertaken on the Land; or
- (c) that the Land may lawfully be used for the Permitted Purpose or for any business or other activity undertaken on the Land.

### **11.2 No representation about zoning**

Without affecting the generality of clause 11.1 the Minister does not represent or warrant that the zoning of the Land will permit it to be used for the Permitted Purpose whether with the approval or permission of the relevant planning authority or otherwise. It is the

Lessee's responsibility to enquire about zoning and the Lessee warrants that before executing this Lease the Lessee has done so to the Lessee's own satisfaction.

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## **12 Notices**

### **12.1 How to give a notice**

A notice claim demand consent or other communication to be given or made under this Lease is taken to have been duly given or made when:

- (a) hand delivered in writing; or
- (b) sent by prepaid post; or
- (c) sent by facsimile transmission from a facsimile machine that produces a print out of the time date and uninterrupted transmission record of sending the notice (to the listed facsimile number);

to the party to which the notice claim or consent is required or permitted to be given or made under this Lease at the addresses given the Details section of this Lease or such other addresses as may be notified by one party to the other party from time to time.

### **12.2 How to serve a notice**

A notice claim demand consent or other communication is taken to have been duly served:

- (a) if hand delivered when delivered;
- (b) if sent by prepaid post on the third Business Day after the date of posting;
- (c) if sent by facsimile transmission (if the sending facsimile machine produces a print out of the time date and uninterrupted transmission record of sending the notice) upon completion of sending if completion is within ordinary business hours in the place where the recipient's facsimile machine is located but if not then at 9.00 am. on the next Business Day in that place.

### **12.3 Who can sign a notice**

A notice claim demand consent or other communication given or made under this Lease is sufficient if:

- (a) in the case of the Minister it is under the hand of the Minister the Minister's authorised agent or the Crown Solicitor;
- (b) in the case of the Lessee it is under the hand of the Lessee or its agent or solicitor.

### **12.4 Signatures**

A printed or copied signature is sufficient for the purposes of sending a notice demand consent or other communication by facsimile machine.

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## **13 Merger of rights**

None of the terms of this Lease nor any act matter or thing done under or by virtue of or in connection with this Lease operates as a merger of any of the rights and remedies of the Minister or the Lessee under this Lease all of which continue in full force and effect.

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## **14 Relationship of parties**

Nothing contained in this Lease is to be construed to create any relationship between the parties other than the relationship of lessor and lessee upon the terms of this Lease.

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## **15 Waiver**

### **15.1 Delay not a waiver**

No failure by a party to exercise or delay in exercising a right power or remedy operates as a waiver.

### **15.2 Future rights not fettered**

A single or partial exercise of a right power or remedy does not preclude any other or further exercise of that or any other right power or remedy.

### **15.3 Waiver to be in writing**

A waiver is neither valid nor binding on the party granting it unless made in writing signed by the party to be bound by the waiver in the specific instance and for the specific purpose for which it is given.

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## **16 Exercise of powers**

### **16.1 Minister may delegate**

The Minister may exercise any powers authorities and discretions through permanent officers or any other person persons or corporation appointed in writing for that purpose (including for the avoidance of doubt the Parks and Reserves Manager).

### **16.2 Consent**

Unless expressly stated otherwise if the Minister's or Parks and Reserves Manager's consent or approval is required under this Lease the Minister and Parks and Reserves Manager may give (conditionally or unconditionally) or withhold such consent or approval at the Minister's and Parks and Reserves Manager's absolute discretion.

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## **17 Costs**

The Lessee must pay to the Minister on demand all the costs of the Minister on a full indemnity basis in relation and incidental to:

- (a) the preparation execution and completion of this Lease and any extension or arrangement for holding over after the expiry of the Term;
- (b) any consent approval waiver or amendment made under or to this Lease;
- (c) any assignment or sub-letting made under this Lease;
- (d) any surrender or termination of this Lease otherwise than by effluxion of time; and
- (e) the actual or contemplated enforcement or exercise of any of the Minister's rights or powers following a breach of any term of this Lease.

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## **18 Dispute resolution**

### **18.1 Management level discussions**

If a dispute arises between the parties about the interpretation implementation or enforcement of a term of this Lease then the parties must use all reasonable endeavours to settle the matter in dispute within ten (10) Business Days of both parties becoming aware of the dispute. For the purpose of this clause to assist in resolving a dispute at first instance the matter in dispute must be discussed at management level.

### **18.2 Committee to resolve disputes**

Failing satisfactory resolution of a dispute under clause 18.1 a committee consisting of:

- (a) a representative of the Minister;
- (b) a representative of the Lessee; and
- (c) an independent third person appointed at the request of either party by the President of the Law Society of Tasmania (or its successor body) to act as mediator,

must be established to try to resolve the dispute.

### **18.3 Arbitration**

If the parties fail to resolve a dispute under clause 18.2 within twenty (20) Business Days then the matter must be referred to arbitration in accordance with the provisions of the *Commercial Arbitration Act 1986* or a court of relevant jurisdiction at the option of the party initiating the arbitral or court proceeding.

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## **19 Severance**

### **19.1 Reading down provisions**

If a provision of this Lease is void or voidable or unenforceable either by the Minister or the Lessee but would not be void or voidable or unenforceable if it were read down and is capable of being read down it must be read down accordingly.

### **19.2 Severance**

If despite clause 19.1 a provision of this Lease is still void or voidable or unenforceable by either the Minister or the Lessee then:

- (a) if the provision would not be void or voidable or unenforceable if a word or words were omitted then that word or those words (as the case may be) are severed; and
- (b) in any other case the whole provision is severed;

and the remainder of this Lease has full force and effect.

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## **20 Governing law and jurisdiction**

### **20.1 Law of Tasmania**

This Lease is governed by the law of Tasmania and the parties submit to the jurisdiction of the Courts of Tasmania.

### **20.2 Proceedings issued under or about this Lease**

Any proceedings issued under or about this Lease must be instituted either:

- (a) in a Tasmanian court; or
- (b) in the Federal Court from the Tasmanian Registry of that court.

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## **21 Rights cumulative**

The rights and remedies provided in this Lease are cumulative and not exclusive of any rights or remedies provided by law.

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## **22 Execution of Lease**

If this Lease is not executed prior to or on the Commencement Date and the Lessee is in occupation of the Land from the Commencement Date then the parties will from the Commencement Date until the Lease is executed be in all respects bound by the terms covenants stipulations and conditions contained in this Lease as if this Lease had been duly and fully completed and executed by the Minister and the Lessee prior to or on the Commencement Date.

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## **23 Disclosure**

- (a) Despite any confidentiality or intellectual property right subsisting in this Lease or a schedule appendix annexure or attachment to it the Minister may publish all or any part of it without reference to the Lessee.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cth).

**Executed** as a Lease.

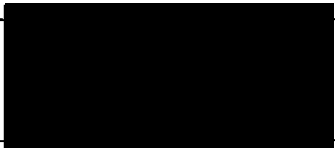
# Signing page

Dated: 19 January

2018

## Signing by Minister

Executed as a Lease by the person named below acting as a delegate of **Honourable Elise Nicole Archer MP** pursuant to an instrument of delegation dated 17 April 2014 made under the *National Parks and Reserves Management Act 2002* (Tas), in the presence of the witness named below:

Signature of delegate: → 

\*Print name and position of delegate: John Whittington  
Director of National Parks and Wildlife

Witness' signature: → 

\*Witness print name and position: J  
Executive Officer

\*Use BLOCK LETTERS

\*Witness print address: 1 Franklin Wharf Hobart

## Signing by Lessee

Executed as a Lease by **Daniel Hackett** in the presence of the witness named below:

Signature: → 

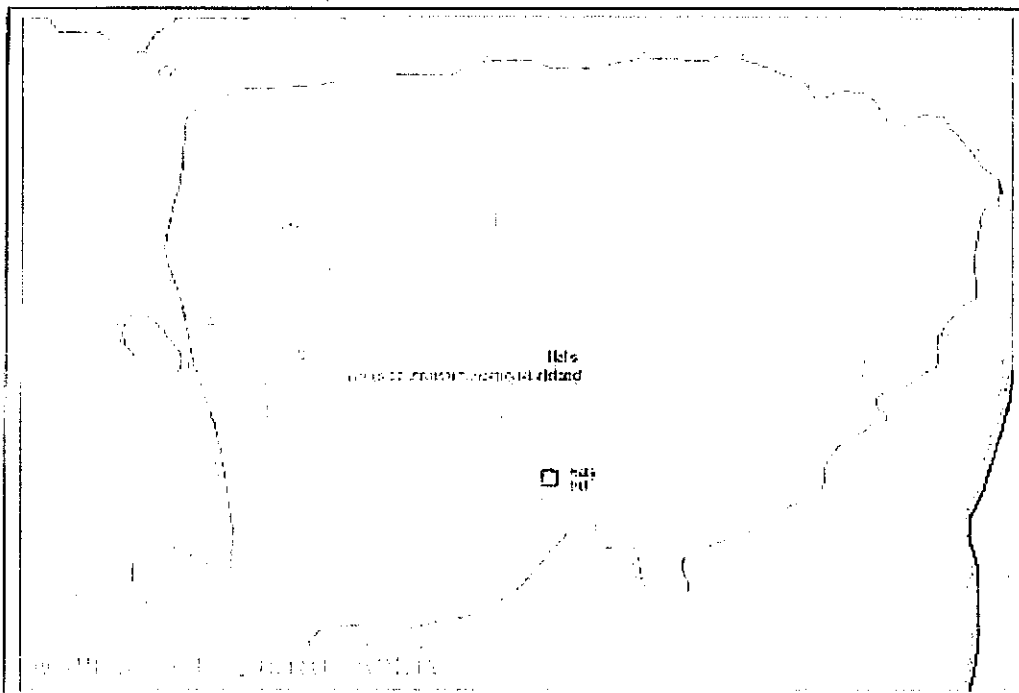
Witness' signature: → 

\*Witness print name:


\*Use BLOCK LETTERS


\*Witness print address: 84 Macquarie Street  
Hobart.

**MAP OF SUBJECT AREA**  
**LOCALITY: Walls of Jerusalem National Park**



**PLAN IS FOR ILLUSTRATION  
PURPOSES ONLY**

 Hut Site

 Locality

**File Number: 004687**

**PID: 5476091**

**Area Estimate: 40± m<sup>2</sup>**

