



# HUON VALLEY COUNCIL

## **Lease Policy**

## **GOV-CORP 007**

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<b>Related Documents</b>	Appendix A – Lease Agreement

## **1. Purpose and Background:**

### **1.1 Background**

The Huon Valley Council holds Council Premises for a variety of purposes.

Not all Council Premises are required for the specific use of Council purposes at any given time and as such can be available for other use.

Such use can provide benefit to the community and provide savings for the Council in costs associated with maintenance and use of the Council Premises.

Sporting and community organisations in particular require access to facilities to conduct a range of activities for members that enhance the physical activities, social interaction and cultural development of the community.

Some volunteer based community organisations have objectives focussed on community development and the provision of community services and these can be delivered from available Council premises for the benefit of the broader community.

There may also be the opportunity for commercial activities that add to the range of services provided to the community.

Further, where there is vacant Council land not otherwise required for Council purposes, this can be made available for grazing or other suitable purpose to ensure that the property is appropriately maintained minimising cost to the Council.

### **1.2 Legislative Context**

Lease of Council land is considered in the following provisions:

#### **177. Sale and disposal of land**

- (1) A council may sell, lease, donate, exchange or otherwise dispose of land owned by it, other than public land, in accordance with this section.
- (2) Before a council sells, leases, donates, exchanges or otherwise disposes of any land, it is to obtain a valuation of the land from the Valuer-General or a person who is qualified to practise as a land valuer under section 4 of the *Land Valuers Act 2001*.
- (3) A council may sell –
  - (a) any land by auction or tender; or
  - (b) any specific land by any other method it approves.
- (4) A council may exchange land for other land –
  - (a) if the valuations of each land are comparable in value; or
  - (b) in any other case, as it considers appropriate.
- (5) A contract pursuant to this section for the sale, lease, donation, exchange or other disposal of land which is public land is of no effect.
- (6) A decision by a council under this section must be made by absolute majority.

#### **178. Sale, exchange and disposal of public land**

- (1) A council may sell, lease, donate, exchange or otherwise dispose of public land owned by it in accordance with this section.
- (2) Public land that is leased for any period by a council remains public land during that period.

- (3) A resolution of the council to sell, lease, donate, exchange or otherwise dispose of public land is to be passed by an absolute majority.
- (4) If a council intends to sell, lease, donate, exchange or otherwise dispose of public land, the General Manager is to—
  - (a) publish that intention on at least two separate occasions in a daily newspaper circulating in the municipal area; and
  - (ab) display a copy of the notice on any boundary of the public land that abuts a highway; and
  - (b) notify the public that objection to the proposed sale, lease, donation, exchange or disposal may be made to the general manager within 21 days of the date of the first publication.
- (5) If the general manager does not receive any objection under subsection (4) and an appeal is not made under section 178A, the council may sell, lease, donate, exchange or otherwise dispose of public land in accordance with its intention as published under subsection (4).
- (6) The council must –
  - (a) consider any objection lodged; and
  - (b) by notice in writing within 7 days after making a decision to take or not to take any action under this section, advise any person who lodged an objection of –
    - (i) that decision; and
    - (ii) the right to appeal against that decision under section 178A.
- (7) The council must not decide to take any action under this section if –
  - (a) any objection lodged under this section is being considered; or
  - (b) an appeal made under section 178A has not yet been determined; or
  - (c) the Appeal Tribunal has made a determination under section 178B(b) or (c).

### **179. Lease of public land for less than 5 years**

A council may lease public land for a period not exceeding 5 years without complying with section 178.

### **1.3 Purpose**

The purpose of this Policy is to ensure the equitable and appropriate allocation of Council Premises pursuant to Sections 177, 178 and 179 of the *Local Government Act 1993*.

### **2. Definitions:**

In this Policy:

“Commercial Business” means a government agency and a business providing goods and services that trades as a commercial enterprise that is not a Community Based Business.

“Community Based Business” means any association, organisation or community group including not-for-profit and unincorporated bodies that provide support, financial, non-financial, or services to the community whether for fee for service or funded by other means. Examples include but not limited to service clubs, on-line centres, and community based health, social or welfare agencies.

“Council Premises” means land, buildings and other fixtures that is owned by the Council or is leased by the Council from the Crown or other party.

“Crown Land” has the same meaning as in the *Crown Lands Act 1976* and includes any other land owned by a State Government Department or Government Business Enterprise.

“Minimum Rate” means the minimum amount payable in respect of the general rate set by the Council for each financial year in accordance with Section 90 of the *Local Government Act 1993*.

“Public Land” has the same meaning as in Section 177A of the *Local Government Act 1993*.

“Trust Land” means land held on trust by the Council pursuant to Section 181 of the *Local Government Act 1993*.

“Sporting and Community Organisations” means any association, club, Men’s Shed, craft group or sporting and recreational clubs for the benefit of its members, where the organisation has the ability to enjoy profit from either an annual membership fee, or licensed facilities or a combination of both, a differential fee structure will generally be applied.

“Private Individual” means a private individual who seeks to use Council Premises for a private use including for grazing and farming activities.

“Standard Lease Agreement” means the Standard lease Agreement included as Attachment A to this Policy.

### **3. Policy Statement:**

#### **3.1 Maximise use of Council Premises for benefits to the Community**

Council recognises and is committed to maximising use of Council Premises to meet the needs of community organisations, sporting clubs, private individuals and commercial businesses to have flow on effects and benefits to the community at large.

#### **3.2 Expressions of Interest**

When leasing Council Premises the Council may consider existing users or may undertake an expressions of interest process.

Factors to be considered by the Council in undertaking an expression of interest process or not are set out below.

Whether or not an expression of interest will be undertaken will depend upon the particular circumstances of the case and also whether the Premises is public land, ordinary Council land or Crown or other land.

##### **3.2.1 Public Land**

Where the land is public land the default position is that an expression of interest process will be undertaken except where:

- The Lessee is an existing Lessee and is a Sporting and Community Organisation that has a strong historical and/or social or recreational ties to the Premises they use.
- The existing Lessee has contributed cash or in-kind to the development of the Premises.
- The existing Lessee owns permanent approved structures on the Premises.
- The Lease of the premises is required to deliver services in circumstances set out in Clause 3.2.3.

Where the Council resolves not to undertake an expression of interest process for the lease of public land then the reasons for doing so under this clause will be stated within the Report.

### **3.2.2 Ordinary Land, Crown Land or other Land**

Where the Premises is ordinary land, Crown Land or other land leased by the Council and is intended to be sub-let to a third party an expression of interest process is to be undertaken at the discretion of the General Manager. The General Manager is to take into account the considerations in 3.2.1, however, the connection to the Premises is not limited to Sporting and Community Organisations and a lease may be granted to any existing Lessee.

At all times any sub-lease of Crown or other land may only be approved if the use is consistent with the purpose of the lease in the first instance.

### **3.2.3 Lease of Premises for Service Delivery**

Where lease of Premises is related to service delivery, that is where the Council provides an existing service or facility that it no longer wishes to provide and is seeking a third party to undertake in place of the Council, a lease will only be granted over a Premises necessary to deliver the service to the successful third party.

The lease in this instance will be consistent with the arrangements and provision of the services or facilities and the Standard Lease Agreement will apply as far as practicable. The process for selection of the successful third party is separate to this Policy. The lease follows the event only.

## **3.3 Criteria for Assessment of Expression of Interest**

Any expression of interest under this Policy is to address and be evaluated in accordance with the following criteria:

1. State the organisational name.
2. State the legal entity of the organisation (whether or not an individual person, an incorporated association, body corporate or corporation).
3. Provide evidence of insurance relevant to the proposed use of the Premises including a minimum of \$10,000,000.00 cover in respect to public liability. Such minimum may be increased dependent upon the risk associated with the proposed use.
4. Provide a statement of the proposed usage of the Premises.
5. Provide a Business Plan for usage of the Premises (if applicable determined by the General Manager on a risk basis).
6. Provide financial status of the person/organisation. The Council may request the prospective Lessee to provide the Council with financial documentation demonstrating the viability of the use and ability of the prospective Lessee to pay the costs and expenses under the Lease.
7. Statements of experience to carry out the proposed use.
8. The community benefit of the proposed use. This will not apply where the proposed lease is for ordinary Council land for private use such as grazing purposes.

The General Manager is to develop a template expression of interest document which must at all times remain consistent with this Policy.

Expressions of interest will be treated as confidential as containing information potentially of a competitive nature. However the Council will ensure that the successful party is publicly identified along with the approved use.

### **3.4 Crown Land and other land leased by Council**

Where Council sub-leases land over which it holds a lease from another party including from Crown Land, the standard lease terms will generally be consistent with the master lease and the Lessee responsible for any covenants of the Council under the lease as well as for costs of the lease including but not limited to the master lease rental, statutory charges and outgoings relevant to the area being subleased.

### **3.5 Trust Land**

Unless permissible under the relevant Trust Deed the Council will not permit a lease of Trust Land, however, a licence may be granted.

Where a lease is entered into the Lease Agreement is to be wholly consistent with the Trust Deed.

### **3.6 Term**

Dependent upon the request for lease, a risk assessment and specific circumstances of the case, Council will consider a standard lease term of up to five years. The lease period may be longer dependent upon the terms of the expression of interest.

Should the term be for a longer period and the Council Premises is Public Land within the meaning of Section 177A of the *Local Government Act 1993* then such lease will only be permitted in the event that Council has undertaken the lease of public land process set out in Section 178 of the Act.

### **3.7 Extension of Lease Periods**

Lease periods may be extended taking into account the factors set out in clause 3.2.

### **3.8 Other Approvals**

Unless otherwise agreed to by the Council it is the responsibility of the Lessee of Premises to ensure that all necessary approvals are obtained in relation to use of the Premises under the lease and that the use complies with all relevant laws. This includes and is not limited to approvals under and compliance with the *Land Use Planning and Approvals Act 1993*, the *Building Act 2016*, *Environmental Management Pollution Control Act 1994*, the *Food Act 2003* and the *Public Health Act 1997*.

### **3.9 Lease Agreement**

Use of Council Premises is to be based upon appropriate and consistent lease arrangements.

Council is committed to ensuring fair and consistent tenure conditions between organisations. However it is acknowledged that some conditions and terms may be negotiated between Council and individual Lessees in particular circumstances.

The Lease will provide the lessee with exclusive use of a defined lease area for a specified purpose and term. Where two or more organisations are to exclusively occupy separate parts of the same Council Premises, separate leases will be offered to the organisations.

The Standard Lease Document included in Appendix A will apply to a lease granted under this Policy however it is not intended to be inflexible and specific purpose lease agreements may be used as required.

The specific terms of any one lease will depend upon the individual circumstances of the lease considering the interest of Council and community and any specific legislative requirements relating to the use of the Premises and the Standard Lease Agreement may be amended as required to meet those circumstances including, where required, additional terms specific to the purpose of the lease.

### 3.10 Categories of Lessees

Lessees of Council Premises will be categorised as follows: Community Based Business; Sporting and Community Organisations; Commercial Business; and, Private Individual.

### 3.11 Lease Costs

Lease rental, statutory fees and outgoings will be applied to the category of Lessee as a matter of principle on the following basis:

#### **Sporting and Community Organisations**

- Nominal Rental per annum equivalent to the minimum rate as at the date of the lease – rental adjusted each year of the lease by the increase in the minimum rate applying at the date of the lease and rounded to the nearest \$5
- Service Charges
- TasWater\*
- Electricity
- Public Liability Insurance

#### **Community Based Business**

- Rental of \$250 per annum plus the minimum rate as at the date of the lease – rental adjusted each year of the lease by the increase in the minimum rate applying at the date of the lease and rounded to the nearest \$5
- Service Charges
- Land Tax
- TasWater\*
- Electricity
- Public Liability Insurance

#### **Commercial Business**

- Commercial Rental as determined by a Land Valuer
- Rates & Service Charges
- Land Tax
- TasWater\*
- Electricity
- Public Liability Insurance

#### **Private Individual**

- Moderated Rental which includes the equivalent of the minimum rate as at the date of the lease but taking into account the saving in costs to the Council in maintenance etc – rental adjusted each year of the lease by Hobart CPI or the increase in minimum rate applying at the date of the lease (whichever is greater) and rounded to the nearest \$5
- Service Charges
- TasWater\*
- Electricity
- Public Liability Insurance

\*TasWater charges will be allocated taking into account the following principles:

- Availability of TasWater Service (water/sewer);
- Where single tenancy for Community Based Business, Commercial Business or Private Individual the Lessee will pay the entire cost of the service and usage charges;
- Where single tenancy for Sporting and Community Organisations the Lessee will pay the entire cost of the usage charges;



- Where multiple tenancy, costs will be charged taking into account the principles for single tenancies however will be apportioned:
  - where sub-meters exist, on the basis of actual use, or
  - in any other event based upon the square metreage of the leased area as a proportion to the number of multiple tenancies.

Commercial Businesses will be responsible for the cost associated with a lease of Council Property in accordance with any fees or charges determined under Section 205 of the *Local Government Act 1993*.

On renewal of any previously held lease, the commencement lease rental will be:

- for Commercial Businesses - the commercial rental as determined by a land valuer at the time of the new lease but not less than the rental amount as at the expiration of the former lease; and
- for Sporting and Community Organisations, Community Based Businesses and Private Individuals – not less than the rental amount as at the expiration of the former lease and not less than the rental amount as at the expiration of the former lease as adjusted in accordance with this Policy.

## **4. Application:**

### **4.1 Application**

This Policy applies to decisions made to lease Council or leased property under Sections 177,178 and 179 of the *Local Government Act 1993* whether by resolution of the Council or under delegated authority granted pursuant to Section 22 of the *Local Government Act 1993*.

The principles of this Policy will be applied to new leases and those leases which have expired and where renewal is pending. The remaining leases will follow as and when their current agreement require renewal.

### **4.2 Non Application**

This Policy does not apply to:

- A licence of Council Premises;
- Seasonal user agreements;
- User agreements or permits issued under any By-law;
- Agreements under the *Residential Tenancy Act 1997*;
- Agreements under the *Retirement Villages Act 2004*.

## **5. Procedures:**

An application to lease Council owned or leased property is to be made in writing to the General Manager and will be considered in accordance with the requirements of the *Local Government Act 1993* and delegated authority granted pursuant to Section 22 of the Act.



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# 1. Definitions and Interpretation

## 1.1. Definitions

“**Commencement Date**” means the date set out at Item 1 of the Second Schedule

“**Premises**” means the premises and improvements described in Item 2 of the Second Schedule

“**Permitted Purpose**” means the purpose set out in Item 3 of the Second Schedule and reasonably necessary ancillary purposes

“**Rent**” means the rental amount referred to in Item 6 of the Second Schedule and any reviewed rental under Clause 3.2 and is exclusive of GST

“**Term**” means

- a) The period set out in Item 4 of the Second Schedule; and
- b) When applicable, includes the period of each further lease granted under this Lease.

## 1.2. Interpretation

The parties agree that this Agreement shall be interpreted according to the following rules except to the extent that such interpretation shall be excluded by or be repugnant to the context:-

- a) Words importing the singular or plural number include the plural and singular number respectively.
- b) Words of any gender shall include any other gender.
- c) Wherever used in this Agreement the words “person”, “Lessor”, and “Lessee” shall be deemed to include a corporation.
- d) Wherever used in this instrument the words “Lessor” and “Lessee”: shall be deemed to include the personal representatives and assigns of the Lessor and the Lessee.
- e) Where more than one person accepts liability under any term covenant agreement stipulation proviso or obligation express or implied each of those persons shall be liable severally as well as jointly.
- f) GST means the goods and services tax as defined in the *(A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

# 2. Grant of Lease

## 2.1 Lease

The Lessor agrees to lease to the Lessee and the Lessee agrees to take a lease of the Premises.

## **2.2 Term of Lease**

The Lessee agrees to take a lease of the Premises for the Term.

## **2.3 Option to Renew**

- a) The parties may agree at the expiration of the Term that the agreement be renewed for a further term set out in item 5 of the Second Schedule at a rental to be determined at the time of renewal by a general review. The reviewed rental shall never be less than in the preceding one year lease period.
- b) The option to renew shall be exercised not earlier than six (6) months nor later than three (3) months from the end of the term hereof by notice in writing given by the Lessee to the Lessor.
- c) The option shall not be exercisable if there is any existing breach of the terms hereof.
- d) In the event that the Agreement is renewed the lease resulting therefrom will be upon the same terms and conditions as are contained in this Agreement save this provision for renewal and subject to a general review of rental at the date of renewal under this Agreement.

## **3. Rent**

### **3.1 Rent**

- a) The Lessee shall pay to the Lessor the Rent in the manner set out at Item 6 of the Second Schedule, with the first payment to be made on the Commencement Date.
- b) Unless otherwise specified in the First Schedule to this Agreement, where this Agreement is entered into as a sub-lease, to pay the Rent applicable to the Master Lease to the Lessor in accordance with the terms of the Master Lease.

### **3.2 Review of Rent**

- a) The Rent shall be reviewed annually and adjusted as set out in Item 7 of the Second Schedule.
- b) The reviewed Rent will never be less than in the preceding one year lease period.
- c) Any review of the Rent under the terms of this agreement is not to take into account any improvement made to the Premises that is made at the sole expense of the Lessee.

## **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 the 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.

## **5. Lessee’s covenants**

The lease will contain the following covenants with the Lessor on the part of the Lessee:-

### **5.1 Use of the Premises**

- a) To use the Premises for the Permitted Purpose or otherwise agreed in writing by the Lessor.
- b) The Lessee is responsible for maintaining security to the Premises.
- c) Not to store or permit to be stored in the Premises any inflammable or dangerous liquids, gas, or solids in excess of that permitted to be held on the Premises by the insurers of the Premises.
- d) Not to use the plumbing other than as designed and must not cause or allow any blockage of the plumbing.
- e) Not to do or permit to be done upon the Premises anything which in the opinion of the Lessor may be or become a nuisance or annoyance to adjacent Premises or land.
- f) Not to do or permit to be done anything whereby the insurance which is required to be taken out by the lessee as described in Clause 9 might cause such insurances to become void or voidable.

### **5.2 Rates and charges**

To pay all statutory charges applicable to the Premises as specified in Item 9 of the Second Schedule.

### **5.3 Other outgoings**

To pay all outgoings associated with the lease of the Premises specified in Item 10 of the Second Schedule.

### **5.4 Advertising availability for Lease**

To allow the Lessor or its agent to display a sign within the Premises during the last calendar month of the period of the tenancy or if there is an extension of the period then during the last calendar month of the last extension of the tenancy for the purposes of advertising that the Premises are available for lease and allow the Lessor or his agent access to the Premises for the purpose of enabling any prospective Lessee an inspection thereof.

### **5.5 Good and tenantable repair and maintenance**

Except for fair wear and tear, to maintain the Premises in a neat, tidy and healthy condition, properly cleaned and repaired and free from vermin and fire hazards, to maintain the internal fixtures of the premises including but not limited to the lights, light fittings, carpets and heaters and to make good or repair any damage caused to the

exterior or structure of the Premises including plate glass and windows by the Lessee at the Lessee's expense but the Lessee is not otherwise responsible for the external and structural maintenance and repair of the Premises unless specified in the First Schedule.

## **5.6 Rubbish**

To keep all waste, rubbish and garbage properly stored and regularly removed from the Premises.

## **5.7 Signs**

Not to affix or exhibit or permit to be affixed or exhibited to or upon any part of the exterior of the Premises or of the external walls thereof or on the land any placard poster signboard or other advertisement except such as the Lessor has consented to in writing. Consent is not to be unreasonably withheld by the Lessor if the placard poster signboard or other advertisement relates to the business undertaken on the Premises only, is not of an offensive nature and complies with all relevant statutory requirements.

## **5.8 Inspection and repair**

- a) To permit the Lessor or his agent at all reasonable times to enter upon the Premises to inspect the condition thereof and in the case of any decay defect default or want or reparation being found then upon notice in writing being given to the Lessee or left on the Premises the Lessee shall within one (1) calendar month next after every such notice well and sufficiently repair and make good the same accordingly.
- b) If the Lessee does not comply with a notice given under clause 5.1 (n) within the required time the Lessor may enter the premises and execute such repairs and works, the costs of such repairs and works to the Lessor shall be a debt due from the Lessee to the Lessor and recoverable in a Court of competent jurisdiction.

## **5.9 Lessor entry**

To permit the Lessor or his agent or the occupiers of adjoining premises with all necessary workmen and appliances at all reasonable times to enter upon premises to execute repairs or alterations on any adjoining premises of the Lessor and the Lessor shall make good all damage occasioned to the Lessee by such entry.

## **5.10 Alterations and improvements**

Not to make any alterations or improvements to the Premises without first having obtained the prior written approval of the Lessor and obtaining all necessary statutory approvals relating to those alterations or improvements.

## **5.11 Lessor costs and expenses**

To reimburse to the Lessor all duty assessed at any time on this Agreement and on one duplicate and any instrument varying the rights and obligations hereunder and any future Agreement extending or varying the terms of this tenancy and to reimburse the Lessor's reasonable legal costs in respect of this lease and any instrument varying or extending the lease.

## 5.12 Acts and By-laws

The Lessee is at all times to comply with all legislative requirements including Acts, Statutes, Regulations and By-laws with respect to the use of the Premises.

## 5.13 Essential safety and health features

- a) The Lessee is an occupier for the purpose of Part 14, Section 204(ab) of the *Building Act 2016* and therefore must maintain any essential safety and health features of the Premises and any essential safety and health measures necessary to ensure the safety of persons using the Premises in accordance with the Building Act 2016.
- b) If applicable, the Lessee must obtain and comply with a maintenance schedule in accordance with the requirements of section 206 of the *Building Act 2016*.

## 6. Approvals

For the purposes of clause 5.10 an approval received by the Lessor acting in a statutory capacity in respect of an application made to it by the Lessee is not an approval, consent or permission of the Lessor required under the terms of this agreement.

## 7. Lessor's covenants

The lease will contain the following covenants with the Lessee on the part of the Lessor:-

### 7.1 Undisturbed Possession

The Lessee paying the Rent reserved by this Agreement and observing and performing the covenants and stipulations herein on their part contained shall peaceably hold and enjoy the Premises during the term or any extension of the term without any interruption by the Lessor or any person lawfully claiming under or in trust for them.

### 7.2 Maintenance

The Lessor is responsible for external maintenance of the Premises except to the extent the repair is made necessary by the actions, omission, neglect or default of the Lessee as provided in this Agreement unless otherwise specified in the First Schedule.

### 7.3 Building Insurance

The Lessor is responsible for maintaining a policy of insurance, insuring the building containing the Premises against loss but the Lessor is not responsible for insuring the property, contents, fixtures and fittings of the Lessee under this agreement unless otherwise specified in the First Schedule.

## 8. Special provisions

The special provisions in the First Schedule are part of the Lease and bind the parties according to their tenor and prevail to extent of any inconsistency with the terms of this Agreement.



## 9. Insurance and Indemnity

### 9.1 Lessee to insure

- a) The Lessee shall at all times during this agreement be the holder of a current Public Liability Policy of Insurance ("the Policy") of the minimum amount specified in Item 8 of the Second Schedule with an insurer approved by the Lessor in the name the Lessee providing coverage for all activities to be undertaken pursuant to this agreement against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them for any loss or damage to property or personal injury, arising out of, or in relation this agreement.
- b) The Policy is to note the interest of the Lessor as owner of the Premises.
- c) The Lessee is to punctually pay all premiums in respect of the Policy and to provide a copy of the certificate of currency and the Policy to the Lessor and evidence of renewal of the Policy to the Lessor immediately upon the anniversary of the Policy.
- d) The Lessee agrees to indemnify and keep indemnified the Lessor, its servants and agents and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, arising out of, or in relation this agreement. The Lessee's liability to indemnify the Lessor shall be reduced proportionally to the extent that any act or omission of the Lessor, its servants or agents, contributed to the loss or liability.
- e) The Lessee is responsible for insuring the contents of the Premises.

## 10. Termination of Lease

### 10.1 Provisos

The Lease will contain the following provisos and covenants:-

- a) Non Payment of Rent and other Default  
In the event that:-
  - i. the Rent hereby reserved or any part thereof shall at any time be unpaid for thirty (30) days after becoming payable on invoice;
  - ii. the Lessee has at any time failed or neglected to perform or observe any of the agreements stipulations or conditions contained in this Agreement or shall go into liquidation or become bankrupt or make any assignment for the benefit of creditors or enter into any agreement with creditors for the liquidation of its or their debts by composition or otherwise;
  - iii. the Lessee shall suffer any distress or process of execution to be levied upon its good;

**THEN** in any of the above events it shall be lawful for the Lessor or his authorised agent at any time thereafter to re-enter upon the Premises or any part of them in the name of the whole and thereupon the term created by this Agreement shall absolutely determine but without prejudice to the right of action of the Lessor in respect of any antecedent breach of covenant.

- b) Rights of Lessor on Re-entry  
Upon re-entry being lawfully made by the Lessor under Clause 10.1 of this Agreement the Lessor shall be entitled to recover from the Lessee (in addition to any other amounts for which the Lessee may be liable to the Lessor) damages for either
  - i. loss of the benefit of performance of all of the Lessee's covenants for the original term of the Agreement: OR
  - ii. (where a new or extended term has commenced or been granted) loss of the benefit of performance of all the Lessee's covenants for the new or extended term of the Agreement.
  
- c) Each of the covenants contained in Clauses 3.1, 4.1, 5, 8 and 9 of this Agreement are agreed to be a fundamental term of the Agreement breach of which will give rise to a right for the Lessor to terminate the Agreement and recover damages from the Lessee for either
  - i. loss of the benefit of performance of all the Lessee's covenants for the original term of the Agreement: OR
  - ii. (where a new or extended term has commenced or been created) loss of the benefit of performance of all of the Lessee's covenants for the new or extended term of this Agreement.
  
- d) This Agreement may be terminated by either party by the giving of six months notice in writing of the intention to do so.

## **11. Holding Over**

Should the Lessee with the consent of the Lessor remain in occupation of the Premises at or after the expiration of the term or any permitted extension or renewal thereof then in the absence of any express written agreement to the contrary the Lessee shall be deemed to be a monthly Lessee of the Premises notwithstanding that the rent may be paid weekly monthly quarterly or howsoever otherwise and the tenancy may thereafter be determined by either party upon the expiration of a notice in writing given to the other and expiring on any day of the month.

## **12. No representation or warranty**

### **12.1 No representation about suitability**

The Lessor does not represent or warrant:

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

## **12.2 No representation about zoning**

Without affecting the generality of clause 12.1, the Lessor does not represent or warrant that the zoning of the Premise 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.

## **13. Notice**

### **13.1 Expiration of Term**

- a) On the expiration of the term of this Agreement, or any extension of the term thereof through the effluxion of time, or within one month thereafter if the Reserved Rent shall be duly paid up to such termination, and there shall not be any unsatisfied breach of any stipulation or provision on the Lessee's part herein contained the Lessee may, or on the giving of one month's notice by the Lessor shall, at the Lessee's expense, remove from the Premises the fixtures, fittings, articles and things which the Lessee now, has or may at any time during the term of this Agreement attach, place or set up on or upon or about the Premises and whether falling within the legal category of trade or not. The Lessee may sell such fixtures, fittings, articles and things to any succeeding or incoming tenant of the Premises.
- b) The Lessee is to give the Lessor one months' notice of its intention to remove all or any business related fixtures placed by them on the Premises under sub-clause 5.1 of this agreement.
- c) The Lessee is to yield up the Premises (together with all the Lessor's fixtures) at the expiration of the term or of any extension of the term in good and Tenantable repair and condition in accordance with the Lessee's covenants and to make good at the sole cost of the Lessee any damage caused in removing the Lessee's fixtures, fittings articles and things from the Premises.

### **13.2 How to give a notice - Address**

That any notice be given under this Agreement shall be sufficiently given to the Lessee if:

- a) signed by the Lessor or his solicitor and posted to the Lessee by post in an envelope addressed to the Lessee at his or her last known address any notice shall be sufficiently given to the Lessor if addressed to the Lessor and left at or forwarded by post to the Lessor at the address of the Lessor shown in this Agreement; or
- b) sent by email to the Lessor or Lessee's email address nominated in the Second Schedule of this Agreement.

### **13.3 Postal Notice Timing**

Any notice sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

## **14. 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 Lessor or the Lessee under this Lease, all of which continue in full force and effect.

## **15. No Joint Venture**

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.

## **16. Assignment**

The Lessee may not assign, underlet or part with possession of the Premises or any part thereof without the prior written consent of the Lessor.

Consent is not to be unreasonably withheld by the Lessor if the assignment is a result of the sale of the business being undertaken on the Premises and that business is to continue to operate in accordance with the terms of this Agreement.

## **17. Waiver**

No failure by a party to exercise, nor delay in exercising, a right, power or remedy operates as a waiver. 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. 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.

## **18. Arbitration**

If any difference shall arise between the Lessor and the Lessee relating to any matter contained in this Agreement or the construction of this Agreement or the rights duties or liabilities of either party in relation to the Premises the matter in dispute shall be referred to arbitration in accordance with provisions of the *Commercial Arbitration Act 2011* or such statutory amendment or substitution as is then in force in Tasmania for the conduct of matters referable to arbitration.

## **19. Severance**

### **19.1 Reading down provisions**

If a provision of this Lease is void or voidable or unenforceable, either by the Lessor or the Lessee, but would not be void or voidable or unenforceable if it were read down

### **19.2 Severance**

If, despite Clause 19.1, a provision of this Lease is still void or voidable or unenforceable by either the Lessor 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.

## **20. Governing law and jurisdiction**

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

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.

## **21. Rights cumulative**

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

## **22. Confidentiality**

- a) Despite any confidentiality or intellectual property right substituting in this Lease or a schedule, appendix, annexure or attachment to it, either party may publish all or any part of it without reference to the other.
- b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1998* (Cwlth).

## Signing Page

IN WITNESS hereto the hands and seals of the parties this day

THE COMMON SEAL of the HUON )  
VALLEY COUNCIL has been )  
affixed this day of ) .....  
20.... in the presence of ) GENERAL MANAGER

The COMMON SEAL of ..... )  
..... )  
(ACN/ABN.....) has been ) .....  
affixed this day of ) DIRECTOR  
20... in the presence of )  
.....  
DIRECTOR

OR (as applicable):

SIGNED for and on behalf of )  
..... )  
this day of 20.. ) .....  
in the presence of ) LESSEE NAME  
.....  
WITNESS

## **First Schedule Special Provisions**

## Second Schedule

Item Number	Details
1 Commencement Date	
2 Premises	
3 Permitted Purpose	
4 Term	
5 Period of Further Lease	
6 Rent	
7 Rent Review	
8 Insurance	
9 Statutory Charges	
10 Outgoings	
11 Postal and Email address of Lessor	
12 Postal and Email address of Lessee	



## Plan of area