

Mr Keiran McNamara

Director-General - Department of Environment and Conservation

LOAN COPY**1715****1922/100**

WESTERN AUSTRALIA
 CONSERVATION AND LAND MANAGEMENT ACT 1984
 TRANSFER OF LAND ACT 1893 AS AMENDED

LEASE OF STATE FOREST (L)

DESCRIPTION OF LAND (NOTE 1)

RESERVE 49174

EXTENT

Portion

VOLUME

FOLIO

ENCUMBRANCES (NOTE 2)

Nil

LESSOR/S (NOTE 3)

The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of 17 Dick Perry Avenue,
 Kensington, Western Australia 6152

LESSEE/S (NOTE 4)

Shire of Gingin of 7 Brockman Street, Gingin, Western Australia 6503

TERM OF LEASE (NOTE 5)

Five (5) years commencing 1 January 2009 and, unless determined earlier in accordance with this Agreement, expiring on 31 December 2013.

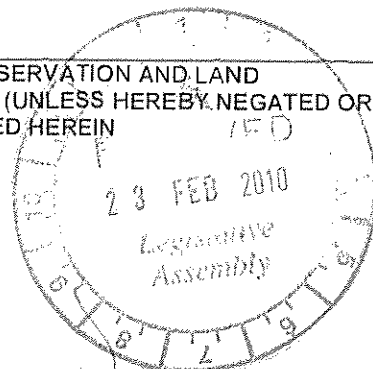
THE LESSOR HEREBY LEASES TO THE LESSEE the land above and herein described subject to the encumbrances (if any) shown hereon for the Term and at the Rent as described in the Schedule herein and otherwise in accordance with the provisions of this Lease.

SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE CONSERVATION AND LAND MANAGEMENT ACT 1984 & TRANSFER OF LAND ACT 1893 AS AMENDED (UNLESS HEREBY NEGATED OR MODIFIED) AND ALSO TO THE COVENANTS AND CONDITIONS CONTAINED HEREIN

Laid on the Table of the
 Legislative Assembly

23 FEB 2010

This paper should not be
 removed from the Chamber



**CONSERVATION AND LAND MANAGEMENT
EXECUTIVE BODY**

and

SHIRE OF GINGIN

Lease No. 1922-100

TABLE OF CONTENTS

1.0	DEFINITION AND INTERPRETATION.....	1
2.0	EXCLUSION OF IMPLIED COVENANTS AND CONTRAVENTION OF STATUTE.....	3
3.0	TERM OF LEASE AND HOLDING OVER.....	4
4.0	PAYMENT.....	4
5.0	USE OF PREMISES.....	6
6.0	ACCESS TO THE PREMISES.....	8
7.0	INSURANCE, INDEMNITIES AND RELEASE.....	9
8.0	INSTALLATION AND MAINTENANCE.....	10
9.0	ELECTRICITY SUPPLY.....	11
10.0	TERMINATION.....	12
11.0	NOTICES.....	13
12.0	ASSIGNMENT AND SUBLEASING.....	13
13.0	LESSOR'S COVENANTS.....	14
14.0	MISCELLANEOUS.....	15
15.0	OPTION OF A FURTHER TERM.....	17

LEASE dated this

6th

day of

November

2009

BETWEEN the Conservation and Land Management Executive Body having its office at Hackett Drive Crawley in the State of Western Australia (hereinafter the 'Lessor' which expression where the context so admits includes the person for the time being entitled to the reversion immediately expectant upon the termination of the term hereby created) of the one part and

SHIRE OF GINGIN having its office at 7 Brockman Street, GINGIN (hereunder the 'Lessee' which expression includes of it successors and permitted assigns) of the other part.

Pursuant to the provisions of Section 100 of the *Conservation and Land Management Act 1984* ('the Act') the Lessor with the approval of the Minister of the Crown charged with the administration of the said Act has agreed to grant to the Lessee which has agreed to accept a lease of all that piece of land situate within the boundaries of Reserve 49174 more particularly delineated on the plan annexed hereto containing an area of 1.0 hectare or thereabouts (hereinafter referred to as "the Premises") for the purpose of constructing, maintaining and operating a radio communications network and radio communications and telecommunications networks service and uses incidental thereto (non-residential).

1.0 DEFINITION AND INTERPRETATION

1.1 Defined Terms

In the Lease:

'Adjoining Land' means that portion of the Land stated in Item 9 of the Reference Schedule;

'Australian Communication Authority' means the Commonwealth agency, for the time being, responsible for the licensing of parties to operate communication facilities from a specified location on a specified transmission frequency, and includes its successor or any future statutory authority having the same authority.

'Business Day' means any day in the State which is not a Saturday, Sunday or Public Holiday;

'Consumer Price Index Number' means the Consumer Price Index All Groups Index Numbers for Perth the subject of Catalogue No 6401.0 provided by the Australian Bureau of Statistics at Canberra provided that if the Consumer Price Index figure are any relevant date is no longer provided by the Australian Bureau of Statistics or if the basis upon which the Consumer Price Index figure is determined by the Australian Bureau of Statistics is substantially varied or altered then the Lessor may utilise such figure in place of the figure no longer provided or such basis for determination in place of the basis for determination which is so varied or altered (as the case may be) as the Lessor may reasonably determine and in so determining the Lessor shall use an index which is as near to the Consumer Price Index previously referred to as is reasonably possible;

'CPI Review Date' means each anniversary of the Commencement Date other than each anniversary which is a Market Review Date.

'Date of Commencement' means the date stated in Item 2 of the Reference Schedule;

'Date of Expiration' means the date stated in Item 3 of the Reference Schedule;

'Government Agency' means any government or any governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

'Land' means Reserve No 49174

'Lease' means the lease or tenancy that exists between the Lessor and the Lessee in relation to the Premises of whatever nature and whether at law or in equity as evidenced in whole or in part by this document;

'Lessee' means the Lessee described on page two of the Lease and its successors and assigns or, if the Lessee is a natural person, its executors, administrators and assigns and in either case its employees, agents and contractors;

'Lessee's Covenants' means the covenants and agreements contained or implied in the lease to be observed and performed by the Lessee;

'Lessor' means the Lessor described on page two of the Lease and its successors and assigns and its employees, agents and contractors;

'Month' means calendar month;

'Premises' means the Premises described in Item 1 of the Reference Schedule;

'Rates and Taxes' means any rate, tax, levy or any other charge imposed at any time during the Term of the Lease by any State, local or Federal governmental body, authority, department or instrumentality or any other authority of any kind, in relation to the supply or use of the Premises or any thing under or in connection with the Lease.

'Reference Schedule' means the schedule so described which is included in this document;

'Crown Land Rental Review Date' means the first day of each term for which this Lease is extended.

'Rent' means the amount stated in Item 5 of the Reference Schedule;

Rent Review Date includes each CPI Review Date and Renewal Rent Review Date;

'State' means the State of Western Australia in which the Premises and adjoining land area are situated;

'Statute' means any statute, regulation, proclamation, ordinance or by-law of the Commonwealth of Australia or the State, and includes all statutes, regulations, proclamation, ordinances or by-laws varying consolidating or replacing them and all regulations, proclamations, ordinances and by-laws issued under that statute;

'Term' means the term of the Lease set out in Item 4 of the Reference Schedule.

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) Headings and underlinings are for convenience only and do not affect the interpretation of the Lease;
- (b) Words importing the singular include the plural and vice versa;
- (c) Words importing a gender include any gender;
- (d) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government agency;
- (e) Where an association, body or authority, statutory or not, ceases to exist or is reconstituted, renamed, or replaced or its powers and functions are transferred to any other association, body or authority, a reference to that association, body or authority means the association, body or authority (as the case may be) established or constituted in its place or assuming its powers and functions;
- (f) A reference to any thing includes a part of that thing;
- (g) A reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of and a party, annexure, exhibit and schedule to the Lease;
- (h) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (i) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (j) A covenant or agreement on the part of two or more persons binds them jointly and severally.

2.0 EXCLUSION OF IMPLIED COVENANTS AND CONTRAVENTION OF STATUTE

2.1 Inclusion of Implied Covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease and not excluded by law.

2.2 Contravention of Statute – Severance

Any provision of the Lease which is void, voidable, unenforceable or invalid because of any Statute must in any such case and to such extent be severed from the Lease, and the Lease must be read as though such provision did not form part of the Lease at that time.

3.0 TERM OF LEASE AND HOLDING OVER

3.1 Term of Lease

The Term commences on the Date of Commencement as detailed in Item 2 of the Reference Schedule and expires on the Date of Expiration as detailed in Item 3 of the Reference Schedule subject to the provisions of the Lease.

3.2 Holding Over

If the Lessee occupies the Premises after the Date of Expiration (other than pursuant to the grant of a further lease) the Lessee must do so as a twelve-monthly lessee for twelve monthly terms thereafter on the same terms and conditions as the Lease as far as they apply to a twelve-monthly tenancy.

4.0 PAYMENT

4.1 Lessee's Covenant

The Lessee must pay the Rent as detailed in Item 5 of the reference Schedule clear of all deductions to the Lessor during the Term.

4.2 Rental Derived From Subleasing

On the 31 December of each year, the Lessee is required to submit a true and certified statement to the Lessor showing the rental to be charged and or received for the use of the tower, less GST, for all sub-leases and or licences for the next calendar year. The statement is to be certified by the CEO of the Shire and at least one member of the Council's Executive Committee.

4.3 Payment of Rent

The Rent will be paid annually in advance to the Lessor or to any other person the Lessor nominates in writing to the Lessee. Any nomination must be at least 30 days prior to the date for payment of Rent.

4.4 Rent Review

4.4.1 *CPI / Percentage Increase*

With effect from (and including) each date specified in Clause 1.1 as a "CPI Review Date", the rent must be reviewed on the basis that the reviewed rent is to be the higher of:

- (1) The rent applying immediately before the relevant CPI Review Date; and
- (2) the amount calculated by using the following formula;

$$A = \frac{B}{C} \times D$$

Where:

- A = the amount of the reviewed rent which is payable from (and including) the relevant CPI Review Date.
- B = the last quarterly CPI Index Number published before the relevant CPI Review Date.
- C = the last quarterly CPI Index Number published before the previous rent review date (or in the case of the first review, before the Commencement Date).
- D= the amount of the rent applying immediately before the relevant CPI Review Date.

4.4.2 *Renewal (Crown Land Rental)*

With effect from (and including) each date specified in this clause 1.1 as a "Crown Land Rental Review Date", the lessor can require that the rent be reviewed on the following basis.

The Lessor must use reasonable endeavours to give the Lessee notice of the proposed rent three (3) months prior to the relevant Crown Land Rental Review Date.

If the Lessee has not agreed in writing to the amount of the reviewed rent proposed by the Lessor by 1 month before the relevant Renewal Rent Review Date, the amount of the reviewed rent is to be the higher of:

- 1) the rent applying immediately before the relevant Crown Land Rental Review Date
- 2) the Crown Land Rental Review for the Leased Premises determined by a valuer licensed under the Land Valuers Licensing Act:
 - (a) agreed to by each of the parties; or
 - (b) appointed by the President for the time being of the Australian Property Institute (WA Division) at the request of either party;
- 3) The parties must each pay half the fees charged by any valuer appointed under this Lease to determine the Crown Land Rental for the leased Premises.
- 4) Crown Land Rent means the rent that a tenant would be prepared to pay and an owner of the Leased Premises would be prepared to accept taking into account:

- (a) The approved use and utility conferred under the Lease.
- (b) The nature of the Lessee. In this regard the Lessee is required to keep proper and audited books of account and these books of accounts for the current and past three years will be made available to the Lessor upon request for the purpose of assisting in the determination of the rent. Average management of the organisation will be assumed.
- (c) The provisions of this Lease.
- (d) The period which will elapse between the current Crown Land Review Date and the next Crown Land Rental Review Date or, if there is not one, the termination of this Lease.
- (e) The full length of the term and the benefit of any option to renew.
- (f) Any improvement to the Leased Premises.

But disregarding:

- (g) The consequences of any default by the Lessee of this Lease which may have adversely affected the condition, rental value or Crown Land rental of the Leased Premises
- (h) Any part of the term that has expired
- (i) The value of the Lessee's Property and any goodwill created by the Lessee's business or activities on the Leased Premises.

4.4.3 Delay

No delay by the Lessor in enforcing any review of the rent prevents the Lessor from requiring at any time that the rent must be reviewed with effect from the dates for review of the rent specified in clause 4 provided that the Lessor must have completed the review of the rent prior to the next Crown Land Rent Review Date.

5.0 USE OF PREMISES

5.1 Permitted Use

The Lessee will use the Premises for the purpose of constructing, maintaining and operating a radio communications network and radio communications and telecommunications networks service and uses incidental thereto (non-residential). In doing so the Lessee will satisfy all reasonable technical requirements of the Lessor having regard to the Lessee's use of the Premises (28 days notice of which must be given to the Lessee from time to time) and will ensure that any carrier/service provider or the Lessee operating at the Premises holds a current certificate issued by the Australian Communication Authority to operate at the Premises. In the event of any inconsistency

between the Lessor's technical requirements and any licensing requirements the latter shall prevail.

5.2 Adjoining Land

The Lessor grants to the Lessee the right to use the Adjoining Land in accordance with any reasonable stipulations by the Lessor during the installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the Lessee's telecommunications network and the telecommunications service. After using the Adjoining Land on any specific occasion, the Lessee will restore the surface of the Adjoining Land so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor. The provisions of clause 7.3.1 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.2.

5.3 Requirements of Government Agencies

The Lessee must to the extent it is required at law comply promptly with any Statute in respect of the Lessee's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises.

5.4 Fire Prevention

- (a) The Lessee will duly and faithfully observe perform and comply with the Provisions of the *Bush Fires Act, 1954* and amendments thereof and the regulations thereunder and any proclamations and orders made under the provisions thereof so far as the same apply to the Premises. Any breach of the said Act and/or Regulations shall be regarded as a breach of the conditions of this lease.
- (b) The Lessee will not light or cause to be lit or permit any person to light any fire on the Premises except to the extent necessary for the purpose referred to in clause 5.4(a) hereof and then only with the prior written approval of the Lessor or any other person duly authorised by him to give such approval.
- (c) If the Lessee or its agents or workmen causes a fire to be lit on or at the Premises other than with permission granted in accordance with the provisions of this Lease, the Lessee shall, immediately upon becoming aware of the fire, take all reasonable measures at the Lessee's own expense to extinguish such fire and the Lessee shall be liable to reimburse to the Lessor any expenses incurred by the Lessor in taking measures to extinguish the fire in the event of the Lessee failing to do so.
- (d) The Lessee will clear firebreaks as directed and to the satisfaction of the Lessor.

5.5 Interference

- (a) The Lessee covenants and agrees with the Lessor that it will take all necessary steps to ensure that the operation of its equipment on the Premises does not result in radio communications interference to any installation or use of radio or telecommunications equipment by the Lessor or other users of the Adjoining Land in existence at the date of the Lease and that it will indemnify the Lessor against

any loss suffered by it as a direct result of the Lessee's equipment causing any such interference.

- (b) The Lessee covenants and agrees with the Lessor that it will carry out a radio frequency test within 28 days of commencing use of its equipment on the Premises to assess whether the operation of its equipment causes radio communications interference to any installation or use of radio or telecommunications equipment by the Lessor or other users of the Adjoining Land in existence at the date of the Lease and, subject to the test confirming that the Lessee's equipment is not causing such interference, the Lessor shall provide that Lessee with a written acknowledgment signed on behalf of the Lessor and the other users of the Adjoining Land to that effect.
- (c) The Lessor covenants and agrees with the Lessee that it will take all necessary action to ensure that its installation or use of radio or telecommunication equipment on the Adjoining Land does not result in radio communications interference to the facility of the Lessee and to ensure that any structure or installation which it erects or installs within or upon the Adjoining Land does not interfere with the Lessee's use or enjoyment of the Premises.
- (d) The Lessor covenants and agrees with the Lessee that it will ensure that all radio and telecommunications equipment on the Adjoining Land ('other equipment') will be turned off during servicing of the Lessee's equipment if the radio frequency level of the other equipment exceeds recommended occupational health and safety standards as published from time to time.

5.6 Other

The Lessee will not:

- (a) do anything in or about the Premises (notwithstanding any other consent given by the Lessor under this Lease) which in the reasonable opinion of the Lessor is noxious, offensive or audibly or visually a nuisance;
- (b) behave in a riotous, disorderly, offensive or improper manner or to perform any illegal act in or on the Premises;
- (c) fix or place signs, notices or advertisements either inside or outside the Premises unless it is consistent with the purpose of this Lease and reasonably acceptable to the Lessor; or
- (d) plant in or otherwise introduce to the Premises or the Land any plant not indigenous to the Land.

6.0 ACCESS TO THE PREMISES

6.1 Access

The Lessor consents to the Lessee and persons authorised by the Lessee with or without materials, plant and other apparatus and vehicles entering the Land for the purpose of using the Premises and exercising its rights under the Lease at all times of the day and night during the Term.

- 6.2 Notwithstanding clause 6.1 the Lessee shall observe all instructions issued by the Lessor or his nominee regarding the prevention or spread of plant disease, in particular *Phytophthora* species. This shall include the washing down of vehicles and equipment and such other measures as may be required from time to time. Any cost involved in the carrying out of such measures shall be borne by the Lessee.
- 6.3 The Lessee shall permit the Lessor and its agents at all reasonable times (subject to giving the Lessee not less than 48 hours prior written notice) to enter upon the Premises to view the condition of any buildings erected on them.
- 6.4 The Lessee shall permit the Lessor and its agents and workmen at all times to enter upon and carry out such duties and exercise such powers upon the Premises as it may be necessary or expedient to carry out or exercise in the administration or for the purposes of the Conservation and Land Management Act, 1984 or any other enactment or any regulation made thereunder and the Lessee shall not be entitled to any compensation by reason of any inconvenience or disturbance or loss occasioned by such action on the part of the Lessor.

7.0 INSURANCE, INDEMNITIES AND RELEASE

7.1 Obligation to Insure

The Lessee will insure against any loss or damage which could be covered by public risk or liability insurance in respect of the Premises with a reputable and substantial insurance office and pay the premiums necessary for the above purposes on or before the days on which the same respectively become due and whenever so requested produce to the Lessor or its agents the policy or several policies of such insurance and the receipts for the current year's premiums.

7.2 Indemnity

7.2.1 The Lessee indemnifies the Lessor against any liability or loss arising from, and any costs charges and expenses incurred in connection with:

- (a) any damage to the Premises, or any loss of or damage to anything in it or near it; and
- (b) any injury to any person in or near the, Premises caused or contributed to by:
 - (i) the act, negligence or default of the Lessee or a Lessee's Agent; or
 - (ii) some danger created by the Lessee or a Lessee's Agent whether or not the existence of that danger was or ought to have been known to the Lessee.

7.2.2 The Lessor is not liable in respect of any liability or loss resulting from or for:

- (a) any act or omission of any person in the Premises (whether there lawfully or not); or

- (b) ~~damage to, destruction or loss of any property or injury to any person in or near the Premises due to any cause other than the negligence or default of the Lessor or any employee agent contractor invitee or licensee of the Lessor.~~

7.2.3 Subject to clause 7.2.2 the Lessee releases and discharges the Lessor from liability or loss arising from, and costs charges and expenses incurred in connection with, damage to or loss of any property or injury to any person, in or near the Premises.

7.2.4 For the purposes of this clause 7 the expression "in or near the Premises" shall be deemed to include (without limitation) the area of Land surrounding the Premises.

7.3 Lessee's Assumption of Responsibilities

7.3.1. The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it was the owner or occupier of the freehold of the Premises.

7.3.2. The Lessee will take adequate precautions to ensure the equipment installed on the Premises is protected against theft or damage and the Lessor shall not be held responsible for any removal or damage which may occur to such equipment during the term other than removal or damage caused by an act or omission of the Lessor.

8.0 INSTALLATION AND MAINTENANCE

8.1 Repair and Maintenance

The Lessee must maintain the Premises in good repair, order and condition during the Term.

8.2 Construction and Alterations

8.2.1 The Lessee may at the Lessee's expense during the term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law with the prior consent of the Lessor install, erect, construct, dismantle, repair, replace, renew and maintain upon the Premises any building or buildings as necessary now or in the future to shelter telecommunications equipment and a free standing monopole, guy tower or antenna structure or other antenna support structure of sufficient height now or in the future to meet the Lessee's telecommunications requirements and all necessary connecting appurtenances provided that any such building to be erected or constructed shall be of a similar quality to and not incompatible with other buildings on the land.

8.2.2 The Lessee will not without obtaining the prior written consent of the Lessor on each occasion and then only in accordance with such conditions as the Lessor shall reasonably impose:

- (i) bulldoze, clear or remove any trees, shrubs or other vegetation growing on the Premises; or
- (ii) remove rocks, earth or soil from the Premises; or
- (iii) alter the contour of the surface of the Premises; or
- (iv) deposit any earth, fill or material on the Premises; or
- (v) construct outlets for surface drainage on the Premises; or
- (vi) erect or install any improvements on the Premises except as described in clause 13.4.

8.3 Fencing

8.3.1 The Lessee may at the Lessee's option and expense with the prior consent of the Lessor (which must not be unreasonably withheld) and having complied with the requirements of any relevant Government Agency having jurisdiction in the matter to the extent required by law erect around the perimeter of the Premises a security fence using materials as may be legally required and approved by the Lessor.

8.3.2 The Lessor may require that the Lessee shall

- (i) erect and maintain a fence around the boundary of the Premises which fence shall:
 - (a) be a "sufficient fence" within the meaning of the Dividing Fences Act 1961; and
 - (b) at any event be adequate to keep unauthorised persons and animals out of the Premises;

and in such case, the Lessee shall comply with all reasonable requirements of the Lessor.

- (ii) at all times keep such fence and gates in good and substantial order, repair and condition.

9.0 ELECTRICITY SUPPLY

9.1 Electricity Connection

For the purposes of carrying out the Lessee's use of the Premises the Lessee must arrange at its cost and if required connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of the Lessee's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter so that the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it on the Premises.

10. TERMINATION

10.1 Events of Termination

If:

- (a) the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Lessee or inaccessible by any means of access;
- (b) the Lessee commits a material breach of any of the Lessee's Covenants and has not remedied that breach after receiving written notification from the Lessor to rectify that breach within a reasonable period having regard to the nature of the breach being in any event not less than 28 days;
- (c) any application for a required consent to a permit for the installation and use of the Premises as part of a telecommunications network and telecommunications service is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (d) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant radio-communications interference;

then the Lease may be terminated immediately by written notice by the Lessee in the case of subclauses (a), (c) and (d) and by the Lessor in the case of subclause (b).

10.2 Effect on Rights or Liabilities

Termination of the Lease does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to termination.

10.3 Lessee to Yield Up

The Lessee must at the expiration or sooner termination of the Term yield up the Premises in good repair and clean condition.

10.4 Removal of Lessee's Fixtures and Chattels

The Lessee must at or within 6 months after the Date of Expiration (unless there is in place after this Lease a further Lease between the Lessor and the Lessee, and in any event subject to clause 14.3), earlier termination of the Lease or such other date as the Lessor and the Lessee agree in writing, remove from the Premises and the Adjoining Land all above-ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises and the Adjoining Land and rehabilitate the Premises and the Adjoining Land as near as reasonably practicable to their condition as at the Date of Commencement, during that 6 month period the Lessee will be deemed to be holding over.

10.5 Termination of Holding Over

Either the Lessor or the Lessee may terminate the twelve monthly tenancy under clause 3.2 by giving the other 30 days prior written notice.

11.0 NOTICES

11.1 Method of Service

Any notice to be given under this Lease by one of the parties to the other must be in writing and is given for all purposes by pre-paid post or by facsimile addressed to the receiving party at the address set out in Item 6 of the Reference Schedule in the case of the Lessor and in Item 7 of the Reference Schedule in the case of the Lessee.

11.2 Time of Service

Any notice given in accordance with this Lease will be deemed to have been duly served in the case of posting at the expiration of 2 business days after the date of posting, and in the case of facsimile, on the first business day after the date of transmission (providing the sending party received a facsimile machine verification report indicating that the notice has been transmitted).

11.3 Change of Address

A party may at any time change its address, postal address or facsimile number by giving written notice to the other party.

12.0 ASSIGNMENT AND SUBLEASING

12.1 Subject to clause 13.4 of this Lease the Lessee may not without the prior written consent of the Lessor which shall not be unreasonably withheld assign mortgage charge sublet dispose of part with the possession of or grant any licence in respect of the leased premises or any part thereof or procure allow or suffer either voluntarily or involuntarily the same to be assigned mortgaged charged sublet disposed or the possession thereof parted with or licences for all or any part of the term hereby created **AND** the Lessor may condition its consent upon the execution of an agreement to be prepared by or on behalf of the Lessor and executed by the proposed assignee mortgagee chargee sublessee or licensee binding such assignee mortgage chargee sublessee or licensee to observe and comply with the covenants conditions and stipulations herein contained and such further covenants and conditions as the Lessor shall deem fit and notwithstanding anything contained in or anything done under or pursuant to the preceding provisions of this subclause the Lessee shall at all times during the currency of this Lease be and remain liable up to the Date of Assignment for the due and punctual performance and observance of all the covenants and agreements on its part herein contained or implied **AND** the provisions of Section 80 and 82 of the Property Law Act 1969 are hereby expressly excluded from this Lease.

In the event of any assignment of this Lease the Lessee is from the date of that assignment released from all future obligations under this Lease except in respect of any prior breach or default.

- 12.2 If the Lessee wishes to assign this Lease or sublet the Premises (other than to a Related Body Corporate) the Lessee must pay to the Lessor all reasonable and proper professional and other costs incurred by the Lessor of and incidental to the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee and all other reasonable and proper matters relating to the proposed assignment or sublease whether or not the assignment or sublease proceeds.

13.0 LESSOR'S COVENANTS

13.1 Quiet Enjoyment

The Lessor covenants that the Lessee may peaceably hold and enjoy the Premises during the Term without any interruption by the Lessor or any person rightfully claiming through the Lessor.

13.2 Restriction on Lessor's Use of the Adjoining Land

If the Lessor proposes to grant rights of occupancy on the Adjoining Land to third parties (whether to other telecommunication carriers or otherwise) it must:

- (a) give immediate notice to the Lessee of such a proposal;
- (b) obtain the Lessee's consent to such a proposal which must not be withheld if the Lessee's use of the Premises will not be interfered with;
- (c) if changes to the third party's facility interferes with the Lessee's use of the Premises the Lessor must either:
 - (i) terminate the arrangement with the third party; or
 - (ii) arrange for the relocation of the third party's facility; or
 - (iii) require the third party to modify its facility or its operation;

in order to eliminate the interference.

13.3 Lessor's Covenant

The Lessor covenants that the Lessor will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on or transport to or over the Adjoining Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises provided that if the Lessee advises the Lessor of any breach by the Lessor of its covenant the Lessor will, to the extent that it is within its power to do so, use its reasonable endeavours at its expense to forthwith remedy such breach.

13.4 Lessor's Acknowledgment: Use of Premises by Third Parties: Co-location of Communications Network

The Lessor HEREBY COVENANTS AND AGREES with the Lessee that the Lessee may permit up to 12 carriers/service providers to use the Premises at any one time for the purpose of using the Lessee's communications network on the Premises ("the

Communications Network") and notwithstanding clause 8.2.2 erecting an equipment cabin to facilitate colocation of the Communications Network without the need for those carriers/service providers to enter into a sublease agreement with the Lessor and the Lessee to obtain the consent of the Lessor in accordance with clause 12 of this Lease on each occasion that a carrier/service provider wishes to use the Premises. The erection of any equipment cabins must comply with the Lessor's specifications in respect to colour and materials used.

13.5 Lessee's Acknowledgement

The Lessee HEREBY ACKNOWLEDGES that so long as it remains the Lessee under this Lease the Lessor may use the Communications Network on the Premises at no cost to the Lessor for the duration of the Term and at a rent to be negotiated between the Lessee and the Lessor in respect of any extension of this Lease and may erect an equipment cabin on the Premises to enable the Lessor to use the Communications Network HOWEVER the Lessor may only erect one equipment cabin and one structure for the purpose of transmission and reception of radiofrequency emissions on the Premises and shall only erect any additional structures on the Premises with the prior written consent of the Lessee.

14.0 MISCELLANEOUS

14.1 Lessee to Pay Costs and Disbursements

The Lessee must pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) and all the Lessor's reasonable legal and other costs charges and expenses or which the Lessor may reasonably suffer or incur in consequence of an incidental to the preparation, completion, stamping and registration of the Lease, and costs of surveying and pegging the Premises.

14.2 Registration of Lease

The Lessee must register this Lease in accordance with the Land Administration Act 1997 or other relevant legislation at the Lessee's cost.

14.3 Costs on Default

The Lessee will pay all reasonable costs, charges and expenses (including solicitor's costs and surveyors' and valuers' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice or notices under section 81 of the Property Law Act 1969 requiring the Lessee to remedy a breach of any of the Lessee's Covenants notwithstanding that forfeiture for any such breach is waived by the Lessor or is avoided otherwise than by relief granted by the courts or from which the Lessee shall be relieved under the provisions of the Property Law Act 1969 and all reasonable costs, charges and expenses (including fees for architects and clerks of works) incurred by the Lessor for supervising, inspecting and approving any works or repairs carried out to the Premises by or on behalf of or in consequence of the default of the Lessee under any of the Lessee's Covenants.

14.4 Without Prejudice

This Lease is without prejudice to the Lessee's rights under Part VII of the *Telecommunications Act, 1991* (Cth).

14.5 Governing Law

This Lease is governed by the law in force in Western Australia.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 11.1.

14.6 Rates & Taxes

The Lessee must pay all rates and taxes including any fines or penalties, which are separately assessed and lawfully charged in respect to the Premises and the lessors use of the Premises.

14.7 Goods and Services Tax

GST means a goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Act or otherwise on a supply.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

New Tax System changes has the same meaning as in section 75AT of the Trade Practices Act 1974(Cth).

Tax Invoice includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

14.6.1 Adjustment for GST

- (a) Unless expressly included, the consideration for any supply made by the Lessor under or in connection with this lease does not include GST.
- (b) GST is payable on any supply of goods and services under the Lease.

14.6.2 Tax Invoices

The Lessor must issue a Tax Invoice to the Lessee in respect of any supply of goods and services under the Lease.

14.6.3 Reimbursements

If the Lessor is entitled under the lease to be reimbursed or indemnified by the Lessee for a cost or expense incurred in connection with the lease, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Lessor.

14.8 Arbitration

If at any time any dispute or difference arises between the parties in respect of any matters arising under or pursuant to the Lease or the meaning or construction of any of the provisions contained in it, such dispute or difference shall be referred to a single arbitrator to be appointed in accordance with the provisions of the Commercial Arbitration Act 1985 (as amended). On any such arbitration, a party may, if it chooses, be represented by a duly qualified legal practitioner or other representative. The costs of the arbitration are to be borne equally by the parties regardless of the outcome but each party shall bear their own legal costs.

15.0 OPTION OF A FURTHER TERM(S)

15.1 If the Lessee shall at least (3) months prior to the end but not earlier than six (6) months prior to the end of the term give to the Lessor written notice of the desire of the Lessee to renew the term hereby created provided that the Lessee shall not at the time of giving such notice be in default notice of which has been given to the Lessee in performing and observing the covenants and conditions to be performed and observed by the Lessee hereunder and provided specifically that the Lessee shall not at the time of giving such notice be in rental arrears then the Lessor shall extend and renew this lease of the Premises and the term hereby created for a further term from the expiration of the original term for a further term as specified in Item 8 of the Reference Schedule hereto.

15.2 The renewed Lease shall:

- (a) commence on the day after the Lease expires;
- (b) be at a rent equal to the rent for the last year of the Lease or further term increased as specified in clause 4.3; and
- (c) be on the terms and conditions contained in the Lease but not including any provision for renewal in the case of the last of the further terms.

REFERENCE SCHEDULE

- Item 1 Premises (clause 1.1). The area delineated and shown hatched on the attached plan comprising an area of about 1.0 hectares and being a portion of Reserve No. 49174.
- Item 2 Date of Commencement (clause 1.1)
First day of January 2009
- Item 3 Date of Expiration (clause 1.1)
31 Day of December 2013
- Item 4 Term (clause 1.1)
5 years
- Item 5 Rent
In the first part in accordance with clause 4.1 which is \$755.71 (exclusive of GST) during the first year of the Term, increased thereafter on each anniversary of the Date of Commencement, as specified in Clause 4.4
AND
In the second part, 50% (exclusive of GST) of any revenue derived from sub-leasing arrangements for each year of the Term in accordance with information supplied as specified in Clause 4.2.
- Item 6 Contact at Lessor (clause 11.1)
Name: Leasing Officer, Property Unit
Address: 17 Dick Perry Avenue, Kensington WA 6152
Telephone No. (08) 9423-2333
Facsimile No. (08) 9423-2253
- Item 7 Contact at Lessee (clause 11.1)
Name: Chief Executive Officer

Address: Shire of Gingin
7 Brockman Street
GINGIN WA 6503

Telephone no. 9575 2211
Facsimile no. 9575 2121
- Item 8 Option (clause 15)
One further term of five years.
- Item 9 Adjoining Land (clauses 5.2, 5.5 and 13.2)
Portion of land which is within a 100 metre radius of the centre of the Premises.

THE COMMON SEAL OF THE
CONSERVATION AND LAND
MANAGEMENT EXECUTIVE BODY

.....
Witness signature

THE COMMON SEAL of SHIRE OF)
GINGIN was hereunto affixed in the)
presence of:)

SIMON D FRASER
CHIEF EXECUTIVE OFFICER
SHIRE OF GINGIN