

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

Mr Keiran McNamara
Director General - Department of Environment and Conservation

LEASE OF CROWN LAND (L)

DESCRIPTION OF LAND (NOTE 1)

Portion of State forest 14 at McLarty Road, Dwellingup

EXTENT

Portion

VOLUME

FOLIO

ENCUMBRANCES (NOTE 2)

Nil

LESSOR/S (NOTE 3)

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of Hackett Drive Crawley, Western Australian

LESSEE/S (NOTE 4)

OPTUS MOBILE PTY LIMITED of 1 Lyonpark Road, Maccuarie Park, New South Wales

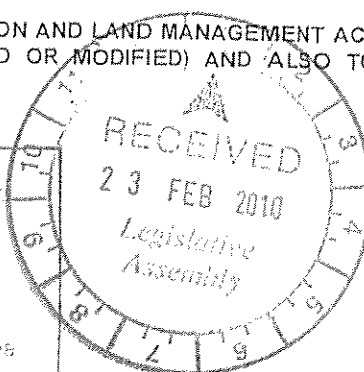
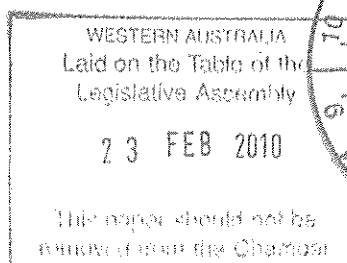
TERM OF LEASE (NOTE 5)

TEN (10) Years commencing from the 1st Day of November 2009

THE LESSOR LEASES TO THE LESSEE the land above described subject to the encumbrances shown hereon (note 6)

For the first year of above term for the yearly rental of \$4072.53 payable in advance commencing on 1st day of November 2009 and then each year in accordance with the terms and conditions contained in the 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.



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**CONSERVATION AND
LAND MANAGEMENT
EXECUTIVE BODY
(Lessor)**

and

**OPTUS MOBILE PTY LIMITED
(Lessee)**

LEASE NO. 2276/97
OPTUS SITE P8087

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LEASE dated this

29th

day of December

2009

BETWEEN the Conservation and Land Management Executive Body ABN ~~051 775 556~~ 38 052 249 024 having its office at corner of Hackett Drive and Australia II 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

Optus Mobile Pty Limited ACN 054 365 696 of 1 Lyonpark Road, Macquarie Park in the State of New South Wales (hereunder the 'Lessee' which expression includes its successors and permitted assigns) of the other part.

In consideration, among other things, of the mutual promises contained in the Lease, the Lessor and the Lessee agree as follows:

1.0 DEFINITION AND INTERPRETATION

1.1 Defined Terms

In the Lease:

'Adjoining Land' means that portion of the State forest 14 which is located outside the Premises;

'Australian Communication and Media 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;

'Break Date' means each of the dates stated in **Item 3A** of the Reference Schedule;

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

'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;

'Fixed Review Date' means each anniversary of the Commencement Date during the Term other than each anniversary which is a Market Review Date;

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

'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)*;

'Land' means State forest 14;

'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 five 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 five of the Lease and its successors and assigns and its employees, agents and contractors;

Market Rent means the rent that a tenant would be prepared to pay and an owner of the Premises would be prepared to accept taking into account:

- (1) the highest and best use of the Premises;
- (2) the provisions of this Lease;
- (3) the period which will elapse between the current review date and the next rent review date or, if there is not one, the termination of this Lease;
- (4) the full length of the Term and the benefit of any option to renew;
- (5) any improvement to the Premises by the Lessor;
- (6) the rent and any other amounts paid or payable by tenants in respect of other premises of a quality, nature, size and location similar to the Premises;
- (7) the use of the Premises permitted by law and the provisions of this Lease;
- (8) the assumption that the Lessee has observed and performed all the provisions of this Lease; and
- (9) otherwise the proper and usual principles adopted by Valuers in Western Australia;

but disregarding:

- (10) the consequences of any default by the Lessee of this Lease which may have adversely affected the condition, rental value or market rent of the Premises;
- (11) any part of the Term which has expired;
- (12) the value of the Lessee's Property and any goodwill created by the Lessee's business or activities on the Premises;

'Market Review Date' means each of the market review dates stated in **Item 5B** of the Reference Schedule;

'Month' means calendar month;

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

'Rates and Taxes' means any separately assessed 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 Premises or any thing under or in connection with the Lease;

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

'Related Body Corporate' where the Lessee is a holding company of another body corporate, a subsidiary of another body corporate or a subsidiary of a holding company of another body corporate means that other body corporate;

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

'Rent Payment Date' means the Commencement Date and after that date the anniversary of the Date of Commencement every year during the Term;

'Rent Review Date' includes each Fixed Review Date and Market Review Date;

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

'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;

'Taxable Supply' has the same meaning as in the GST Act; and

'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;
- (k) where pursuant to this Lease but subject to any express provision to the contrary:
 - (i) one party is required to pay to the other any fees, costs, charges or similar expenses, such fees, costs, charges or similar expenses are to be limited to reasonable fees, costs charges or similar expenses likely to be incurred in the particular circumstances;
 - (ii) one party is given a discretion, then such discretion is to be acted upon in good faith and as is reasonable in the circumstances;
 - (iii) the opinion of a party or someone engaged or contracted by that party is relevant in determining any fact or obligation of either the Lessor or the Lessee then the opinion is to be formed in good faith and reasonable in the circumstances. In the event of a dispute, then such opinion is to be prima facie evidence of that fact only;
 - (iv) one party's discretion, or opinion, or consent or specification is required, such discretion, or opinion, or consent or specification is to be given within a reasonable time after the other party's request.

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. This clause has no effect if severance alters the basic nature of this Lease or is contrary to public policy.

3.0 GRANT TERM OF LEASE AND HOLDING OVER

3.1 *Grant of Lease*

The Lessor leases the Premises to the Lessee for the Term and subject to the terms and conditions of this Lease.

3.2 *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.

3.3 *Termination on a Break Date*

If the Lessee gives the Lessor at least 6 months notice that it intends to end the Term on a Break Date stated in the notice, that Break Date becomes the Date of Expiration.

3.4 *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 tenant 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 RENT

4.1 *Amount of the Rent*

The annual rent payable under this Lease from the Commencement Date is the amount specified in **Item 5** of the Schedule.

4.2 Manner of Payment

- (a) The Lessee must pay the rent by equal annual instalments in advance on each Rent Payment Date. Rent payable for part of a year is to be proportionately adjusted on a daily basis.
- (b) The Lessee may pay the Rent by Electronic Funds Transfer ('EFT') to the account nominated in **Item 6** of the Reference Schedule. The Lessor may notify another account in Australia to which payment may be made by EFT to replace the account stated in **Item 6**. The notification must be at least 30 days prior to the date for payment of Rent. Payment by EFT by the Lessee's bank to the relevant nominated account by the due date is a full discharge for the payment.
- (c) The Lessee must provide the Lessor with formal notification, to the facsimile number listed at Item 7 of the Schedule, when the payment has been made.

4.3 Rent Review

4.3.1 Fixed Rent Review

On and from each Fixed Review Date (irrespective of when the review is actually carried out or determined), the Rent will be varied in accordance with the following formula (to the nearest whole dollar):

$$NR = PR \times \frac{105}{100}$$

where:

NR is the new Rent payable as a result of variation under this clause.

PR is the Rent payable immediately before variation under this clause.

4.3.2 Market

- (a) With effect from (and including) each Market Review Date the Lessor can require that the rent be reviewed on the following basis.
- (b) The Lessor must use reasonable endeavours to give the Lessee notice of the proposed rent 3 months prior to the relevant Market Review Date.
- (c) 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 Market Review Date, the amount of the reviewed rent is to the higher of:
 - (1) the amount determined under **clause 4.3.1**; and
 - (2) the market rent for the Premises determined by a valuer licensed under the *Land Valuers Licensing Act, 1978 (WA)*;

- (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 market rent for the Premises; and
- (4) Until the Rent is agreed or determined under this clause, the Lessee must pay the Rent in effect prior to the variation, on the Rent Payment date. When so agreed or determined, the Lessee must pay the Rent as varied, including the amount of any consequential adjustment from the Market Review Date until the date of such agreement or determination, within 30 days of the agreement or determination.

4.3.3 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 this **clause 4** provided that the Lessor must have completed the review of the rent prior to the next Rent Review Date.

4.4 Goods and Services Tax

4.4.1 Adjustment for GST

- (a) Unless expressly included, the consideration for any Taxable Supply made by the Lessor under or in connection with this Lease does not include GST.
- (b) Subject to **clause 4.4.2**, the Lessee must pay to the Lessor the amount of any GST that the Lessor pays or is liable to pay on a Taxable Supply made under this Lease in addition to, and at the same time and in the same manner as the Lessee pays for that Taxable Supply.

4.4.2 Tax Invoices

The Lessor must issue a Tax Invoice to the Lessee in respect of any Taxable Supply under this Lease before the Lessee is required to pay the GST on the supply of the goods and services.

4.4.3 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 indemnify payment must not include any GST

component of the cost or expense for which an input tax credit may be claimed by the Lessor.

5.0 USE OF PREMISES

5.1 *Permitted Use*

The Lessee will use the Premises for the purpose of constructing, maintaining and operating a telecommunications network and telecommunications service and uses incidental thereto (non-residential). In doing so the Lessee will satisfy all 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 hold a current certificate or licence issued by the Australian Communication and Media 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 to the extent of such inconsistency.

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 as 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 7.2** 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 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 provided that the Lessee is under no liability for structural alterations unless caused or contributed to by the Lessee's particular use or occupation 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 (WA)* 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 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 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 around the Premises as reasonably directed by the Lessor and to the reasonable 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 or liability suffered or incurred by it as a direct result of the Lessee's equipment causing any such interference.
- (b) 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 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.
- (c) The Lessor covenants and agrees with the Lessee that after receiving due and proper notification it will take all reasonable measures to 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 *Not To Pollute*

The Lessee agrees to do all things necessary to prevent, and not to do or permit or suffer to be done anything likely to cause pollution, degradation or contamination of the Premises by garbage, refuse, waste matter, oil, liquid fuels, noise, sewage or other pollutants or by stormwater or other run-off or arising from the use of the Premises and in particular but without limiting the generality of the Lessee's obligations under this clause, to regularly collect and dispose of all garbage refuse waste (solid and liquid), oil and other pollutants from the Premises at a place and in a manner required or approved by the Lessor or by the authorities (State, Federal and local) having control over the disposal of waste matter and the protection of the environment from time to time, and to remove all garbage refuse and waste from the Premises at regular intervals by means of the service provided by the relevant Government Agency or a contractor engaged and paid for by the Lessee.

5.7 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 acceptable to the Lessor; or
- (d) plant in or otherwise introduce to the Premises or the Forest any plant not indigenous to the Forest.

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 or improvements at any time sanctioned to be erected thereon.

- 6.4 The Lessee shall permit the Lessor and its agents and workman 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 (WA)* 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.

- 6.5 Nothing in **Clauses 6.3 or 6.4** will entitle the Lessor to enter any equipment shelter of the Lessee on the Premises or to interfere or tamper in any way with any equipment of the Lessee on the Premises. Despite the previous sentence, in the case of a fire emergency on or near the Premises, the Lessor may, in relation to the Premises, act in accordance with sections 39, 44 and 45 of the *Bushfires Act, 1954 (WA)*.

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 of at least \$10,000,000 for each accident or event in respect of the Premises and whenever so requested in writing produce to the Lessor or its agents a certificate or currency for such insurance provided that the request is not made more than once annually.

7.2 *Indemnity*

Except to the extent that any damage, liability, loss, costs, charges or expenses are caused by or contributed to by the act, negligence or default of the Lessor, its servants or agents the Lessee indemnifies the Lessor and its employees and agents and the Government of the State of Western Australia from and 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 or damage to anything in the Premises; and
- (b) any injury to any person in or near the Premises caused or contributed to by:
 - (i) any act, common negligence or default of the Lessee; or
 - (ii) some danger created by the Lessee whether or not the existence of that danger was or ought to have been known to the Lessee.

7.3 *Lessee's Assumption of Responsibilities*

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.

7.4 *Theft or Damage of Equipment*

The Lessee will take adequate precaution to ensure that equipment installed on the Premises is protected against theft or damage.

7.5 *Lessor Not Liable*

The Lessor shall not be liable for any removal or damage which may occur to the Lessee's equipment installed on the Premises during the Term except to the extent that the same has been caused or contributed to by any negligent act or omission by or on the part of the Lessor.

8.0 INSTALLATION AND MAINTENANCE

8.1 *Repair and Maintenance*

The Lessee must maintain the Premises in a reasonable and reasonably safe repair, order and condition during the Term fair wear and tear excepted.

8.2 *Construction and Alterations*

8.2.1 The Lessee may at the Lessee's option and 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 which consent shall not be unreasonably withheld 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 three-sided 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 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.

This clause shall not apply to the initial erection of the Lessee's prior approved telecommunications facility on the Premises where these matters will have already been taken into account.

8.3 *Fences*

- (a) In the event that the Premises are not currently fenced or secured, the Lessee must as soon as reasonably practicable after the Date of Commencement, but having regard to its reasonable requirements during the construction or erection of any telecommunications facility as described in **clause 8.2** fence off the area of the Premises with good quality materials, to the Lessor's reasonable satisfaction, and in any case in accordance with

any statutory requirement applicable to the fencing of a telecommunications facility.

- (b) During the Term the Lessee must:
 - (i) maintain the fences referred to in **subclause (a)** in good and safe repair and condition; and
 - (ii) erect and maintain such warning signs, barricades and other devices necessary to render and keep the Premises safe and free from hazard or danger to any person or, using or occupying any land adjacent to the Premises.

8.4 *Cabling*

For the purpose of the operation of the Lessee's telecommunications network and telecommunications service the Lessee may, subject to any reasonable conditions set by the Lessor, install, maintain and use above or below ground cabling to and from the Premises and where necessary to construct support for that cabling. In exercising its rights under the clause the Lessee must:

- (a) not cause any lasting material damage to the Land or material interference with the Lessor; and
- (b) within a reasonable time period after the works are completed restore the surface of the Land as so used as nearly as practically possible to its state prior to use by the Lessee to the reasonable satisfaction of the Lessor.

8.5 *Radio Frequency (RF) Electromagnetic Energy Levels (EME)*

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 is within all safety limits as set by the Australian Communications and Media Authority and other relevant Government Agencies. It will at all times ensure that any and all emissions from all equipment on the Premises will not pose a health risk to the users of the adjoining land.

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 a connection for the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and may 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. If an electricity supply is available to the Land and the installation of cabling associated with the electricity connection has received prior approval of the Lessor the Lessor will not unreasonably restrict the Lessee's ability to connect to that electricity supply on the same terms as are contained in this Lease.

10.0 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 within a reasonable period having regard to the nature of the breach;
- (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;
- (d) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant radio-communications interference; or
- (e) the Lessee no longer requires to use the Premises for the permitted use,

then the Lease may be terminated immediately by written notice by the Lessee in the case of **subclauses (a), (c), (d) and (e)** 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, having regard to their condition at the Commencement Date.

10.4 *Removal of Lessee's Fixtures and Chattels*

The Lessee must at or prior to 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, such activity to rehabilitate to be completed within 90 days of the Date of Expiration or earlier termination as the case

may be but if the weather conditions at the Date of Expiration on earlier termination of the Term are not favourable for rehabilitation, within such other period as the parties agree.

10.5 *Termination of Holding Over*

Either the Lessor or the Lessee may terminate the twelve monthly tenancy under **clause 3.4** by giving the other twelve months prior written notice.

10.6 *Termination due to Government Agency*

If any part of the Premises is required by any Government Agency for any purpose then the Lessee may terminate this Lease at any time by written notice to the Lessor.

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 delivery in person, by pre-paid post or by facsimile addressed to the receiving party at the address set out in **Item 7** of the Reference Schedule in the case of the Lessor and in **Item 8** 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 *Consent Required*

Unless the Lessor consents, the Lessee may not assign this Lease or sublet the Premises except under **clause 12.2**.

12.2 *Assignment and Subletting to a Related Body Corporate*

The Lessee may without the consent of the Lessor from time to time assign the Lease or sublet the whole or part of the Premises to a Related Body Corporate of the Lessee and in the case of an assignment will not be released from its obligations under the Lease. The Lessee will notify the Lessor the details of the Related Body Corporate.

12.3 *Obligations on Assignment or Sublease other than to a Related Body Corporate*

If the Lessee assigns this Lease or sublets the Premises to a party other than a Related Body Corporate, the Lessee must:

- (1) deliver to the Lessor, before the date that the proposed assignment or sublease is to take effect, a completed agreement in the form of a deed prepared or approved by the Lessor's solicitors, by which the proposed assignee or subtenant agrees with the Lessor to be bound by this Lease as from the date the assignment or sublease take effect; and
- (2) pay to the Lessor on request the Lessor's expenses, including legal costs:
 - (a) incurred in making reasonable enquiries about the proposed assignee or subtenant; and
 - (b) in connection with the preparation, completion and stamping of the assignment or sublease documents and any other related documents, (including the stamp duty on those documents).

12.4 *Lessee Remains Liable*

The Lessee remains fully liable under this Lease even if the Lessee assigns this Lease or sublets the Premises or gives any right in relation to this Lease or the Premises to any other person, except that in respect to any assignment of this Lease, the Lessee is from the date of assignment released from all future obligations under the Lease except in respect of any prior breach or default.

12.5 *Change in Control if the Lessee is not Optus or a Related Body Corporate*

If the Lessee is a company, and there is a change in control of the Lessee the Lessor may require the Lessee to obtain from the persons who have acquired control, as reasonably nominated by the Lessor, a guarantee of the Lessee's obligations under this Lease in a form prepared or approved by the Lessor's solicitors. If the Lessee is a subsidiary company a change in control includes a change in control of its holding company.

In this clause:

- (1) **company** does not include a company which is listed on the Australian Stock Exchange or is wholly owned by such a company; and
- (2) **control** means control of the composition of the board of directors or control of more than 20% of the shares with the right to vote at general meetings; and
- (3) words defined in the *Corporations Act, 2001 (Cth)* have the meanings given to them by that Act.

12.6 *Exclusion of Statutory Provisions*

The provisions of Sections 80 and 82 of the Property Law Act, 1969 (WA) do not apply to this Lease.

12.7 *Fees*

The Lessee must reimburse the Lessor on request for all fees paid by the Lessor to any agent or consultant engaged by the Lessor in connection with a proposed assignment or sub-letting by the Lessee.

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*

The Lessor must not itself knowingly nor will it knowingly permit any third party to do anything on the Adjoining Land which is likely to cause radio frequency interference which obstructs, interrupts or impedes the use or operation of the Lessee's telecommunications network and telecommunications service and in the event of the Lessee advising the Lessor of any breach of this clause, the Lessor will, in good faith, use reasonable endeavours to cause removal of such interference, to the extent that it is within its power to do so.

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.

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 (limited to \$1,500.00 plus GST) which the Lessor may reasonably suffer or incur in consequence of and incidental to the preparation, completion, stamping and registration of the Lease, and costs of surveying and pegging the Premises.

14.2 *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 (WA)* 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 (WA)* 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.

14.3 *Without Prejudice*

This Lease is without prejudice to the Lessee's rights under Schedule 3 of the *Telecommunications Act 1997 (Cth)*.

14.4 *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**.

14.5 *Rates and Taxes*

The Lessee must pay all rates, taxes and assessments charged upon the Premises and/or the Land by the due date for payment.

14.6 *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 (WA) (as amended)*. On any such arbitration, a party may, if it chooses, be represented by a duly qualified legal practitioner. 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 CONSENT TO TOWER SUBLEASE

In this clause and the following clauses:

'Tower Lease' means this Lease (for the Tower Premises);

'Tower Premises' means the premises demised pursuant to the Tower Lease;

'Tower Sublease' means a sublease between the Lessee and the Sublessee of part of the Tower Premises, a copy of which shall be exhibited to the Lessor at the time of its execution and any future sublease of the same part of the Tower Premises entered into between the Lessee and the Sublessee contemporaneously with the first mentioned sublease and of which a copy shall be exhibited to the Lessor at the time of its execution plus any extension or renewal of any of those subleases.

The Lessor hereby:

- (a) acknowledges that the Lessee may propose to enter into a Tower Sublease; and
- (b) will not unreasonably withhold consent to the granting of a Tower Sublease.

16.0 TERMINATION OF TOWER LEASE

16.1 *Assignment of Tower Lease*

The Lessor acknowledges that it is a condition of any Tower Sublease that the Lessee must not terminate or surrender the Tower Lease without first notifying the Sublessee of its intention to do so, in which event the Sublessee may require the Lessee to assign the Tower Lease to the Sublessee. The Lessor agrees that if in such event the Sublessee does so require the Lessee to assign the Tower Lease to it, the Lessor will not unreasonably withhold its consent to such an assignment provided that the Sublessee is not in default under the terms of its Lease with the Lessor and has failed to remedy the default with the time specified in its Lease.

16.2 *Grant of Tower Lease to Sublessee*

Provided that the Sublessee is not at that time in default of the terms of its Lease with the Lessor then, if, at any time during the Term, the Lessor becomes entitled to terminate the Tower Lease for any reason whatsoever, then prior to so terminating the Tower Lease, the Lessor must use reasonable endeavours to give notice to the Sublessee ('the Notice of Intended Termination') of its intention to so terminate the Tower Lease. The Sublessee may within 7 days after receipt of the Notice of Intended Termination, give notice to the Lessor ('the Sublessee's Notice') requiring the Lessor to grant to it a lease of the Tower Premises for the term left remaining under the Tower Lease including any options of renewal upon the same terms as the Tower Lease.

16.3 *Lessor and Sublessee to enter into Tower Lease*

The Lessor must as soon as practicable after either the receipt by it of the Sublessee's Notice or the termination of the Tower Lease (whichever is the last to occur), use reasonable endeavours to grant to the Sublessee a lease or leases of the Tower Premises upon the same terms as the Tower Lease, but commencing upon the date upon which the Tower Lease is terminated and expiring upon the dates or dates which the Tower Lease would, but for the prior termination thereof by the lessor, have otherwise expired, and substituting the Sublessee in place of the Lessee. Upon the grant of any such lease, any default or other right or cause of action between the Lessor and the Lessee will, as between the Lessor and the Sublessee, be deemed to have been waived and permanently released, provided that this does not release any default or other right or cause of action between the Lessor and the Lessee.

17.0 *OPTION IN TOWER LEASE*

If the Lessee fails to exercise any option to renew contained in the Tower Lease within the time provided in the Tower Lease or purports to exercise the option but the Lessor rejects the exercise of the option the Lessor will use reasonable endeavours as soon as practical after the time for exercise of that option to renew has elapsed notify the Sublessee of that fact ('**Non Exercise Notice**') and:

- (a) the Sublessee will have the right by notice in writing ('**Renewal Notice**') served on the Lessor within 14 days of the Non Exercise Notice to require the Lessor to grant to the Sublessee a lease of the Tower Premises on the terms contemplated in the Tower Lease as if the option to renew contained in it had been exercised by the Lessee;
- (b) upon service of the Renewal Notice by the Sublessee, the provisions of clause 16.3 will apply so far as they are relevant.

18.0 *TRILOCATION*

The Lessor's obligations under **clauses 16** and **17** are subject to any prior like rights granted by the Lessor or the Lessee to a third carrier as defined in *Telecommunications Act, 1997 (Cth)* so long as the Lessor only deals with the third carrier in relation to the Tower Premises or the Tower Lease subject to the Tower Sublease.

19.0 *DEED OF COVENANT*

19.1 *Sale of Tower Premises*

The Lessor agrees that the Lessor will not sell transfer mortgage or otherwise dispose of the Tower Premises unless the proposed purchaser, transferee mortgagee or disponent has entered into a deed of covenant with the Lessee agreeing to be bound by the provisions of **clauses 16, 17, 18, and 19** of this Lease as if that party was the Lessor described in this Lease.

19.2 Charge

The Lessor charges the Lessee with the observance and performance of the covenants contained in this Lease with respect to the Tower Premises and agrees that the Sublessee may lodge an absolute caveat against the Tower Premises to protect the charge created by this clause and the agreement to lease contained in **clauses 16 and 17** of this Lease.

REFERENCE SCHEDULE

Item 1 Premises (clause 1.1)

The area delineated and hatched on the attached lease plan comprising an area of 119m² and being a portion of State forest 14 at McLarty Road, Dwellingup, Western Australia.

Item 2 Date of Commencement (clause 1.1)

1 November 2009

Item 3 Date of Expiration (clause 1.1)

31 October 2019

Item 3A Break Date (clause 1.1)

1 November 2014

Item 4 Term (clause 1.1)

10 years

Item 5 Rent (clause 1.1)

\$4072.53 during the first year of the Term, and adjusted thereafter on the Rent Review Dates specified in Item 5A and Item 5B, for the balance of the Term.

Item 5A Fixed Review Dates (clause 1.1)

1 November 2010;
1 November 2011;
1 November 2013;
1 November 2014;
1 November 2016; and
1 November 2017.

Item 5B Market Review Dates (clause 1.1)

1 November 2012;
1 November 2015; and
1 November 2018.

Item 6 Nominated Account

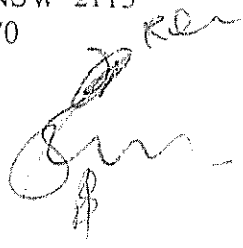
Bank	Commonwealth Bank
Branch	St Georges Tce, Perth WA
Account Name	Department of Environment and Conservation
BSB No.	066 - 040
Account No.	11300006

Item 7 Contact at Lessor (clause 11.1)

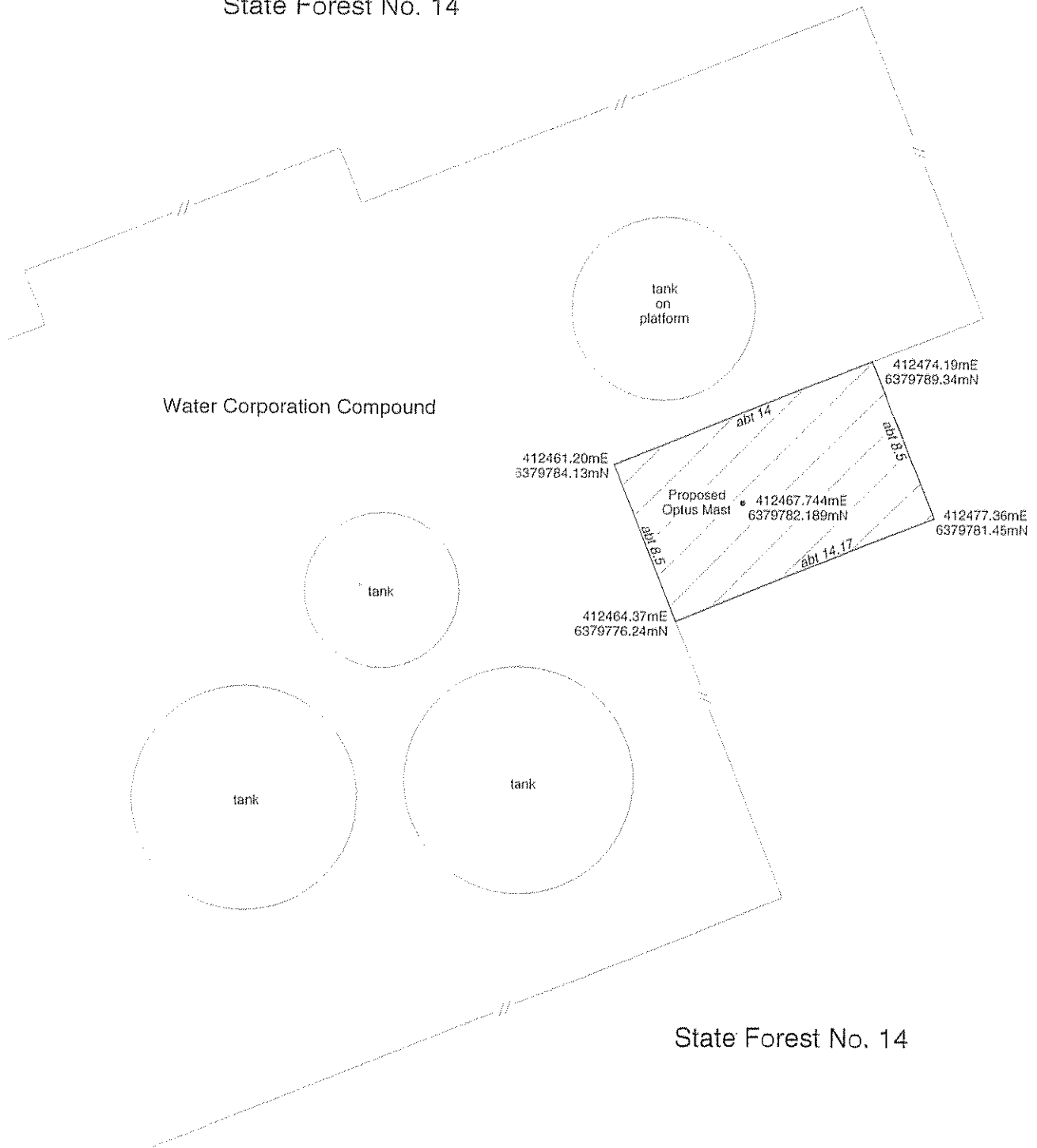
Name:	Leasing Officer – Property Unit
Address:	17 Dick Perry Avenue, Technology Park, Kensington WA 6151 Locked Bag 104 Bentley Delivery Centre WA 6983
Telephone number:	08 9423 2410
Facsimile number:	08 9423 2253

Item 8 Contact at Lessee (clause 11.1)

Name:	Attention: Manager – Lease Administration
Site code:	P8193 Griffin Coal P8087 Dwellingup
Address:	1 Lyonpark Road, Macquarie Park NSW 2113 PO Box 888, North Ryde NSW 1670
Telephone number:	(02) 8082 1620
Facsimile number :	(02) 8082 1299



State Forest No. 14



Coordinate data: GDA94, MGA Zone 50
(figures approximate only)

FOREST LEASE No. 2276/97

LESSEE	Optus Mobile Pty Ltd		
LGA	SHIRE OF MURRAY	AREA	Abt 119m ²
LAND DISTRICT	MURRAY	DRAWN	JLF (based on survey by JBA surveys)
DEC DISTRICT	PERTH HILLS	CHECKED	CMB. 16.3.09
PLAN	DWELLINGUP (CU.63); 2132-14	FILE No.	2008/003795-1

SCALE 1 : 300

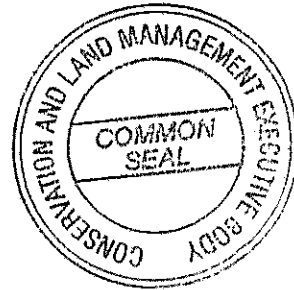


Department of
Environment and
Conservation

Our environment, our future

AS WITNESS the execution of this Deed the day and year first hereinbefore written.

THE COMMON SEAL of the)
CONSERVATION AND LAND)
MANAGEMENT EXECUTIVE BODY)
was hereunto affixed by)



R. J. M. S. S. S.
Chief Executive Officer

in the presence of:

[Signature]
Witness

KAREN PIAHANA-WONG
Name of Witness (Print)

LEVEL 4, 168 ST GEORGES TCE
Address of Witness (Print)

PUBLIC SERVANT
Occupation of Witness (Print)

Executed by)
Optus Mobile Pty Limited)
ACN 054 365 696)
in accordance with Section 127 of the)
Corporations Act)


Director: _____
(Signature)

Director/Secretary: _____
(Signature)

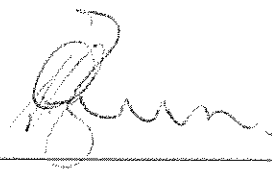
Director: _____
(Print Name)

Director/Secretary: _____
(Print Name)

SIGNED SEALED and DELIVERED by)
Paul Gerard O'Brien as attorney for **OPTUS**)
MOBILE PTY LIMITED ACN 054 365)
696 who declares that he is its company)
secretary under Power of Attorney)
Registered No. G886420 in the presence of:)



Signature of Witness
Brigitte Taylor Justice of the Peace
NSW No 114291
Phone: 02 8087 1627



Company Secretary

Name of Witness (Print)
1 Lyon Park Road Macquarie Park 2113

Address of Witness (Print)

Occupation of Witness (Print)

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet Form B1 should be used with appropriate headings. The boxed sections should only contain the words "See Annexure".
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the person signing this document and their witnesses.
4. Duplicates are not issued for Crown Land Titles.

NOTES

1. DESCRIPTION OF LAND

Lot and Diagram/Plan number or Location name and number to be stated.

Extent – Whole, part or balance of the land comprised in the Certificate of Crown Land Title to be stated.

The Certificate of Crown Land Title Volume and Folio number to be stated.

2. ENCUMBRANCES

To be identified by nature and number, if none show "nil".

3. LESSOR

State full name and address of Lessor(s) and the address(es) to which future notices can be sent.

4. LESSEE

State full name and address of Lessee(s) and the address(es) to which future notices can be sent.

5. TERM OF LEASE

Term to be stated in years, months and days.

Commencement date to be date, month and year. Options to renew to be shown.

6. RECITE ANY EASEMENTS TO BE CREATED

Here set forth Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".

7. RENTAL

State amount in words.

8. PAYMENT TERMS

State terms of payment. Eg, by instalments of \$..... payable on the day of each month/the months of in each year, commencing with a payment of \$..... on or before the day of/execution of this lease by the Lessee.

9. EXECUTION

A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of witnesses must be stated.

EXAMINED

Office Use Only

LEASE OF CROWN LAND (L)

LODGED BY

ADDRESS

PHONE No.

FAX No.

REFERENCE No.

ISSUING BOX No.

PREPARED BY Department of Environment and Conservation

ADDRESS 17 Dick Perry Avenue
KENSINGTON WA 6152

PHONE No. 9334 0333

FAX No. 9334 0253

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO
OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED HERewith

1. _____ Received Items

2. _____ Nos.

3. _____

4. _____ Receiving Clerk

5. _____

6. _____

7. _____

8. _____

Registered pursuant to the provisions of the TRANSFER
OF LAND ACT 1893 as amended on the day and time
shown above and particulars entered in the Register.