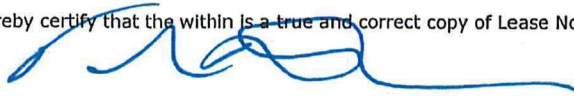


I hereby certify that the within is a true and correct copy of Lease No. 1922/100.



Mr Peter Dans

Acting Director General, Department of Biodiversity, Conservation and Attractions

RESERVE 49174

CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY

(LESSOR)

and

SHIRE OF GINGIN

(LESSEE)

LEASE NO. 1922/100

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4. PERMITTED USE OF THE LEASED AREA

4.1 Permitted Use

Constructing, maintaining and operating a radio communications network and radio communications and telecommunications networks service and uses incidental thereto (non-residential).

5. MINIMUM INSURANCE COVER

5.1 Minimum Public Liability Insurance

\$20,000,000

6. ADDRESS FOR NOTICES

6.1 Notices to be sent to Lessor

- (a) Address: Locked bag 104, Bentley Delivery Centre, WA 6983
- (b) Email: Leasing@dbca.wa.gov.au
- (c) Attention: Leasing Officer

6.2 Notices to be sent to Lessee

- (a) Address: PO Box 510, GINGIN WA 6503
- (b) Email: mail@gingin.wa.gov.au
- (c) Attention: Chief Executive Officer

Authority means any government or any governmental, semi governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, statutory corporation or position, agency, entity or Parliament, whether State, Federal or otherwise.

Authorisation means any approval, agreement, certificate, authorisation, notification, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent by any Authority required under any Law, and includes any renewal of, or variation to, any of them but does not include any act or omission by the Lessor under this Lease.

Business Day means any day except a Saturday, Sunday or a public holiday in Western Australia.

CALM Act means the *Conservation and Land Management Act 1984 (WA)* and any subsidiary legislation made under the CALM Act.

Claim means any claim, proceeding, action, cause of action, demand or suit of any nature (including by way of contribution or indemnity) made or asserted under or in connection with this Lease or under any Law.

Crown Land Rent Review Notice has the meaning give in clause 5.3(a)(i).

Code of Practice means any code of practice issued under the *Telecommunications Act*.

Colocation Event means any arrangement, understanding or agreement reached with or right conferred on a Colocator (including by giving physical access to the Leased Area) for the purpose of collocating the Colocator's Telecommunications Network or any part of it on the Leased Area.

Colocator means any person operating or reasonably intending to operate a Telecommunications Network in accordance with the *Telecommunications Act*.

Commencement Date means the date in item 2.2 of the Schedule.

Contamination is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003 (WA)*.

Corporations Act means the *Corporations Act 2001 (Cth)* and any subsidiary legislation made under the Corporations Act.

CPI Rent Review means a rent review undertaken in accordance with clause 5.2.

CPI Rent Review Date means each of the dates specified in item 3.4 of the Schedule on and from which the Lessor may vary the Rent under clause 5.2.

Crown Land Rent Review means a rent review undertaken in accordance with clause 5.3.

Degradation has the meaning given in clause 10.7.

Department means the department of the public service principally assisting in the administration of the CALM Act.

Environment has the same meaning as that term is defined in the *Environmental Protection Act 1986 (WA)*.

Environmental Harm has the same meaning as that term is defined in the *Environmental Protection Act 1986 (WA)*.

Environmental Law means all planning, environmental, Contamination or Pollution laws and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

Environmental Notice means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Authority, whether written or oral and in connection with any Environmental Law.

Event of Default means any of the events specified in clause 18.2.

Expiry Date means the date in item 2.3 of the Schedule.

- (o) standards, codes, policies and guidelines.

Lease means this lease including the Schedule and Annexures, as it is amended from time to time, varied, supplemented, replaced, extended, renewed or assigned, as permitted by this lease, and includes any deed of variation of this lease.

Leased Area means the leased area the subject of this Lease as described in item 1.1 of the Schedule together with the Lessor's Property in, or forming part of, the leased area.

Lessee's Group means each of the Lessee's officers, employees, agents, contractors, service suppliers, sub-lessees, assignees (in respect of whose obligations the Lessee has not been released), licensees, sub-licensees, Colocators and any other person who at any time is on the Leased Area with or without the express or implied consent of the Lessee.

Lessee's Improvements mean any building or structure in, on or under the Leased Area and includes any Facility.

Lessor's Agents includes the Lessor and the officers, agents, servants, employees, advisors, consultants and contractors of the Lessor and the State.

Lessor's Property means those items (if any) listed in item 1.3 of the Schedule.

Loss means any loss, cost (including legal costs), expense, injury, debt, compensation, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including pure economic loss), present or future, ascertained or unascertained, actual, prospective or contingent, or any fine or penalty.

Parties means the Lessor, the Lessee and the guarantor (if any) and "party" is a reference to any of them.

Permitted Use means the use described in item 4.1 of the Schedule.

Pollution has the same meaning as that term is defined in the *Environmental Protection Act 1986* (WA).

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Law means the PPSA and any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.

Rates and Taxes means any rate, tax, levy or any other charge imposed at any time during the Term of this 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 Leased Area or anything under or in connection with this Lease.

Related Body Corporate has the meaning given in section 50 of the Corporations Act;

Relevant Land means the Leased Area, the Surrounding Area and the Adjoining Land.

Rent means the amount of rent specified in item 3.1 of the Schedule as varied from time to time under this Lease.

Rent Payment Date means the date on which Rent is due and payable under this Lease as specified in item 3.2 of the Schedule.

Schedule means the Schedule at the front of this Lease, which is incorporated in and forms part of this Lease.

Security Interest means any one or more of:

- (a) a mortgage, charge, sub-demise, lien, trust or power, which is a security for the payment of money or the compliance with any other obligation; and
- (b) a "security interest" within the meaning of the PPSA.

Services means all services running through or servicing all or part of the Leased Area, whether installed by the Lessor or Lessee, including air conditioning, electricity, gas, water, sewerage, drainage, telecommunications and fire sprinkler systems and all associated pipes,

- (l) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (m) no rule of construction applies to the disadvantage of a Party on the basis that the Party drafted this Lease or any part;
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, designs, specifications, models, plans, records and other documents in all forms including the electronic form in which it was generated;
- (o) if the word "including" or "includes" is used, the words: "without limitation" are deemed to immediately follow;
- (p) a reference to the termination of this Lease includes the expiry of the Term;
- (q) if a Party consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:
 - (i) an obligation imposed on a Party under this Lease binds each person who comprises that Party jointly and severally;
 - (ii) each person who comprises a Party agrees to do all things necessary to enable the obligations imposed on that Party under this Lease to be undertaken; and
 - (iii) the act of one person who comprises a Party binds the other person or persons who comprise that Party;
- (r) a reference to any Party or person includes their and each of their legal representatives, executors, administrators, successors and permitted substitutes and assigns, including any person taking part by way of novation;
- (s) reference to any authorities, associations and bodies whether statutory or otherwise shall in the event of any such authority association or body ceasing to exist or being re-constituted or re-named or replaced or the powers or functions thereof being transferred to any other authority association or body be deemed to refer respectively to the authority association or body established or constituted in lieu thereof or as nearly as may be succeeding to the powers or functions thereof;
- (t) a reference to this Lease or to any other deed, agreement, document or instrument is deemed to include a reference to this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (u) a reference in this Lease to a clause or an item is a reference to a clause of this Lease or an item of the Schedule, respectively; and
- (v) a reference to a contractor includes a subcontractor at any tier.

1.3 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.

1.4 Contravention of Law – Severance

Any provision of the Lease which is void, voidable, unenforceable or invalid because of any Law must in any such case and to such extent be severed from the Lease, and the Lease must

Where:

- A = the adjusted Rent payable from (and including) the relevant CPI Rent Review Date in accordance with clause 5.2;
- B = the September quarter CPI as last published by the Australian Statistician prior to the relevant CPI Rent Review Date;
- C = the September quarter CPI as last published before the latter of the Commencement Date or the immediately preceding CPI Rent Review Date; and
- D = the amount of the Rent applying immediately before the relevant CPI Rent Review Date.

(c) **Crown Land Rent** means the annual rent that could reasonably be expected to be obtained for the Leased Area taking into account:

- (i) the approved use and utility conferred under this Lease;
- (ii) the nature of the Lessee;
- (iii) the provisions of this Lease;
- (iv) the period between Crown Land Rent Reviews as set out in clause 5.3(a);
- (v) the full length of the Term (including any option to extend); and
- (vi) any improvement to the Leased Area,

but disregarding:

- (vii) the consequences of any breach by the Lessee of this Lease which may have adversely affected the condition or rental value of the Leased Area;
- (viii) any part of the Term that has expired; and
- (ix) the value of the Lessee's Property and any goodwill created by the Lessee's business or activities to the Leased Area.

(d) **Valuer** means a person who:

- (i) is a fellow or an associate, of not less than 5 years standing, of the Australian Property Institute and is practising and licensed under the *Land Valuers Licensing Act 1978* (WA) at the time of appointment; and
- (ii) has at least 5 years of experience in valuing areas of a similar nature to the Leased Area.

5.2 CPI Rent Review

With effect on and from each CPI Rent Review Date, the Lessor may vary the Rent payable by the Lessee under this Lease to an amount that is the higher of:

- (a) the Rent payable by the Lessee immediately before the relevant CPI Rent Review Date; and
- (b) the amount calculated by using the CPI Method.

- (c) The Lessee must at the request of the Lessor produce to the Lessor the receipts of payment of the Rate and Taxes where these are paid to the relevant Authority.

6.2 Service Charges

- (a) The Lessee must pay all charges for Services which are imposed in respect of the Leased Area either to the supplier of the Services before those charges become overdue or, in the case of any such charges imposed on the Lessor, to the Lessor within 30 Business Days after the Lessor requests payment.
- (b) If any Services are assessed or imposed in respect of other property as well and not only in respect of the Leased Area, the Lessee must pay a proportion of those Services to the Lessor within 30 Business Days after the Lessor requests payment. The proportion is the proportion that the Leased Area bears to the area of the property the subject of the assessment or imposition.

7. GOODS AND SERVICES TAX

7.1 Definitions

Expressions set out in italics in this clause have the same meaning as those expressions in the GST Act.

7.2 Amounts payable by Lessee exclusive of GST

Except where express provision is made to the contrary, all amounts payable by the Lessee specified in this Lease are stated exclusive of GST.

7.3 Liability to pay any GST

If the Lessor makes a *taxable supply* in connection with this Lease for a *consideration* which represents an amount which is exclusive of GST, then the Lessee must pay to the Lessor, at the same time and in the same manner as such *consideration* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

7.4 Reimbursements

If this Lease requires the Lessee to pay, reimburse or contribute an amount paid or payable by the Lessor in respect of an *acquisition* from a third party for which the Lessor is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the Lessee will be the *value* of the *acquisition* by the Lessor plus, if the Lessor's recovery from the Lessee is a *taxable supply*, any GST payable under clause 7.3.

7.5 Tax invoice

The Lessor shall provide to the Lessee a valid *tax invoice* in respect of any GST paid pursuant to clause 7.3 within 28 days of the Lessee's request to do so.

8. USE OF LEASED AREA

8.1 Permitted Use

- (a) The Lessee may only use the Leased Area for the Permitted Use and must not use the Leased Area for any other purpose unless the Lessor consents in writing.
- (b) In using the Leased Area for the Permitted Use, the Lessee will satisfy all technical requirements of the Lessor having regard to the Lessee's use of the Leased Area (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 Leased Area. In the event of any inconsistency between

Lease and the Lessee will be responsible and the bears the costs for all works and other activities required to resolve the defect, problem or other issue.

8.5 No warranty by Lessor

The Lessor does not make or give any warranty or representation of any kind, either expressly or impliedly, that the Leased Area is or will remain suitable for all or any of the purposes of the Lessee. Any warranty in relation to the Leased Area which is implied by Law is excluded to the extent that the Law permits the warranty to be excluded.

8.6 Contamination, Pollution or Environmental Harm at Lessee's risk

- (a) The Lessee relies on its own investigations concerning the existence, non-existence, level or quantity of Contamination, Pollution or Environmental Harm on the Relevant Land.
- (b) The Lessor does not make any representation or warranty concerning the existence, non-existence, level or quantity of Contamination, Pollution or Environmental Harm on the Relevant Land.
- (c) If the Lessee becomes aware of any Pollution, Contamination or Environmental Harm affecting the Leased Area, the Lessee may elect to either:
 - (i) remediate the Leased Area at the Lessee's cost, to a state that, in the opinion of the Lessee, is suitable for the Permitted Use; or
 - (ii) continue in possession of the Leased Area in accordance with the terms of this Lease at its own risk.

9. BUILDING WORK, MAINTENANCE AND REPAIR AND CLEANING

9.1 Ownership of Improvements

Subject to clause 19.2, ownership of the Lessee's Improvements vests in the Lessee.

9.2 Construction and alteration of Lessee's Improvements

- (a) The Lessee must not construct, erect, install, dismantle, repair, replace, renew or maintain any Lessee's Improvements on the Leased Area (which includes completing a major upgrade to a Facility) unless the Lessee has obtained:
 - (i) any Authorisations required for the work; and
 - (ii) the prior approval in writing of the Lessor which will not be unreasonably withheld (which approval may be subject to conditions),
- (b) The approval in writing of the Lessor referred to in clause 9.2(a)(ii) is only given in response to the Lessee submitting sufficiently detailed plans and specifications for the proposed work to the Lessor, unless the Lessor dispenses with this requirement to submit detailed plans and specifications.
- (c) Where the Lessee is permitted to undertake the work in this clause 9.2, or is required under this Lease or by Law or an Authority to carry out work (including the making of repairs), the Lessee must at its cost in respect of such work:
 - (i) comply with any Authorisations required for the work and any requirements of any Law or Authority having authority or jurisdiction in respect of the use of the Leased Area which apply to the work;

regard to its reasonable requirements during the construction of any Lessee's Improvements in accordance with clause 9.2, fence off the Leased Area 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 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 such warning signs, barricades and other devices necessary to render and keep the Leased Area safe and free from hazard or danger to any person using or occupying any land in the Surrounding Area.

9.6 Cabling

For the purpose of operating the Lessee's Telecommunications Network and Telecommunications Service the Lessee may, subject to obtaining the prior written approval of the Lessor (which approval may be subject to conditions) and any other required Authorisations, install, maintain and use above or below ground cabling to and from the Leased Area and where necessary to construct support for that cabling. In exercising its rights under this clause 9.6, 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.

9.7 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 Leased Area is within all safety limits as set by the Australian Communications and Media Authority and other relevant Authorities. It will at all times ensure that any and all emissions from all equipment on the Leased Area will not pose a health risk to the users of the Surrounding Area.

9.8 Conservation, cultural or heritage significance of Leased Area

- (a) The Lessee acknowledges that:
 - (i) the whole or part of the Leased Area may be of conservation, cultural or heritage significance; and
 - (ii) special circumstances and obligations may apply upon the Lessee seeking to make any alterations or undertaking any works to the Leased Area.
- (b) Despite any other provision of this Lease, the Lessee must not at any time during the Term dig or otherwise disturb the ground surface of the Leased Area:
 - (i) without the Lessor's prior written consent; and
 - (ii) without first obtaining all necessary Authorisations from all relevant Authorities, including obtaining all necessary archaeological, heritage or native title clearances, required for that ground-breaking activity.
- (c) The Lessee must notify the Lessor, and report to the relevant Authority as required by Law, if it finds or locates any items or places of conservation, cultural or heritage

- (e) If a fire is detected in or around the Leased Area, the Lessee must immediately:
 - (i) call the 000 emergency number and report the fire and comply with any directions given;
 - (ii) notify the Lessor and comply with any directions given; and
 - (iii) take all reasonable and safe action which the Lessee is able to take to try to extinguish or contain the fire.

10.2 Contamination, Pollution and Environmental Harm

- (a) The Lessee must not cause or permit any Contamination, Pollution or Environmental Harm of the Relevant Land and must take all measures necessary to prevent Contamination, Pollution or Environmental Harm of the Relevant Land, including the use or storage of any chemicals and other potential pollutants in a way that prevents their access or spread to the Environment.
- (b) The Lessee must notify the Lessor immediately on becoming aware of:
 - (i) the existence of any Contamination;
 - (ii) any Pollution affecting, or the potential for Pollution to affect, the Relevant Land;
 - (iii) an Environmental Notice being served on the Lessee or any other person which relates to or arises from the Lessee's use or occupation of the Leased Area; or
 - (iv) the making of a complaint to any person, including to the Lessee or the commencement of proceedings against the Lessee relating to an alleged failure by the Lessee to observe or perform an obligation under an Environmental Law or Authorisation.
- (c) The Lessee must, at its cost, comply with every Environmental Notice issued in respect of, arising from or relating to, the Lessee's use or occupation of the Leased Area, whether the notice is served on Lessor or the Lessee.
- (d) Without affecting:
 - (i) the obligations of the Lessee at Law or in this clause 10; or
 - (ii) limiting any right of, or indemnity in favour of, the Lessor,if any Contamination, Pollution or Environmental Harm occurs, the Lessee must do everything necessary to minimise the effect of the Contamination, Pollution or Environmental Harm as soon as reasonably practicable and must remediate any resultant damage and harm, to the absolute satisfaction of the Lessor and in compliance with any Environmental Notice or Environmental Law.
- (e) The obligations of the Lessee under this clause 10.2 continue after the expiration or earlier determination of this Lease.

10.3 Environmental Authorisations

- (a) The Lessee must:
 - (i) obtain any Authorisation required under Environmental Law for any conduct, activity or use undertaken by the Lessee on the Leased Area, including the Permitted Use, before that conduct, activity or use is

person, it may only do so after consultation with the Lessor, unless the taking of such action is immediately required to protect people or property.

10.7 No degradation of the Environment

(a) In this clause 10.7, **Degradation** includes:

- (i) destroying, spoiling, excavating, polluting, contaminating or changing (including adding to) the land, air or water on or comprising the Relevant Land or its natural features or characteristics (including topography);
- (ii) bulldoze, clear or remove any trees, shrubs or other vegetation growing on the Leased Area;
- (iii) destroying, cutting, injuring, threatening or jeopardising any flora or fauna on, in or inhabiting the land, air or water comprising the Relevant Land;
- (iv) depositing any earth, fill or material on the Leased Area or removing stones, rocks, earth, sand, soil or other material from the Leased Area;
- (v) introducing or bringing onto the Leased Area any flora or fauna or disease, or harming or endangering any flora or fauna on the Leased Area;
- (vi) lighting fires or causing explosions on or near the land, air or water comprising the Relevant Land;
- (vii) altering the natural drainage on the Leased Area or taking water from the local environment;
- (viii) constructing outlets for surface drainage on the Leased Area;
- (ix) erect or install any improvements on the Leased Area other than the Lessee's Improvements specified in clause 9.2(a);
- (x) the causing or leaving of rubbish, useless material, pollutants or contaminants on or in the land, air or water comprising the Relevant Land;
- (xi) the application of fertilisers; and
- (xii) anything else which in connection with the Leased Area may be harmful to the Environment.

- (b) The Lessee acknowledges that the Leased Area may be environmentally sensitive and that the Lessor has a general duty to protect the Environment.
- (c) Without limiting the Lessee's obligations in this clause 10, unless expressly authorised under this Lease the Lessee agrees to do all things necessary to prevent, and must not effect, cause or suffer any Degradation without first obtaining the consent of the Lessor.
- (d) If Degradation has occurred, the Lessee must promptly notify the Lessor in writing and, at its own cost, restore the Environment to the condition it was in immediately before the Degradation occurred to the Lessor's satisfaction.
- (e) The Lessee must, at its cost, promptly comply with any directions of the Lessor in respect of the Degradation the restoration of the Environment or the prevention of any future Degradation.
- (f) Without limiting the generality of the Lessee's obligations under this clause 10, the Lessee must, at its cost, regularly collect and dispose of all garbage, refuse, waste

- (e) use its best endeavours to protect and keep safe any property on the Leased Area from theft or robbery and securely lock all exterior doors and windows of any property when not occupied;
- (f) allow persons having an interest in the Leased Area superior to, or concurrent with, the Lessor's interest to exercise the Lessor's or that other person's rights and perform their obligations in connection with the Leased Area;
- (g) withdraw any 'subject to claim' caveat lodged to protect the Lessee's interest under this Lease at the termination, or on an assignment, of this Lease;
- (h) promptly give the Lessor a copy of every notice from any Authority received by the Lessee relating to the Leased Area;
- (i) immediately notify the Lessor if the Lessee becomes aware of any threat to the Leased Area and comply with the Lessor's directions for the purpose of protecting property or persons in the Leased Area;
- (j) promptly inform the Lessor after becoming aware of any damage to the Leased Area or of the faulty operation of any Services; and
- (k) abide by and comply with any rules that the Lessor may make from time to time.

11.2 Negative obligations

In connection with the Leased Area, the Lessee must not (and must not permit anyone else to):

- (a) give any person a Security Interest in the Leased Area;
- (b) modify, interfere with or obstruct the operation of or access to the Services;
- (c) do anything which is offensive, illegal or a nuisance and must promptly abate any nuisance which does occur;
- (d) do, cause or omit to do any act or thing that may detract from the reputation of the Lessor, the Land or the Leased Area;
- (e) store or use inflammable or explosive substances, including fuels, paint, solvents and pesticides in the Leased Area except those normally used for any activity included in the Permitted Use but then only if they are stored in proper containers and used only in accordance with all relevant Laws and the requirements of any Authority; or
- (f) use any public facilities in or near the Leased Area, including the toilets and drains;
- (g) place on, or on any window or exterior surface of any building or other structure forming part of, the Leased Area, any signs, advertisements, televisions, antennae, amplifiers, loudspeakers, radio, mast or other apparatus (either temporarily or permanently), except as authorised by this Lease or in writing by the Lessor;
- (h) permit any other person to carry on business on or from the Leased Area, except as authorised by this Lease or in writing by the Lessor;
- (i) permit a Colocation Event to occur in respect of the Leased Area, except as authorised by this Lease or in writing by the Lessor;
- (j) use the Leased Area as a residence, other than for an approved caretaker's residence for security purposes;

loss or damage occasioned by fire, fire-fighting activities, fusion, explosion, lightning, civil commotion, storm, tempest, flood, earthquake, burglary and malicious damage;

- (iii) workers' compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for at least the amount specified in item **Error! Reference source not found.** of the Schedule for any one occurrence and unlimited as to the number of occurrences; and
- (iv) any other insurance required by law as a result of the Lessee's use of the Leased Area or which the Lessor acting reasonably may from time to time require the Lessee to effect and maintain.

13.2 Variation of insurance amount

The Lessor may by notice to the Lessee at any time require the Lessee to increase the minimum cover for any of the Lessee's insurance policies required under clause 13.1 if in the circumstances it is reasonable for the cover to be increased. The Lessee must promptly increase the amount or extent of cover at its cost as and when notified by the Lessor.

13.3 Insurance obligations

The Lessee must:

- (a) pay all insurance premiums on all policies referred to in clause 13.1 before the due date for payment and, when reasonably requested by the Lessor, provide evidence of payment;
- (b) produce to the Lessor evidence of currency certified by the insurer for each of the insurance policies upon effecting, the renewal of or a change of each insurance policy and when reasonably requested by the Lessor;
- (c) not surrender, let lapse or cancel any of the insurance policies referred to in clause 13.1;
- (d) immediately notify the Lessor if an event occurs which may give rise to a claim under any insurance policy referred to in clause 13.1 or which could adversely affect either or both parties or if an insurance policy is cancelled and must not settle, compromise or waive any claims in respect of any such insurances except on terms first approved by the Lessor in writing;
- (e) immediately expend and apply all money recovered in respect of any claim against an insurance policy referred to in clause 13.1 in and towards the satisfaction of the liability or the payment of damages or the reinstatement or replacement of the property for which that money is received; and
- (f) on demand make up from the Lessee's own money any deficiency, shortfall or insufficiency of money recovered from insurance for that purpose.

13.4 Voiding insurance policies

- (a) Unless the Lessor consents, the Lessee must not:
 - (i) do or allow anything to be done which could adversely affect any insurance taken out by the Lessor in connection with the Leased Area or which could increase the cost of obtaining that insurance; or
 - (ii) settle, compromise or waive any claim under any policy of insurance held by the Lessor relating to the Leased Area.

except to the extent that such Claims or Losses are caused by the gross negligence of the Lessor.

- (b) The Lessee indemnifies and must keep indemnified the Lessor and the State from and against all Claims and Losses relating to, or in respect of, the remediation of Contamination, Pollution or Environmental Harm required under any Environmental Notice, by any Law or by any Authority as a result of any Contamination, Pollution or Environmental Harm emanating on, or from, the Leased Area as a result of, or relating to, the use or occupation of the Leased Area by the Lessee or Lessee's Group.
- (c) Without limiting the generality of clause 14.1(a), the Lessee indemnifies and must keep indemnified the Lessor and the State from and against all Claims and Losses arising in connection with any electromagnetic or radio frequency radiation or fields emanating from the Lessee's Improvements installed on the Leased Area. This indemnity does not apply to the extent:
 - (i) of any Loss caused or contributed to by the negligent act or omission of the Lessor or the Lessor's Agents; or
 - (ii) the Lessee proves that it complied with all applicable Law relating to the emanation of any such radiation or fields from the Lessee's equipment installed on the Leased Area during the period in which the Loss arose or was incurred or suffered. For the foregoing purpose, the Lessee must:
 - (A) maintain and keep all adequate records of emissions and comply with all applicable codes (including at the Commencement Date, "Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz (RPS 3)" and Law; and
 - (B) provide copies of such records to the Lessor on request;for at least 6 years (or such other relevant period of limitation) after the date to which the record relates and the obligations of the Lessee under this clause continue after the expiration or earlier termination of this Lease.
- (d) The Lessee acknowledges and agrees that the Lessee's public liability insurer is aware of the conditions that apply to this Lease and the indemnity granted pursuant to this clause 14.1 and that the Lessee's public liability policy covers the Permitted Use and the Lessee's activities on, in or under the Leased Area in connection with the Permitted Use.
- (e) The obligations of the Lessee under this clause 14.1:
 - (i) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount; and
 - (ii) continue after the expiration or earlier determination of this Lease in respect of any act, omission, deed, matter or thing occurring before the expiration or earlier determination of this Lease.

14.2 Release and no claim

- (a) The Lessee agrees to occupy, use and keep the Leased Area at the sole risk of the Lessee.
- (b) Neither the Lessor nor the State shall be liable (in negligence or howsoever) to the Lessee, and the Lessee will not make a claim against and releases to the full extent permitted by Law, the Lessor and the State from and against:

- (vi) anything else which the Lessor is required or permitted to do by Law or under this Lease,

without affecting the Lessee's obligations under this Lease 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.

- (b) Nothing in this clause 15.2 entitles the Lessor to enter any equipment shelter of the Lessee on the Leased Area or to interfere or tamper in any way with the Lessee's Improvements on the Leased Area. Despite the previous sentence, in the case of a fire emergency on or near the Leased Area, the Lessor may, in relation to the Leased Area, act in accordance with the provisions of the *Bushfires Act 1954 (WA)* including sections 28(3), 39, 44 and 45 of the *Bushfires Act 1954 (WA)* 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.

15.3 Lessor's power with respect to contractors

- (a) The Lessor retains the right to approve or not to approve any contractor, tradesperson, employee, firm or company to carry out any repairs, renovation, alteration, addition or cleaning whatsoever to the Leased Area within the responsibility of the Lessor, regardless of whether the Lessee is liable for costs or not and irrespective of whether the work to be carried out is a requirement under this Lease or not.
- (b) The Lessor retains the right to appoint a contractor, agent, employee or tradespeople of its choice to carry out any work of any nature to the Leased Area which may be required and if the work is such which is the responsibility of the Lessee under this Lease then the Lessee shall be liable to pay on demand by the Lessor the costs so incurred.

15.4 Lessor may rectify

The Lessor or Lessor's Agents may do anything which should have been done by the Lessee under this Lease but which has not been done or has not been done properly and the Lessor may enter the Leased Area for that purpose. The Lessee must pay any costs incurred by the Lessor in taking action under this clause 15.4 within 10 Business Days after the Lessor requests payment.

16. ASSIGNMENT, SUBLETTING AND COLOCATION

16.1 No interest to be created without consent

Subject to this clause 16, the Lessee must not:

- (a) give any person any right or interest in this Lease or the Leased Area (including a licence to use or occupy the Leased Area) or allow any person to use or occupy the Leased Area; or
- (b) permit a Colocation Event; or
- (c) assign, transfer, mortgage, novate, charge or otherwise encumber this Lease or any payment or other right, benefit, money or interest under of in respect of this Lease,

without the Lessor's written consent, which consent must not be unreasonably withheld and may be subject to conditions.

made pursuant to the *Telecommunications Act* or the *Competition and Consumer Act 2010* (Cth).

16.5 Requirements for Consent

Except where clause 16.2 applies, if the Lessor consents to a proposed assignment, transfer, sub-lease, licence or Colocation Event then, within a reasonable time before the proposed date of change in possession or Colocation Event, the Lessee must:

- (a) supply to the Lessor evidence reasonably acceptable to the Lessor that the proposed assignee, transferee, licensee, sub-lessee or Colocator is respectable, responsible, solvent, fit and proper and is technically and financially able to perform all the Lessee's obligations under this Lease;
- (b) in the case of a Colocation Event, supply to the Lessor all of the information specified in clause 16.3(b) to the Lessor's satisfaction;
- (c) remedy any default under this Lease to the Lessor's satisfaction unless it has been waived by the Lessor;
- (d) deliver to the Lessor a deed executed by the Lessee and proposed assignee, transferee, licensee, sublessee or Colocator in a form prepared by, or approved by, the Lessor, by which:
 - (i) the proposed assignee, transferee, licensee, sub-lessee or Colocator agrees to be bound by and comply with this Lease on and from the date that the assignment, transfer, licence, sub-lease or Colocation Event takes effect; and
 - (ii) any guarantor requested under clause 16.9 gives the Lessor a guarantee and indemnity as required by that clause.
 - (iii) in the case of a Colocation Event, assignment or transfer to a Colocator, assignee or transferee who is, in the Lessor's opinion, an entity seeking commercial gain from the Colocation Event, assignment or transfer, the Colocator, assignee or transferee agrees to vary the terms of this Lease (including the Rent) as required by the Lessor;
- (e) pay to the Lessor on demand the Lessor's costs and expenses including agents fees and legal costs in connection with the preparation or examination of any documents relating to the assignment, transfer, license, sub-lease or Colocation Event and the duty on those documents;
- (f) in the case of an assignment or transfer, withdraw any caveat lodged in respect of the Lessee's interest in the Leased Area; and
- (g) comply with any other requirement of the Lessor,

and the Lessor's consent is taken to be conditional on the Lessee complying with the obligations in this clause 16.5.

16.6 Lessee Remains Liable

The Lessee remains fully liable under this Lease even if the Lessee assigns or transfers this Lease or sublets the Leased Area or gives any right (including a licence or a Colocation Event) in relation to this Lease or the Leased Area to any other person (including a Colocator).

16.12 No compensation or claim against the Lessor

- (a) The Lessee is not entitled to any compensation or to make any other claim against the Lessor in relation to the proper exercise of any right given to another person by the Lessor.
- (b) The Lessee is responsible for and indemnifies the Lessor against any Loss resulting from any Claim made by a person to whom a right or interest has been granted by the Lessor in connection with any negligent act or omission of the Lessee or any default by the Lessee under this Lease.

17. HOLDING OVER

If the Lessor consents to the Lessee continuing to occupy the Leased Area after the Expiry Date or after the end of any extended term, the Lessee is a six-monthly Lessee of the Leased Area and:

- (a) the six-monthly tenancy may be terminated by either Party giving to the other at least one month's notice which may expire on any day; and
- (b) the rent is the same as the Rent payable in accordance with clause 4 as varied in accordance with clause 5; and
- (c) all the other provisions of this Lease apply to the six-monthly tenancy (including the variation of Rent under clause 5) except any option to extend this Lease.

18. DEFAULT

18.1 Essential terms

Every obligation of the Lessee under this Lease:

- (a) to pay money;
- (b) not to do something without the Lessor's consent;
- (c) to do something by a particular timeframe; or
- (d) relating to damage to or degradation of the Leased Area or to the state of repair or condition of the Leased Area,

is an essential term of this Lease.

This clause does not prevent any other obligation of the Lessee under this Lease being an essential term.

18.2 Events of Default

An Event of Default occurs if:

- (a) the Lessee repudiates this Lease;
- (b) the Lessee abandons the Leased Area, or ceases to use the Leased Area for the Permitted Use other than for a temporary period;
- (c) the Rent is at any time unpaid for 10 Business Days after becoming due, whether formally demanded or not;
- (d) (subject to clauses 18.2(a) and 18.2(b)) the Lessee breaches this Lease and does not remedy that breach within 10 Business Days (or such longer period as

less:

- (ii) amounts which the Lessor could be reasonably expected to obtain by re-letting the Leased Area until the date on which the Term would have expired if the Lessor had not terminated this Lease before the end of the Term (but the Lessor is not to be taken to be required to accept the same or similar terms as those in this Lease).
- (b) The Lessor's right to recover damages is not affected by the occurrence of any of the following events:
 - (i) the Lessor accepts the Lessee's repudiation or abandonment of this Lease;
 - (ii) the Lessor terminates this Lease by notice or re-entry;
 - (iii) the Lessee has abandoned the Leased Area;
 - (iv) there is a surrender of this Lease by Law.

18.8 Indemnities

- (a) The Lessee indemnifies and must keep indemnified the Lessor against any Claim or Loss resulting from:
 - (i) an Event of Default; or
 - (ii) if this Lease is terminated by the Lessor for any reason:
 - (A) the Lessor re-entering the Leased Area; or
 - (B) the Lessor not receiving the benefit of the Lessee performing the Lessee's obligations under this Lease from the date of termination until the end of the Term,

including in each case, legal costs and expenses relating to any of those matters.

- (b) The benefit of the Lessee performing the Lessee's obligations referred to in subclause 18.8(a)(ii)(B) is to be calculated on the assumption that this Lease continues in force until the end of the Term and taking into account the provisions in this Lease relating to Rent and other payments required by the Lessee.
- (c) This indemnity is not affected by the Lessor accepting a repudiation or abandonment of this Lease by the Lessee.

18.9 Interest on overdue money

The Lessee must pay interest on any amount payable by the Lessee under this Lease from the date the amount becomes due for payment until it is paid. The interest is to be paid on demand and is to be calculated on daily balances. The rate to be applied to each daily balance is the rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* (WA) from time to time.

18.10 Acceptance of Rent or mitigation

The acceptance of Rent or other money owing under this Lease or an attempt by the Lessor to mitigate its loss is not a waiver of a breach by the Lessee of its obligations under this Lease or a surrender by operation of Law.

earlier date on which the Lessor may cause any default by the Lessee in the performance of such obligations to be remedied).

20. FORCE MAJEURE

20.1 Force Majeure Event

For the purposes of this clause 20, a "Force Majeure Event" means an event that prevents a Party from performing its obligations, or receiving the benefit of the other Party's obligations, in whole or part, under this Lease and which is unforeseeable and beyond the reasonable control of the affected Party, including:

- (a) an act of God;
- (b) an explosion or fire;
- (c) a war, riot, civil unrest, insurrection, sabotage or terrorism;
- (d) an epidemic or pandemic or shortages caused thereby;
- (e) industrial action (other than industrial action limited to the affected party);
- (f) inclement weather; and
- (g) a law, rule or regulation of any government or governmental agency, and executive or administrative order, act or requirement of general application;

but does not include:

- (h) a lack or inability to use funds for any reason; or
- (i) any occurrence which results from the wrongful or negligent act or omission of the affected party (including breach of this Lease or other contract) or the failure by the affected party to act in a reasonable and prudent manner; or
- (j) the breakdown of equipment; or
- (k) the failure by a third party to fulfil a contractual commitment with the affected party (other than as a result of any of items (a) to (g) above; or
- (l) or any act or omission of a subcontractor.

20.2 Effect of Force majeure

- (a) A Party is not liable for its inability to perform, or for any delay in performing, any of its obligations under this Lease (other than an obligation to pay Rent or other monies), to the extent that, and during the time that, the inability or delay is caused by a Force Majeure Event.
- (b) If a Party is prevented from performing its obligations under this Lease by a Force Majeure Event, then that Party must:
 - (i) notify the other Party as soon as reasonably practicable of the Force Majeure Event, giving details of the nature of the Force Majeure Event, the effect the Force Majeure Event will have on the Party's performance of its obligations under this Lease (including which obligations it is prevented from performing), and the expected duration of the Force Majeure Event; and

- (d) any act or omission by the Lessee causing cost or expense to the Lessor; and
- (e) obtaining or giving any consent or approval under this Lease,

which includes in each case the Lessor's legal costs and expenses on a full indemnity basis and consultants' and agents' fees.

21.2 Duties and Fees

The Lessee must pay or reimburse the Lessor on demand for all stamp duty, taxes and fees (including fines and penalties attributable to the Lessee) payable in connection with this Lease.

22. MISCELLANEOUS

22.1 Survival

The following clauses of this Lease survive the termination or expiry of this Lease and will continue in full force and effect:

- (a) Clause 1 (Definitions and Interpretation);
- (b) Clause 7 (GST);
- (c) Clauses 9.3, 9.4 and 9.9 (Building Work, Maintenance and Repair and Cleaning);
- (d) Clause 10 (Lessee's Environmental Obligations);
- (e) Clause 11 (Lessee's general obligations);
- (f) Clause 12 (Compliance with laws and requirements);
- (g) Clause 13 (Insurance);
- (h) Clause 14 (Indemnities and Release);
- (i) Clause 15 (Lessor's general rights and obligations);
- (j) Clause 16 (Assignment and subletting) with respect to any obligation of the Lessee to pay the Lessor any costs, expenses or fees or indemnify the Lessor;
- (k) Clause 17 (Holding Over);
- (l) Clause 18.8 (Indemnities);
- (m) Clause 18.9 (Interest on overdue money);
- (n) Clause 19 (Lessee's obligations on termination);
- (o) Clauses 20.3, 20.4 and 20.5 (Force Majeure);
- (p) Clause 21 (Costs and expenses);
- (q) Clause 22.1 (Survival);
- (r) Clause 22.5 (Payments);
- (s) Clause 22.8 (Governing Law and jurisdiction);
- (t) Clause 22.13 (Entire Agreement);

- (b) Each Party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with this Lease. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

22.9 Lessor may act by agent

All acts and things which the Lessor is required or empowered to do under this Lease may be done by the Lessor, the Lessor's Agents or the solicitor of the Lessor.

22.10 Further assurances

Each Party must do all things and execute all further documents necessary to give full effect to the provisions and purpose of this Lease.

22.11 Approvals and consents

- (a) Unless otherwise stated, whenever the Lessor's approval or consent is required under this Lease, the Lessor may give it conditionally or unconditionally. Each approval or consent, to be valid and effective, must be in writing and be given prior to the happening of the event for which the approval or consent is required.
- (b) The Lessee agrees that any failure by it to comply with or perform a condition imposed under clause 22.11(a) will constitute a breach of this Lease by the Lessee.

22.12 Waiver and estoppel

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this Lease by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Lease.
- (b) A waiver given by a Party under this Lease is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No course of dealings between the parties removes the requirement under clause 22.12(b) that a waiver must be in writing to be effective and binding upon the parties.
- (d) No waiver of a breach of a term of this Lease operates as a waiver of any other breach of that term or of a breach of any other term of this Lease.
- (e) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under this Lease by the Lessor does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Lease.

22.13 Entire Agreement

This Lease states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

22.14 Counterparts

This Lease may be executed in any number of counterparts. Each counterpart is deemed an original and all the counterparts together constitute one instrument, which is deemed to be

- (c) 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.

23. POWER OF ATTORNEY

The Lessee for valuable consideration irrevocably appoints the Lessor and every senior officer of the Lessor (jointly and severally) as the Lessee's attorney for the purpose of withdrawing any caveat which the Lessee is obliged to withdraw under this Lease.

In this clause "**senior officer**" means every person designated by the Lessor as a senior officer.

24. NOTICES

24.1 Form of notice

A notice, consent, request, advice, direction, notification or other communication (howsoever described) that may or must be given under or in connection with this Lease is, if given, only valid and effective if it is:

- (a) in writing and signed by the Party giving the notice, consent, direction or other communication or any authorised officer of that Party or its solicitor or agent;
- (b) addressed to the person to whom it is to be given;
- (c) either sent by:
 - (i) pre-paid mail, couriered or hand-delivered to the person's address; or
 - (ii) sent by email to that person's email address and the sender receives confirmation on its server that the message has been transmitted, provided:
 - (A) the notice, consent, direction or other communication is sent as a .pdf attachment to the email and is not sent as a temporary file or link; and
 - (B) the size of the email is less than 10MB; and
- (d) the address or email address to which the notice, consent, request, advice, direction or other communication is sent is as set out in the Schedule or otherwise notified to the sender for the giving of notices, consents, directions or other communications under or in connection with this Lease.

24.2 Receipt

Unless a later time is specified in it, a notice, consent, direction or other communication that complies with this clause 24 takes effect from the time it is taken to be received, which is:

- (a) if sent by courier or email, or is hand-delivered, if received:
 - (i) by 5.00 pm on a Business Day - on that day; or
 - (ii) after 5.00 pm on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (b) if sent by mail, five Business Days after posting.

28. PPSA

28.1 Interpretation

For the purposes of this clause 28:

- (a) **"Lessor's Personal Property"** means all personal property the subject of a security interest granted to or held by the Lessor under this Lease; and
- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

28.2 Further assurance

If the Lessor determines that this Lease (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Lessee agrees to do anything (including without limitation obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Lessor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling the Lessor to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that the Lessor has the priority required by it; and/or
- (c) enabling the Lessor to exercise rights in connection with the security interest.

28.3 No requirement for PPSA notices

The Lessor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

28.4 Priority of the Lessor's interest

Nothing in this Lease shall be taken or construed as an agreement or consent by the Lessor to:

- (a) subordinate the Lessor's interest in the Lessor's Personal Property (or any part thereof) to any other encumbrance or interest affecting the Lessor's Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under this Lease attaches to the relevant collateral.

28.5 Enforcement

To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Lessor of any security interest in the Lessor's Personal Property, the Lessee and the Lessor agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- (a) **(enforcement methods)** sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);

ANNEXURE A

Additional Terms

NONE

Executed by the parties as a Deed on the day, month and year set out above.

Signed for and on behalf of the Conservation and Land Management Executive Body by:


.....

Peter Sharp

Executive Director, Parks and Visitor Services

Department of Biodiversity, Conservation and Attractions

an officer of the Department of Biodiversity, Conservation and Attractions authorised under s38 of the
Conservation and Land Management Act 1984 as delegate of the Chief Executive Officer

in the presence of:

Witness: Signature



Name (Please print)

Dannielle Walter

Occupation (Please print)

Public Servant

Address (Please print)

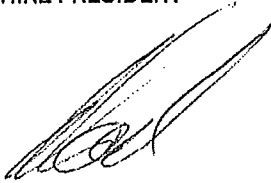
17 Dick Perry Ave Kensington

The Common Seal of the Shire of Gingin was affixed in the presence of:



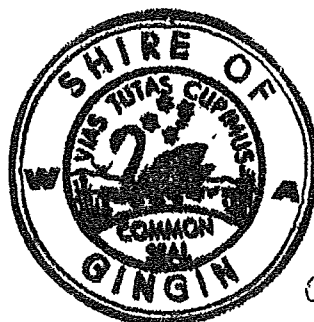
Golin Wayne Fewster *JUSTIN KIMBLETT R.O.F.*

A SHIRE PRESIDENT



Aaron Cook

CHIEF EXECUTIVE OFFICER



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