

STATE FOREST NO. 22

CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY

(LESSOR)

and

SHIRE OF SERPENTINE-JARRAHDALE

(LESSEE)

LEASE NO. 2102/97

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SCHEDULE 1**1. LEASED AREA DETAILS****1.1 Leased Area**

SEE AREA SHOWN HATCHED ON THE ATTACHED LEASE PLAN

1.2 Land

Land means State Forest No. 22

1.3 Lessor's Property

Nil

2. TERM DETAILS**2.1 Original Term**

The period of 25 years from the Commencement Date to the Expiry Date.

2.2 Commencement Date

Commencement date [to be inserted]

2.3 Expiry Date

Expiry date [to be inserted]

2.4 Further Term

Nil

3. RENT DETAILS**3.1 Rent**

Rent for each year of the Lease on and from the Commencement Date is \$35,000.00 as varied during the Term in accordance with clauses 5.1 and 5.2.

3.2 Rent Payment Date

To be paid annually in advance, with the first Rent Payment Date on the Commencement Date, and all subsequent Rent Payment Dates on each anniversary of the Commencement Date within 30 days of the receipt of an invoice issued by the Lessor.

3.3 Address for Payment of Rent

Bank	Commonwealth Bank
Branch	St Georges Tce, Perth WA
Account Name	Department of Biodiversity, Conservation and Attractions
BSB	██████
Account No.	██████████

3.4 Fixed Rent Review Date

Each anniversary of the Commencement Date during the Term.

3.5 Fixed Rent Review Percentage

3%

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4. PERMITTED USE OF THE LEASED AREA**4.1 Permitted Use**

Constructing, maintaining and operating a telecommunications facility 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, Bentley WA 6983
- (b) Email: leasing@dbca.wa.gov.au
- (c) Attention: Leasing Officer – Tourism and Concessions Branch

6.2 Notices to be sent to Lessee

- (a) Address: *[insert]*
- (b) Email: *[insert]*
- (c) Attention: *[insert]*

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DEED OF LEASE

is made on between the following parties:

The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY, a body corporate established under section 36 of the *Conservation and Land Management Act 1984* (WA), of Locked Bag 104, Bentley Delivery Centre, Bentley Western Australia 6983 ("**Lessor**")

AND

The SHIRE OF SERPENTINE JARRAHDALÉ of 6 Paterson Street, Mundijong Western Australia 6123 ("**Lessee**")

Each a "Party", and together, the "Parties".

RECITALS

- A. The Conservation and Parks Commission is established under section 18(1) of the CALM Act.
- B. Pursuant to section 7(1) of the CALM Act the land in [INSERT NATIONAL PARK/STATE FOREST NO.] (the "**Land**") is vested in the Conservation and Parks Commission.
- C. Pursuant to Section 97 of the CALM Act, the Chief Executive Officer of the Department (the "**CEO**") has the power to grant a lease in respect of the Land for a term not exceeding 99 years on such terms and conditions as the CEO thinks fit.
- D. Section 36 of the CALM Act allows for the Lessor to be established and to be governed by the CEO. Section 37 of the CALM Act allows for the Lessor, as a body corporate, to perform functions of the CEO, including to grant this Lease.
- E. The Lessee has applied to the Lessor for a lease of a portion of the Land together with the Lessor's Property in, or forming part of, the leased area (collectively the "**Leased Area**").
- F. The Lessor has agreed to lease the Leased Area to the Lessee for the Term on the terms and conditions set out in this Lease.
- G. Pursuant to section 97(3) of the CALM Act, this Lease shall be laid before each House of Parliament within 14 sitting days of its execution by all parties and will be incorporated into Hansard.
- H. The Lessee acknowledges that the Leased Area and surrounding Land is environmentally significant and sensitive and that it will seek to protect the environmental values throughout the Term of this Lease.

THE PARTIES AGREE AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease, unless the context requires otherwise:

Adjoining Land means that portion of the Land which is within a 100 metre radius of the centre of the Leased Area.

Adjoining Land Purpose has the meaning given in clause 8.2(e).

Annexures means any and all of the Annexures at the end of this Lease, which Annexures are incorporated in and form part of this Lease.

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.

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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.

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.

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

Crown Land Rent Review Notice has the meaning give in clause 5.2(a)(i).

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.

Facility has the same meaning as in the *Telecommunications Act*.

Fixed Rent Review means a rent review undertaken in accordance with clause 5.1.

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Fixed Rent Review Date means each of the dates specified in item 0 of the Schedule on and from which the Lessor may vary the Rent under clause 5.1.

Forest Produce has the same meaning as in the CALM Act.

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

GST means GST within the meaning of the GST Act.

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

Insolvency Event means the happening of any of the following events in relation to the Lessee:

- (a) the Lessee is unable to pay all the Lessee's debts as and when they become due and payable or the Lessee has failed to comply with a statutory demand as provided in section 459F of the Corporations Act, or the Lessee is taken to be unable to pay the Lessee's debts under section 585 of the Corporations Act;
- (b) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;
- (c) a corporation enters into voluntary liquidation;
- (d) an order is made for the administration, dissolution or winding up of a corporation;
- (e) an application is made for the administration, dissolution or winding up of a corporation which application is not stayed within 10 Business Days after being made;
- (f) a resolution is passed for the administration or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other Party;
- (g) the appointment of a controller (as defined in section 9 of the Corporations Act) of any of the Lessee's assets;
- (h) the Lessee proposes to enter into or enters into any form of arrangement (formal or informal) with the Lessee's creditors or any of them, including a deed of company arrangement;
- (i) the Lessee becomes an insolvent under administration, as defined in section 9 of the Corporations Act, or action is taken which could result in that event;
- (j) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; and
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

Land means the area of land described in item 1.2 of the Schedule.

Law means all present and future laws including:

- (l) all statutes, regulations, proclamations, ordinances or by-laws, present or future, and whether State, Federal or otherwise, and includes Environmental Law;
- (m) Authorisations;
- (n) rules or principles of the common law or equity; and

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(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,

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ducts, cables, wiring, connections, equipment and facilities, but does not include any part of the Lessee's Improvements.

State means the State of Western Australia and includes any department, agency, emanation or instrumentality of the State of Western Australia, the Parliament and any Minister, whether body corporate or otherwise, and each of their respective employees, agents, contractors, servants, advisors and consultants.

Surrounding Area means the land or water adjacent to or in the vicinity of the Leased Area and the air generally above the Leased Area, and includes an affected site within the meaning of that term as defined in the *Contaminated Sites Act 2003 (WA)*.

Telecommunications Act means the *Telecommunications Act 1997 (Cth)*

Telecommunications Network has the same meaning as in the *Telecommunications Act*.

Telecommunications Service has the same meaning as in the *Telecommunications (Interception and Access) Act 1979 (Cth)*.

Term means the original term for which the Leased Area is let by the Lessor to the Lessee as referred to in item 2.1 of the Schedule and every period of holding over, every renewed or extended term of this Lease and any other period during which the Lessee occupies or uses the Leased Area with the Lessor's express or implied consent.

1.2 Interpretation

In this Lease, unless the context indicates otherwise:

- (a) a reference to the Lessee includes the Lessee's employees, agents, contractors, sublessees, licensees, customers, invitees and any other person who is in the Leased Area with the Lessee's permission (direct or implied);
- (b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the Commencement Date;
- (c) the singular includes the plural and vice versa;
- (d) references to a "person" includes an individual, a firm, a body corporate, an unincorporated association, an Authority, a joint venture (whether incorporated or unincorporated) or a partnership;
- (e) an obligation, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- (f) each obligation of a Party to this Lease has effect as a covenant given in favour of the Party who may enforce the obligation;
- (g) if a period of time is expressed to be calculated from or after a specified day, that day is not included in the period;
- (h) a reference to a day is a reference to the 24-hour period commencing at midnight;
- (i) a reference to time is a reference to Western Australian Standard Time;
- (j) a reference to a month is to a calendar month and a reference to a year is a calendar year;
- (k) headings are for convenience only and do not affect the interpretation of this Lease;

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- (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

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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.

2. GRANT OF LEASE

The Lessor leases the Leased Area to the Lessee pursuant to the *CALM Act* for the Term on the terms and conditions of this Lease and the Lessee accepts this Lease.

3. QUIET ENJOYMENT

For as long as the Lessee complies with this Lease, the Lessee may occupy and use the Leased Area during the Term without disturbance or interference by the Lessor except as permitted by this Lease or by Law.

4. RENT

4.1 Amount of Rent

The Lessee must pay to the Lessor the Rent on and from the Commencement Date for the Term.

4.2 Manner of Payment

The Lessee must pay to the Lessor the Rent:

- (a) by consecutive annual payments in advance on each Rent Payment Date;
- (b) at the place and in the manner notified by the Lessor in writing at any time or in the absence of that direction, at the address specified in item 3.3 of the Schedule; and
- (c) in accordance with clause 22.5 of this Lease.

If this Lease is terminated other than by the expiry of the Term, the Rent payable by the Lessee to the Lessor in respect of that portion of the year prior to the termination of this Lease will be a proportionate part of the Rent for that year subject to the provisions of clause 18.

5. VARIATION OF RENT

5.1 Fixed Rent Review

The Rent is to be increased on each Fixed Rent Review Date, by the percentage set out in Item 3.5 of the Schedule unless the Rent is reviewed in accordance with clause 5.2.

5.2 Crown Land Rent Reviews

- (a) The Lessor may review the Rent payable by the Lessee under this Lease and vary the Rent to an amount that is the Crown Land Rent during the Term so long as:
 - (i) the Lessee is given at least 12 months' notice of the Lessor's intention to conduct a Crown Land Rent Review and vary the rent accordingly under this clause 5.2 (**Crown Land Rent Review Notice**); and
 - (ii) Crown Land Rent Reviews are carried out no more than once every 5 years during the Term.
- (b) The Lessor will give the Lessee notice of the varied Rent promptly after completing each Crown Land Rent Review. The Lessee, upon receipt of such notice, may within 30 days require the Lessor to have the amount of the varied Rent determined by a mutually acceptable Valuer either:

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- (i) agreed to by each of the Parties; or
 - (ii) failing such agreement, appointed by the President for the time being of the Australian Property Institute (WA Division) at the request of either Party.
- (c) The Valuer appointed under this clause will act as an expert and must determine the Crown Land Rent for the Leased Area within 40 Business Days of the Valuer's appointment. If the Crown Land Rent determined by the Valuer under this clause 5.2(c) differs to the Crown Land Rent determined by the Lessor under clause 5.2(a), the varied Rent will be the greater of:
- (i) the Rent payable by the Lessee immediately before the Crown Land Rent Review; and
 - (ii) the Crown Land Rent determined by the Valuer under this clause 5.2(c).
- (d) The varied Rent determined in accordance with this clause 5.2 takes effect and is payable on and from the end of the notice period required by clause 5.2(a)(i).
- (e) The fees charged by the Valuer shall be borne equally by the parties to this Lease.

5.3 Omitted Rent Reviews

No delay by the Lessor in undertaking any Fixed Rent Reviews or Crown Land Rent Reviews of the Rent prevents the Lessor from requiring at any time that the Rent must be reviewed with effect from the respective dates for review of the Rent specified in clauses 5.1 and 5.2 respectively.

6. OUTGOINGS

6.1 Rates and Taxes

- (a) The Lessee must pay the Rates and Taxes either to the relevant Authority before those Rates and Taxes become overdue or, in the case of any Rates and Taxes imposed on the Lessor, to the Lessor as required by the Lessor whenever the Rates and Taxes become payable.
- (b) If any of the Rates and Taxes are not assessed separately on the Leased Area but also on other property which includes the Leased Area, the amount which the Lessor can require the Lessee to pay is the same proportion of those Rates and Taxes as the area of the Leased Area bears to the area of the property the subject of the assessment.
- (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.

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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 the Lessor's technical requirements and any licensing requirements the latter shall prevail to the extent of such inconsistency.

8.2 Adjoining Land

- (a) From time to time, the Lessee may by notice in writing to the Lessor request the use of the Adjoining Land for an Adjoining Land Purpose during the Term. The Lessee's notice must specify the requested Adjoining Land Purpose, the period of use and any other information reasonably requested by the Lessor.
- (b) To the extent that the Adjoining Land is land vested in the Lessor and there are no legal restrictions in doing so, the Lessor may grant to the Lessee the right to use the Adjoining Land for the requested Adjoining Land Purpose, in accordance with any reasonable stipulations by the Lessor. After using the Adjoining Land on each specific occasion requested by the Lessee, the Lessee will restore the surface of the Adjoining Land as so used as near as practicably possible to its state prior to such

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use by the Lessee to the reasonable satisfaction of the Lessor. The provisions of clause 14 will apply to the exercise by the Lessee of its rights pursuant to this paragraph (b).

- (c) In this clause 8.2, the **Adjoining Land Purpose** means:
- (i) to facilitate the installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the Lessee's Facilities on the Leased Area; or
 - (ii) the placement and maintenance of guy anchors in such positions on the Adjoining Land and in such numbers as are reasonably required by the Lessee for the purpose of supporting its antennae support structure erected on the Leased Area and to run guy wires from those guy anchors to its antenna support structure.

8.3 Access ways

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 via access ways nominated from time to time by the Lessor for the purpose of using the Leased Area and exercising its rights under the Lease at all times of the day and night during the Term.

8.4 Lessee's own enquiries and no representation

- (a) The Lessee has relied on its own enquiries about:
- (i) the suitability of the Leased Area for any purpose to which it is to be put and not on any representation from the Lessor;
 - (ii) all planning and any other requirements, prohibitions or restrictions applying to the Leased Area under any Law or as a result of the requirements or orders of any Authority; and
 - (iii) the suitability of the Services (if any) that supply the Leased Area and their state of repair.
- (b) The Lessee acknowledges that no representation was given by the Lessor that the Leased Area or any part of the Lease Area is suitable for the carrying out of the Permitted Use, including any development of the Leased Area or the carrying out of the Lessee's business or other activities.
- (c) Any defect, problem or other issue which is found to exist on, around or in respect to the Leased Area in no way relieves the Lessee of its obligations under this Lease and the Lessee will be responsible and 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.

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- (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 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;
 - (ii) carry out the work in a safe and proper manner and, if applicable, strictly in accordance with the plans and specifications for the work approved by the Lessor, including any conditions of approval;
 - (iii) use only good quality materials and employ only qualified, skilled and competent persons; and
 - (iv) pay any costs incurred by the Lessor to:
 - (A) provide its approval; and
 - (B) supervise the work if the Lessor requires,
 including fees paid to architects, engineers, contractors or other advisors.

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- (d) Subject to compliance with this clause 9.2, for the avoidance of doubt, the Lessee is authorised to install Facilities on the Leased Area without relying on the provisions of Division 3 of Schedule 3 of the *Telecommunications Act*.

9.3 Maintenance and repair

Subject to compliance with clause 9.2, the Lessee must at its cost maintain the Leased Area and the Lessee's Improvements in safe repair, order and condition during the Term fair wear and tear excepted.

9.4 Services

- (a) The Lessee acknowledges that the Lessor has no obligation to and is not responsible for providing any Services to the Leased Area or maintaining, repairing or replacing any Services within the Leased Area or outside of the Leased Area where those Services exist for the purposes of providing Services to the Leased Area.
- (b) If the Lessee requires any additional Services during the Term that are not already present on, in or under the Leased Area as at the Commencement Date, then the Lessee must obtain the Lessor's approval in writing and, if such approval is given, the Lessee must construct, install and connect the additional approved Services at the Lessee's cost.
- (c) The Lessee acknowledges its obligations to maintain and repair the Leased Area under clause 9.3 of this Lease apply to the Services. The Lessee must also maintain and repair all damage to Services outside of the Leased Area where those Services exist for the purposes of providing Services to the Leased Area.
- (d) The Lessee is responsible for obtaining permission to access land and all Authorisations to construct, install and connect any Services outside of the Leased Area required for the purposes of the Leased Area.
- (e) The supply of electricity to the Leased Area for the purpose of the Permitted Use 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 Leased Area. 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.

9.5 Fencing and signs

- (a) In the event that the Leased Area is not currently fenced or secured, the Lessee must as soon as reasonably practicable after the Commencement Date, but having 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.

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9.6 Cabling

For the purpose of operating any Telecommunications Network and Telecommunications Service by any of the Lessee's sublessees, licensees, sub-licensee or co-locators, 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 significance and must comply with reasonable directions provided in response to the notice or report.

9.9 Cleaning and waste management

- (a) The Lessee must, at its own cost:
 - (i) keep the Leased Area and, where the Lessee is able to lawfully do so, the Surrounding Area for a distance of 10 metres from the Leased Area boundary, clean and tidy and free from rubbish, vermin and pests;
 - (ii) ensure the Lessee's Group do not do anything to cause rubbish, vermin or pests in the Leased Area and the Surrounding Area;

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- (iii) remove any graffiti from the Leased Area as soon as reasonably practicable after becoming aware of that graffiti appearing on the Leased Area; and
 - (iv) comply with the Lessor's directions for the disposal and recycling of rubbish and, if no directions are given, the Lessee must store all rubbish in a proper and hygienic manner within the Leased Area and attend to its prompt disposal in an appropriate recycling or rubbish disposal site outside the Leased Area.
- (b) The Lessee must not dispose of rubbish in any bins provided for public use.

9.10 Asbestos Management

The Lessee shall at all times throughout the Term, ensure that it complies with all relevant Australian standards and legal requirements which apply in relation to the management and removal of asbestos (if any) at or from the Leased Area.

9.11 Theft or Damage of Equipment

The Lessee will take adequate precaution to ensure that the Lessee's Improvements and equipment are protected against theft or damage.

10. LESSEE'S ENVIRONMENTAL OBLIGATIONS

10.1 Fire prevention and emergency response

- (a) The Lessee will observe perform and comply with the provisions of the *Bush Fires Act 1954 (WA)* to the extent that Act applies to the Leased Area. Any breach of that Act 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 Leased Area except to the extent necessary for the purpose referred to in clause 10.1(a) and then only with the written approval of the Lessor or any other person duly authorised by the Lessor to give such approval.
- (c) If the Lessee or any of the Lessee's Group causes a fire to be lit on or at the Leased Area 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 repair any damage caused by 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 Leased Area as reasonably directed by the Lessor and to the reasonable satisfaction of the Lessor.
- (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.

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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 undertaken and keep all such Authorisations in full force and effect throughout the Term;
 - (ii) use the Leased Area in a manner which complies with each Environmental Law and each Authorisation held by the Lessee in accordance with sub-clause 10.3(a)(i); and
 - (iii) not do or omit to do any act which may directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the

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Leased Area or any conduct or activity relating to the use or occupation of the Leased Area.

- (b) Nothing in this Lease is to be taken as exempting the Lessee from or limiting the obligation of the Lessee to comply with all Environmental Law.

10.4 Protection of vegetation and soil

- (a) The Lessee must take all reasonable actions necessary to:
- (i) protect the trees and other vegetation growing on the Leased Area; and
 - (ii) prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Leased Area.
- (b) The Lessee may only use timber on the Leased Area for fencing or other authorised improvements and only after obtaining the Lessor's written consent.
- (c) This Lease does not grant to the Lessee any rights to Forest Produce on the Leased Area.

10.5 Prevention of diseases and pests

- (a) The Lessee must:
- (i) comply with all of the Lessor's directions relating to the prevention of, or minimising the impact or spread of, any diseases or pests in connection with the Leased Area;
 - (ii) arrange for other measures as may be necessary (including as directed by the Lessor) to prevent the spread of *Phytophthora cinnamomi* (dieback); and
 - (iii) arrange for other measures as may be necessary (including as directed by the Lessor) to ensure that no animals (as defined in the *Biodiversity Conservation Act 2016 (WA)*) are introduced to the land. This includes the reporting requirements under the *Agriculture and Related Resources Protection Act 1976 (WA)*.
- (b) The Lessee must control declared plants and declared animals as defined in the *Agriculture and Related Resources Protection Act 1976 (WA)* in relation to the Leased Area, as required by that Act.

10.6 Dangers or threats to the public

- (a) The Lessee must take all measures necessary to prevent accidents and to protect the safety of the Lessee's Group and the public generally on the Leased Area, including warning the public of any actual or potential dangers or threats.
- (b) If the Lessee believes it needs to prune or remove any vegetation which it considers is in a dangerous condition or which may threaten the safety of any 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:

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- (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 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 (solid and liquid), oil and other pollutants from the Leased Area at a place and in a manner required or approved by the Lessor or by an Authority 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 Leased Area at regular intervals by means of the service provided by the relevant Government Agency or a contractor engaged and paid for by the Lessee.

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10.8 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 Leased Area 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 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 any structure or installation which the Lessor erects or installs (or gives approval to another person to erect or install) within or upon the Adjoining Land after the date of this Lease does not result in radio communications interference to the Lessee's Facility on the Leased Area.
- (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, except in the event of an emergency which requires the other equipment to remain operational.

10.9 Tree safety

- (a) The Lessee agrees to take reasonable precautions to manage the risks associated with falling trees and branches in the Leased Area.
- (b) The Lessee accepts full responsibility for any loss, damage or injury caused to any person or property by falling trees or branches in the Leased Area, and shall indemnify the Lessor against any claim, loss or injury resulting from falling trees and branches in the Leased Area.

11. LESSEE'S GENERAL OBLIGATIONS

11.1 Obligations

Without limiting any other obligations of the Lessee under this Lease, the Lessee must:

- (a) conduct the Lessee's business or activities in the Leased Area in a safe and proper manner;
- (b) ensure the health and safety of Lessee's Group (including the Lessor and Lessor's Agents who enter the Leased Area);
- (c) ensure that the Lessee's officers, employees, contractors, agents, service suppliers, sublessees, licensees and sub-licensees maintain a high standard of professional and courteous conduct towards the Lessor, the Lessor's Agents and the general public;
- (d) use its best endeavours to ensure that the Lessee's Group comply with all Laws applicable to the Land and any rules that the Lessor may make from time to time;
- (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;

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- (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;
- (k) bring on the Leased Area any heavy machinery or other plant and equipment which is not reasonably necessary or proper for the Permitted Use, and in no circumstances is any such machinery, plant or equipment to be of such nature or size as may cause any damage to or degradation of the Leased Area; or

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- (l) vacate the Leased Area, except as required by this Lease, or abandon the Leased Area.

11.3 No absolute caveat

The Lessee must not lodge an absolute caveat affecting the Leased Area to protect the Lessee's interest under this Lease.

11.4 Lessee's warranty

The Lessee warrants that it has the power to enter into this Lease and to perform and observe the Lessee's covenants contained in this Lease.

11.5 Cost of complying with obligations

Unless otherwise stated in this Lease, the Lessee must pay the cost of performing or complying with every obligation of the Lessee under this Lease.

12. COMPLIANCE WITH LAWS AND REQUIREMENTS

- (a) At all times during the Term, the Lessee must at its expense:
- (i) comply with all applicable requirements of any Authority and all Laws relevant or applicable to, or in connection with, this Lease, the Leased Area, the Lessee's Improvements and the Lessee's activities in relation to the Leased Area;
 - (ii) obtain, maintain and comply with all Authorisations required to use the Leased Area for the Permitted Use; and
 - (iii) pay when due to the relevant Authority all application and other fees of and incidental to the obtaining and maintaining of the Authorisation of any relevant Authority.
- (b) Unless and only to the extent expressly provided otherwise elsewhere in this Lease, nothing in this Lease relieves the Lessee from its obligations under, and the Lessee shall comply with, the *Telecommunications Act* and the Code of Practice, and any determination or other instrument made under or pursuant to any of them.

13. INSURANCE

13.1 Lessee's insurance

- (a) Throughout the Term, the Lessee must effect and maintain with a reputable insurer at the Lessee's expense the following insurance policies in the names of the Lessee and Lessor for their respective rights and interests:
- (i) public liability and products liability insurance of at least the amount specified in item 5.1 of the Schedule for each occurrence in the Leased Area and unlimited as to the number of occurrences;
 - (ii) a property insurance policy to cover the Leased Area (including the Lessor's Property) and the Lessee's Property (including vehicle insurance) to their full insurable replacement value against all usual risks against which a prudent tenant should ordinarily insure, including but not limited to loss or damage occasioned by fire, fire-fighting activities, fusion, explosion, lightning, civil commotion, storm, tempest, flood, earthquake, burglary and malicious damage;

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- (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 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.
- (b) Each policy of insurance effected and maintained as required by clause 13.1(a) must:
- (i) provide that each party named in the insurance policy is to be treated as separate insured parties and the insurers waive rights of subrogation against the Lessor and the State;
 - (ii) include a cross liability endorsement for the benefit of the Lessor and the State so that the insurance policy operates in the same manner as if there were a separate policy of insurance covered each such party;
 - (iii) provide that any breach of the conditions of the insurance policy by an insured other than the Lessor or the State must not in any way prejudice or diminish any rights which the Lessor has under the insurance policy;
 - (iv) provide that the insurance policy is primary with respect to the interests of the Lessor and the State, and any other insurance or self-insurance arrangements maintained by the Lessor or the State is in excess to and not contributory with the insurance policy; and
 - (v) provide that a notice of claim given to the insurer by an insured other than the Lessor will be accepted by the insurer as a notice or claim given also by the Lessor.

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;

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- (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.
- (b) If the Lessee or Lessee's Group does or causes or omits to do anything which has the effect of invalidating or avoiding any policy of insurance taken out by either the Lessor or the Lessee, or by virtue of which the insurer may lawfully refuse a claim in whole or in part, then the Lessee must pay on demand any resulting cost, expense, injury, damage, liability or loss which the Lessor suffers, sustains or incurs and (without limiting any other rights or remedies of the Lessor) must pay to the Lessor on demand any increased amount of premium which may be charged on any such insurance.
- (c) If the Lessee or Lessee's Group does or causes or omits to do anything which causes the Lessor to claim on any policy of insurance taken out by the Lessor, the Lessee must pay any excess payable on that policy in respect of or in consequence of that claim to the Lessor on demand.

13.5 No limitation of other liabilities

Nothing in this clause 13 limits the Lessee's other liabilities or obligations under this Lease or restricts the Lessee from insuring for sums or risks greater than those required under this Lease.

14. INDEMNITIES AND RELEASE

14.1 Indemnities by the Lessee

- (a) The Lessee indemnifies and must keep indemnified the Lessor and the State from and against any and all Claims and Loss incurred or suffered (by either or both of the Lessor and the State) that is caused by, contributed to or arises out of or in connection with (whether directly or indirectly):
 - (i) any breach of this Lease by or on behalf of the Lessee;
 - (ii) the use or occupation of the Leased Area by the Lessee or the Lessee's Group;
 - (iii) any work carried out by, for or on behalf of the Lessee on or in respect to the Leased Area;
 - (iv) the Lessee's activities, operations, business or other use of any kind under this Lease;

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- (v) the presence of Contamination, Pollution or Environmental Harm in, on or under the Relevant Land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Group;
- (vi) any act, omission or default of the Lessee or the Lessee's Group;
- (vii) any act, omission or default of the Lessee that affects, prevents or interferes with a third party exercising a right or interest granted pursuant to clause 16.10 of this Lease;
- (viii) any danger or hazard created, or made worse, by the Lessee or the Lessee's Group; or
- (ix) any fire which starts on the Leased Area unless the Lessee can prove to the reasonable satisfaction of the Lessor that the fire:
 - (A) was not caused by the Lessee's negligent or unlawful act or omission or the Lessee's default under this Lease; or
 - (B) was started by a cause beyond the Lessee's reasonable control,
 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

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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:
- (i) any Loss which may arise in respect of any accident or damage to any property, or death or injury to, or illness of, any person, of any nature in or near the Leased Area;
 - (ii) loss or malfunction of or damage to Lessee's Improvements or any fixtures or personal property of the Lessee;
 - (iii) all Claims and Losses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Relevant Land at any time throughout the Term;
 - (iv) any act, omission or default of any other occupier (including a Colocator) of the Land (including the Leased Area); and
 - (v) any breakdown in, or interruption or defective operation of any Service or associated equipment,

except to the extent that such loss or damage is caused by the gross negligence of the Lessor.

- (c) The obligations of the Lessee under this clause 14.2 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.

14.3 Part 1F of the Civil Liability Act excluded

Should the Lessee actually or allegedly commit or be responsible for the commission of a tortious act or contractual breach, Part 1F of the *Civil Liability Act 2002 (WA)* is excluded from this Lease and its operation.

15. LESSOR'S GENERAL RIGHTS AND OBLIGATIONS

15.1 Exercise of rights under the CALM Act

The Lessor reserves the right for it, and for Lessor's Agents, to enter the Leased Area at any time in order to exercise any right, power or authority which the Lessor (or another agent of the State) has under the CALM Act. The Lessee is not entitled to any compensation or to make any other claim against the Lessor for anything done or not done by the Lessor on the Leased Area in the exercise of any right, power or authority under the CALM Act.

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15.2 Right to enter

- (a) The Lessor or the Lessor's Agents may, after giving reasonable notice to the Lessee (or in an emergency, without notice), enter the Leased Area to do any one or more of the following things:
- (i) inspect the state of repair and condition of the Leased Area;
 - (ii) view the condition of any buildings or Lessee's Improvements at any time sanctioned to be erected thereon;
 - (iii) remove anything which is actually or potentially harmful or dangerous;
 - (iv) carry out such duties and exercise such powers upon the Leased Area as may be necessary or expedient to carry out or exercise in the administration or for the purposes of the CALM Act or any other enactment or any regulation made thereunder;
 - (v) anything which should have been done by the Lessee but which has not been done to the Lessor's satisfaction, or at all; and
 - (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 may be subject to conditions.

16.2 Colocation Event

- (a) The Lessee must obtain the Lessor's prior written consent to a proposed Colocation Event in respect of the Leased Area in accordance with clause 16.4.
- (b) The Lessee is to provide to the Lessor in respect of a proposed Colocation Event:
 - (i) the name, address and Australian Company Number (if any) of the Colocator;
 - (ii) if the Colocator is not a natural person, the name and contact details of a natural person who is authorised to act on behalf of the Colocator in an emergency, at any time of the day;
 - (iii) details of the Colocator's actual or intended use of the Leased Area;
 - (iv) the area of the Leased Area intended to be used by the Colocator;
 - (v) the period or periods during which the Colocator intends to use the Leased Area, by reference to specific dates, and
 - (vi) a copy of the colocation notice received from the Colocator and the proposed documentation to be entered into between the Lessee and the Colocator.
- (c) The Lessee is to provide any details or documents referred to in subclause (b) as may be requested by the Lessor from time to time or which may be relevant to the matters referred to in subclause (b) in respect of any or all Colocation Events, which are to be current as at the date of the Lessor's request.
- (d) Nothing in this clause 16.2 affects or derogates from the Lessor's rights and the Lessee's obligations under and referred to in clause 16.1.

16.3 Colocation to be granted in good faith

- (a) In furtherance of the National Competition Policy principles, the Lessee will negotiate in good faith to permit the colocation of the telecommunications equipment of any licensed carrier wishing to become a Colocator upon any Lessee's Improvements, to the full extent of the Lessee's statutory or other obligations.

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- (b) In any event, the Lessee must not exceed the time period specified in any applicable facilities access code or other relevant Law or administrative instrument made pursuant to the *Telecommunications Act* or the *Competition and Consumer Act 2010* (Cth).

16.4 Requirements for Consent

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 16.2(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, sublessee 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 16.8 gives the Lessor a guarantee and indemnity as required by that clause.
- (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 16.4.

16.5 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).

16.6 Change in Control

- (a) For the purposes of this clause 16.6, the terms "**Control**", "**Subsidiary**" and "**Holding Company**" each have the same meaning as the corresponding term in the Corporations Act.

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- (b) If 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.
- (c) If the Lessee is a Subsidiary a change in Control includes a change in Control of its Holding Company.

16.7 Exclusion of Statutory Provisions

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

16.8 Guarantee required

If the Lessee at any time intends to assign or transfer this Lease or if clause 16.6 applies, and if the Lessor requests, the Lessee must obtain a guarantee of the assignee's, transferee's or lessee's obligations under this Lease from the directors and principal shareholders of the assignee, transferee or lessee (if a company) or any other person reasonably required by the Lessor. The guarantee is to be on terms reasonably acceptable to the Lessor. In this clause 16.8 "guarantee" means guarantee and indemnify.

16.9 Fees

The Lessee must pay to the Lessor on demand all fees and expenses payable by the Lessor to any agent or consultant engaged by the Lessor in connection with a proposed assignment or sub-letting by the Lessee.

16.10 Dealing by Lessor with the Leased Area

- (a) The Lessor may:
 - (i) transfer, mortgage, charge, licence or encumber the Land (including the Leased Area) or any part of it or any right, benefit, money or interest under this Lease without the Lessee's consent; or
 - (ii) grant easements, licences or other rights or interests of any kind to any person over the Land (including the Leased Area) at any time so long as this does not unreasonably interfere with the Lessee's use of the Leased Area for the Permitted Use.
- (b) Without limiting clause 16.10(a), the rights and interests which the Lessor may grant include:
 - (i) the right to cut down and remove timber or other vegetation from the Leased Area, the right to draw water or the right to excavate and remove rocks, earth, soil or other materials from the Leased Area; and
 - (ii) a licence or some other right to any person who is lawfully co-locating on the Lessee's Improvements, including but not limited to any tower and equipment shelter, for a purpose consistent with this Lease on the Leased Area.

16.11 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.

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- (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 specified by the Lessor) after being given a notice by the Lessor requiring the Lessee to remedy that breach;
- (e) a judgment, order or a Security Interest is enforced, or becomes enforceable, against the Lessee's interest in this Lease or the Lessee's Improvements;

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- (f) an Insolvency Event occurs in respect of the Lessee;
- (g) the Lessee commits more than 3 breaches of this Lease in any 180 day period (whether any of those breaches are remedied or not); or
- (h) the Lessee fails to comply with any other requirement of this Lease, which failure expressly constitutes an Event of Default for the purposes of this Lease.

18.3 Lessor's right to terminate

If an Event of Default occurs, the Lessor may terminate this Lease by:

- (a) re-entering the Leased Area without notice; or
- (b) notice to the Lessee.

18.4 Lessee's right to terminate

If:

- (a) any application for a required consent to a permit for the installation and use of the Leased Area 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;
- (b) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant radio-communications interference; or
- (c) the Lessee no longer requires the Leased Area for the Permitted Use,

then the Lease may be terminated immediately by written notice by the Lessee.

18.5 Termination due to Government Agency

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

18.6 Effect of Termination on Sub-lease, Licence and Sub-licence Arrangements

Should this Lease be terminated for any reason then any sub-lease (at any tier), licence or sub-licence (at any tier) or Colocation Event will also terminate on the same date that this Lease terminates.

18.7 Damages

- (a) If the Lessee defaults by not performing or complying with any obligation which is an essential term, the Lessor is entitled to:
 - (i) recover damages for Losses over the whole Term, including Losses caused by the non-payment of money by the Lessee over that period, even if this Lease is terminated by the Lessor as a result of an Event of Default before the Expiry Date or the end of any extended term or period of holding over;

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

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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.

19. LESSEE'S OBLIGATIONS ON TERMINATION

19.1 Lessee to vacate

The Lessee must:

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- (a) at or prior to the Expiry Date (unless there is in place after this Lease a further lease between the Lessor and the Lessee), earlier termination of the Lease or such other date as the Lessor and the Lessee agree in writing, vacate the Leased Area and remove all the Lessee's Improvements from the Leased Area and the Adjoining Land to the extent requested by the Lessor, including cables and other equipment erected or brought by the Lessee onto the Leased Area and the Adjoining Land; and
- (b) rehabilitate the Leased Area and the Adjoining Area as near as reasonably practicable to their condition as at the Commencement Date or to the satisfaction of the Lessor, such activity to rehabilitate to be completed within 90 days of the Expiry Date or earlier termination as the case may be but if the weather conditions at the Expiry Date or earlier termination of the Term are not favourable for rehabilitation, within such other period as the Parties agree.

19.2 Removal of Lessee's Improvements

- (a) If the Lessee does not comply with clause 19.1(a), the Lessee's Improvements shall at the option of the Lessor become the property of the Lessor (without any entitlement by the Lessee to compensation in respect thereof).
- (b) If the abandoned Lessee's Improvements are found to contain asbestos or if the Lessor does not assume ownership of any of the Lessee's Improvements under sub-clause (a), the Lessor may remove the Lessee's Improvements from the Leased Area and the Adjoining Area at the cost of the Lessee and either store it at the risk and cost of the Lessee or treat the Lessee's Property as abandoned and deal with it in any manner the Lessor chooses at the Lessee's cost, and may rehabilitate the Leased Area and the Adjoining Area to the Lessor's satisfaction at the Lessee's cost.

19.3 Risk

The Lessee's Improvements remain at the Lessee's risk at all times before and after the termination of this Lease, except for any property which the Lessor elects to become the property of the Lessor under clause 19.2(a), which property is at the Lessor's risk from the date of election by the Lessor.

19.4 Survive Termination

The Lessee's obligations under this clause 19 shall survive termination of this Lease.

19.5 Recovery of Damages

- (a) For the purposes of this clause 19.5, **Liquidated Damages** means a daily sum equal to $1/365^{\text{th}}$ of the aggregate of the Rent and Rates and Taxes payable by the Lessee under this Lease for the 12 months immediately preceding the date of the expiry or termination of this Lease.
- (b) Without prejudice to any other right or remedy of the Lessor contained or implied in this Lease, the Lessor may recover from the Lessee, and the Lessee must pay to the Lessor, Liquidated Damages for each day of the period that starts on the day immediately after the expiry or termination of this Lease and ends on the day the Lessee completes the performance of its obligations under this clause 19 (or such 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 an 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
 - (ii) use its best endeavours to minimise the effect of the Force Majeure Event on the Party's performance of its obligations under this Lease.

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- (c) Subject to clause 20.2(f), the time for performance of any obligation by either Party under this Lease will be extended by a period which is reasonable in the circumstances. For the avoidance of doubt, any extension of time under this clause 20.2(c) does not in any way operate to extend the Term.
- (d) The affected Party must provide the other Party with regular updates as to the affected Party's circumstances and the impact of the Force Majeure Event during the time that it is prevented from performing its, or receiving the benefit of the other Party's, obligations under this Lease and in any event must provide the other Party with an update within 2 Business Days of a request at any time by the other Party.
- (e) The affected Party must notify the other Party in writing as soon as, and in any event within 2 Business Days of, the Force Majeure event ceasing to prevent it from performing under this Lease.
- (f) If a Party's performance is affected by a Force Majeure Event for a period equal to or greater than six months, either Party may terminate this Lease with immediate effect by notice in writing to the other Party.

20.3 No other liability

Neither the Lessee nor the Lessor is liable to the other solely because of the termination of this Lease under this clause 20.

20.4 No obligation to reinstate

Nothing in this clause 20 or elsewhere imposes an obligation on the Lessor to repair, remediate, replace or reinstate the Leased Area.

20.5 Non-payment of insurance money

The Lessee's rights to terminate this Lease under clause 20.2(f) do not apply if:

- (a) insurance money otherwise payable under an insurance policy in connection with the Leased Area is not paid by the insurer as a result of an act or omission by the Lessee or the Lessee's Group; or
- (b) any contractual breach, or actionable, civil or criminal wrong, by or on the part of the Lessee or the Lessee's Group, caused the destruction or damage of or to the Leased Area.

21. COSTS AND EXPENSES

21.1 Costs and expenses

The Lessee must pay or reimburse the Lessor on demand for all the Lessor's costs and expenses in relation to:

- (a) arranging for any survey or demarcation drawing necessary to identify the Leased Area;
- (b) the instructions for and the negotiation, preparation, execution and stamping of this Lease and any document assigning, varying or surrendering this Lease;
- (c) the exercise or enforcement by the Lessor of any right under this Lease, and the preparation and service of a notice under section 81 of the *Property Law Act 1969* (WA);
- (d) any act or omission by the Lessee causing cost or expense to the Lessor; and

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(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);
- (u) Clause 24 (Notices);

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- (v) Clause 27 (Trust); and
- (w) any other clause that expressly or impliedly survives the expiry or termination of this Lease.

The preceding provisions of this clause 22.1 do not oust or limit the operation of the common law pertaining to the survival of contractual provisions post-termination. Such operation of the common law is hereby preserved and applies in its entirety to this Lease (even after termination).

22.2 Remedies Cumulative

The rights, powers, authorities, discretions and remedies arising in connection with this Lease are cumulative and do not exclude any other right, power, authority, discretion or remedy otherwise available to the Lessor.

22.3 Accrued Rights

The termination of this Lease for any reason does not affect the rights of the Lessor in relation to a breach of this Lease by the Lessee before termination.

22.4 Schedules etc

The expressed and implied terms of each schedule (including the Schedule), appendix and annexure to this Lease form part of this Lease and must therefore be complied with in accordance with their expressed and implied terms.

22.5 Payments

- (a) The Lessee must make all payments under this Lease without set-off, counterclaim, abatement or deduction.
- (b) Payments by the Lessee under this Lease are to be made to the Lessor or any other person nominated by the Lessor.
- (c) The Lessor is not required to make a demand for payment of any amount required to be paid by the Lessee under this Lease unless required by Law.
- (d) If this Lease does not specify when a payment is due, it is due within 14 days after the Lessor requests payment.

22.6 Transfer of Land Act 1983

The covenants and powers implied in every lease made under the *Transfer of Land Act 1893* (WA) are implied in this Lease, whether registered under that Act or not, except:

- (a) to the extent that they are modified by this Lease; and
- (b) the implied covenant set out in section 92(b) of that Act is excluded.

22.7 Variation

Any variation of any term of this Lease must be in writing and signed by the parties.

22.8 Governing Law and jurisdiction

- (a) This Lease is governed by the Law in force in Western Australia.
- (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

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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 dated on the earlier of the date of exchange or the date of acceptance as is communicated in writing.

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22.15 Relationship of the parties

- (a) Nothing in this Lease gives a Party authority to bind the other Party in any way.
- (b) Neither this Lease, nor the relationship created by it, is intended to create, and will not be construed as creating any partnership or joint venture or fiduciary relationship, as between the parties.
- (c) Neither the Lessee's staff, personnel or contractors will be deemed to be employees, agents, contractors, or consultants of the Lessor and each Party must pay all costs associated with its employees.

22.16 Corporate power and authority

Each Party represents and warrants to the other that it has full power to enter into and perform its obligations under this Lease and that when executed this Lease will constitute legal, valid, and binding obligations under its terms.

22.17 State's interest and statutory functions

- (a) Any right of the Lessor may be exercised for the benefit of any other part of the State and any reference in this Lease to the Loss of, or costs incurred by, the Lessor includes direct Losses of, and direct costs incurred by, any other part of the State.
- (b) Except where this Lease expressly provides otherwise, to the extent permitted by Law, nothing in this Lease gives rise to any duty on the part of the Lessor to consider interests other than the Lessor's interests (including the public interest) when exercising any of its rights or performing any of its obligations.
- (c) Nothing contained in this Lease or contemplated by this Lease has the effect of constraining the Lessor or any other part of the State or placing any fetter on the Lessor's or any other part of the State's statutory rights, duties, powers or functions.
- (d) Notwithstanding anything contained or implied in this Lease to the contrary, the parties agree that the Lessor is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any Authority, or to influence, over-ride or direct any Authority in the proper exercise and performance of its legal duties and functions.
- (e) The Lessee is not entitled to make any Claim against the Lessor for any Loss relating to any exercise or failure by the Lessor to exercise its statutory rights or duties.

22.18 Arbitration

- (a) 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 2012 (WA)*, provided that the referral of a dispute relating to an Event of Default does not preclude the Lessor from exercising any remedies it believes it is entitled to exercise arising out of that Event of Default.
- (b) On any such arbitration, a Party may, if it chooses, be represented by a duly qualified legal practitioner.
- (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.

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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.

25. OPTION TO EXTEND THIS LEASE**25.1 Option**

If further terms have been added to item 2.4 of the Schedule, the Lessor gives the Lessee the option to extend this Lease for any further term specified in that item 2.4. Each option is exercisable by the Lessee giving notice to the Lessor not earlier than 6 months and not later than 3 months before the end of the Term specified in item 2.1 of the Schedule.

25.2 Loss of option

If, when the Lessee notifies the Lessor or, if the notice has been given at the end of the Term specified in item 2.1 of the Schedule, an Event of Default has occurred and it has not been remedied or waived, the option to extend this Lease ceases to have effect and the Lessee ceases to be entitled to an extension of this Lease.

25.3 Terms of extension

Any extension of this Lease is to be on the same terms as this Lease except that:

- (a) the rent applicable at the commencement date of the extended lease is to be the same as the Rent payable under this Lease immediately before the end of the Term unless the commencement date is also a Fixed Rent Review Date or a Crown Land Rent Review Date, in which case, the Rent is subject to review on that date by the method set out in this Lease;
- (b) any option to extend this Lease included in this Lease but which has been exercised does not apply.

25.4 Documentation

The Lessee must promptly sign a deed of extension of lease, to be prepared by the Lessor or its solicitors, when requested by the Lessor. Clause 21 relating to costs, expenses, duties and fees applies in relation to that deed.

26. ADDITIONAL TERMS

The parties to this Lease agree to be bound by and must comply with the additional terms, if any, set out in Annexure A to this Lease and which form part of this Lease.

27. TRUST PROVISIONS

If the Lessee has entered into this Lease as trustee of a trust, whether or not the Lessor is aware of the trust, the Lessee:

- (a) is taken to enter into this Lease both as trustee and in the Lessee's personal capacity and acknowledges that the Lessee is personally liable for the performance of the Lessee's obligations under this Lease;
- (b) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Lessor for any default by the Lessee;
- (c) will assign to the Lessor any right of indemnity the Lessee has against the assets of the trust to the extent of the liability of the Lessee under this Lease; and
- (d) warrants that the Lessee has the power and authority under the terms of the trust to enter into this Lease.

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);

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- (b) **(notices)** sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- (c) **(rights to remedy)** sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

28.6 Negative undertakings

The Lessee must not:

- (a) create any security interest or lien over any of the Lessor's Personal Property whatsoever (other than security interests granted in favour of the Lessor under this Lease);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Lessor's Personal Property;
- (c) give possession of the Lessor's Personal Property to another person other than the Lessor or where the Lessor expressly authorises it to do so;
- (d) permit any of the Lessor's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Lessor of the new name not less than 21 days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any of the Lessor's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Lessor's Personal Property at any time.

28.7 The Lessor's interest remains unaffected

The Lessor's interest in the Lessor's Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Lessor's Personal Property at any time.

28.8 Notices to the Lessor

Without limiting clause 28.6, the Lessee must notify the Lessor as soon as the Lessee becomes aware of any of the following:

- (a) if any personal property which does not form part of the Lessor's Personal Property becomes an accession to the Lessor's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any of the Lessor's Personal Property is transported, located or situated outside Australia; and
- (c) upon request by the Lessor, of the present location or situation of any of the Lessor's Personal Property.

ANNEXURE A

Additional Terms

None

DRAFT

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Lease Plan to be inserted here

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Conservation and Land Management Act 1984 Lease

Executed by the parties as a Deed on the _____ day of _____ in the year 20 ____ .

Signed for and on behalf of the _____)
CONSERVATION AND LAND _____)
MANAGEMENT EXECUTIVE BODY by: _____)

Signature of authorised officer

Name and position of authorised officer (please print)

in the presence of:

Witness: Signature _____

Name (Please print) _____

Occupation (Please print) _____

Address (Please print) _____

Please insert Shire of Serpentine-Jarrahdale Execution clause here