



23 July 2018

Merredin Shire Council
Att: Peter Zenni
Po Box 42,
Merredin WA 6415

Sent via email: emds@merredin.gov.au

Dear Peter,

Re: Agreement to Lease to Optus Mobile Pty Ltd (Optus)

Site Address: 106 Barrack St, Merredin WA 6415
Site Type: Telstra Tower
Site Name: Merredin
Site ID: P0095
Project / Program Name: Idaho

The purpose of this letter is to obtain the Lessor's consent to enter into a new lease of the above existing Optus' installation (on the terms and conditions as below). These terms and conditions will be included in the lease to be executed by Optus and the Lessor. The lease will be on Optus' standard lease terms and conditions as amended by this agreement. A copy of Optus' standard lease is enclosed with this letter.

The terms of the proposed Lease are as follows:

1	Lessor (and Lessor's Managing Agent details, if applicable):	Shire of Merredin Street address Cnr King & Barrack Streets, Merredin WA 6415 Contact Person Mr Peter Zenni Phone number 08 9041 1611 Email emds@merredin.wa.gov.au
2	Lessor's ABN number:	8706 567 6484
3	Lessor's Bank Account Details: (To be completed by Lessor by hand prior to submitting signed conditional acceptance)	Bank Name: Commonwealth Bank of Australia Branch Name: Merredin Account Name: Shire of Merredin Municipal Fund BSB No: 066-518

optus.com.au

SingTel Optus Pty Ltd
ABN 90 052 833 208

1 Lyonpark Road, Macquarie
Park, NSW 2113 Australia

PO Box 888, North Ryde,
NSW 1670 Australia

Telephone +61 2 8082 7800
Facsimile +61 2 8082 7100

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		Account No: 0000 0010
4	Lessor's solicitors: (To be completed by the Lessor by hand prior to submitting signed conditional acceptance)	Firm: McLeods Contact Person: Phone No: 08 9383 3133 Address: Stirling Law Chambers, 220-222 Stirling Hwy, Claremont WA 6010 Email: Name: Email address:
5	Lessee:	Optus Mobile Pty Ltd - ABN: 65 054 365 696
6	Leased Area:	Part of the Land described in certificates of title Lot 22 on Diagram 26563, Volume 1254 Folio 237 and being part of the premises known as Lot 22 Barrack Street, Merredin as depicted in the <u>attached Lease Plan</u> . Optus will arrange for the preparation of a new surveyed lease plan, if it is required, to accurately describe the leased area and/or to enable registration of the new lease. The cost is to be borne equally between Optus and the Lessor.
7	Commencement Date:	19 September 2020
8	Expiry Date:	20 years
9	Term:	18 September 2040
10	Break Dates:	Optus to give the Lessor at least 6 months notice that it wishes to end the term on the date that is 15 years, 10 years or 5 years before the date of expiration.
11	Further Term(s): N/A	0 years as an automatic option – that is, the option will automatically be exercised unless Optus delivers a notice to the Lessor advising that the option term is not required.
12	Rent:	\$4,500.00 (plus GST) per annum paid annually in advance by electronic funds transfer. The rent is a gross amount and includes all rates, taxes and outgoings in respect of the land and Premises.
13	GST – Exclusive:	Unless otherwise specified, payments under the lease are calculated without regard to GST. For any taxable supplies under the lease Optus will pay the Lessor an additional amount equal to the GST payable by the Lessor on that supply.

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		Optus will issue recipient created tax invoices (RCTI's) for all payments (reducing lessor administration and streamlining the payment process as monthly tax invoices need not be prepared and approved by Optus) .
14	Rent Reviews:	2.5% fixed increase annually on the anniversary of the commencement date of the lease, including commencement of any Further Term.
15	Permitted Use:	For the purpose of constructing, maintaining and operating a telecommunications network and telecommunications service including but not limited to installing, storing, operating, repairing, maintaining, altering and replacing Telecommunications equipment consistent with the evolving nature of telecommunications services.
16	Equipment:	The existing and any future equipment required to conduct the Permitted Use.
17	Access:	The Lessor consents to Optus and persons authorised by Optus without the need for prior notice to enter the Land for the purpose of using the Premises at all times of the day and night during the Term.
18	Insurance:	Optus will maintain insurance policies for such sum as would be prudent for Optus to effect from time to time and workers' compensation insurance as it is required by law to maintain. Optus has group wide insurance policies so it cannot accept any requests that may require a change in its policies. A certificate of currency of Optus' global policy can be provided upon request but not more than once during a 12 month period
19	Electricity:	This site is currently separately metered.
20	Assignment and Subletting:	Optus may assign the Lease with the prior written consent of the Lessor such consent not to be unreasonably withheld or delayed, except where the assignee is a Related Body Corporate of Optus or to a Carrier in which case Optus need not obtain the consent of, or notify the Lessor. Optus may sublet, part with or share its right to possession of the Premises upon written notice to the Lessor.
21	Holding Over:	If Optus occupies the Premises after the Date of Expiration (other than pursuant to the grant of a further

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		lease) Optus must do so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy except that the Rent will remain at the rate payable in the last year of the Term and either party may terminate by giving 6 months prior written notice to the other.
22	Legal Fees:	<p>Optus to contribute \$1,500 + GST in Lessors legal fees.</p> <p>Each party must pay its own legal costs and disbursements in relation to the preparation and execution of this proposed lease. The Lessor must pay the costs of obtaining any mortgagee or other consents.</p> <p>Optus must pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) which the Lessor may reasonably suffer or incur in consequence of and incidental to the stamping and registration (if applicable).</p>
23	Tower Lease:	<p>Where there is a lease between the Lessor and another carrier (Existing Carrier) for a tower/monopole:</p> <ol style="list-style-type: none"> 1. The Lessor must not terminate or surrender the tower lease without first notifying Optus of its intention to do so, in which event Optus may require the Existing Carrier to assign the tower lease to Optus and the Lessor will not unreasonably withhold its consent. 2. If the Lessor becomes entitled to terminate the tower lease then the Lessor must give notice to Optus which then may require the Lessor to grant Optus a lease of the Tower Premises. 3. If the Existing Carrier fails to exercise any option to renew the Lessor will notify Optus and Optus will have the right to require the Lessor to grant Optus a lease of the tower/monopole.
24	Sale of Land:	The Lessor must not sell the Land or enter into any sale documentation without first serving on Optus an offer to purchase.
25	No Concurrent Lease:	The Lessor must not grant any concurrent or superior lease or grant any easement over the Premises or enter into any other dealing over the Premises without Optus' consent.

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26	Document:	The parties agree to use Optus's pro-forma lease a copy of which is attached to this agreement.
27	Special Conditions:	<ul style="list-style-type: none">• Market review every 5 years. Optus will endeavor to provide a draft lease to the Lessor within 30 business days of receiving a fully completed and signed copy of this Agreement to Lease from the Lessor. The Lessor agrees to execute and return the Lease to Optus within 30 days after receiving the draft lease.
28	Telecommunications Act 1997 (Cth):	This letter and any proposed lease is to be without prejudice to Optus' rights pursuant to Schedule 3 of the <i>Telecommunications Act 1997 (Cth)</i> .
29	Confidentiality:	The terms of this proposal and the negotiations between Optus (or its representative) and all parties are strictly confidential.

Please confirm the Lessor's acceptance of the above terms, by signing this letter (where indicated below) and returning the original to our office. Should you have any queries, please contact the author on below.

Yours faithfully



Caroline Hovsepian
Property & Leasing Executive | Mobile Radio Deployment
Phone: 02 8082 2850
1 Lyonpark Road, Macquarie Park, NSW 2113
caroline.hovsepian@optus.com.au

Acceptance of proposed Lease Terms and Conditions

optus.com.au

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ABN 90 052 833 208

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Park, NSW 2113 Australia

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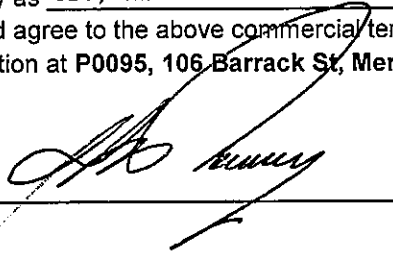
This agreement is subject to the Lessor signing and returning this agreement to Optus.

Please note that this agreement is not legally binding upon the parties until both parties have signed a completed Lease.

I, Mr Greg Powell (Print Name)

in the capacity as CEO, Shire of Merredin (e.g.: Owner, Property Manager etc.)
have read and agree to the above commercial terms forming the basis of a new lease for the existing
Optus installation at **P0095, 106 Barrack St, Merredin WA 6415**

(Signed)



25/07/2018
(Dated)

To assist in the preparation of the Lease, please complete by hand the information required in points 3 and 4 of this letter and ensure that the information set out in points 1 and 2 of this letter are correct prior to returning this acceptance to Optus..

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WESTERN



AUSTRALIA

REGISTER NUMBER 200/DP56205	
DUPLICATE EDITION 4	DATE DUPLICATE ISSUED 7/11/2017

RECORD OF CERTIFICATE OF TITLE
UNDER THE TRANSFER OF LAND ACT 1893

VOLUME **2668** FOLIO **423**

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.



REGISTRAR OF TITLES

LAND DESCRIPTION:

LOT 200 ON DEPOSITED PLAN 56205

REGISTERED PROPRIETOR:
(FIRST SCHEDULE)

SHIRE OF MERREDIN OF PO BOX 42 MERREDIN WA 6415

(AF K296712) REGISTERED 7/8/2007

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)

1. H713933 LEASE TO OPTUS MOBILE PTY LTD OF OPTUS CENTRE, 101 MILLER STREET, NORTH SYDNEY, NSW EXPIRES: SEE LEASE. AS TO PORTION ONLY. REGISTERED 5/4/2001.
2. H713934 LEASE TO OPTUS MOBILE PTY LTD OF OPTUS CENTRE, 101 MILLER STREET, NORTH SYDNEY, NSW EXPIRES: SEE LEASE. AS TO PORTION ONLY. REGISTERED 5/4/2001.
3. K832905 LEASE TO BROADCAST AUSTRALIA PTY LTD OF LEVEL 10, TOWER A 799 PACIFIC HIGHWAY, CHATSWOOD, NEW SOUTH WALES EXPIRES: SEE LEASE. AS TO PORTION ONLY REGISTERED 23/1/2009.
4. N527156 LEASE TO TELSTRA CORPORATION LIMITED OF LEVEL 41 242 EXHIBITION STREET MELBOURNE VIC EXPIRES: SEE LEASE. AS TO PORTION ONLY REGISTERED 10/1/2017.
5. N757730 LEASE TO TELSTRA CORPORATION LIMITED OF LEVEL 41 242 EXHIBITION STREET MELBOURNE VIC 3000 EXPIRES: SEE LEASE. AS TO PORTION ONLY REGISTERED 6/11/2017.

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.
* Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title.
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND: DP56205
PREVIOUS TITLE: 1254-237
PROPERTY STREET ADDRESS: 108 BARRACK ST, MERREDIN.
LOCAL GOVERNMENT AUTHORITY: SHIRE OF MERREDIN

**WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED**

LEASE

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
As to portion only: Lot 200 on Deposited Plan 56205 and being that part of the Land hachured on the plan annexed to this Lease	Part	2668	423

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS (Note 2)

--

ESTATE AND INTEREST

Fee simple

LESSOR (Note 3)

SHIRE OF MERREDIN of PO Box 42, Merredin, Western Australia 6415
--

LESSEE (Note 4)

OPTUS MOBILE PTY LIMITED ACN 054 365 696 of 1 Lyonpark Road, Macquarie Park, New South Wales
--

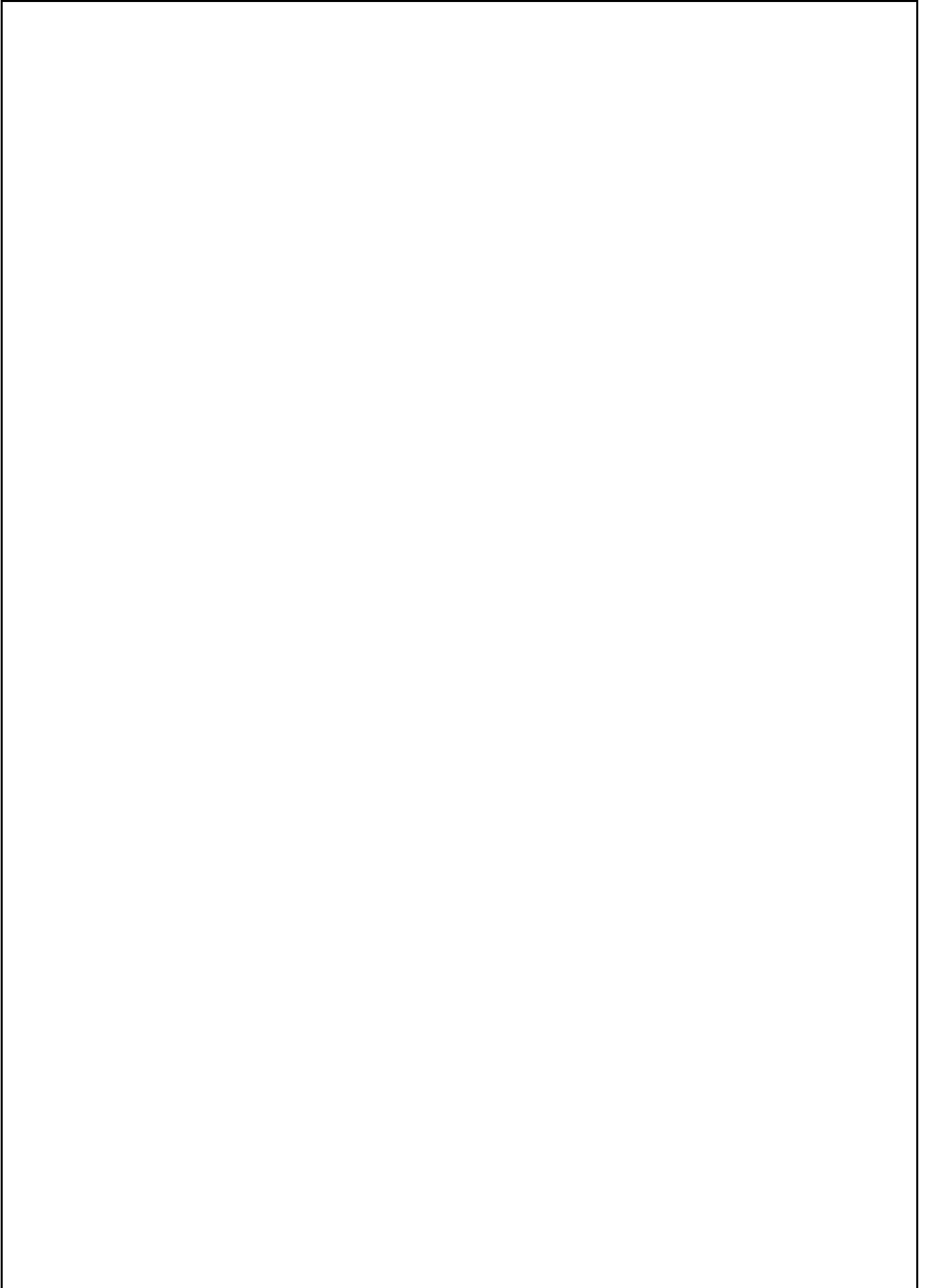
TERM OF LEASE (Note 5)

20 years commencing from the 19th day of September 2020
--

<p>THE LESSOR HEREBY LEASES TO THE LESSEE the land described above subject to the encumbrances as shown hereon (Note 6) for the above term for the clear yearly rental of \$4,500 (plus GST) (Note 7) payable (Note 8) in accordance with Clause 4 of this Lease</p>
--

Subject to the covenants and powers implied under the Transfer of Land Act 1893 as amended (unless hereby negated or modified) and also to the covenants and conditions contained herein.

The following covenants by the Lessee are to be construed according to section ninety-four of the Transfer of Land Act 1893 as amended (Note 9)



ATTESTATION SHEET

Dated this _____ day of _____ 2018

LESSOR/S SIGN HERE (Note 10)

THE COMMON SEAL of SHIRE OF MERREDIN) was hereunto affixed in the presence of:)))	
_____	_____
Shire President	Name of Shire President (print)
_____	_____
Chief Executive Officer	Name of Chief Executive Officer (print)

LESSEE/S SIGN HERE (Note 10)

SIGNED SEALED and DELIVERED by) PAUL GERARD O'BRIEN as attorney for OPTUS) MOBILE PTY LIMITED ACN 054 365 696 who) declares that he is its company secretary under) Power of Attorney Registered No. G886420 in) the presence of)	_____
	Company Secretary

Signature of witness	

Name of witness	

Address of witness	

Occupation of witness (print)	

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet, Approval No B1191, should be used with appropriate headings. The boxed sections should only contain the words 'see page ...'
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.
4. Where issued, the Duplicate Certificate of Title is required to be produced or if held by another party then arrangements must be made for its production.

NOTES

1. **DESCRIPTION OF LAND**
Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated. If part, define by recital and/or sketch. Extent - whole, part or balance of the land comprised in the Certificate of Title to be stated.
The Volume and Folio number to be stated.
2. **LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS**
In this panel show (subject to the next paragraph) those limitations, interests, encumbrances and notifications affecting the land being leased that are recorded on the certificate(s) of title:
(a) In the Second Schedule;
(b) If no Second Schedule, that are encumbrances.
(Unless to be removed by action or document before registration hereof) Do not show any:
(a) Easement Benefits or Restrictive/Covenant Benefits; or
(b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg, if a mortgage is shown, do not show any partial discharges or any document affecting either).
The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and relevant plan/diagram.
Strata/survey-strata plan encumbrances are to be described as "Interests on strata/survey-strata plan".
If none show "nil".
3. **LESSOR**
State the full name of the Lessor/Lessors (REGISTERED PROPRIETOR) as shown in the Certificate of Title and the address/addresses to which future notices can be sent.
4. **LESSEE**
State full name of the Lessee/Lessees and the address/ addresses to which future notices can be sent. If two or more state tenancy eg Joint Tenants, Tenants in Common. If Tenants in Common specify shares.
5. **TERM OF LEASE**
Must exceed 3 years.
Term to be stated in years, months and days or as the case may be. Commencement date to be stated. Options to renew to be shown.
6. **RECITE ANY EASEMENTS TO BE CREATED**
Here set forth any Easements to be created as appurtenant to the lease commencing with the words 'together with' and/or any Reservations hereby created encumbering the lease commencing with the words 'reserving to'.
7. State amount of yearly rental in figures
8. State term of payment.
9. Insert any Covenants required.
10. **LESSOR/LESSEE EXECUTION**
A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an **Adult Person**. The full name, address and occupation of the witness **must** be stated.

EXAMINED

OFFICE USE ONLY

LEASE

LODGED BY

ADDRESS
PHONE NO.

FAX NO.

REFERENCE

ISSUING BOX NO.

PREPARED BY

ADDRESS

PHONE NO. FAX NO.

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

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- | | | |
|----|-------|-----------------|
| 1. | _____ | Received items |
| 2. | _____ | |
| 3. | _____ | Nos. |
| 4. | _____ | |
| 5. | _____ | Receiving Clerk |
| 6. | _____ | |

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

Information table

Parties

Name	Shire of Merredin
ABN	87 065 676 484
Short form name	Lessor
Notice details	Postal address: PO Box 42, Merredin WA 6415 Telephone: 08 9041 1611 Email: emds@merredin.wa.gov.au Attention: Chief Executive Officer
Name	Optus Mobile Pty Limited ACN 054 365 696
Short form name	Lessee
Notice details	Postal address: 1 Lyonpark Road, Macquarie Park NSW 2113 PO Box 888, North Ryde NSW 1670 Telephone: (03) 8576 1900 Email: mdsspropertyissues@optus.com.au Attention: National Site Acquisition Co-ordinator
Site code	P0095

Items

Item 1	Premises (clause 1.1) That part of the Land hachured in black on the plan in Annexure A being part of the property known as 108 Barrack Street, Merredin WA 6415
Item 2	Commencement Date (clause 1.1) 19 September 2020
Item 3	Expiry Date (clause 1.1) 18 September 2040
Item 4	Term (clause 1.1) Twenty years
Item 5	Rent (clause 1.1 and 4.4) \$4,500 (plus GST) during the first year of the Term, and reviewed to the then current open market rent (in accordance with clause 4.4) on each Market Rent Review Date or otherwise increased by 2.5% on each anniversary of the Commencement Date (which is not a Market Rent Review Date) thereafter throughout the remainder of the Term

Item 6

Nominated Account (clause 4.3)

Bank: Commonwealth Bank of Australia
Branch: Merredin
Account Name: Shire of Merredin Municipal Council
BSB No: 066-518
Account No: 0000-0010

Item 7

Break Date (clause 1.1)

Each of the following dates:

- (a) the date that is 15 years before the Expiry Date;
- (b) the date that is 10 years before the Expiry Date; and
- (c) the date that is 5 years before the Expiry Date.

Item 8

Tower Lease (clause 15)

Leases registered under dealing numbers N527156 and N757730

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In the Lease:

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

API WA means the Western Australia Division of the Australian Property Institute.

Break Date means the date stated in Item 7.

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

Carrier means a carrier as defined in the Act.

Commencement Date means the date stated in Item 2.

Expiry Date means the date stated in Item 3.

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

GST means a goods and services tax or like tax payable by the Lessor in respect of a supply under the Lease.

Information table means the part of this document described as Information table.

Item means an item appearing in the Information table.

Land means the land in the Certificate of Title referred to on the front page of the Lease.

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

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

Lessor means the lessor described on the front page of the Lease and its successors and assigns or, if the Lessor is a natural person, its executors administrators and assigns and in either case its employees, agents and contractors.

Market Rent Review Date means the date that is the fifth, tenth and fifteenth anniversary of the Commencement Date.

Month means calendar month.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Review Date means each anniversary of the Commencement Date.

Review Period means the period following each Market Rent Review Date until the next Review Date or the end of this Lease.

State means the State of the Commonwealth of Australia in which the Land is situated.

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

Telecommunications Equipment means any and all equipment, ancillary installations and necessary or desirable equipment required to operate and maintain a telecommunications network and telecommunications service now and in the future.

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

Valuer means a full member for at least five years of API WA and:

- (a) a person with at least 5 years' experience in the determination of market rentals for leases or licenses of telecommunication facilities; and
- (b) is licensed to practise as a valuer of the same type of property as the Premises.

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit, information table or schedule is a reference to a part and clause of and a party, annexure, exhibit, information table and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it; and
- (i) a covenant or agreement on the part of two or more persons binds them jointly and severally.

2. Implied covenants and powers

2.1 Exclusion of implied covenants

Sections 92, 93 and 94 of the *Transfer of Land Act 1893* (WA) do not apply to, and are not implied in the Lease unless expressly included.

2.2 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.

2.3 Contravention of Statute - severance

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

3. Term of Lease and holding over

3.1 Term of the Lease

The Term commences on the Commencement Date and expires on the Expiry Date, subject to the provisions of the Lease.

3.2 Termination on a Break Date

If the Lessee gives the Lessor notice no later than 6 months prior to the Break Date that the Lessee wishes to end the Term on a Break Date, the Break Date becomes the Expiry Date.

3.3 Yearly tenancy - holding over

If the Lessee occupies the Premises after the Expiry Date (other than pursuant to the grant of a further lease) without demand for possession by the Lessor, the Lessee does so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy, except that the Rent will not escalate in the manner specified in Item 5 and will remain at the rate payable in the last year of the Term.

4. Payment

4.1 Lessee's covenant

The Lessee must pay the Rent to the Lessor during the Term.

4.2 Payment of Rent

The Rent for the first year of the Term will be paid on or before the Commencement Date. The Rent for the balance of the Term will be paid annually in advance on or before each anniversary of the Commencement Date. The Lessee must pay the Rent to the Lessor or to any other person the Lessor notifies to the Lessee. Any notification must be at least 30 days prior to the date for payment of Rent.

4.3 EFT payments

The Lessee may pay the Rent by Electronic Funds Transfer (**EFT**) to the account nominated in Item 6. The Lessor may notify another account in Australia to which payments may be made by EFT to replace the account stated in Item 6. The notification must be at least 30 days prior to the date for payment of Rent. Payment by EFT by the Lessee's banker to the relevant nominated account by the due date is a full discharge for the payment.

4.4 Market Rent Review

The review procedure on each Market Rent Review Date is:

- (a) each review of rent may be initiated by either party;

- (b) a party may initiate a review by giving the other party a written notice stating the current market rent which it proposes as the rent for the Review Period. If a party receiving the notice does not object in writing to the proposed rent within 20 business days, that party will be deemed to have served an objection to the proposed rent and clause 4.4(c) applies.
- (c) If the party receiving the notice serves an objection to the proposed rent or there is a deemed objection pursuant to clause 4.4(b) and the parties do not agree on the rent within 20 business days after the objection is served (or is deemed to be served pursuant to clause 4.4(b)), the parties must appoint a Valuer to determine the current market rent. If the parties do not agree within 20 business days after the objection is served on the name of the Valuer, the Valuer must be nominated by the President of the Australian Property Institute, Western Australia Division, at the request of either party.
- (d) In determining the current market rent for the Premises, the Valuer must:
 - (i) consider any written submissions made by the parties within 20 business days after receiving the submissions under clause 4.4(i); and
 - (ii) determine the current market rent as an expert and not an arbitrator.
- (e) The valuer may confer with the Lessor and the Lessee and may require either party to supply information that the Valuer considers relevant to the determination.
- (f) Any request for information must be complied with promptly in writing by the party to whom it is directed, and that party must send a copy of that information to the other party.
- (g) Either party may supply the Valuer with other information that it considers relevant and, if it does so, must send a copy of that information to the other party.
- (h) Information may be provided on a confidential basis and if the party providing the information states that it wishes that information to be kept confidential then the party receiving it and the Valuer must treat the information as confidential and will not use that information other than for the purposes of this clause.
- (i) The Lessor and the Lessee may make written submissions to the Valuer in relation to the market rent within 20 business days of the Valuer's appointment. A party making a written submission must at the same time send a copy of it to the other party.
- (j) Regardless of any other provision of this Lease, the Rent payable from any Market Rent Review Date may be less than the Rent payable prior to the Market Rent Review Date.
- (k) In determining a new rent for the Premises the Valuer shall determine the open market rental value on the date when the rent is to apply for the Premises having regard to all matters then relevant to the determination. In particular, the Valuer should have consideration of the following matters:
 - (i) the Lessor is a willing but not anxious lessor and the Lessee is a willing but not anxious lessee;
 - (ii) there is a reasonable period within which to negotiate the new rent having regard to the nature of the Premises and the state of the market;
 - (iii) the Lessor and the Lessee are well acquainted with the Premises and aware of any factors which might affect value;
 - (iv) the length of the lease term and the period between rent reviews;
 - (v) the terms and obligations of the Lease;

- (vi) the permitted use under the Lease; and
 - (vii) the rental of comparable premises.
- (l) In considering rental evidence, rent levels determined under new, freely negotiated leases and sub-leases between a willing lessor and a willing lessee represent the best evidence of current market value, in the following hierarchical order of comparable evidence, to which Valuers should have regard:
- (i) open market lettings between unconnected parties. These transactions would have been negotiated freely and in full knowledge of market conditions and alternatives available to the lessee. They should therefore reflect the market rental value for that transaction.
 - (ii) Evidence produced from lease renewal negotiations. While this should have been negotiated in full knowledge of the market rates, the costs of moving to the lessee might tend to encourage agreement somewhat above the market level.
 - (iii) Rent review evidence. While it is in theory based on market rental values, neither party can walk away from the lease and this may also skew the result.
 - (iv) Rents settled by third parties (the courts, arbitrators or independent experts) are considered to be a further level down the hierarchy.
 - (v) In the absence of good comparable evidence from any of the above sources, the Valuer will have to look further afield. Older, newer or generally less comparable evidence will need to be considered, as will transactions in different locations. The Valuer will then need to apply professional knowledge and judgement to the evidence in order to apply it to the Premises.
- (m) The Valuer must disregard the value of any improvements owner by the Lessee, any sublessees or licensees.
- (n) The Valuer must make the determination of the current market rent and inform the parties in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 20 business days allowed for submissions by the parties.
- (o) If:
- (i) no determination has been made within 45 days (or such longer period as is agreed by the Lessor and the Lessee) of the parties:
 - (A) appointing the Valuer; or
 - (B) being informed of the Valuer's appointment; or
 - (C) the Valuer resigns, dies or becomes unable to complete the valuation,
 then the parties may immediately appoint a replacement Valuer in accordance with this clause 4.4.
- (p) The Valuer's determination will be final and binds both parties except in the case of manifest error or fraud.
- (q) The Lessor and Lessee must:
- (i) bear equally the appointed Valuer's fee for making the determination and if either pays more than half the fee, the difference may be recovered from the other; and

- (ii) each be responsible for their own costs (including costs of appointing valuers, agents or other consultants) involved in undertaking the negotiations envisaged by sub-clause 4.4(d) and/or to assist in making a submission to the determining Valuer.
- (r) Until the determination is made by the Valuer, the Lessee must continue to pay the same rent as before the Market Rent Review Date. Within 20 business days of being informed of the Valuer's determination, the parties must make any necessary adjustments.
- (s) A delay in starting a market review does not prevent the review from taking place and being effective from the Market Rent Review Date but if the market review is started more than 12 months after the Market Rent Review Date, the review takes effect only from the date on which it is started.

4.5 Rates, taxes and outgoings

The parties acknowledge and agree that:

- (a) the Rent is a gross amount and the Lessee is not required to pay any rates, taxes, charges, levies or outgoings which are charged to, levied on or relate to the Land (including but not limited to the Premises) except for electricity charges which are payable by the Lessee under clause 9); and
- (b) the Lessor must pay all rates, taxes, charges, levies and outgoings which are charged to, levied on or relate to the Land (including but not limited to the Premises).

4.6 Definitions

In this clause 4.6 and clauses 4.7 to 4.9:

- (a) **ABN** means Australian Business Number being an 11 digit identifying number allocated by the Australian Business Register (www.abr.business.gov.au);
- (b) **RCTI** means recipient created tax invoice;
- (c) words or expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning; and
- (d) a reference to the Lessor or Lessee includes their GST group representative member (if applicable).

4.7 ABN

- (a) The Lessor warrants that the Lessor:
 - (i) has an ABN; or
 - (ii) does not have an ABN, on the basis it is not entitled to have one under the *A New Tax System (Australian Business Number) Act 1999*; and
 - (iii) if it appoints a third party to manage the leasing of the Premises on its behalf and the third party's ABN is quoted in any tax invoice, invoice or other document relating to the Lease, the third party does so as agent for the Lessor in accordance with Australian Taxation Office's public ruling GSTR 2000/37: agency relationships and the application of the law.
- (b) If the Lessor does not have an ABN or the Lessor's ABN is cancelled, the Lessor must immediately notify the Lessee and unless the Lessor provides evidence that the Lessor is not entitled to have an ABN under the *A New Tax System (Australian Business Number) Act 1999*, the Lessor acknowledges that the Lessee will be required to deduct from each

payment to the Lessor, PAYG withholding tax pursuant to section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*.

- (c) If the Lessor does not comply with its obligations or breaches any warranty under this clause 4.7, the Lessor indemnifies the Lessee for any tax, charge, fine, penalty or other impost which the Lessee incurs or becomes liable to pay as a result of the Lessor's default or breach of warranty.

4.8 Lessor registered for GST

The following provisions apply in relation to GST:

- (a) Unless stated to the contrary, all payments to be made by the Lessee under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by the Lessee to the Lessor under the Lease is consideration for a supply by the Lessor under the Lease on which the Lessor must pay GST, the Lessee must also pay the Lessor an additional amount equal to the GST payable by the Lessor on that supply.
- (b) The Lessor must issue a tax invoice to the Lessee for any excluded taxable supply made by the Lessor to the Lessee under the Lease before the consideration payable for that supply is due and the Lessee need not pay for a particular excluded taxable supply until such time as the Lessor has issued a tax invoice to the Lessee for that supply.
- (c) The parties agree that the Lessee will issue RCTIs for the taxable supplies made by the Lessor to the Lessee under the Lease except for any supplies that the parties agree in writing are excluded taxable supplies. As at the date of the Lease the only agreed excluded taxable supplies are those supplies for which the Lessor has already issued a tax invoice to the Lessee. For the purpose of the Lessee issuing RCTIs the parties agree:
 - (i) the Lessee may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) the Lessor will not issue a tax invoice in respect of any supply it makes to the Lessee under the Lease other than an excluded taxable supply;
 - (iii) each party acknowledges and warrants that at the time of entering into the Lease, it is registered for GST; and
 - (iv) each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs. If the Lessor breaches its obligations under this clause 4.8(c)(iv) and the Australian Taxation Office determines the RCTI is not validly issued and requires the Lessee to repay any input tax credit, the Lessor:
 - (A) must immediately refund the overclaimed input tax credit amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credit.
- (d) If a payment to a party under the Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (e) If the Lessee notifies the Lessor in writing that the Lessee will no longer issue RCTIs then clause 4.8(c) will not apply from the date specified in the notification until the Lessee

withdraws the notification by a further written notice to the Lessor. While clause 4.8(c) does not apply the parties agree that all taxable supplies made by the Lessor to the Lessee under the Lease are excluded taxable supplies to which clause 4.8(b) applies.

4.9 Lessor not registered for GST

- (a) The Lessor must notify the Lessee of its GST registration status on or before execution of the Lease and must immediately notify the Lessee if it ceases to be registered for GST at any time during the Term.
- (b) Despite any other clause in the Lease, if the Lessor is not registered for GST or ceases to be registered for GST:
 - (i) the Lessee is not required to make a payment under the Lease (including but not limited to Rent) until the Lessor provides the Lessee with an invoice for the payment quoting either the Lessor's ABN or the Lessor's agent's ABN; and
 - (ii) if GST is incorrectly charged on any invoice or tax invoice issued by the Lessor or any third party on its behalf, the Lessor:
 - (A) must immediately refund the overcharged GST amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credits.

5. Use of Premises

5.1 Permitted use

- (a) The Lessee will use the Premises for the purpose of constructing, maintaining and operating a telecommunications network and telecommunications service including but not limited to installing, storing, operating, repairing, maintaining, altering, and replacing Telecommunications Equipment consistent with the evolving nature of telecommunications services.
- (b) The Lessor gives no warranty:
 - (i) as to the suitability of the Premises for the use referred to in clause 5.1(a); or
 - (ii) that the Lessor will issue any consents, approvals, authorities, permits or licenses required by the Lessee under any statute for its use of the Premises.

5.2 Adjoining Land

- (a) The Lessor grants to the Lessee the right to temporarily use so much of the Land adjoining and adjacent to the Premises or any installation of the Lessee as is reasonably required during installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the telecommunications network and the telecommunications service.
- (b) When exercising its rights pursuant to this clause 5.2 the Lessee must use its reasonable endeavours to cause minimal disruption and inconvenience to the Lessor as far as is practicable.
- (c) After temporarily using the Land adjoining and adjacent to the Premises or any installation of the Lessee, the Lessee will restore the surface of the Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor.

- (d) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.2.

5.3 Requirements of Government Agencies

The Lessee must comply promptly with any Statute in respect of the Lessee's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises. The Lessee is under no liability for structural alterations unless caused or contributed to by the Lessee's particular use or occupation of the Premises.

5.4 Cabling

- (a) For the purpose of the operation of the Lessee's telecommunications network and telecommunications service, the Lessor will permit the Lessee to install, maintain, repair, replace and use above or below ground cabling to and from the Premises and where necessary to construct supports for that cabling.
- (b) In exercising its rights under this clause 5.4, the Lessee must:
 - (i) not cause any lasting material damage to the Land or material interference with the Lessor; and
 - (ii) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by the Lessee to the reasonable satisfaction of the Lessor.
- (c) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.4.

5.5 Not used.

5.6 Consents

- (a) Subject to clause 14.6, the Lessor hereby irrevocably authorises the Lessee to make at the expense of the Lessee any application for consent or approval to any Government Agency to use or develop the Premises for the use referred to in clause 5.1 and to exercise and procure (at the Lessee's expense) every right of appeal arising from the determination of any such application or the failure to determine the application. The Lessor must sign all documentation and do all such things as the Lessee or any person nominated by the Lessee reasonably requires (at the cost and expense of the Lessee) to authorise or assist in obtaining consent or approval from any Government Agency to use or develop the Premises for the use referred to in clause 5.1.

5.7 Not used.

6. Access to the Premises

- (a) The Lessor consents to the Lessee and persons authorised by the Lessee without the need for prior notice and with or without materials, plant and other apparatus and vehicles entering the Land by the usual access routes for the purpose of using the Premises and exercising its rights under the Lease at all times of the day and night during the Term.
- (b) The Lessor agrees that where the Lessee installs, upgrades or maintains at its cost any access track or electricity connection to the Premises then:
 - (i) any other person (except the Lessor) who wishes to utilise the Lessee's track or connection must contribute to the cost of installation, upgrading and maintenance as apportioned by the Lessee; and

- (ii) the Lessor must not grant or allow to be granted to any third party an interest or a right to use the Lessee's track or connection until that party first reaches an agreement with the Lessee as to the terms and amount of the contribution.

7. Insurance, indemnities and release

7.1 Obligation to insure

- (a) The Lessee will insure against any loss or damage which is commonly covered by public risk or liability insurance in respect of the Premises.
- (b) The Lessee will provide the Lessor with a certificate of currency for all insurances under clause 7.1(a) no more than once annually and only upon written request to the Lessee by the Lessor on each occasion.

7.2 Lessee's assumption of responsibilities

The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of injury or death to persons and damage to property if, during the Term it was the owner and occupier of the freehold of the Premises and the Lessee indemnifies and will keep the Lessor indemnified in that regard. Without limitation the Lessee indemnifies the Lessor from all actions, claims, costs and demands in respect of injury or death to persons or damage to property caused by electromagnetic fields emanating from the Lessee's Telecommunications Equipment installed on the Premises.

7.3 Negligence or default of Lessor

The releases, responsibilities and indemnities in clause 7.2 do not apply to any act, matter, thing or consequence if it arises out of the negligence, omission or default of the Lessor.

7.4 Warranty

- (a) The Lessee agrees that it must cause no greater disturbance to the Land, the Lessor's fixtures and facilities, the Lessor and to any other tenants of the Land, than is reasonably necessary having regard to the permitted use under clause 5.1.
- (b) The Lessee must operate the Premises lawfully and in a safe manner in accordance with such standards as are adopted by the Australian Communications and Media Authority from time to time concerning safe electromagnetic emission levels from facilities of the nature of the Telecommunications Equipment.
- (c) The Lessor may upon installation of any new Telecommunications Equipment on the Premises request that the Lessee provide the Lessor with an electromagnetic emissions report in respect of the Telecommunications Equipment to demonstrate compliance with all laws.
- (d) The Lessee agrees that the emissions from the Telecommunications Equipment will not exceed the levels allowed by law.

7.5 Indemnity unaffected by insurance

- (a) The Lessee's obligation to indemnify the Lessor under this Lease or at law is not affected by any insurance maintained by the Landlord or the Lessee in respect of the Premises and the indemnity under clause 7.2 is paramount.
- (b) If insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under clause 7.2 will be reduced by the extent of such payment.

7.6 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises except to the extent that such loss, damage or injury was caused or contributed (to the extent of that contribution) by the negligence, omission or default of the Lessor or any person under the express control of the Lessor.

8. Installation and maintenance

8.1 Repair and maintenance

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

8.2 Construction and alterations

The Lessee may at the Lessee's option and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law:

- (a) without the consent of the Lessor, install, erect, construct, dismantle, modify, repair, replace, renew and maintain upon the Premises Telecommunications Equipment within the equipment shelter on the Premises;
- (b) with the prior consent of the Lessor, such consent not to be unreasonably withheld or delayed install, erect, construct, dismantle, modify, repair, replace, renew and maintain upon the Premises Telecommunications Equipment external to the equipment shelter on the Premises; and
- (c) with the prior consent of the Lessor which consent must not be unreasonably withheld install, erect, construct, dismantle, repair, replace, renew and maintain upon the Premises security fencing and any building or buildings as necessary now or in the future to shelter Telecommunications Equipment and a free standing monopole, guy tower, multi-sided antenna support structure or other antenna support structure of sufficient height now or in the future to meet the Lessee's telecommunications requirements and all necessary connecting appurtenances.

9. Electricity supply

For the purpose of carrying out the Lessee's use of the Premises the Lessor must at the Lessee's request and at the Lessee's cost:

- (a) provide to the Lessee the ability to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of the Lessee's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter so that the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it on the Premises; and
- (b) cause to be registered on the title to the Land an easement for electricity purposes, if required by and if so, in favour of, the relevant electricity authority.

10. Termination

10.1 Events of termination

If:

- (a) the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Lessee or inaccessible by any means of access where such damage or destruction has not been caused by the negligent act or default of the Lessee;
- (b) the Lessee commits a material breach of any of its obligations and has not remedied that breach within a reasonable period of notice from the Lessor having regard to the nature of the breach;
- (c) any application to a Government Agency for a required consent or permit for the installation and use of the Premises as part of a telecommunications network and telecommunications service is granted to the Lessee with conditions unacceptable to it in its absolute and unfettered discretion or is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained;
- (d) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant physical or radio interference;
- (e) as a result of network changes, the Premises cease to operate as or are not required to be a part of the Lessee's telecommunications network;
- (f) the Lessor commits a breach of a material obligation and has not remedied that breach within a reasonable period of notice from the Lessee having regard to the nature of the breach; or
- (g) the Lessor breaches an obligation under clause 13.4 and/or clause 13.5,

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

10.2 Effect on rights or liabilities

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

10.3 Lessee to yield up

Subject to clause 10.4, the Lessee must at the expiration or sooner termination of the Term yield up the Premises in good repair and clean condition fair wear and tear excepted having regard to their condition at the Commencement Date of the Lease.

10.4 Removal of Lessee's fixtures and chattels

- (a) The Lessee must:
 - (i) within 3 months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and the Lessee);
 - (ii) within a reasonable period of earlier termination of the Lease; or
 - (iii) by such other date as the Lessor and the Lessee agree in writing,remove (subject to clause 14.2) from the Premises all above ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises

and make good any damage caused by such removal to the reasonable satisfaction of the Lessor.

- (b) If the Lessee fails to remove the items referred to in clause 10.4(a) within 6 months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and Lessee) and following receipt of notice in writing from the Lessor to the Lessee requesting the removal of said items within a reasonable time (having regard to the nature of the works of removal of those items):
- (i) the Lessor shall have the right to remove from the Premises and Land any such items at the Lessee's cost;
 - (ii) the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property except to the extent that any damage is caused by the negligence, default or omission of the Lessor; and
 - (iii) the Lessor shall have the right to recover the costs of such removal from the Lessee as a due debt in a court of competent jurisdiction.

10.5 Termination of holding over

Either the Lessor or the Lessee may terminate the yearly tenancy under clause 3.3 by giving the other six months' prior written notice.

10.6 Additional Right of Termination

The Lessee may terminate the Lease by notice in writing to the Lessor served at any time before the second anniversary of the Commencement Date. The Lessee will not be entitled to any refund of prepaid Rent in the event of the Lessee exercising its rights under this clause.

10.7 Refund of Rent on termination

If the Lease is terminated by the Lessee pursuant to clause 10.1(a), 10.1(c), 10.1(d), 10.1(e), 10.1(f), 10.1(g), 19(f) or 19(g) the Lessor must, within 30 days of the date of termination, refund to the Lessee any Rent paid in advance for the unexpired portion of the Term after the date of termination.

11. Notices

11.1 Method of service

Any notice to be given under the Lease by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by email addressed to the receiving party at the address specified in the notice details in the Information table.

11.2 Time of service

Any notice given in accordance with the Lease will be deemed to have been duly served in the case of posting at the expiration of two Business Days after the date of posting and in the case of an email transmission, on the first Business Day after the date of transmission (providing the sending party receives an email delivery receipt indicating that the notice has been transmitted).

11.3 Change of address

A party may at any time change its postal address or email address by giving notice to the other party.

12. Assignment and subletting

12.1 Lessee not to assign

The Lessee must not assign the Lease except under clause 12.2 or with the prior written consent of the Lessor under clause 12.3.

12.2 Assignment to a Related Body Corporate

The Lessee may from time to time without the consent of the Lessor assign the Lease or sublet the Premises to a Related Body Corporate of the Lessee.

12.3 Assignment

- (a) Subject to clause 12.2 the Lessee may assign the Lease with the prior written consent of the Lessor such consent not to be unreasonably withheld or delayed.
- (b) The Lessor's consent under clause 12.3(a) will not be unreasonably withheld or delayed provided that:
 - (i) the proposed assignee is a respectable and responsible person of good financial standing;
 - (ii) all amounts due and payable under the Lease which have been notified to the Lessee within 10 Business Days of the date of assignment have been paid and there is no existing unremedied breach of any of the Lessee's covenants which have been notified to the Lessee within 10 Business Days of the date of assignment;
 - (iii) the Lessee procures the execution by the proposed assignee of a deed of assignment to which the Lessor is a party and which is drafted to the reasonable satisfaction of the Lessor; and
 - (iv) the deed of assignment contains a covenant by the assignee to pay all amounts payable under the Lease and to perform and observe all the Lessee's covenants.

12.4 Subletting

The Lessee may sublet, part with or share its right to possession of the Premises with the prior written consent of the Lessor such consent not to be unreasonably withheld or delayed.

12.5 Costs for assignment or subletting

If the Lessee wishes to assign or sublet the leasehold estate created by this Lease, the Lessee must pay all reasonable and proper professional and other reasonable and proper costs, charges and expenses incurred by the Lessor or any other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee;
 - (b) any consents required under this Lease or at law; and
 - (c) all other matters relating to the proposed assignment or subletting,
- whether or not the assignment or subletting proceeds.

13. Lessor's covenants

13.1 Quiet enjoyment

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

13.2 Restriction on Lessor's use of the Land

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

13.3 Lessor's covenant

The Lessor covenants that the Lessor will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on, or transport to or over the Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises and in the event of the Lessee notifying the Lessor of any breach by the Lessor of this clause the Lessor will, in good faith, use its best endeavours to cause removal of such hazardous substances, to the extent that it is within its power to do so.

13.4 No concurrent or superior lease or other dealing

The Lessor must not:

- (a) grant any lease concurrent or superior to the Lease;
- (b) grant any easement over the Premises; or
- (c) enter into any other dealing over the Premises,

without the Lessee's prior written consent, which consent the Lessee may withhold in its absolute discretion.

14. Miscellaneous

14.1 Interference with existing Carriers

- (a) The Lessee acknowledges that there are existing Carriers on the Land and it must not knowingly interfere with the use of the Land by those Carriers.
- (b) Should the Lessor or any other pre-existing Carrier of the Land experience radio frequency interference with their electrical equipment on the Land the Lessor may immediately notify the Lessee of such interference and the following provisions apply:
 - (i) the Lessee will within fourteen days of receipt of such notice determine whether its equipment is the cause of such interference and notify the Lessor of its determination, acting in good faith;
 - (ii) if the Lessee determines that such interference is caused by its equipment it will forthwith use its best endeavours to stop such interference;
 - (iii) if the Lessee determines that such interference is not caused by its equipment it will forthwith notify the Lessor of such determination;

- (iv) if the parties are unable to agree as to the cause of such interference either party may refer the matter to the Australian Communications and Media Authority (or such body constituted by the Commonwealth Government from time to time to police the radio frequency spectrum) for its determination acting as an expert. The Australian Communication and Media Authority shall make its determination within 30 days of any reference to it and such decision will be final and binding on the parties. The cost of determination must be borne by the parties equally; and
- (v) if the Australian Communications and Media Authority determines that such interference is caused by the Lessee the Lessee will remedy such interference within 30 days of the Australian Communications and Media Authority's determination.

14.2 Costs and disbursements

- (a) The Lessee must pay all duty (including penalties and fines other than penalties and fines due to the default of the Lessor) and registration fees on the Lease; and
- (b) The Lessee must (promptly following registration of the Lease) re-imburse the Lessor, the Lessor's legal costs and disbursements in relation to the preparation and execution of this Lease up to a maximum of \$1,500 (plus GST).

14.3 Interest

The Lessee agrees to pay the Lessor on demand interest at a rate equivalent to the 90 day bank bill swap reference rate published in the Australian Financial Review on any late rent payments by the Lessee under this Lease and remaining unpaid for at least 60 days following a written demand by the Lessor. Interest will be computed from the date on which the payment became due.

14.4 Without prejudice

- (a) The Lease is without prejudice to the Lessee's rights under Schedule 3 of the Act.
- (b) To the extent that the Lessee undertakes maintenance (as that term is defined under Schedule 3 of the Act), the Lessor agrees that it does not require the Lessee to give notice of that activity under Schedule 3 of the Act.

14.5 Governing law

The Lease is governed by the laws of the State and the Commonwealth of Australia and the Lessor and the Lessee submit to the non-exclusive jurisdiction of the Courts of the State.

14.6 No Fetter

The Lessee acknowledges and agrees:

- (i) that the Lessor is a local government established by the Local Government Act 1995 (WA);
- (ii) in its capacity as a local government, the Lessor will be obliged to comply with statutory obligations imposed by law; and
- (iii) no provision of this Lease may unlawfully restrict or otherwise fetter the discretion of the Lessor in the lawful exercise of any of its functions and powers as a local government,

provided that nothing in this clause will serve to relieve the Lessor from responsibility for performance of its obligations arising pursuant to this Lease, except to the extent necessary to avoid any unlawful restriction or any unlawful fettering on the Lessor's discretion in the lawful exercise of its functions and powers as a local government.

15. Definitions:

Existing Carrier means the lessee from time to time pursuant to the Tower Lease.

Tower Lease means the lease or leases of the Tower Premises between the Existing Carrier and the Lessor described in Item 8 and any extension or renewal of that lease or those leases.

Tower Agreement means the agreement to occupy part of the Tower Premises between the Existing Carrier and the Lessee commencing on the same day as the Lease and any future agreement between the Existing Carrier and the Lessee.

Tower Premises means the premises leased pursuant to the Tower Lease.

16. Consent to Tower Agreement

The Lessor consents to the Existing Carrier granting the Tower Agreement.

17. Assignment or termination of Tower Lease

17.1 Assignment of Tower Lease

Subject to clause 14.6, the Lessor must not terminate or surrender the Tower Lease without first notifying the Lessee of its intention to do so, in which event the Lessee may require the Existing Carrier to assign the Tower Lease to the Lessee. The Lessor agrees that if the Lessee does so require the Existing Carrier to assign the Tower Lease to it, the Lessor will not unreasonably withhold its consent to such an assignment.

17.2 Grant of Tower Lease to Lessee

Subject to clause 14.6, provided that the Lessee is not at that time in default of the terms of the Lease, then if, at any time during the Term, the Lessor becomes entitled to terminate the Tower Lease for any reason whatsoever, then prior to so terminating the Tower Lease, the Lessor must give notice to the Lessee (**Notice of Intended Termination**) of its intention to so terminate the Tower Lease. The Lessee may within seven days after receipt of the Notice of Intended Termination, give notice to the Lessor (**Lessee's Notice**) requiring the Lessor to grant to it a lease of the Tower Premises upon the same terms as the Tower Lease.

17.3 Lessor and Lessee to enter into Tower Lease

The Lessor must as soon as practicable after either the receipt by it of the Lessee's Notice or the termination of the Tower Lease (which ever is the last to occur), grant to the Lessee a lease or leases of the Tower Premises upon the same terms as the Tower Lease, but commencing on the date on which the Tower Lease is terminated and expiring on the date or dates which the Tower Lease would, but for the prior termination thereof by the Lessor, have otherwise expired, and substituting the Lessee in place of the Existing Carrier. Upon the grant of any such Lease, any default or other right or cause of action between the Lessor and the Existing Carrier will, as between the Lessor and the Lessee, be deemed to have been waived and permanently released.

18. Option in Tower Lease

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

- (a) the Lessee will have the right by notice (**Renewal Notice**) served on the Lessor within 14 days of the Non Exercise Notice to require the Lessor to grant to the Lessee a lease of the Tower Premises on the terms contemplated in the Tower Lease as if the option to renew contained in it had been exercised by the Existing Carrier; and
- (b) upon service of the Renewal Notice by the Lessee, the provisions of clause 17.3 will apply so far as they are relevant.

19. Additional right of termination of the Lease

The Lessee may terminate the Lease immediately by notice to the Lessor if:

- (a) the Lessee takes an assignment of the Tower Lease pursuant to clause 17.1;
- (b) the Lessor grants the Lessee a lease pursuant to clause 17.3 or 18;
- (c) the Tower Lease is terminated by either party or is surrendered and the Lessee does not elect to take an assignment of the Tower Lease pursuant to clause 17.1 or to be granted a lease pursuant to clause 17.3;
- (d) the Lessor gives a Non Exercise Notice under clause 18 and the Lessee does not give a Renewal Notice;
- (e) the Lessee ceases to hold any right described in the Tower Agreement from the Existing Carrier or the Lessor other than as a result of the Lessee's breaching the agreement conferring the right;
- (f) the Tower Lease expires and no new lease is entered into for the Tower Premises between the Existing Carrier and the Lessor that commences immediately after the expiry of the Tower Lease; or
- (g) the Existing Carrier enters into a new lease with the Lessor for the Tower Premises that commences immediately after the expiry of the Tower Lease but the new lease expires before the Expiry Date of the Lease.

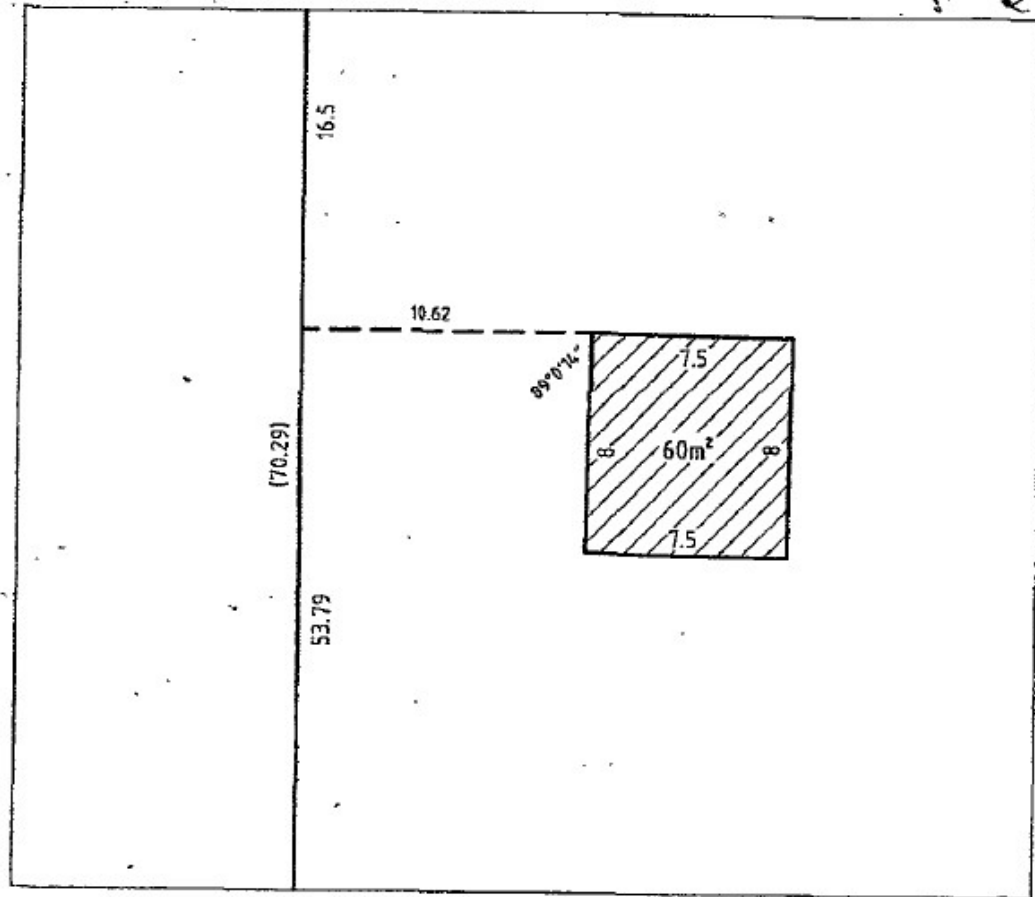
20. Trilocation

The Lessor's obligations under clauses 17 and 18 are subject to any prior like rights granted by the Lessor or the Existing Carrier to a third carrier as defined in the Act so long as the Lessor only deals with the third carrier in relation to the Tower Premises or the Tower Lease subject to the Tower Agreement.

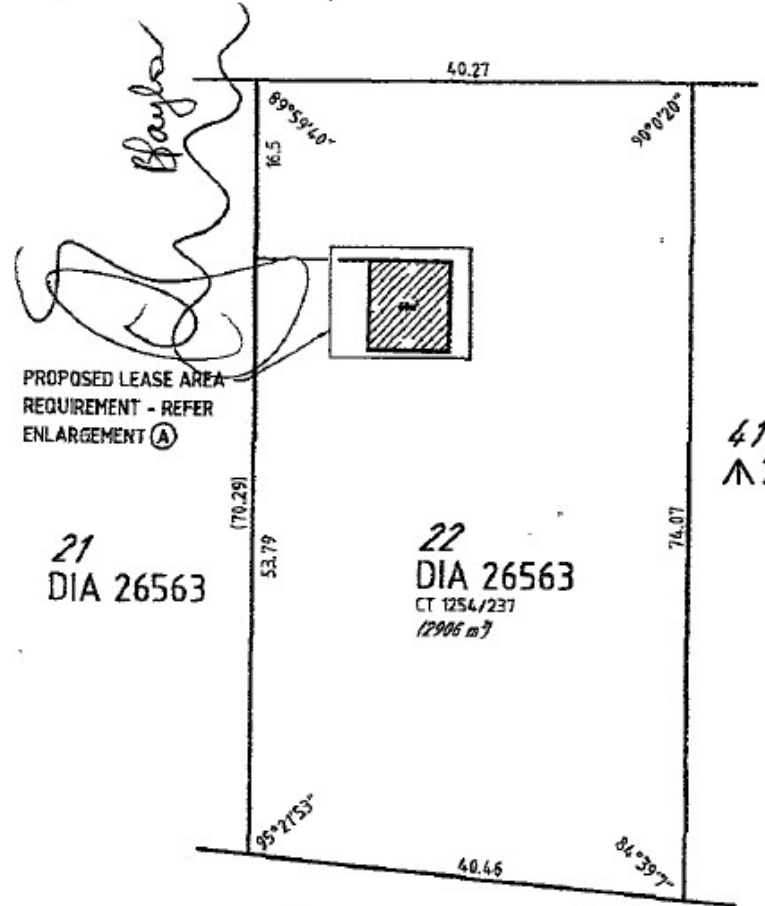
Annexure A

Plan referred to in Item 1

Annexure to Lease of premises known as 108 Barrack Street, Merredin WA 6415



ENLARGEMENT (A)
1:200



PROPOSED LEASE AREA
REQUIREMENT - REFER
ENLARGEMENT (A)

21
DIA 26563

22
DIA 26563
CT 1254/231
12906 m²

41
▲ 25640

BARRACK STREET

NOTE
ALL ANGLES 90° UNLESS NOTED OTHERWISE

Connell Wagner

Connell Wagner Pty Ltd ACN 026 138 875 Telephone: +61 88 823 8200
4th Floor, 207 Adelaide Ter, Perth Facsimile: +61 88 823 9140
Western Australia, 6000, Australia Email: connell@connell.com.au

LICENSER SURVEYOR
[Signature] DATE: 17/7/00
KIMEL R. WELLS

Project: OPTUS GSM ACCELERATED ROLLOUT

Drawing Title: LEASE PLAN
LOT 21, BARRACK ST,
MERRIDIN, W.A. 6415

OPTUS SITE P0095 MERRIDIN	
Project	Project No.
Client	Client Ref.
Drawn	Scale
Checked	Date
Approved	Project No.
Project No.	Drawing No.
A482.29	A48229L.P01

**WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED**

LEASE

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
As to portion only: Lot 200 on Deposited Plan 56205 and being that part of the Land hachured on the plan annexed to this Lease	Part	2668	423

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS (Note 2)

--

ESTATE AND INTEREST

Fee simple

LESSOR (Note 3)

SHIRE OF MERREDIN of PO Box 42, Merredin, Western Australia 6415
--

LESSEE (Note 4)

OPTUS MOBILE PTY LIMITED ACN 054 365 696 of 1 Lyonpark Road, Macquarie Park, New South Wales
--

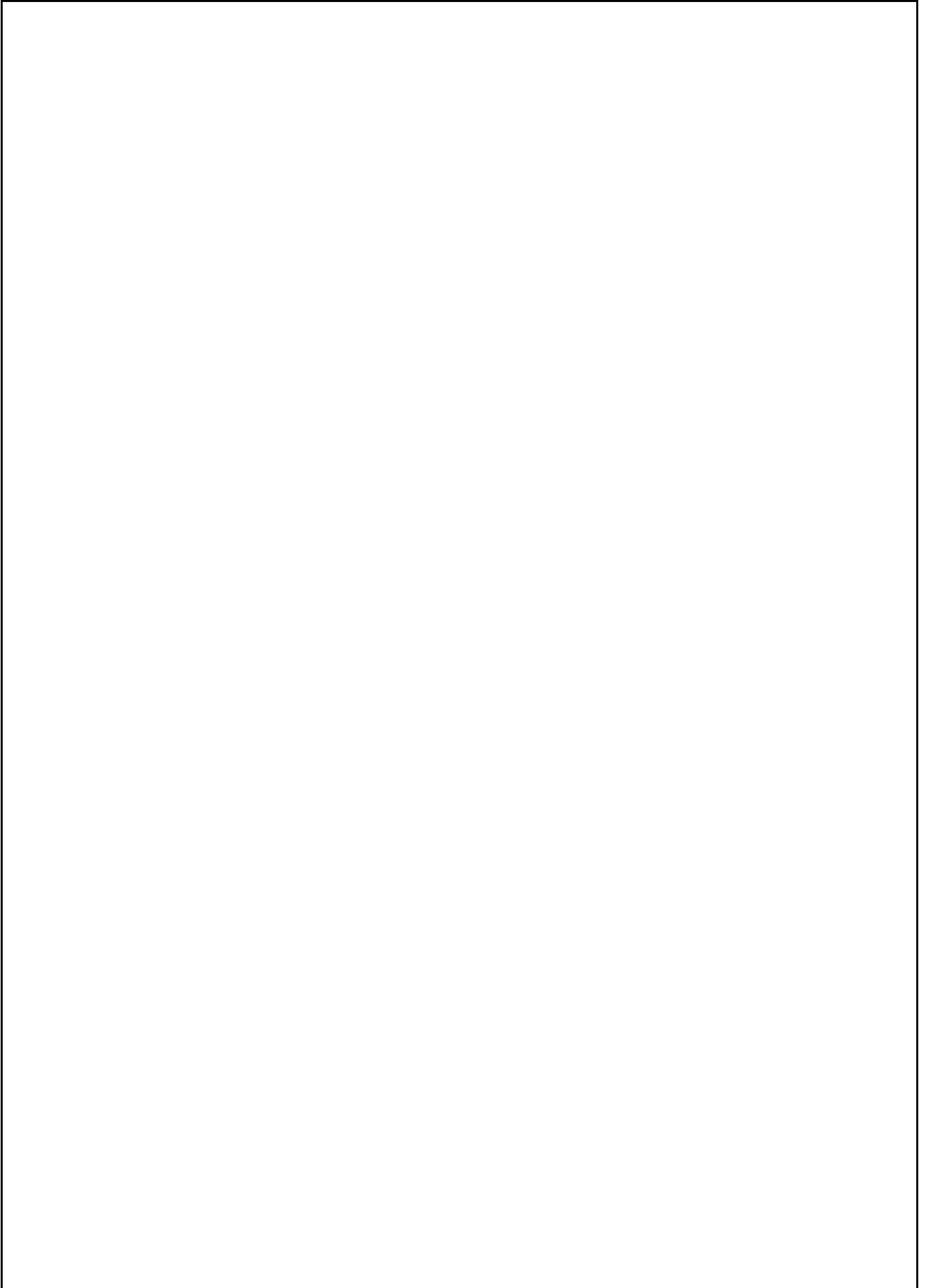
TERM OF LEASE (Note 5)

20 years commencing from the 19th day of September 2020
--

<p>THE LESSOR HEREBY LEASES TO THE LESSEE the land described above subject to the encumbrances as shown hereon (Note 6) for the above term for the clear yearly rental of \$4,500 (plus GST) (Note 7) payable (Note 8) in accordance with Clause 4 of this Lease</p>
--

Subject to the covenants and powers implied under the Transfer of Land Act 1893 as amended (unless hereby negated or modified) and also to the covenants and conditions contained herein.

The following covenants by the Lessee are to be construed according to section ninety-four of the Transfer of Land Act 1893 as amended (Note 9)



ATTESTATION SHEET

Dated this	day of	2018
------------	--------	------

LESSOR/S SIGN HERE (Note 10)

<p>THE COMMON SEAL of SHIRE OF MERREDIN) was hereunto affixed in the presence of:)))))</p>		
Shire President		Name of Shire President (print)
Chief Executive Officer		Name of Chief Executive Officer (print)

LESSEE/S SIGN HERE (Note 10)

<p>SIGNED SEALED and DELIVERED by) PAUL GERARD O'BRIEN as attorney for OPTUS) MOBILE PTY LIMITED ACN 054 365 696 who) declares that he is its company secretary under) Power of Attorney Registered No. G886420 in) the presence of)</p>		<p style="text-align: center;">_____ Company Secretary</p>
Signature of witness		
Name of witness		
Address of witness		
Occupation of witness (print)		

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet, Approval No B1191, should be used with appropriate headings. The boxed sections should only contain the words 'see page ...'
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.
4. Where issued, the Duplicate Certificate of Title is required to be produced or if held by another party then arrangements must be made for its production.

NOTES

1. **DESCRIPTION OF LAND**
Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated. If part, define by recital and/or sketch. Extent - whole, part or balance of the land comprised in the Certificate of Title to be stated.
The Volume and Folio number to be stated.
2. **LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS**
In this panel show (subject to the next paragraph) those limitations, interests, encumbrances and notifications affecting the land being leased that are recorded on the certificate(s) of title:
(a) In the Second Schedule;
(b) If no Second Schedule, that are encumbrances.
(Unless to be removed by action or document before registration hereof) Do not show any:
(a) Easement Benefits or Restrictive/Covenant Benefits; or
(b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg, if a mortgage is shown, do not show any partial discharges or any document affecting either).
The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and relevant plan/diagram.
Strata/survey-strata plan encumbrances are to be described as "Interests on strata/survey-strata plan".
If none show "nil".
3. **LESSOR**
State the full name of the Lessor/Lessors (REGISTERED PROPRIETOR) as shown in the Certificate of Title and the address/addresses to which future notices can be sent.
4. **LESSEE**
State full name of the Lessee/Lesseees and the address/ addresses to which future notices can be sent. If two or more state tenancy eg Joint Tenants, Tenants in Common. If Tenants in Common specify shares.
5. **TERM OF LEASE**
Must exceed 3 years.
Term to be stated in years, months and days or as the case may be. Commencement date to be stated. Options to renew to be shown.
6. **RECITE ANY EASEMENTS TO BE CREATED**
Here set forth any Easements to be created as appurtenant to the lease commencing with the words 'together with' and/or any Reservations hereby created encumbering the lease commencing with the words 'reserving to'.
7. State amount of yearly rental in figures
8. State term of payment.
9. Insert any Covenants required.
10. **LESSOR/LESSEE EXECUTION**
A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an **Adult Person**. The full name, address and occupation of the witness **must** be stated.

EXAMINED

OFFICE USE ONLY

LEASE

LODGED BY

ADDRESS
PHONE NO.

FAX NO.

REFERENCE

ISSUING BOX NO.

PREPARED BY

ADDRESS

PHONE NO. FAX NO.

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

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- | | |
|----------|-----------------|
| 1. _____ | Received items |
| 2. _____ | |
| 3. _____ | Nos. |
| 4. _____ | |
| 5. _____ | Receiving Clerk |
| 6. _____ | |

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

Information table

Parties

Name **Shire of Merredin**
ABN 87 065 676 484
Short form name **Lessor**
Notice details Postal address: PO Box 42, Merredin WA 6415
Telephone: 08 9041 1611
Email: emds@merredin.wa.gov.au
Attention: [Peter Zenni](#) **Chief Executive Officer**

Name **Optus Mobile Pty Limited** ACN 054 365 696
Short form name **Lessee**
Notice details Postal address: 1 Lyonpark Road, Macquarie Park NSW 2113
PO Box 888, North Ryde NSW 1670
Telephone: (03) 8576 1900
Email: mdsspropertyissues@optus.com.au
Attention: National Site Acquisition Co-ordinator

Site code P0095

Items

- Item 1** **Premises** (clause 1.1)
That part of the Land hachured in black on the plan in Annexure A being part of the property known as 106 Barrack Street, Merredin WA 6415
- Item 2** **Commencement Date** (clause 1.1)
19 September 2020
- Item 3** **Expiry Date** (clause 1.1)
18 September 2040
- Item 4** **Term** (clause 1.1)
Twenty years
- Item 5** **Rent** (clause 1.1 and 4.4)
\$4,500 (plus GST) during the first year of the Term, and reviewed to the then current open market rent (in accordance with clause 4.4) on each Market Rent Review Date or otherwise increased by 2.5% on each anniversary of the Commencement Date (which is not a Market Rent Review Date) thereafter throughout the remainder of the Term

Item 6

Nominated Account (clause 4.3)

Bank: Commonwealth Bank of Australia
Branch: Merredin
Account Name: Shire of Merredin Municipal Council
BSB No: 066-518
Account No: 0000-0010

Item 7

Break Date (clause 1.1)

Each of the following dates:

- (a) the date that is 15 years before the Expiry Date;
- (b) the date that is 10 years before the Expiry Date; and
- (c) the date that is 5 years before the Expiry Date.

Item 8

Tower Lease (clause 15)

Leases registered under dealing numbers N527156 and N757730

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In the Lease:

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

API WA means the Western Australia Division of the Australian Property Institute.

Break Date means the date stated in Item 7.

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

Carrier means a carrier as defined in the Act.

Commencement Date means the date stated in Item 2.

Expiry Date means the date stated in Item 3.

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

GST means a goods and services tax or like tax payable by the Lessor in respect of a supply under the Lease.

Information table means the part of this document described as Information table.

Item means an item appearing in the Information table.

Land means the land in the Certificate of Title referred to on the front page of the Lease.

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

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

Lessor means the lessor described on the front page of the Lease and its successors and assigns or, if the Lessor is a natural person, its executors administrators and assigns and in either case its employees, agents and contractors.

Market Rent Review Date means the date that is the fifth, tenth and fifteenth anniversary of the Commencement Date.

Month means calendar month.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Review Date means each anniversary of the Commencement Date.

Review Period means the period following each Market Rent Review Date until the next Review Date or the end of this Lease.

State means the State of the Commonwealth of Australia in which the Land is situated.

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

Telecommunications Equipment means any and all equipment, ancillary installations and necessary or desirable equipment required to operate and maintain a telecommunications network and telecommunications service now and in the future.

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

Valuer means a full member for at least five years of API WA and:

- (a) a person with at least 5 years' experience in the determination of market rentals for leases or licenses of telecommunication facilities; and
- (b) is licensed to practise as a valuer of the same type of property as the Premises.

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit, information table or schedule is a reference to a part and clause of and a party, annexure, exhibit, information table and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it; and
- (i) a covenant or agreement on the part of two or more persons binds them jointly and severally.

2. Implied covenants and powers

2.1 Exclusion of implied covenants

Sections 92, 93 and 94 of the *Transfer of Land Act 1893* (WA) do not apply to, and are not implied in the Lease unless expressly included.

2.2 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.

2.3 Contravention of Statute - severance

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

3. Term of Lease and holding over

3.1 Term of the Lease

The Term commences on the Commencement Date and expires on the Expiry Date, subject to the provisions of the Lease.

3.2 Termination on a Break Date

If the Lessee gives the Lessor notice no later than 6 months prior to the Break Date that the Lessee wishes to end the Term on a Break Date, the Break Date becomes the Expiry Date.

3.3 Yearly tenancy - holding over

If the Lessee occupies the Premises after the Expiry Date (other than pursuant to the grant of a further lease) without demand for possession by the Lessor, the Lessee does so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy, except that the Rent will not escalate in the manner specified in Item 5 and will remain at the rate payable in the last year of the Term.

4. Payment

4.1 Lessee's covenant

The Lessee must pay the Rent to the Lessor during the Term.

4.2 Payment of Rent

The Rent for the first year of the Term will be paid on or before the Commencement Date. The Rent for the balance of the Term will be paid annually in advance on or before each anniversary of the Commencement Date. The Lessee must pay the Rent to the Lessor or to any other person the Lessor notifies to the Lessee. Any notification must be at least 30 days prior to the date for payment of Rent.

4.3 EFT payments

The Lessee may pay the Rent by Electronic Funds Transfer (**EFT**) to the account nominated in Item 6. The Lessor may notify another account in Australia to which payments may be made by EFT to replace the account stated in Item 6. The notification must be at least 30 days prior to the date for payment of Rent. Payment by EFT by the Lessee's banker to the relevant nominated account by the due date is a full discharge for the payment.

4.4 Market Rent Review

The review procedure on each Market Rent Review Date is:

- (a) each review of rent may be initiated by either party;

- (b) a party may initiate a review by giving the other party a written notice stating the current market rent which it proposes as the rent for the Review Period. If a party receiving the notice does not object in writing to the proposed rent within 20 business days, that party will be deemed to have served an objection to the proposed rent and clause 4.4(c) applies.
- (c) If the party receiving the notice serves an objection to the proposed rent or there is a deemed objection pursuant to clause 4.4(b) and the parties do not agree on the rent within 20 business days after the objection is served (or is deemed to be served pursuant to clause 4.4(b)), the parties must appoint a Valuer to determine the current market rent. If the parties do not agree within 20 business days after the objection is served on the name of the Valuer, the Valuer must be nominated by the President of the Australian Property Institute, Western Australia Division, at the request of either party.
- (d) In determining the current market rent for the Premises, the Valuer must:
 - (i) consider any written submissions made by the parties within 20 business days after receiving the submissions under clause 4.4(i); and
 - (ii) determine the current market rent as an expert and not an arbitrator.
- (e) The valuer may confer with the Lessor and the Lessee and may require either party to supply information that the Valuer considers relevant to the determination.
- (f) Any request for information must be complied with promptly in writing by the party to whom it is directed, and that party must send a copy of that information to the other party.
- (g) Either party may supply the Valuer with other information that it considers relevant and, if it does so, must send a copy of that information to the other party.
- (h) Information may be provided on a confidential basis and if the party providing the information states that it wishes that information to be kept confidential then the party receiving it and the Valuer must treat the information as confidential and will not use that information other than for the purposes of this clause.
- (i) The Lessor and the Lessee may make written submissions to the Valuer in relation to the market rent within 20 business days of the Valuer's appointment. A party making a written submission must at the same time send a copy of it to the other party.
- (j) Regardless of any other provision of this Lease, the Rent payable from any Market Rent Review Date may be less than the Rent payable prior to the Market Rent Review Date.
- (k) In determining a new rent for the Premises the Valuer shall determine the open market rental value on the date when the rent is to apply for the Premises having regard to all matters then relevant to the determination. In particular, the Valuer should have consideration of the following matters:
 - (i) the Lessor is a willing but not anxious lessor and the Lessee is a willing but not anxious lessee;
 - (ii) there is a reasonable period within which to negotiate the new rent having regard to the nature of the Premises and the state of the market;
 - (iii) the Lessor and the Lessee are well acquainted with the Premises and aware of any factors which might affect value;
 - (iv) the length of the lease term and the period between rent reviews;
 - (v) the terms and obligations of the Lease;

- (vi) the permitted use under the Lease; and
 - (vii) the rental of comparable premises.
- (l) In considering rental evidence, rent levels determined under new, freely negotiated leases and sub-leases between a willing lessor and a willing lessee represent the best evidence of current market value, in the following hierarchical order of comparable evidence, to which Valuers should have regard:
- (i) open market lettings between unconnected parties. These transactions would have been negotiated freely and in full knowledge of market conditions and alternatives available to the lessee. They should therefore reflect the market rental value for that transaction.
 - (ii) Evidence produced from lease renewal negotiations. While this should have been negotiated in full knowledge of the market rates, the costs of moving to the lessee might tend to encourage agreement somewhat above the market level.
 - (iii) Rent review evidence. While it is in theory based on market rental values, neither party can walk away from the lease and this may also skew the result.
 - (iv) Rents settled by third parties (the courts, arbitrators or independent experts) are considered to be a further level down the hierarchy.
 - (v) In the absence of good comparable evidence from any of the above sources, the Valuer will have to look further afield. Older, newer or generally less comparable evidence will need to be considered, as will transactions in different locations. The Valuer will then need to apply professional knowledge and judgement to the evidence in order to apply it to the Premises.
- (m) The Valuer must disregard the value of any improvements owner by the Lessee, any sublessees or licensees.
- (n) The Valuer must make the determination of the current market rent and inform the parties in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 20 business days allowed for submissions by the parties.
- (o) If:
- (i) no determination has been made within 45 days (or such longer period as is agreed by the Lessor and the Lessee) of the parties:
 - (A) appointing the Valuer; or
 - (B) being informed of the Valuer's appointment; or
 - (C) the Valuer resigns, dies or becomes unable to complete the valuation,
 then the parties may immediately appoint a replacement Valuer in accordance with this clause 4.4.
- (p) The Valuer's determination will be final and binds both parties except in the case of manifest error or fraud.
- (q) The Lessor and Lessee must:
- (i) bear equally the appointed Valuer's fee for making the determination and if either pays more than half the fee, the difference may be recovered from the other; and

- (ii) each be responsible for their own costs (including costs of appointing valuers, agents or other consultants) involved in undertaking the negotiations envisaged by sub-clause 4.4(d) and/or to assist in making a submission to the determining Valuer.
- (r) Until the determination is made by the Valuer, the Lessee must continue to pay the same rent as before the Market Rent Review Date. Within 20 business days of being informed of the Valuer's determination, the parties must make any necessary adjustments.
- (s) A delay in starting a market review does not prevent the review from taking place and being effective from the Market Rent Review Date but if the market review is started more than 12 months after the Market Rent Review Date, the review takes effect only from the date on which it is started.

4.5 Rates, taxes and outgoings

The parties acknowledge and agree that:

- (a) the Rent is a gross amount and the Lessee is not required to pay any rates, taxes, charges, levies or outgoings which are charged to, levied on or relate to the Land (including but not limited to the Premises) except for electricity charges which are payable by the Lessee under clause 9); and
- (b) the Lessor must pay all rates, taxes, charges, levies and outgoings which are charged to, levied on or relate to the Land (including but not limited to the Premises).

4.6 Definitions

In this clause 4.6 and clauses 4.7 to 4.9:

- (a) **ABN** means Australian Business Number being an 11 digit identifying number allocated by the Australian Business Register (www.abr.business.gov.au);
- (b) **RCTI** means recipient created tax invoice;
- (c) words or expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning; and
- (d) a reference to the Lessor or Lessee includes their GST group representative member (if applicable).

4.7 ABN

- (a) The Lessor warrants that the Lessor:
 - (i) has an ABN; or
 - (ii) does not have an ABN, on the basis it is not entitled to have one under the *A New Tax System (Australian Business Number) Act 1999*; and
 - (iii) if it appoints a third party to manage the leasing of the Premises on its behalf and the third party's ABN is quoted in any tax invoice, invoice or other document relating to the Lease, the third party does so as agent for the Lessor in accordance with Australian Taxation Office's public ruling GSTR 2000/37: agency relationships and the application of the law.
- (b) If the Lessor does not have an ABN or the Lessor's ABN is cancelled, the Lessor must immediately notify the Lessee and unless the Lessor provides evidence that the Lessor is not entitled to have an ABN under the *A New Tax System (Australian Business Number) Act 1999*, the Lessor acknowledges that the Lessee will be required to deduct from each

payment to the Lessor, PAYG withholding tax pursuant to section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*.

- (c) If the Lessor does not comply with its obligations or breaches any warranty under this clause 4.7, the Lessor indemnifies the Lessee for any tax, charge, fine, penalty or other impost which the Lessee incurs or becomes liable to pay as a result of the Lessor's default or breach of warranty.

4.8 Lessor registered for GST

The following provisions apply in relation to GST:

- (a) Unless stated to the contrary, all payments to be made by the Lessee under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by the Lessee to the Lessor under the Lease is consideration for a supply by the Lessor under the Lease on which the Lessor must pay GST, the Lessee must also pay the Lessor an additional amount equal to the GST payable by the Lessor on that supply.
- (b) The Lessor must issue a tax invoice to the Lessee for any excluded taxable supply made by the Lessor to the Lessee under the Lease before the consideration payable for that supply is due and the Lessee need not pay for a particular excluded taxable supply until such time as the Lessor has issued a tax invoice to the Lessee for that supply.
- (c) The parties agree that the Lessee will issue RCTIs for the taxable supplies made by the Lessor to the Lessee under the Lease except for any supplies that the parties agree in writing are excluded taxable supplies. As at the date of the Lease the only agreed excluded taxable supplies are those supplies for which the Lessor has already issued a tax invoice to the Lessee. For the purpose of the Lessee issuing RCTIs the parties agree:
 - (i) the Lessee may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) the Lessor will not issue a tax invoice in respect of any supply it makes to the Lessee under the Lease other than an excluded taxable supply;
 - (iii) each party acknowledges and warrants that at the time of entering into the Lease, it is registered for GST; and
 - (iv) each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs. If the Lessor breaches its obligations under this clause 4.8(c)(iv) and the Australian Taxation Office determines the RCTI is not validly issued and requires the Lessee to repay any input tax credit, the Lessor:
 - (A) must immediately refund the overclaimed input tax credit amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credit.
- (d) If a payment to a party under the Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (e) If the Lessee notifies the Lessor in writing that the Lessee will no longer issue RCTIs then clause 4.8(c) will not apply from the date specified in the notification until the Lessee

withdraws the notification by a further written notice to the Lessor. While clause 4.8(c) does not apply the parties agree that all taxable supplies made by the Lessor to the Lessee under the Lease are excluded taxable supplies to which clause 4.8(b) applies.

4.9 Lessor not registered for GST

- (a) The Lessor must notify the Lessee of its GST registration status on or before execution of the Lease and must immediately notify the Lessee if it ceases to be registered for GST at any time during the Term.
- (b) Despite any other clause in the Lease, if the Lessor is not registered for GST or ceases to be registered for GST:
 - (i) the Lessee is not required to make a payment under the Lease (including but not limited to Rent) until the Lessor provides the Lessee with an invoice for the payment quoting either the Lessor's ABN or the Lessor's agent's ABN; and
 - (ii) if GST is incorrectly charged on any invoice or tax invoice issued by the Lessor or any third party on its behalf, the Lessor:
 - (A) must immediately refund the overcharged GST amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credits.

5. Use of Premises

5.1 Permitted use

- (a) The Lessee will use the Premises for the purpose of constructing, maintaining and operating a telecommunications network and telecommunications service including but not limited to installing, storing, operating, repairing, maintaining, altering, and replacing Telecommunications Equipment consistent with the evolving nature of telecommunications services.

(b) The Lessor gives no warranty:

- (i) as to the suitability of the Premises for the use referred to in clause 5.1(a); or
- (ii) that the Lessor will issue any consents, approvals, authorities, permits or licenses required by the Lessee under any statute for its use of the Premises.

5.2 Adjoining Land

- (a) The Lessor grants to the Lessee the right to temporarily use so much of the Land adjoining and adjacent to the Premises or any installation of the Lessee as is reasonably required during installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the telecommunications network and the telecommunications service.
- (b) When exercising its rights pursuant to this clause 5.2 the Lessee must use its reasonable endeavours to cause minimal disruption and inconvenience to the Lessor as far as is practicable.
- (c) After temporarily using the Land adjoining and adjacent to the Premises or any installation of the Lessee, the Lessee will restore the surface of the Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor.

- (d) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.2.

5.3 Requirements of Government Agencies

The Lessee must comply promptly with any Statute in respect of the Lessee's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises. The Lessee is under no liability for structural alterations unless caused or contributed to by the Lessee's particular use or occupation of the Premises.

5.4 Cabling

- (a) For the purpose of the operation of the Lessee's telecommunications network and telecommunications service, the Lessor will permit the Lessee to install, maintain, repair, replace and use above or below ground cabling to and from the Premises and where necessary to construct supports for that cabling.
- (b) In exercising its rights under this clause 5.4, the Lessee must:
- (i) not cause any lasting material damage to the Land or material interference with the Lessor; and
 - (ii) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by the Lessee to the reasonable satisfaction of the Lessor.
- (c) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.4.

5.5 Non-contiguous Premises

In the event of parts of the Premises not being contiguous one with the other or the Premises being partly or wholly on the rooftop of a building on the Land the Lessee may run such above or below ground cabling, wiring, piping, earthing straps, conduit and support structures over the Land or within or upon the building on the Land on which the Premises are situated as are necessary for its safe, continuous and proper use of the Premises but in doing so the Lessee must not cause any material damage to the Land or material interference with the Lessor.

5.6 Consents

The Lessor hereby irrevocably authorises the Lessee to make at the expense of the Lessee any application for consent or approval to any Government Agency to use or develop the Premises for the use referred to in clause 5.1 and to exercise and procure (at the Lessee's expense) every right of appeal arising from the determination of any such application or the failure to determine the application. The Lessor must sign all documentation and do all such things as the Lessee or any person nominated by the Lessee reasonably requires (at the cost and expense of the Lessee) to authorise or assist in obtaining consent or approval from any Government Agency to use or develop the Premises for the use referred to in clause 5.1.

5.7 Guy anchors and guy wires

The Lessor grants the Lessee the right to use so much of the Land adjoining and adjacent to the Premises to place and maintain guy anchors in such positions on the Land and in such numbers as are reasonably required by the Lessee for the purpose of supporting its antenna support structure erected on the Premises and to run guy wires from those guy anchors to its antenna support structure. The Lessor will not use or interfere with the Lessee's guy anchors or guy wires. The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause.

6. Access to the Premises

- (a) The Lessor consents to the Lessee and persons authorised by the Lessee without the need for prior notice and with or without materials, plant and other apparatus and vehicles entering the Land by the usual access routes for the purpose of using the Premises and exercising its rights under the Lease at all times of the day and night during the Term.
- (b) The Lessor agrees that where the Lessee installs, upgrades or maintains at its cost any access track or electricity connection to the Premises then:
 - (i) any other person (except the Lessor) who wishes to utilise the Lessee's track or connection must contribute to the cost of installation, upgrading and maintenance as apportioned by the Lessee; and
 - (ii) the Lessor must not grant or allow to be granted to any third party an interest or a right to use the Lessee's track or connection until that party first reaches an agreement with the Lessee as to the terms and amount of the contribution.

7. Insurance, indemnities and release

7.1 Obligation to insure

- (a) The Lessee will insure against any loss or damage which is commonly covered by public risk or liability insurance in respect of the Premises.
- (b) The Lessee will provide the Lessor with a certificate of currency for all insurances under clause 7.1(a) no more than once annually and only upon written request to the Lessee by the Lessor on each occasion.

7.2 Lessee's assumption of responsibilities

The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of injury or death to persons and damage to property if, during the Term it was the owner and occupier of the freehold of the Premises and the Lessee indemnifies and will keep the Lessor indemnified in that regard. Without limitation the Lessee indemnifies the Lessor from all actions, claims, costs and demands in respect of injury or death to persons or damage to property caused by electromagnetic fields emanating from the Lessee's Telecommunications Equipment installed on the Premises.

7.3 Negligence or default of Lessor

The releases, responsibilities and indemnities in clause 7.2 do not apply to any act, matter, thing or consequence if it arises out of the negligence, omission or default of the Lessor.

7.4 Warranty

- (a) The Lessee agrees that it must cause no greater disturbance to the Land, the Lessor's fixtures and facilities, the Lessor and to any other tenants of the Land, than is reasonably necessary having regard to the permitted use under clause 5.1.
- (b) The Lessee must operate the Premises lawfully and in a safe manner in accordance with such standards as are adopted by the Australian Communications and Media Authority from time to time concerning safe electromagnetic emission levels from facilities of the nature of the Telecommunications Equipment.

- (c) The Lessor may upon installation of any new Telecommunications Equipment on the Premises request that the Lessee provide the Lessor with an electromagnetic emissions report in respect of the Telecommunications Equipment to demonstrate compliance with all laws.
- (d) The Lessee agrees that the emissions from the Telecommunications Equipment will not exceed the levels allowed by law.

7.5 Indemnity unaffected by insurance

- (a) The Lessee's obligation to indemnify the Lessor under this Lease or at law is not affected by any insurance maintained by the Landlord or the Lessee in respect of the Premises and the indemnity under clause 7.2 is paramount.
- (b) If insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under clause 7.2 will be reduced by the extent of such payment.

7.6 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises except to the extent that such loss, damage or injury was caused or contributed (to the extent of that contribution) by the negligence, omission or default of the Lessor or any person under the express control of the Lessor.

8. Installation and maintenance

8.1 Repair and maintenance

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

8.2 Construction and alterations

The Lessee may at the Lessee's option and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law:

- (a) without the consent of the Lessor, install, erect, construct, dismantle, modify, repair, replace, renew and maintain upon the Premises Telecommunications Equipment; and
- (b) with the prior consent of the Lessor which consent must not be unreasonably withheld install, erect, construct, dismantle, repair, replace, renew and maintain upon the Premises security fencing and any building or buildings as necessary now or in the future to shelter Telecommunications Equipment and a free standing monopole, guy tower, multi-sided antenna support structure or other antenna support structure of sufficient height now or in the future to meet the Lessee's telecommunications requirements and all necessary connecting appurtenances.

9. Electricity supply

For the purpose of carrying out the Lessee's use of the Premises the Lessor must at the Lessee's request and at the Lessee's cost:

- (a) provide to the Lessee the ability to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of the

Lessee's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter so that the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it on the Premises; and

- (b) cause to be registered on the title to the Land an easement for electricity purposes, if required by and if so, in favour of, the relevant electricity authority.

10. Termination

10.1 Events of termination

If:

- (a) the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Lessee or inaccessible by any means of access; where such damage or destruction has not been caused by the negligent act or default of the Lessee;
- (b) the Lessee commits a material breach of any of its obligations and has not remedied that breach within a reasonable period of notice from the Lessor having regard to the nature of the breach;
- (c) any application to a Government Agency for a required consent or permit for the installation and use of the Premises as part of a telecommunications network and telecommunications service is granted to the Lessee with conditions unacceptable to it in its absolute and unfettered discretion or is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained;
- (d) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant physical or radio interference;
- (e) as a result of network changes, the Premises cease to operate as or are not required to be a part of the Lessee's telecommunications network;
- (f) the Lessor commits a breach of a material obligation and has not remedied that breach within a reasonable period of notice from the Lessee having regard to the nature of the breach; or
- (g) the Lessor breaches an obligation under clause 13.4 and/or clause 13.5,

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

10.2 Effect on rights or liabilities

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

10.3 Lessee to yield up

Subject to clause 10.4, the Lessee must at the expiration or sooner termination of the Term yield up the Premises in good repair and clean condition fair wear and tear excepted having regard to their condition at the Commencement Date of the Lease.

10.4 Removal of Lessee's fixtures and chattels

- (a) The Lessee must:

- (i) within ~~63~~ months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and the Lessee);
- (ii) within a reasonable period of earlier termination of the Lease; or
- (iii) by such other date as the Lessor and the Lessee agree in writing,

remove (subject to clause ~~14.2~~14.2) from the Premises all above ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises and make good any damage caused by such removal to the reasonable satisfaction of the Lessor.

(b) If the Lessee fails to remove the items referred to in clause 10.4(a) within 6 months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and Lessee) and following receipt of notice in writing from the Lessor to the Lessee requesting the removal of said items within a reasonable time (having regard to the nature of the works of removal of those items):

- (i) the Lessor shall have the right to remove from the Premises and Land any such items at the Lessee's cost;
- (ii) the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property except to the extent that any damage is caused by the negligence, default or omission of the Lessor; and
- (iii) the Lessor shall have the right to recover the costs of such removal from the Lessee as a due debt in a court of competent jurisdiction.

10.5 Termination of holding over

Either the Lessor or the Lessee may terminate the yearly tenancy under clause 3.3 by giving the other six months' prior written notice.

10.6 Additional Right of Termination

The Lessee may terminate the Lease by notice in writing to the Lessor served at any time before the second anniversary of the Commencement Date. The Lessee will not be entitled to any refund of prepaid Rent in the event of the Lessee exercising its rights under this clause.

10.7 Refund of Rent on termination

If the Lease is terminated by the Lessee pursuant to clause 10.1(a), 10.1(c), 10.1(d), 10.1(e), 10.1(f), 10.1(g), 19(f) or 19(g) the Lessor must, within 30 days of the date of termination, refund to the Lessee any Rent paid in advance for the unexpired portion of the Term after the date of termination.

11. Notices

11.1 Method of service

Any notice to be given under the Lease by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by email addressed to the receiving party at the address specified in the notice details in the Information table.

11.2 Time of service

Any notice given in accordance with the Lease will be deemed to have been duly served in the case of posting at the expiration of two Business Days after the date of posting and in the case of

an email transmission, on the first Business Day after the date of transmission (providing the sending party receives an email delivery receipt indicating that the notice has been transmitted).

11.3 Change of address

A party may at any time change its postal address or email address by giving notice to the other party.

12. Assignment and subletting

12.1 Lessee not to assign

The Lessee must not assign the Lease except under clause 12.2 or with the prior written consent of the Lessor under clause 12.3.

12.2 Assignment to a Related Body Corporate ~~or a Carrier~~

The Lessee may from time to time without the consent of the Lessor assign the Lease or sublet the Premises to a Related Body Corporate of the Lessee ~~or to a Carrier~~.

12.3 Assignment

(a) Subject to clause 12.2 the Lessee may assign the Lease with the prior written consent of the Lessor such consent not to be unreasonably withheld or delayed.

(b) The Lessor's consent under clause 12.3(a) will not be unreasonably withheld or delayed provided that:

(i) the proposed assignee is a respectable and responsible person of good financial standing;

(ii) all amounts due and payable under the Lease which have been notified to the Lessee within 10 Business Days of the date of assignment have been paid and there is no existing unremedied breach of any of the Lessee's covenants which have been notified to the Lessee within 10 Business Days of the date of assignment;

(iii) the Lessee procures the execution by the proposed assignee of a deed of assignment to which the Lessor is a party and which is drafted to the reasonable satisfaction of the Lessor; and

(iv) the deed of assignment contains a covenant by the assignee to pay all amounts payable under the Lease and to perform and observe all the Lessee's covenants.

12.4 Subletting

The Lessee may sublet, part with or share its right to possession of the Premises ~~upon~~with the prior written ~~notice to~~ consent of the Lessor such consent not to be unreasonably withheld or delayed.

12.5 Costs for assignment or subletting

If the Lessee wishes to assign or sublet the leasehold estate created by this Lease, the Lessee must pay all reasonable and proper professional and other reasonable and proper costs, charges and expenses incurred by the Lessor or any other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or subletting,
whether or not the assignment or subletting proceeds.

13. Lessor's covenants

13.1 Quiet enjoyment

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

13.2 Restriction on Lessor's use of the Land

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

13.3 Lessor's covenant

The Lessor covenants that the Lessor will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on, or transport to or over the Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises and in the event of the Lessee notifying the Lessor of any breach by the Lessor of this clause the Lessor must remove such hazardous substance will, in good faith, use its best endeavours to cause removal of such hazardous substances, to the extent that it is within its power to do so.

13.4 No concurrent or superior lease or other dealing

The Lessor must not:

- (a) grant any lease concurrent or superior to the Lease;
- (b) grant any easement over the Premises; or
- (c) enter into any other dealing over the Premises,

without the Lessee's prior written consent, which consent the Lessee may withhold in its absolute discretion.

13.5 ~~Last right of refusal~~

- ~~(a) The Lessor must not sell the Sale Land to a Proposed Purchaser or enter into any Sale Documentation with a Proposed Purchaser without first serving on the Lessee the Offer to Purchase.~~
- ~~(b) If within 20 Business Days of receipt by the Lessee of the Offer to Purchase the Lessee serves the Notice of Acceptance then the Lessor must within a further 10 Business Days prepare and forward to the Lessee the Contract, unless the parties have agreed otherwise.~~
- ~~(c) The Lessee must within 15 Business Days of receipt of the Contract, return to the Lessor the Lessee's counterpart of the Contract, duly executed together with a cheque for the deposit (if required), for the purpose of effecting an unconditional exchange of contracts.~~

- (d) ~~The Lessor must effect an exchange of the Contract within 5 Business Days of receipt of the executed Contract and deposit (if required) and if the Lessor fails to do so, the Lessor agrees to be bound by the Contract from the expiration of the 5 Business Day period as if it had been executed by the Lessor and exchanged.~~
- (e) ~~If the Lessee does not serve a Notice of Acceptance or notifies the Lessor that it does not wish to purchase the Sale Land, then the Lessor may sell the Sale Land to the Proposed Purchaser on terms and conditions not more favourable than the terms and conditions of the Offer to Purchase.~~
- (f) ~~Despite any other clause, if the Lessor decides to offer the Land for sale by auction it may do so subject to giving to the Lessee at least 20 Business Days' written notice of the proposed auction.~~
- (g) ~~In this clause:~~
- (i) ~~**Sale Land** means the Land or any part of it comprising the Premises;~~
- (ii) ~~**Proposed Purchaser** means anyone other than the Lessee;~~
- (iii) ~~**Sale Documentation** means genuine bona fide and binding documentation to sell the Sale Land;~~
- (iv) ~~**Offer to Purchase** means a notice from the Lessor to the Lessee offering to sell the Sale Land to the Lessee containing:~~
- (A) ~~details of the price and the other terms and conditions that have been accepted by the Proposed Purchaser; and~~
- (B) ~~a copy of the Sale Documentation which is to be signed or has been signed by or on behalf of the Proposed Purchaser;~~
- (v) ~~**Notice of Acceptance** means a notice by the Lessee to the Lessor that the Lessee will purchase the Sale Land; and~~
- (vi) ~~**Contract** means a contract for the sale of the Sale Land between the Lessor and the Lessee containing the same terms and conditions as were set out in the Sale Documentation.~~

14. Miscellaneous

14.1 Interference with existing Carriers

- (a) The Lessee acknowledges that there are existing Carriers on the Land and it must not knowingly interfere with the use of the Land by those Carriers.
- (b) Should the Lessor or any other pre-existing Carrier of the Land experience radio frequency interference with their electrical equipment on the Land the Lessor may immediately notify the Lessee of such interference and the following provisions apply:
- (i) the Lessee will within fourteen days of receipt of such notice determine whether its equipment is the cause of such interference and notify the Lessor of its determination, acting in good faith;
- (ii) if the Lessee determines that such interference is caused by its equipment it will forthwith use its best endeavours to stop such interference;
- (iii) if the Lessee determines that such interference is not caused by its equipment it with forthwith notify the Lessor of such determination;

- (iv) if the parties are unable to agree as to the cause of such interference either party may refer the matter to the Australian Communications and Media Authority (or such body constituted by the Commonwealth Government from time to time to police the radio frequency spectrum) for its determination acting as an expert. The Australian Communication and Media Authority shall make its determination within 30 days of any reference to it and such decision will be final and binding on the parties. The cost of determination must be borne by the parties equally; and
- (v) if the Australian Communications and Media Authority determines that such interference is caused by the Lessee the Lessee will remedy such interference within 30 days of the Australian Communications and Media Authority's determination.

14.114.2 Costs and disbursements

- (a) The Lessee must pay all duty (including penalties and fines other than penalties and fines due to the default of the Lessor) and registration fees on the Lease; and
- (b) The Lessee must (promptly following registration of the Lease) re-imburse the Lessor, the Lessor's legal costs and disbursements in relation to the preparation and execution of this Lease up to a maximum of \$1,500 (plus GST).

14.3 Interest

The Lessee agrees to pay the Lessor on demand interest at a rate equivalent to the 90 day bank bill swap reference rate published in the Australian Financial Review on any late rent payments by the Lessee under this Lease and remaining unpaid for at least 60 days following a written demand by the Lessor. Interest will be computed from the date on which the payment became due.

14.214.4 Without prejudice

- (a) The Lease is without prejudice to the Lessee's rights under Schedule 3 of the Act.
- (b) To the extent that the Lessee undertakes maintenance (as that term is defined under Schedule 3 of the Act), the Lessor agrees that it does not require the Lessee to give notice of that activity under Schedule 3 of the Act.

14.314.5 Governing law

The Lease is governed by the laws of the State and the Commonwealth of Australia and the Lessor and the Lessee submit to the non-exclusive jurisdiction of the Courts of the State.

15. Definitions:

Existing Carrier means the lessee from time to time pursuant to the Tower Lease.

Tower Lease means the lease or leases of the Tower Premises between the Existing Carrier and the Lessor described in Item 8 and any extension or renewal of that lease or those leases.

Tower Agreement means the agreement to occupy part of the Tower Premises between the Existing Carrier and the Lessee commencing on the same day as the Lease and any future agreement between the Existing Carrier and the Lessee.

Tower Premises means the premises leased pursuant to the Tower Lease.

16. Consent to Tower Agreement

The Lessor consents to the Existing Carrier granting the Tower Agreement.

17. Assignment or termination of Tower Lease

17.1 Assignment of Tower Lease

The Lessor must not terminate or surrender the Tower Lease without first notifying the Lessee of its intention to do so, in which event the Lessee may require the Existing Carrier to assign the Tower Lease to the Lessee. The Lessor agrees that if the Lessee does so require the Existing Carrier to assign the Tower Lease to it, the Lessor will not unreasonably withhold its consent to such an assignment.

17.2 Grant of Tower Lease to Lessee

Provided that the Lessee is not at that time in default of the terms of the Lease, then if, at any time during the Term, the Lessor becomes entitled to terminate the Tower Lease for any reason whatsoever, then prior to so terminating the Tower Lease, the Lessor must give notice to the Lessee (**Notice of Intended Termination**) of its intention to so terminate the Tower Lease. The Lessee may within seven days after receipt of the Notice of Intended Termination, give notice to the Lessor (**Lessee's Notice**) requiring the Lessor to grant to it a lease of the Tower Premises upon the same terms as the Tower Lease.

17.3 Lessor and Lessee to enter into Tower Lease

The Lessor must as soon as practicable after either the receipt by it of the Lessee's Notice or the termination of the Tower Lease (which ever is the last to occur), grant to the Lessee a lease or leases of the Tower Premises upon the same terms as the Tower Lease, but commencing on the date on which the Tower Lease is terminated and expiring on the date or dates which the Tower Lease would, but for the prior termination thereof by the Lessor, have otherwise expired, and substituting the Lessee in place of the Existing Carrier. Upon the grant of any such Lease, any default or other right or cause of action between the Lessor and the Existing Carrier will, as between the Lessor and the Lessee, be deemed to have been waived and permanently released.

18. Option in Tower Lease

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

- (a) the Lessee will have the right by notice (**Renewal Notice**) served on the Lessor within 14 days of the Non Exercise Notice to require the Lessor to grant to the Lessee a lease of the Tower Premises on the terms contemplated in the Tower Lease as if the option to renew contained in it had been exercised by the Existing Carrier; and
- (b) upon service of the Renewal Notice by the Lessee, the provisions of clause 17.3 will apply so far as they are relevant.

19. Additional right of termination of the Lease

The Lessee may terminate the Lease immediately by notice to the Lessor if:

- (a) the Lessee takes an assignment of the Tower Lease pursuant to clause 17.1;
- (b) the Lessor grants the Lessee a lease pursuant to clause 17.3 or 18;

- (c) the Tower Lease is terminated by either party or is surrendered and the Lessee does not elect to take an assignment of the Tower Lease pursuant to clause 17.1 or to be granted a lease pursuant to clause 17.3;
- (d) the Lessor gives a Non Exercise Notice under clause 18 and the Lessee does not give a Renewal Notice;
- (e) the Lessee ceases to hold any right described in the Tower Agreement from the Existing Carrier or the Lessor other than as a result of the Lessee's breaching the agreement conferring the right;
- (f) the Tower Lease expires and no new lease is entered into for the Tower Premises between the Existing Carrier and the Lessor that commences immediately after the expiry of the Tower Lease; or
- (g) the Existing Carrier enters into a new lease with the Lessor for the Tower Premises that commences immediately after the expiry of the Tower Lease but the new lease expires before the Expiry Date of the Lease.

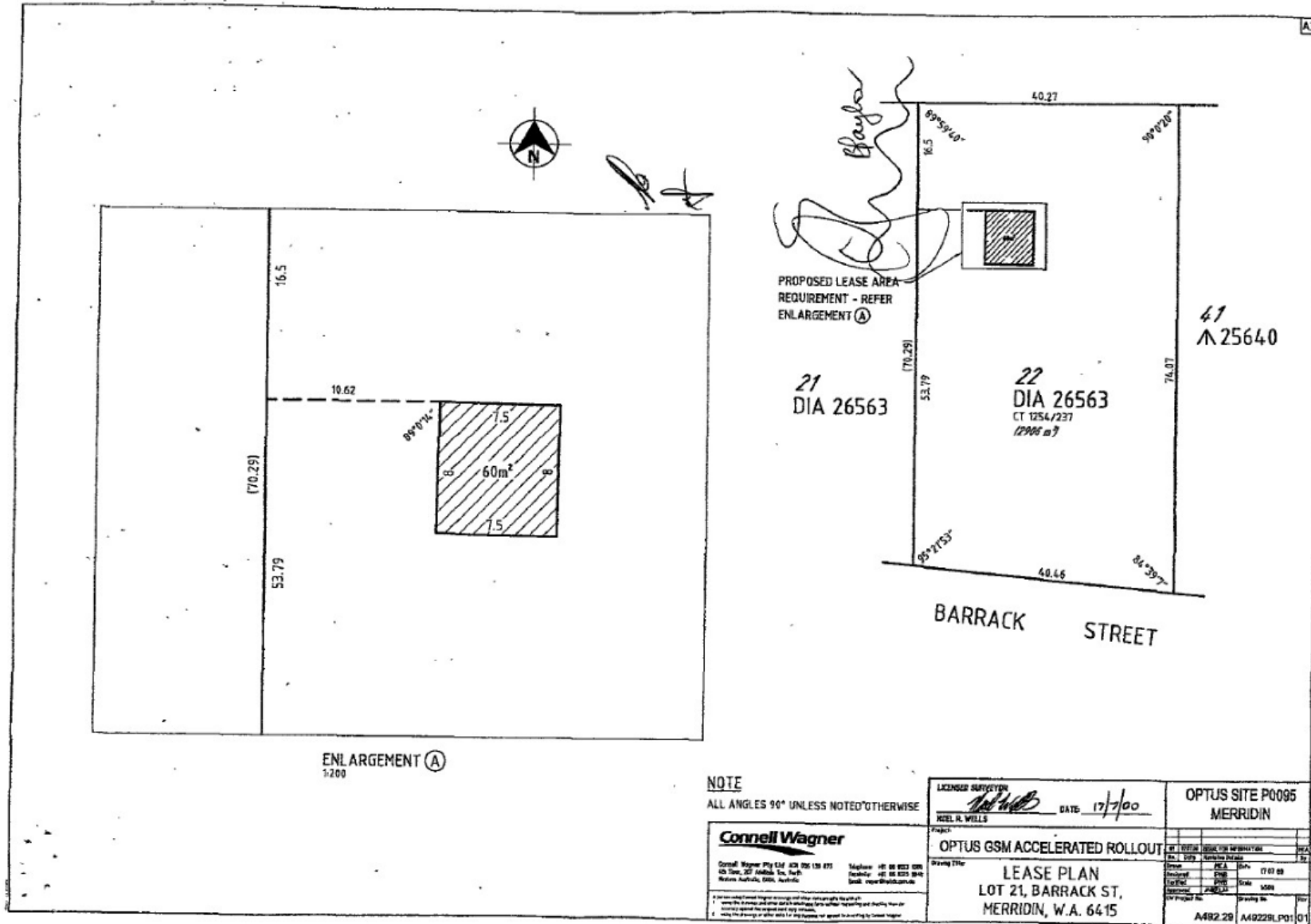
20. Trilocation

The Lessor's obligations under clauses 17 and 18 are subject to any prior like rights granted by the Lessor or the Existing Carrier to a third carrier as defined in the Act so long as the Lessor only deals with the third carrier in relation to the Tower Premises or the Tower Lease subject to the Tower Agreement.

Annexure A

Plan referred to in Item 1

Annexure to Lease of premises known as 106 Barrack Street, Merredin WA 6415



**WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED**

LEASE

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
As to portion only: Lot 200 on Deposited Plan 56205 and being that part of the Land hachured on the plan annexed to this Lease	Part	2668	423

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS (Note 2)

--

ESTATE AND INTEREST

Fee simple

LESSOR (Note 3)

SHIRE OF MERREDIN of PO Box 42, Merredin, Western Australia 6415
--

LESSEE (Note 4)

OPTUS MOBILE PTY LIMITED ACN 054 365 696 of 1 Lyonpark Road, Macquarie Park, New South Wales
--

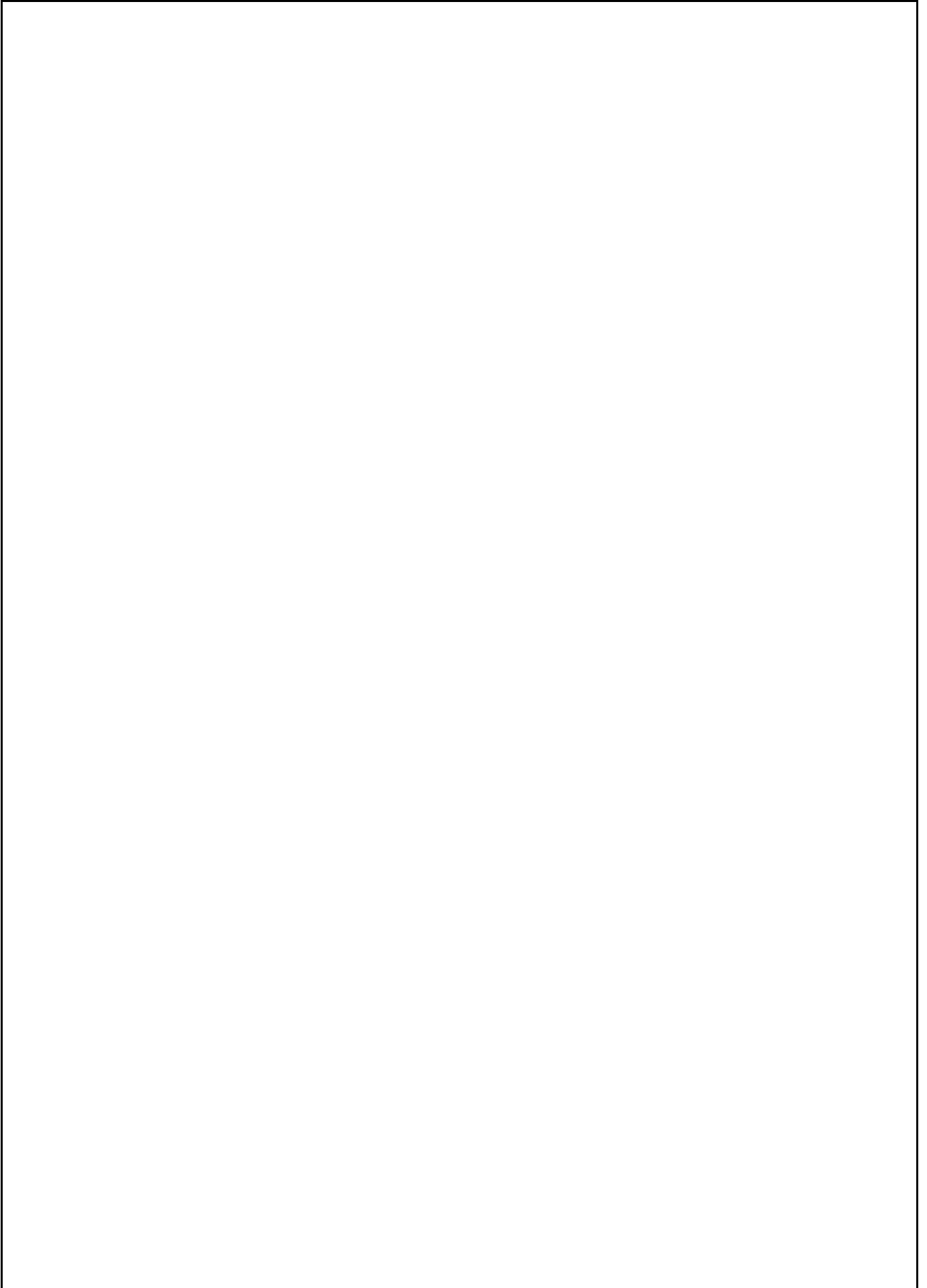
TERM OF LEASE (Note 5)

20 years commencing from the 19th day of September 2020
--

<p>THE LESSOR HEREBY LEASES TO THE LESSEE the land described above subject to the encumbrances as shown hereon (Note 6) for the above term for the clear yearly rental of \$4,500 (plus GST) (Note 7) payable (Note 8) in accordance with Clause 4 of this Lease</p>
--

Subject to the covenants and powers implied under the Transfer of Land Act 1893 as amended (unless hereby negated or modified) and also to the covenants and conditions contained herein.

The following covenants by the Lessee are to be construed according to section ninety-four of the Transfer of Land Act 1893 as amended (Note 9)



ATTESTATION SHEET

Dated this _____ day of _____ 2018

LESSOR/S SIGN HERE (Note 10)

THE COMMON SEAL of SHIRE OF MERREDIN) was hereunto affixed in the presence of:)))	
_____	_____
Shire President	Name of Shire President (print)
_____	_____
Chief Executive Officer	Name of Chief Executive Officer (print)

LESSEE/S SIGN HERE (Note 10)

SIGNED SEALED and DELIVERED by) PAUL GERARD O'BRIEN as attorney for OPTUS) MOBILE PTY LIMITED ACN 054 365 696 who) declares that he is its company secretary under) Power of Attorney Registered No. G886420 in) the presence of)	_____
	Company Secretary

Signature of witness	

Name of witness	

Address of witness	

Occupation of witness (print)	

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet, Approval No B1191, should be used with appropriate headings. The boxed sections should only contain the words 'see page ...'
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.
4. Where issued, the Duplicate Certificate of Title is required to be produced or if held by another party then arrangements must be made for its production.

NOTES

1. **DESCRIPTION OF LAND**
Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated. If part, define by recital and/or sketch. Extent - whole, part or balance of the land comprised in the Certificate of Title to be stated.
The Volume and Folio number to be stated.
2. **LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS**
In this panel show (subject to the next paragraph) those limitations, interests, encumbrances and notifications affecting the land being leased that are recorded on the certificate(s) of title:
(a) In the Second Schedule;
(b) If no Second Schedule, that are encumbrances.
(Unless to be removed by action or document before registration hereof) Do not show any:
(a) Easement Benefits or Restrictive/Covenant Benefits; or
(b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg, if a mortgage is shown, do not show any partial discharges or any document affecting either).
The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and relevant plan/diagram.
Strata/survey-strata plan encumbrances are to be described as "Interests on strata/survey-strata plan".
If none show "nil".
3. **LESSOR**
State the full name of the Lessor/Lessors (REGISTERED PROPRIETOR) as shown in the Certificate of Title and the address/addresses to which future notices can be sent.
4. **LESSEE**
State full name of the Lessee/Lessees and the address/ addresses to which future notices can be sent. If two or more state tenancy eg Joint Tenants, Tenants in Common. If Tenants in Common specify shares.
5. **TERM OF LEASE**
Must exceed 3 years.
Term to be stated in years, months and days or as the case may be. Commencement date to be stated. Options to renew to be shown.
6. **RECITE ANY EASEMENTS TO BE CREATED**
Here set forth any Easements to be created as appurtenant to the lease commencing with the words 'together with' and/or any Reservations hereby created encumbering the lease commencing with the words 'reserving to'.
7. State amount of yearly rental in figures
8. State term of payment.
9. Insert any Covenants required.
10. **LESSOR/LESSEE EXECUTION**
A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an **Adult Person**. The full name, address and occupation of the witness **must** be stated.

EXAMINED

OFFICE USE ONLY

LEASE

LODGED BY

ADDRESS
PHONE NO.

FAX NO.

REFERENCE

ISSUING BOX NO.

PREPARED BY

ADDRESS

PHONE NO. FAX NO.

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

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- | | |
|----------|-----------------|
| 1. _____ | Received items |
| 2. _____ | |
| 3. _____ | Nos. |
| 4. _____ | |
| 5. _____ | Receiving Clerk |
| 6. _____ | |

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

Information table

Parties

Name	Shire of Merredin
ABN	87 065 676 484
Short form name	Lessor
Notice details	Postal address: PO Box 42, Merredin WA 6415 Telephone: 08 9041 1611 Email: emds@merredin.wa.gov.au Attention: Chief Executive Officer
Name	Optus Mobile Pty Limited ACN 054 365 696
Short form name	Lessee
Notice details	Postal address: 1 Lyonpark Road, Macquarie Park NSW 2113 PO Box 888, North Ryde NSW 1670 Telephone: (03) 8576 1900 Email: mdsspropertyissues@optus.com.au Attention: National Site Acquisition Co-ordinator
Site code	P0095

Items

Item 1	Premises (clause 1.1) That part of the Land hachured in black on the plan in Annexure A being part of the property known as 106 Barrack Street, Merredin WA 6415
Item 2	Commencement Date (clause 1.1) 19 September 2020
Item 3	Expiry Date (clause 1.1) 18 September 2040
Item 4	Term (clause 1.1) Twenty years
Item 5	Rent (clause 1.1 and 4.4) \$4,500 (plus GST) during the first year of the Term, and reviewed to the then current open market rent (in accordance with clause 4.4) on each Market Rent Review Date or otherwise increased by 2.5% on each anniversary of the Commencement Date (which is not a Market Rent Review Date) thereafter throughout the remainder of the Term

Item 6

Nominated Account (clause 4.3)

Bank: Commonwealth Bank of Australia
Branch: Merredin
Account Name: Shire of Merredin Municipal Council
BSB No: 066-518
Account No: 0000-0010

Item 7

Break Date (clause 1.1)

Each of the following dates:

- (a) the date that is 15 years before the Expiry Date;
- (b) the date that is 10 years before the Expiry Date; and
- (c) the date that is 5 years before the Expiry Date.

Item 8

Tower Lease (clause 15)

Leases registered under dealing numbers N527156 and N757730

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In the Lease:

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

API WA means the Western Australia Division of the Australian Property Institute.

Break Date means the date stated in Item 7.

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

Carrier means a carrier as defined in the Act.

Commencement Date means the date stated in Item 2.

Expiry Date means the date stated in Item 3.

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

GST means a goods and services tax or like tax payable by the Lessor in respect of a supply under the Lease.

Information table means the part of this document described as Information table.

Item means an item appearing in the Information table.

Land means the land in the Certificate of Title referred to on the front page of the Lease.

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

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

Lessor means the lessor described on the front page of the Lease and its successors and assigns or, if the Lessor is a natural person, its executors administrators and assigns and in either case its employees, agents and contractors.

Market Rent Review Date means the date that is the fifth, tenth and fifteenth anniversary of the Commencement Date.

Month means calendar month.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Review Date means each anniversary of the Commencement Date.

Review Period means the period following each Market Rent Review Date until the next Review Date or the end of this Lease.

State means the State of the Commonwealth of Australia in which the Land is situated.

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

Telecommunications Equipment means any and all equipment, ancillary installations and necessary or desirable equipment required to operate and maintain a telecommunications network and telecommunications service now and in the future.

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

Valuer means a full member for at least five years of API WA and:

- (a) a person with at least 5 years' experience in the determination of market rentals for leases or licenses of telecommunication facilities; and
- (b) is licensed to practise as a valuer of the same type of property as the Premises.

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit, information table or schedule is a reference to a part and clause of and a party, annexure, exhibit, information table and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it; and
- (i) a covenant or agreement on the part of two or more persons binds them jointly and severally.

2. Implied covenants and powers

2.1 Exclusion of implied covenants

Sections 92, 93 and 94 of the *Transfer of Land Act 1893* (WA) do not apply to, and are not implied in the Lease unless expressly included.

2.2 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.

2.3 Contravention of Statute - severance

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

3. Term of Lease and holding over

3.1 Term of the Lease

The Term commences on the Commencement Date and expires on the Expiry Date, subject to the provisions of the Lease.

3.2 Termination on a Break Date

If the Lessee gives the Lessor notice no later than 6 months prior to the Break Date that the Lessee wishes to end the Term on a Break Date, the Break Date becomes the Expiry Date.

3.3 Yearly tenancy - holding over

If the Lessee occupies the Premises after the Expiry Date (other than pursuant to the grant of a further lease) without demand for possession by the Lessor, the Lessee does so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy, except that the Rent will not escalate in the manner specified in Item 5 and will remain at the rate payable in the last year of the Term.

4. Payment

4.1 Lessee's covenant

The Lessee must pay the Rent to the Lessor during the Term.

4.2 Payment of Rent

The Rent for the first year of the Term will be paid on or before the Commencement Date. The Rent for the balance of the Term will be paid annually in advance on or before each anniversary of the Commencement Date. The Lessee must pay the Rent to the Lessor or to any other person the Lessor notifies to the Lessee. Any notification must be at least 30 days prior to the date for payment of Rent.

4.3 EFT payments

The Lessee may pay the Rent by Electronic Funds Transfer (**EFT**) to the account nominated in Item 6. The Lessor may notify another account in Australia to which payments may be made by EFT to replace the account stated in Item 6. The notification must be at least 30 days prior to the date for payment of Rent. Payment by EFT by the Lessee's banker to the relevant nominated account by the due date is a full discharge for the payment.

4.4 Market Rent Review

The review procedure on each Market Rent Review Date is:

- (a) each review of rent may be initiated by either party;

- (b) a party may initiate a review by giving the other party a written notice stating the current market rent which it proposes as the rent for the Review Period. If a party receiving the notice does not object in writing to the proposed rent within 20 business days, that party will be deemed to have served an objection to the proposed rent and clause 4.4(c) applies.
- (c) If the party receiving the notice serves an objection to the proposed rent or there is a deemed objection pursuant to clause 4.4(b) and the parties do not agree on the rent within 20 business days after the objection is served (or is deemed to be served pursuant to clause 4.4(b)), the parties must appoint a Valuer to determine the current market rent. If the parties do not agree within 20 business days after the objection is served on the name of the Valuer, the Valuer must be nominated by the President of the Australian Property Institute, Western Australia Division, at the request of either party.
- (d) In determining the current market rent for the Premises, the Valuer must:
 - (i) consider any written submissions made by the parties within 20 business days after receiving the submissions under clause 4.4(i); and
 - (ii) determine the current market rent as an expert and not an arbitrator.
- (e) The valuer may confer with the Lessor and the Lessee and may require either party to supply information that the Valuer considers relevant to the determination.
- (f) Any request for information must be complied with promptly in writing by the party to whom it is directed, and that party must send a copy of that information to the other party.
- (g) Either party may supply the Valuer with other information that it considers relevant and, if it does so, must send a copy of that information to the other party.
- (h) Information may be provided on a confidential basis and if the party providing the information states that it wishes that information to be kept confidential then the party receiving it and the Valuer must treat the information as confidential and will not use that information other than for the purposes of this clause.
- (i) The Lessor and the Lessee may make written submissions to the Valuer in relation to the market rent within 20 business days of the Valuer's appointment. A party making a written submission must at the same time send a copy of it to the other party.
- (j) Regardless of any other provision of this Lease, the Rent payable from any Market Rent Review Date may be less than the Rent payable prior to the Market Rent Review Date.
- (k) In determining a new rent for the Premises the Valuer shall determine the open market rental value on the date when the rent is to apply for the Premises having regard to all matters then relevant to the determination. In particular, the Valuer should have consideration of the following matters:
 - (i) the Lessor is a willing but not anxious lessor and the Lessee is a willing but not anxious lessee;
 - (ii) there is a reasonable period within which to negotiate the new rent having regard to the nature of the Premises and the state of the market;
 - (iii) the Lessor and the Lessee are well acquainted with the Premises and aware of any factors which might affect value;
 - (iv) the length of the lease term and the period between rent reviews;
 - (v) the terms and obligations of the Lease;

- (vi) the permitted use under the Lease; and
 - (vii) the rental of comparable premises.
- (l) In considering rental evidence, rent levels determined under new, freely negotiated leases and sub-leases between a willing lessor and a willing lessee represent the best evidence of current market value, in the following hierarchical order of comparable evidence, to which Valuers should have regard:
- (i) open market lettings between unconnected parties. These transactions would have been negotiated freely and in full knowledge of market conditions and alternatives available to the lessee. They should therefore reflect the market rental value for that transaction.
 - (ii) Evidence produced from lease renewal negotiations. While this should have been negotiated in full knowledge of the market rates, the costs of moving to the lessee might tend to encourage agreement somewhat above the market level.
 - (iii) Rent review evidence. While it is in theory based on market rental values, neither party can walk away from the lease and this may also skew the result.
 - (iv) Rents settled by third parties (the courts, arbitrators or independent experts) are considered to be a further level down the hierarchy.
 - (v) In the absence of good comparable evidence from any of the above sources, the Valuer will have to look further afield. Older, newer or generally less comparable evidence will need to be considered, as will transactions in different locations. The Valuer will then need to apply professional knowledge and judgement to the evidence in order to apply it to the Premises.
- (m) The Valuer must disregard the value of any improvements owner by the Lessee, any sublessees or licensees.
- (n) The Valuer must make the determination of the current market rent and inform the parties in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 20 business days allowed for submissions by the parties.
- (o) If:
- (i) no determination has been made within 45 days (or such longer period as is agreed by the Lessor and the Lessee) of the parties:
 - (A) appointing the Valuer; or
 - (B) being informed of the Valuer's appointment; or
 - (C) the Valuer resigns, dies or becomes unable to complete the valuation,then the parties may immediately appoint a replacement Valuer in accordance with this clause 4.4.
- (p) The Valuer's determination will be final and binds both parties except in the case of manifest error or fraud.
- (q) The Lessor and Lessee must:
- (i) bear equally the appointed Valuer's fee for making the determination and if either pays more than half the fee, the difference may be recovered from the other; and

- (ii) each be responsible for their own costs (including costs of appointing valuers, agents or other consultants) involved in undertaking the negotiations envisaged by sub-clause 4.4(d) and/or to assist in making a submission to the determining Valuer.
- (r) Until the determination is made by the Valuer, the Lessee must continue to pay the same rent as before the Market Rent Review Date. Within 20 business days of being informed of the Valuer's determination, the parties must make any necessary adjustments.
- (s) A delay in starting a market review does not prevent the review from taking place and being effective from the Market Rent Review Date but if the market review is started more than 12 months after the Market Rent Review Date, the review takes effect only from the date on which it is started.

4.5 Rates, taxes and outgoings

The parties acknowledge and agree that:

- (a) the Rent is a gross amount and the Lessee is not required to pay any rates, taxes, charges, levies or outgoings which are charged to, levied on or relate to the Land (including but not limited to the Premises) except for electricity charges which are payable by the Lessee under clause 9); and
- (b) the Lessor must pay all rates, taxes, charges, levies and outgoings which are charged to, levied on or relate to the Land (including but not limited to the Premises).

4.6 Definitions

In this clause 4.6 and clauses 4.7 to 4.9:

- (a) **ABN** means Australian Business Number being an 11 digit identifying number allocated by the Australian Business Register (www.abr.business.gov.au);
- (b) **RCTI** means recipient created tax invoice;
- (c) words or expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning; and
- (d) a reference to the Lessor or Lessee includes their GST group representative member (if applicable).

4.7 ABN

- (a) The Lessor warrants that the Lessor:
 - (i) has an ABN; or
 - (ii) does not have an ABN, on the basis it is not entitled to have one under the *A New Tax System (Australian Business Number) Act 1999*; and
 - (iii) if it appoints a third party to manage the leasing of the Premises on its behalf and the third party's ABN is quoted in any tax invoice, invoice or other document relating to the Lease, the third party does so as agent for the Lessor in accordance with Australian Taxation Office's public ruling GSTR 2000/37: agency relationships and the application of the law.
- (b) If the Lessor does not have an ABN or the Lessor's ABN is cancelled, the Lessor must immediately notify the Lessee and unless the Lessor provides evidence that the Lessor is not entitled to have an ABN under the *A New Tax System (Australian Business Number) Act 1999*, the Lessor acknowledges that the Lessee will be required to deduct from each

payment to the Lessor, PAYG withholding tax pursuant to section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*.

- (c) If the Lessor does not comply with its obligations or breaches any warranty under this clause 4.7, the Lessor indemnifies the Lessee for any tax, charge, fine, penalty or other impost which the Lessee incurs or becomes liable to pay as a result of the Lessor's default or breach of warranty.

4.8 Lessor registered for GST

The following provisions apply in relation to GST:

- (a) Unless stated to the contrary, all payments to be made by the Lessee under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by the Lessee to the Lessor under the Lease is consideration for a supply by the Lessor under the Lease on which the Lessor must pay GST, the Lessee must also pay the Lessor an additional amount equal to the GST payable by the Lessor on that supply.
- (b) The Lessor must issue a tax invoice to the Lessee for any excluded taxable supply made by the Lessor to the Lessee under the Lease before the consideration payable for that supply is due and the Lessee need not pay for a particular excluded taxable supply until such time as the Lessor has issued a tax invoice to the Lessee for that supply.
- (c) The parties agree that the Lessee will issue RCTIs for the taxable supplies made by the Lessor to the Lessee under the Lease except for any supplies that the parties agree in writing are excluded taxable supplies. As at the date of the Lease the only agreed excluded taxable supplies are those supplies for which the Lessor has already issued a tax invoice to the Lessee. For the purpose of the Lessee issuing RCTIs the parties agree:
 - (i) the Lessee may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) the Lessor will not issue a tax invoice in respect of any supply it makes to the Lessee under the Lease other than an excluded taxable supply;
 - (iii) each party acknowledges and warrants that at the time of entering into the Lease, it is registered for GST; and
 - (iv) each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs. If the Lessor breaches its obligations under this clause 4.8(c)(iv) and the Australian Taxation Office determines the RCTI is not validly issued and requires the Lessee to repay any input tax credit, the Lessor:
 - (A) must immediately refund the overclaimed input tax credit amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credit.
- (d) If a payment to a party under the Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (e) If the Lessee notifies the Lessor in writing that the Lessee will no longer issue RCTIs then clause 4.8(c) will not apply from the date specified in the notification until the Lessee

withdraws the notification by a further written notice to the Lessor. While clause 4.8(c) does not apply the parties agree that all taxable supplies made by the Lessor to the Lessee under the Lease are excluded taxable supplies to which clause 4.8(b) applies.

4.9 Lessor not registered for GST

- (a) The Lessor must notify the Lessee of its GST registration status on or before execution of the Lease and must immediately notify the Lessee if it ceases to be registered for GST at any time during the Term.
- (b) Despite any other clause in the Lease, if the Lessor is not registered for GST or ceases to be registered for GST:
 - (i) the Lessee is not required to make a payment under the Lease (including but not limited to Rent) until the Lessor provides the Lessee with an invoice for the payment quoting either the Lessor's ABN or the Lessor's agent's ABN; and
 - (ii) if GST is incorrectly charged on any invoice or tax invoice issued by the Lessor or any third party on its behalf, the Lessor:
 - (A) must immediately refund the overcharged GST amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credits.

5. Use of Premises

5.1 Permitted use

- (a) The Lessee will use the Premises for the purpose of constructing, maintaining and operating a telecommunications network and telecommunications service including but not limited to installing, storing, operating, repairing, maintaining, altering, and replacing Telecommunications Equipment consistent with the evolving nature of telecommunications services.
- (b) The Lessor gives no warranty:
 - (i) as to the suitability of the Premises for the use referred to in clause 5.1(a); or
 - (ii) that the Lessor will issue any consents, approvals, authorities, permits or licenses required by the Lessee under any statute for its use of the Premises.

5.2 Adjoining Land

- (a) The Lessor grants to the Lessee the right to temporarily use so much of the Land adjoining and adjacent to the Premises or any installation of the Lessee as is reasonably required during installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the telecommunications network and the telecommunications service.
- (b) When exercising its rights pursuant to this clause 5.2 the Lessee must use its reasonable endeavours to cause minimal disruption and inconvenience to the Lessor as far as is practicable.
- (c) After temporarily using the Land adjoining and adjacent to the Premises or any installation of the Lessee, the Lessee will restore the surface of the Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor.

- (d) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.2.

5.3 Requirements of Government Agencies

The Lessee must comply promptly with any Statute in respect of the Lessee's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises. The Lessee is under no liability for structural alterations unless caused or contributed to by the Lessee's particular use or occupation of the Premises.

5.4 Cabling

- (a) For the purpose of the operation of the Lessee's telecommunications network and telecommunications service, the Lessor will permit the Lessee to install, maintain, repair, replace and use above or below ground cabling to and from the Premises and where necessary to construct supports for that cabling.
- (b) In exercising its rights under this clause 5.4, the Lessee must:
 - (i) not cause any lasting material damage to the Land or material interference with the Lessor; and
 - (ii) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by the Lessee to the reasonable satisfaction of the Lessor.
- (c) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.4.

5.5 Not used.

5.6 Consents

- (a) Subject to clause 14.6, the Lessor hereby irrevocably authorises the Lessee to make at the expense of the Lessee any application for consent or approval to any Government Agency to use or develop the Premises for the use referred to in clause 5.1 and to exercise and procure (at the Lessee's expense) every right of appeal arising from the determination of any such application or the failure to determine the application. The Lessor must sign all documentation and do all such things as the Lessee or any person nominated by the Lessee reasonably requires (at the cost and expense of the Lessee) to authorise or assist in obtaining consent or approval from any Government Agency to use or develop the Premises for the use referred to in clause 5.1.

5.7 Not used.

6. Access to the Premises

- (a) The Lessor consents to the Lessee and persons authorised by the Lessee without the need for prior notice and with or without materials, plant and other apparatus and vehicles entering the Land by the usual access routes for the purpose of using the Premises and exercising its rights under the Lease at all times of the day and night during the Term.
- (b) The Lessor agrees that where the Lessee installs, upgrades or maintains at its cost any access track or electricity connection to the Premises then:
 - (i) any other person (except the Lessor) who wishes to utilise the Lessee's track or connection must contribute to the cost of installation, upgrading and maintenance as apportioned by the Lessee; and

- (ii) the Lessor must not grant or allow to be granted to any third party an interest or a right to use the Lessee's track or connection until that party first reaches an agreement with the Lessee as to the terms and amount of the contribution.

7. Insurance, indemnities and release

7.1 Obligation to insure

- (a) The Lessee will insure against any loss or damage which is commonly covered by public risk or liability insurance in respect of the Premises.
- (b) The Lessee will provide the Lessor with a certificate of currency for all insurances under clause 7.1(a) no more than once annually and only upon written request to the Lessee by the Lessor on each occasion.

7.2 Lessee's assumption of responsibilities

The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of injury or death to persons and damage to property if, during the Term it was the owner and occupier of the freehold of the Premises and the Lessee indemnifies and will keep the Lessor indemnified in that regard. Without limitation the Lessee indemnifies the Lessor from all actions, claims, costs and demands in respect of injury or death to persons or damage to property caused by electromagnetic fields emanating from the Lessee's Telecommunications Equipment installed on the Premises.

7.3 Negligence or default of Lessor

The releases, responsibilities and indemnities in clause 7.2 do not apply to any act, matter, thing or consequence if it arises out of the negligence, omission or default of the Lessor.

7.4 Warranty

- (a) The Lessee agrees that it must cause no greater disturbance to the Land, the Lessor's fixtures and facilities, the Lessor and to any other tenants of the Land, than is reasonably necessary having regard to the permitted use under clause 5.1.
- (b) The Lessee must operate the Premises lawfully and in a safe manner in accordance with such standards as are adopted by the Australian Communications and Media Authority from time to time concerning safe electromagnetic emission levels from facilities of the nature of the Telecommunications Equipment.
- (c) The Lessor may upon installation of any new Telecommunications Equipment on the Premises request that the Lessee provide the Lessor with an electromagnetic emissions report in respect of the Telecommunications Equipment to demonstrate compliance with all laws.
- (d) The Lessee agrees that the emissions from the Telecommunications Equipment will not exceed the levels allowed by law.

7.5 Indemnity unaffected by insurance

- (a) The Lessee's obligation to indemnify the Lessor under this Lease or at law is not affected by any insurance maintained by the Landlord or the Lessee in respect of the Premises and the indemnity under clause 7.2 is paramount.
- (b) If insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under clause 7.2 will be reduced by the extent of such payment.

7.6 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises except to the extent that such loss, damage or injury was caused or contributed (to the extent of that contribution) by the negligence, omission or default of the Lessor or any person under the express control of the Lessor.

8. Installation and maintenance

8.1 Repair and maintenance

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

8.2 Construction and alterations

The Lessee may at the Lessee's option and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law:

- (a) without the consent of the Lessor, install, erect, construct, dismantle, modify, repair, replace, renew and maintain upon the Premises Telecommunications Equipment within the equipment shelter on the Premises;
- (b) with the prior consent of the Lessor, such consent not to be unreasonably withheld or delayed install, erect, construct, dismantle, modify, repair, replace, renew and maintain upon the Premises Telecommunications Equipment external to the equipment shelter on the Premises; and
- (c) with the prior consent of the Lessor which consent must not be unreasonably withheld install, erect, construct, dismantle, repair, replace, renew and maintain upon the Premises security fencing and any building or buildings as necessary now or in the future to shelter Telecommunications Equipment and a free standing monopole, guy tower, multi-sided antenna support structure or other antenna support structure of sufficient height now or in the future to meet the Lessee's telecommunications requirements and all necessary connecting appurtenances.

9. Electricity supply

For the purpose of carrying out the Lessee's use of the Premises the Lessor must at the Lessee's request and at the Lessee's cost:

- (a) provide to the Lessee the ability to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of the Lessee's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter so that the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it on the Premises; and
- (b) cause to be registered on the title to the Land an easement for electricity purposes, if required by and if so, in favour of, the relevant electricity authority.

10. Termination

10.1 Events of termination

If:

- (a) the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Lessee or inaccessible by any means of access where such damage or destruction has not been caused by the negligent act or default of the Lessee;
- (b) the Lessee commits a material breach of any of its obligations and has not remedied that breach within a reasonable period of notice from the Lessor having regard to the nature of the breach;
- (c) any application to a Government Agency for a required consent or permit for the installation and use of the Premises as part of a telecommunications network and telecommunications service is granted to the Lessee with conditions unacceptable to it in its absolute and unfettered discretion or is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained;
- (d) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant physical or radio interference;
- (e) as a result of network changes, the Premises cease to operate as or are not required to be a part of the Lessee's telecommunications network;
- (f) the Lessor commits a breach of a material obligation and has not remedied that breach within a reasonable period of notice from the Lessee having regard to the nature of the breach; or
- (g) the Lessor breaches an obligation under clause 13.4 and/or clause 13.5,

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

10.2 Effect on rights or liabilities

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

10.3 Lessee to yield up

Subject to clause 10.4, the Lessee must at the expiration or sooner termination of the Term yield up the Premises in good repair and clean condition fair wear and tear excepted having regard to their condition at the Commencement Date of the Lease.

10.4 Removal of Lessee's fixtures and chattels

- (a) The Lessee must:
 - (i) within 3 months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and the Lessee);
 - (ii) within a reasonable period of earlier termination of the Lease; or
 - (iii) by such other date as the Lessor and the Lessee agree in writing,remove (subject to clause 14.2) from the Premises all above ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises

and make good any damage caused by such removal to the reasonable satisfaction of the Lessor.

- (b) If the Lessee fails to remove the items referred to in clause 10.4(a) within 6 months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and Lessee) and following receipt of notice in writing from the Lessor to the Lessee requesting the removal of said items within a reasonable time (having regard to the nature of the works of removal of those items):
- (i) the Lessor shall have the right to remove from the Premises and Land any such items at the Lessee's cost;
 - (ii) the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property except to the extent that any damage is caused by the negligence, default or omission of the Lessor; and
 - (iii) the Lessor shall have the right to recover the costs of such removal from the Lessee as a due debt in a court of competent jurisdiction.

10.5 Termination of holding over

Either the Lessor or the Lessee may terminate the yearly tenancy under clause 3.3 by giving the other six months' prior written notice.

10.6 Additional Right of Termination

The Lessee may terminate the Lease by notice in writing to the Lessor served at any time before the second anniversary of the Commencement Date. The Lessee will not be entitled to any refund of prepaid Rent in the event of the Lessee exercising its rights under this clause.

10.7 Refund of Rent on termination

If the Lease is terminated by the Lessee pursuant to clause 10.1(a), 10.1(c), 10.1(d), 10.1(e), 10.1(f), 10.1(g), 19(f) or 19(g) the Lessor must, within 30 days of the date of termination, refund to the Lessee any Rent paid in advance for the unexpired portion of the Term after the date of termination.

11. Notices

11.1 Method of service

Any notice to be given under the Lease by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by email addressed to the receiving party at the address specified in the notice details in the Information table.

11.2 Time of service

Any notice given in accordance with the Lease will be deemed to have been duly served in the case of posting at the expiration of two Business Days after the date of posting and in the case of an email transmission, on the first Business Day after the date of transmission (providing the sending party receives an email delivery receipt indicating that the notice has been transmitted).

11.3 Change of address

A party may at any time change its postal address or email address by giving notice to the other party.

12. Assignment and subletting

12.1 Lessee not to assign

The Lessee must not assign the Lease except under clause 12.2 or with the prior written consent of the Lessor under clause 12.3.

12.2 Assignment to a Related Body Corporate

The Lessee may from time to time without the consent of the Lessor assign the Lease or sublet the Premises to a Related Body Corporate of the Lessee.

12.3 Assignment

- (a) Subject to clause 12.2 the Lessee may assign the Lease with the prior written consent of the Lessor such consent not to be unreasonably withheld or delayed.
- (b) The Lessor's consent under clause 12.3(a) will not be unreasonably withheld or delayed provided that:
 - (i) the proposed assignee is a respectable and responsible person of good financial standing;
 - (ii) all amounts due and payable under the Lease which have been notified to the Lessee within 10 Business Days of the date of assignment have been paid and there is no existing unremedied breach of any of the Lessee's covenants which have been notified to the Lessee within 10 Business Days of the date of assignment;
 - (iii) the Lessee procures the execution by the proposed assignee of a deed of assignment to which the Lessor is a party and which is drafted to the reasonable satisfaction of the Lessor; and
 - (iv) the deed of assignment contains a covenant by the assignee to pay all amounts payable under the Lease and to perform and observe all the Lessee's covenants.

12.4 Subletting

The Lessee may sublet, part with or share its right to possession of the Premises with the prior written consent of the Lessor such consent not to be unreasonably withheld or delayed.

12.5 Costs for assignment or subletting

If the Lessee wishes to assign or sublet the leasehold estate created by this Lease, the Lessee must pay all reasonable and proper professional and other reasonable and proper costs, charges and expenses incurred by the Lessor or any other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee;
 - (b) any consents required under this Lease or at law; and
 - (c) all other matters relating to the proposed assignment or subletting,
- whether or not the assignment or subletting proceeds.

13. Lessor's covenants

13.1 Quiet enjoyment

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

13.2 Restriction on Lessor's use of the Land

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

13.3 Lessor's covenant

The Lessor covenants that the Lessor will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on, or transport to or over the Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises and in the event of the Lessee notifying the Lessor of any breach by the Lessor of this clause the Lessor will, in good faith, use its best endeavours to cause removal of such hazardous substances, to the extent that it is within its power to do so.

13.4 No concurrent or superior lease or other dealing

The Lessor must not:

- (a) grant any lease concurrent or superior to the Lease;
- (b) grant any easement over the Premises; or
- (c) enter into any other dealing over the Premises,

without the Lessee's prior written consent, which consent the Lessee may withhold in its absolute discretion.

14. Miscellaneous

14.1 Interference with existing Carriers

- (a) The Lessee acknowledges that there are existing Carriers on the Land and it must not knowingly interfere with the use of the Land by those Carriers.
- (b) Should the Lessor or any other pre-existing Carrier of the Land experience radio frequency interference with their electrical equipment on the Land the Lessor may immediately notify the Lessee of such interference and the following provisions apply:
 - (i) the Lessee will within fourteen days of receipt of such notice determine whether its equipment is the cause of such interference and notify the Lessor of its determination, acting in good faith;
 - (ii) if the Lessee determines that such interference is caused by its equipment it will forthwith use its best endeavours to stop such interference;
 - (iii) if the Lessee determines that such interference is not caused by its equipment it will forthwith notify the Lessor of such determination;

- (iv) if the parties are unable to agree as to the cause of such interference either party may refer the matter to the Australian Communications and Media Authority (or such body constituted by the Commonwealth Government from time to time to police the radio frequency spectrum) for its determination acting as an expert. The Australian Communication and Media Authority shall make its determination within 30 days of any reference to it and such decision will be final and binding on the parties. The cost of determination must be borne by the parties equally; and
- (v) if the Australian Communications and Media Authority determines that such interference is caused by the Lessee the Lessee will remedy such interference within 30 days of the Australian Communications and Media Authority's determination.

14.2 Costs and disbursements

- (a) The Lessee must pay all duty (including penalties and fines other than penalties and fines due to the default of the Lessor) and registration fees on the Lease; and
- (b) The Lessee must (promptly following registration of the Lease) re-imburse the Lessor, the Lessor's legal costs and disbursements in relation to the preparation and execution of this Lease up to a maximum of \$1,500 (plus GST).

14.3 Interest

The Lessee agrees to pay the Lessor on demand interest at a rate equivalent to the 90 day bank bill swap reference rate published in the Australian Financial Review on any late rent payments by the Lessee under this Lease and remaining unpaid for at least 60 days following a written demand by the Lessor. Interest will be computed from the date on which the payment became due.

14.4 Without prejudice

- (a) The Lease is without prejudice to the Lessee's rights under Schedule 3 of the Act.
- (b) To the extent that the Lessee undertakes maintenance (as that term is defined under Schedule 3 of the Act), the Lessor agrees that it does not require the Lessee to give notice of that activity under Schedule 3 of the Act.

14.5 Governing law

The Lease is governed by the laws of the State and the Commonwealth of Australia and the Lessor and the Lessee submit to the non-exclusive jurisdiction of the Courts of the State.

14.6 No Fetter

The Lessee acknowledges and agrees:

- (i) that the Lessor is a local government established by the Local Government Act 1995 (WA);
- (ii) in its capacity as a local government, the Lessor will be obliged to comply with statutory obligations imposed by law; and
- (iii) no provision of this Lease may unlawfully restrict or otherwise fetter the discretion of the Lessor in the lawful exercise of any of its functions and powers as a local government,

provided that nothing in this clause will serve to relieve the Lessor from responsibility for performance of its obligations arising pursuant to this Lease, except to the extent necessary to avoid any unlawful restriction or any unlawful fettering on the Lessor's discretion in the lawful exercise of its functions and powers as a local government.

15. Definitions:

Existing Carrier means the lessee from time to time pursuant to the Tower Lease.

Tower Lease means the lease or leases of the Tower Premises between the Existing Carrier and the Lessor described in Item 8 and any extension or renewal of that lease or those leases.

Tower Agreement means the agreement to occupy part of the Tower Premises between the Existing Carrier and the Lessee commencing on the same day as the Lease and any future agreement between the Existing Carrier and the Lessee.

Tower Premises means the premises leased pursuant to the Tower Lease.

16. Consent to Tower Agreement

The Lessor consents to the Existing Carrier granting the Tower Agreement.

17. Assignment or termination of Tower Lease

17.1 Assignment of Tower Lease

Subject to clause 14.6, the Lessor must not terminate or surrender the Tower Lease without first notifying the Lessee of its intention to do so, in which event the Lessee may require the Existing Carrier to assign the Tower Lease to the Lessee. The Lessor agrees that if the Lessee does so require the Existing Carrier to assign the Tower Lease to it, the Lessor will not unreasonably withhold its consent to such an assignment.

17.2 Grant of Tower Lease to Lessee

Subject to clause 14.6, provided that the Lessee is not at that time in default of the terms of the Lease, then if, at any time during the Term, the Lessor becomes entitled to terminate the Tower Lease for any reason whatsoever, then prior to so terminating the Tower Lease, the Lessor must give notice to the Lessee (**Notice of Intended Termination**) of its intention to so terminate the Tower Lease. The Lessee may within seven days after receipt of the Notice of Intended Termination, give notice to the Lessor (**Lessee's Notice**) requiring the Lessor to grant to it a lease of the Tower Premises upon the same terms as the Tower Lease.

17.3 Lessor and Lessee to enter into Tower Lease

The Lessor must as soon as practicable after either the receipt by it of the Lessee's Notice or the termination of the Tower Lease (which ever is the last to occur), grant to the Lessee a lease or leases of the Tower Premises upon the same terms as the Tower Lease, but commencing on the date on which the Tower Lease is terminated and expiring on the date or dates which the Tower Lease would, but for the prior termination thereof by the Lessor, have otherwise expired, and substituting the Lessee in place of the Existing Carrier. Upon the grant of any such Lease, any default or other right or cause of action between the Lessor and the Existing Carrier will, as between the Lessor and the Lessee, be deemed to have been waived and permanently released.

18. Option in Tower Lease

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

- (a) the Lessee will have the right by notice (**Renewal Notice**) served on the Lessor within 14 days of the Non Exercise Notice to require the Lessor to grant to the Lessee a lease of the Tower Premises on the terms contemplated in the Tower Lease as if the option to renew contained in it had been exercised by the Existing Carrier; and
- (b) upon service of the Renewal Notice by the Lessee, the provisions of clause 17.3 will apply so far as they are relevant.

19. Additional right of termination of the Lease

The Lessee may terminate the Lease immediately by notice to the Lessor if:

- (a) the Lessee takes an assignment of the Tower Lease pursuant to clause 17.1;
- (b) the Lessor grants the Lessee a lease pursuant to clause 17.3 or 18;
- (c) the Tower Lease is terminated by either party or is surrendered and the Lessee does not elect to take an assignment of the Tower Lease pursuant to clause 17.1 or to be granted a lease pursuant to clause 17.3;
- (d) the Lessor gives a Non Exercise Notice under clause 18 and the Lessee does not give a Renewal Notice;
- (e) the Lessee ceases to hold any right described in the Tower Agreement from the Existing Carrier or the Lessor other than as a result of the Lessee's breaching the agreement conferring the right;
- (f) the Tower Lease expires and no new lease is entered into for the Tower Premises between the Existing Carrier and the Lessor that commences immediately after the expiry of the Tower Lease; or
- (g) the Existing Carrier enters into a new lease with the Lessor for the Tower Premises that commences immediately after the expiry of the Tower Lease but the new lease expires before the Expiry Date of the Lease.

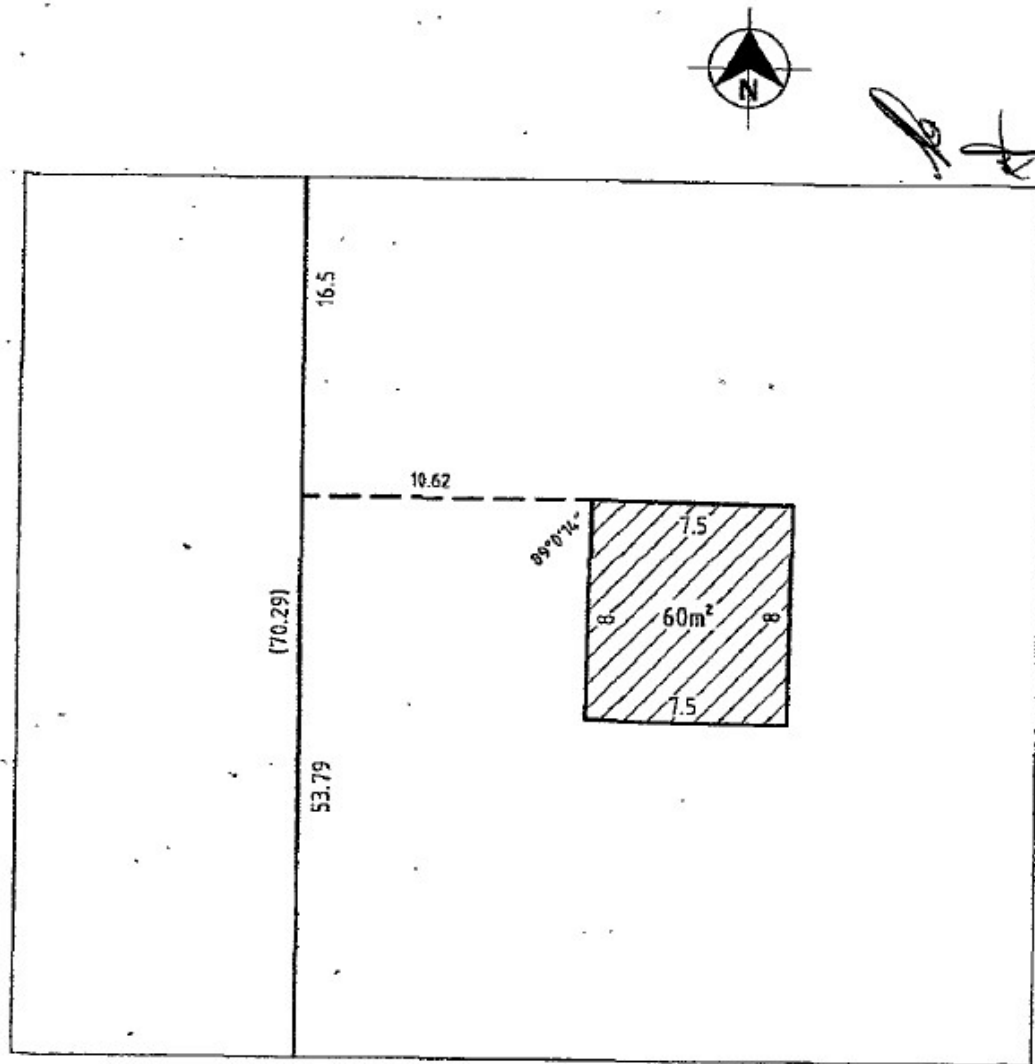
20. Trilocation

The Lessor's obligations under clauses 17 and 18 are subject to any prior like rights granted by the Lessor or the Existing Carrier to a third carrier as defined in the Act so long as the Lessor only deals with the third carrier in relation to the Tower Premises or the Tower Lease subject to the Tower Agreement.

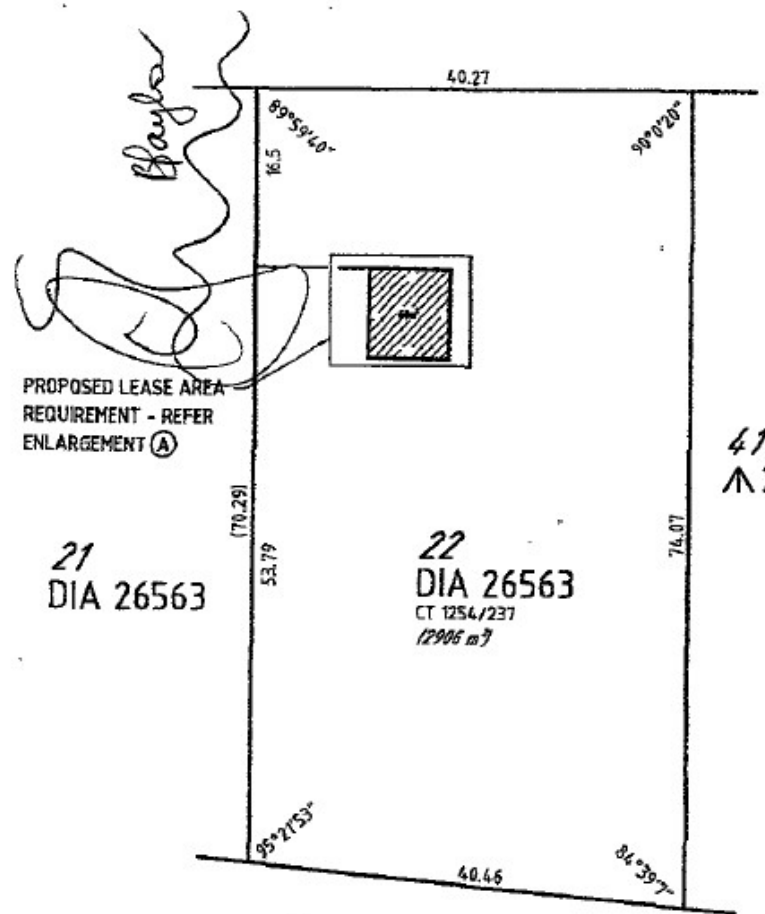
Annexure A

Plan referred to in Item 1

Annexure to Lease of premises known as 106 Barrack Street, Merredin WA 6415



ENLARGEMENT (A)
1:200



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▲ 25640

BARRACK STREET

NOTE
ALL ANGLES 90° UNLESS NOTED OTHERWISE

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LICENSER SURVEYOR <i>[Signature]</i> KIMEL R. WELLS	DATE 17/7/00	OPTUS SITE P0095 MERRIDIN								
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