

# Licence of Portion of Lot 3 (No. 77) Wogolin Road, Wickepin

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Shire of Wickepin

Pivotel Mobile Pty Limited



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# Details

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## Parties

### Shire of Wickepin

of PO Box 19, Wickepin, Western Australia  
(Licensor)

### Pivotel Mobile Pty Limited (ACN 116 239 813)

of Locked Bag 100, 75 Nerang Street, Southport, Queensland  
(Licensee)

## Background

- A The Licensor is registered as the proprietor of the Land.
- B The Licensee has requested that the Licensor grant a licence of those portions of the Land described in **Item 1** of the Schedule (**Licensed Premises**) and the Licensor has agreed subject to the Parties entering into this Licence agreement.

## Agreed terms

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### 1. Definitions & Interpretation

#### 1.1 Definitions

Unless otherwise required by the context or subject matter the following words have these meanings in this Agreement:

**Amounts Payable** means the Licence Fee and any other money payable by the Licensee under this Licence;

**Authorised Person** means an agent, employee or licensee of the Licensor;

**CEO** means the Chief Executive Officer for the time being of the Licensor or any person appointed by the Chief Executive Officer to perform any of his or her functions under this Licence;

**Commencement Date** means the date of commencement of the Term specified in **Item 4** of the Schedule;

**Common Areas** means all those parts of the Land not leased to any licensee and intended for use by the Licensor and its respective employees, customers or invitees in common with each other including all parking areas, roads, walkways, corridors, passageways, stairways, elevators toilets and washrooms in on or about the Land;

**Encumbrance** means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title for the Land;

**Equipment** means the equipment listed in paragraphs (a) to (f) of **Item 1** of the Schedule and includes any rack mounted equipment, racks, masts, antennas, cables, pipes, wires, conduits, mounts, erections and all appliances, apparatus and other things brought upon the Licensed Premises by the Licensee during the Term in accordance with the Permitted Purpose;

**Facilities** mean lavatories, sinks, drains, drainage or other sewerage or plumbing facilities, and gas or electrical fittings or appliances, telecommunications fittings or appliances, kitchen fittings and appliances, air-conditioning fittings and equipment, fire equipment and lifts and escalators (if any) and any other mechanical, electric, hydraulic or electronic service including pipes, wires, and cables the Licensor provides for the common use of users and occupiers of the Land, but does not include the services flowing or being conducted through those facilities;

**Further Terms** means the further terms specified in **Item 3** of the Schedule;

**Good Repair** means good and substantial tenantable repair and in clean, good working order and condition;

**Interest Rate** means the rate at the time the payment falls due being 2% greater than the Licensor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

**Land** means the land described at **Item 1** of the Schedule;

**Licence** means this deed as supplemented, amended or varied from time to time;

**Licence Fee** means the Licence Fee specified in **Item 5** of the Schedule as varied from time to time under this Licence;

**Licence Fee Review Date** means a date identified in **Item 8** of the Schedule;

**Licensed Premises** means the Licensed Premises described at **Item 1** of the Schedule;

**Licensee's Agents** includes:

- (a) the employees, agents, contractors, invitees and licensees of the Licensee; and
- (b) any person on the Licensed Premises by the authority of a person specified in paragraph (a);

**Licensee's Covenants** means the covenants, agreements and obligations set out or implied in this Licence or imposed by law to be performed and observed by the Licensee;

**Licensor's Covenants** means the covenants, agreements and obligations set out or implied in this Licence, or imposed by law to be performed and observed by the Licensor;

**Notice** means each notice, demand, consent or authority given or made to any person under this Licence;

**Parties** means the Licensor and the Licensee;

**Party** means the Licensor or the Licensee according to the context;

**Permitted Purpose** means the purpose set out in **Item 6** of the Schedule;

**Schedule** means the Schedule to this Licence;

**Services** mean any services to or of the Land provided by a relevant authority or the Licensor and includes water, gas, electricity, fuel, oil, air-conditioning and fire equipment, and other like commodities or services;

**Term** means the term of years specified in **Item 2** of the Schedule; and

**Termination** means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over.

## 1.2 Interpretation

In this Licence, unless expressed to the contrary:

- (a) words importing:
  - (i) the singular includes the plural and vice versa; and
  - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to:
  - (i) a natural person includes a body corporate or local government;
  - (ii) a body corporate or local government includes a natural person;
  - (iii) a professional body includes a successor to or substitute for that body;
  - (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
  - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
  - (vi) a right includes a benefit, remedy, discretion, authority or power;
  - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (viii) this Licence or provisions of this Licence or any other deed, agreement, instrument or contract includes a reference to -
    - (A) both express and implied provisions; and



- (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Licence;
- (d) the covenants and obligations on the part of the Licensee not to do or omit to do any act or thing include:
  - (i) covenants not to permit that act or thing to be done or omitted to be done by the Licensee's Agents; and
  - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

## 2. Grant of Licence

### 2.1 Grant of Licence

The Licensor licences to the Licensee the Licensed Premises for the Term subject to:

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Licensee's Covenants.

### 2.2 Nature of Licence

The Licensee acknowledges that:

- (a) this Licence does not grant exclusive possession of the Licensed Premises or confer any estate or interest in the Licensed Premises;
- (b) other than the rights granted under this Licence, the grant of this Licence does not create or confer upon the Licensee any tenancy or any other estate or interest in the Licensed Premises; and
- (c) the rights of the Licensee lie in contract only.

### 3. Quiet Enjoyment

Except as provided in the Licence and subject to the performance and observance of the Licensee's Covenants, the Licensee may quietly hold and enjoy the Licensed Premises during the Term without any interruption or disturbance from the Licensor or persons lawfully claiming through or under the Licensor.

### 4. Licence Fee and Other Payments

#### 4.1 Licence Fee

The Licensee covenants with the Licensor to pay to the Licensor the Licence Fee in the manner set out at **Item 5** of the Schedule on and from the Commencement Date clear of any deductions whatsoever.

#### 4.2 Outgoings

(1) The Licensee covenants with the Licensor to pay to the Licensor or to such person as the Licensor may from time to time direct punctually all the following outgoings or charges, assessed or incurred in respect of the Licensed Premises:

(a) electricity and other power charges in the amount of thirty dollars (\$30) per month. The Parties acknowledge and agree that the electricity and power charges payable by the Licensee have been included in the Licence Fee;

(b) premiums, excess and other costs arising from the insurance obtained by the Licensor in respect of the Licensed Premises. For the avoidance of doubt, the Parties agree:

(i) that if such premium or cost does not include a separate assessment or identification of the Licensed Premises or the Land, the Licensee must pay a proportionate part of such premium or cost determined by the Licensor acting reasonably; and

(ii) such insurance will include insurance for the full replacement value of buildings; and

(c) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Licensee's use and occupation of the Licensed Premises.

(2) If the Licensed Premises are not separately charged or assessed the Licensee will pay to the Licensor a proportionate amount of any charge or assessment referred to in **clause 4.2(1)** determined by the Licensor (acting reasonably) as the Licensee's proportion, save and except if the Licensee is the only tenant in occupation of the Licensed Premises and the charge is a consumption charge or cost incurred solely by reason of the Licensee's use and occupation of the Licensed Premises.

#### 4.3 Interest

Without affecting the rights, power and remedies of the Licensor under this Licence, the Licensee covenants with the Licensor to pay to the Licensor interest on demand on any Amounts Payable which are unpaid for seven (7) days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

#### **4.4 Costs**

- (1) The Licensee covenants with the Licensor to pay to the Licensor all costs, legal fees, disbursements and payments incurred by or for which the Licensor is liable in connection with or incidental to:
  - (a) the preparation, execution and stamping of this Licence;
  - (b) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Licence;
  - (c) any breach of covenant by the Licensee or the Licensee's Agents;
  - (d) the preparation and service of a notice under section 81 of the *Property Law Act 1969* requiring the Licensee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
  - (e) any work done at the Licensee's request; and
  - (f) any action or proceedings arising out of or incidental to any matters referred to in this **clause 4.4** or any matter arising out of this Licence.

#### **4.5 Payment of money**

Amounts Payable to the Licensor under this Licence must be paid to the Licensor at the address of the Licensor referred to in this Licence or as otherwise directed by the Licensor by Notice from time to time.

#### **4.6 Accrual of Amounts Payable**

Amounts Payable accrue on a daily basis.

### **5. Licence Fee Review**

#### **5.1 Licence Fee to be reviewed**

The Licence Fee will be reviewed on and from each Licence Fee Review Date to determine the Licence Fee to be paid by the Licensee until the next Licence Fee Review Date.

#### **5.2 Method of review**

The review will be based on a CPI Review as identified for each Licence Fee Review Date in **Item 8** of the Schedule.

#### **5.3 CPI Review**

- (1) A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly March CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly March CPI published immediately prior to the relevant Rent Review Date.
- (2) If there is a decrease in CPI having regard to the relevant CPI publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period.
- (3) Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the Parties shall endeavour to agree upon the substitution of the CPI with an

equivalent index, or failing agreement by the parties, the substitution shall be made by a valuer appointed by the Licensor.

#### **5.4 Licensor's right to review**

The Licensor may institute a rent review notwithstanding the Licence Fee Review Date has passed and the Licensor did not institute a rent review on or prior to that Licence Fee Review Date, and in which case the Licence Fee agreed or determined shall date back to and be payable from the Licence Fee Review Date for which such review is made.

## **6. Insurance**

### **6.1 Public liability insurance**

The Licensee must effect and maintain with insurers approved by the Licensor in noting the Licensor and the Licensee for their respective rights and interests in the Licensed Premises for the time being adequate public liability insurance for a sum not less than the sum set out at **Item 7** of the Schedule in respect of any one claim or such greater amount as the Licensor may from time to time reasonably require.

### **6.2 Contents insurance**

Where the Licensor so requires, insurance to cover the Licensee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a Licensee can and does ordinarily insure in their full replacement value, and loss from theft or burglary.

### **6.3 Workers compensation**

The Licensee must effect and maintain a policy of employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Licensee employed in, about or from the Licensed Premises.

### **6.4 Building insurance to be effected by Licensor**

The Licensor shall effect and keep effected policies of insurance in relation to any risk relating to the Licensor's ownership or interest in the Land and the Licensed Premises including, without limitation, insurance for fire and insurance for the Licensor's fixtures and fittings and the Licensee must punctually reimburse the Licensor for any premiums or other costs arising therefrom including without limitation any excesses.

### **6.5 Details and receipts**

In respect of the insurances required by this **clause 6** the Licensee must:

- (a) on demand supply to the Licensor details of the insurances and give to the Licensor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Licensor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Licensor immediately:
  - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
  - (ii) when a policy of insurance is cancelled.

## **6.6 Not to invalidate**

The Licensee must not do or omit to do any act or thing or bring or keep anything on the Licensed Premises which might:

- (a) render any insurance effected under this clause on the Licensed Premises, or any adjoining premises, void or voidable; or
- (b) cause the rate of a premium to be increased for the Licensed Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

## **6.7 Report**

Each Party must report to the other promptly in writing, and in addition verbally in an emergency:

- (a) any damage to the Licensed Premises of which they are aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Licensed Premises or to any person in or on the Licensed Premises.

## **6.8 Settlement of claim**

The Licensor may, but the Licensee may not without prior written consent of the Licensor, settle or compromise any claims under any policy of insurance required by this clause.

## **6.9 Licensor as attorney**

The Licensee irrevocably appoints the Licensor as the Licensee's attorney during the Term:

- (a) in respect to all matters and questions which may arise in relation to any insurances required by this clause;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by this clause;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

# **7. Indemnity**

## **7.1 Responsibility of Licensee**

The Licensee is responsible and liable for all acts or omissions of the Licensee's Agents on the Licensed Premises and for any breach by them of any covenants or terms in this Licence required to be performed or complied with by the Licensee.

## **7.2 Indemnity**

- (1) The Licensee indemnifies, and shall keep indemnified, the Licensor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Licensor, or brought, maintained or made against the Licensor, in respect of:
  - (a) any loss whatsoever (including loss of use);

- (b) injury or damage of, or to, any kind of property or thing; and
- (c) the death of, or injury suffered by, any person,

caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

- (a) the use or occupation of the Licensed Premises by the Licensee or the Licensee's Agents;
- (b) any work carried out by or on behalf of the Licensee on the Licensed Premises;
- (c) the Licensee's activities, operations or business on, or other use of any kind of, the Licensed Premises;
- (d) any default by the Licensee in the due and punctual performance, observance and compliance with any of the Licensee's covenants or obligations under this Licence; or
- (e) an act or omission of the Licensee.

### **7.3 Obligations continuing**

The obligations of the Licensee under this clause:

- (a) are unaffected by the obligation of the Licensee to take out insurance, and the obligations of the Licensee to indemnify are paramount, however if insurance money is received by the Licensor for any of the obligations set out in this clause then the Licensee's obligations under **clause 7.2** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Licence in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Licence.

### **7.4 No indemnity for Licensor's negligence**

The Parties agree that nothing in this clause shall require the Licensee to indemnify the Licensor against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Licensor, or its servants, agents, contractors or invitees.

### **7.5 Release**

(1) The Licensee:

- (a) agrees to occupy and use the Licensed Premises at the risk of the Licensee; and
- (b) releases to the full extent permitted by law, the Licensor from:
  - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Licensed Premises or arising from the Licensee's use or occupation of the Licensed Premises by; and
  - (ii) loss of or damage to the Licensed Premises or personal property of the Licensee;

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Licensor, or its servants, agents, contractors or invitees.

(2) The release by the Licensee continues after the expiration or earlier determination of this Licence in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Licence.

## 8. Limit of Licensor's Liability

The Licensor will not be liable for loss, damage or injury to any person or property in or about the Licensed Premises however occurring and the Licensor will not be liable for any failure to perform and observe any of the Licensor's Covenants due to any cause beyond the Licensor's control, except to the extent that any loss, damage or injury or failure to perform and observe any of the Licensor's Covenants is caused or contributed to by the negligent or wrongful act or omission of the Licensor, or its servants, agents, contractors or invitees.

## 9. Maintenance, Repair and Cleaning

### 9.1 Generally

- (1) The Licensee AGREES during the Term and for so long as the Licensee remains in possession or occupation of the Licensed Premises to maintain, replace, repair, clean and keep the Licensed Premises (which for the avoidance of doubt includes the Licensor's fixtures and fittings) clean and in Good Repair having regard to the age of the Licensed Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Licensee any obligation:
  - (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Licensee or the Licensee's Agents, or the Licensor's insurances are invalidated by any act, neglect or default by the Licensee or the Licensee's Agents; and
  - (b) in respect of any structural maintenance, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because of any act or omission of or on the part of the Licensee or the Licensee's Agents, or by the Licensee's particular use or occupancy of the Licensed Premises.
- (2) In discharging the obligations imposed on the Licensee under this subclause, the Licensee shall where maintaining, replacing or repairing in or on the Licensed Premises:
  - (a) any electrical fittings and fixtures;
  - (b) any plumbing;
  - (c) any air-conditioning fittings and fixtures; and
  - (d) any gas fittings and fixtures,use only licensed trades persons, or such trades persons as may be approved by the Licensor and notified to the Licensee, which approval shall not be unreasonably withheld.
- (3) For the avoidance of doubt, the Licensee is responsible for minor internal repairs to the Licensed Premises. For example, repair and replacement of door handles, door locks, light fittings, globe replacement, internal glass breakages and internal painting.
- (4) For the avoidance of doubt, the Licensor is responsible for all structural repairs, sewerage, plumbing, electrical, air-conditioning and external glass breakages to the Licensed EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Licensee or the Licensee's Agents, or the Licensor's insurances are invalidated by any act, neglect or default by the Licensee or the Licensee's Agents.
- (5) Notwithstanding paragraph (4) above, the Licensee acknowledges and agrees that the Licensor may have limited, or no, funds set aside within its budget for structural maintenance of the Licensed Premises, and as a consequence the Licensor will not be able to rectify any major

maintenance or structural defect or problem unless it has sufficient monies set aside in its budget for such purpose and/or the Licensor's Council has approved such expenditure.

## **9.2 Maintain surroundings**

The Licensee must regularly inspect and maintain in good condition any part of the Licensed Premises which surrounds any buildings including but not limited to any flora, gardens, lawns, shrubs, hedges and trees.

## **9.3 Cleaning**

The Licensee must at all times keep the Licensed Premises clean, tidy, unobstructed and free from dirt and rubbish.

## **9.4 Pest control**

- (1) The Licensee must keep the Licensed Premises free of any vermin or any other recognised pests and the cost of extermination will be borne by the Licensee.
- (2) The Licensee must immediately report any pest activity to the Licensor.
- (3) The Parties agree that the costs incurred in regular pest inspections and pest treatments, will be proportionally shared between the Licensor and the Licensee in accordance with **clause 4.2(2)**.

## **9.5 Comply with all reasonable conditions**

The Licensee must comply with all reasonable conditions that may be imposed by the Licensor from time to time in relation to the Licensee's maintenance of the Licensed Premises.

## **9.6 Acknowledgement of state of repair of Licensed Premises**

- (1) The Licensee accepts the Licensed Premises and the Land in its present condition relying upon its own enquiries and investigations.
- (2) The Licensor does not expressly or impliedly warrant that the Licensed Premises are now or will remain suitable or adequate for all or any of the purposes of the Licensee or for the business which the Licensee is authorised to conduct thereon and to the extent permitted by law, all warranties (if any) as to suitability and adequacy of the Licensed Premises implied by law are hereby expressly negated.

# **10. Alterations**

## **10.1 Restriction**

- (1) The Licensee must not without prior written consent:
  - (a)
    - (i) from the Licensor;
    - (ii) from any other person from whom consent is required under this Licence;
    - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Licensor under a town planning scheme of the Licensor;
  - (b) install any new signage;
  - (c) make or allow to be made any alteration, addition or improvements to or demolish any part of the Licensed Premises;



- (d) remove alter or add to any fixtures, fittings or facilities in or on the Licensed Premises; or
- (e) remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Licensed Premises or the Land.

## 10.2 Consent

- (1) If the Licensor and any other person whose consent is required under this Licence or at law consents to any matter referred to in **clause 10.1** the Licensor may:
  - (a) consent subject to conditions; and
    - (i) require that work be carried out in accordance with plans and specifications approved by the Licensor or any other person giving consent; and
    - (ii) require that any alteration be carried out to the satisfaction of the Licensor under the supervision of an engineer or other consultant; and
  - (b) if the Licensor consents to any matter referred to in **clause 10.1**:
    - (i) the Licensor gives no warranty that the Licensor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
    - (ii) the Licensee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

## 10.3 Cost of Works

All works undertaken under this **clause 10** will be carried out at the Licensee's expense.

## 10.4 Conditions

If any of the consents given by the Licensor or other persons whose consent is required under this Licence or at law require other works to be done by the Licensee as a condition of giving consent, then the Licensee must at the option of the Licensor either:

- (a) carry out those other works at the Licensee's expense; or
  - (b) permit the Licensor to carry out those other works at the Licensee's expense,
- in accordance with the Licensor's requirements.

# 11. Use

## 11.1 Restrictions on use

The Licensee must not and must not suffer or permit a person to:

- (a) use the Licensed Premises or any part thereof for any purpose other than the Permitted Purpose;
- (b) use the Licensed Premises for any purpose which is not permitted under any town planning scheme or any law relating to health;
- (c) do or carry out on the Licensed Premises any harmful, offensive or illegal act, matter or thing;

- (d) do or carry out on the Licensed Premises any thing which causes a nuisance, damage or disturbance to the Licensor or to owners or occupiers of adjoining properties;
- (e) store any dangerous compound or substance on or in the Licensed Premises;
- (f) do any act or thing which might result in excessive stress or harm to any part of the Licensed Premises; or
- (g) display from or affix any signs, notices or advertisements on the Licensed Premises without the prior written consent of the Licensor.

## **11.2 No warranty**

The Licensor gives no warranty:

- (a) as to the use to which the Licensed Premises may be put; or
- (b) that the Licensor will issue any consents, approvals, authorities, permits or licences required by the Licensee under any statute for its use of the Licensed Premises.

## **11.3 Premises subject to restriction**

The Licensee accepts the Licensed Premises for the Term subject to any existing prohibition or restriction on the use of the Licensed Premises.

## **11.4 Indemnity for costs**

The Licensee indemnifies the Licensor against any claims or demands for all costs, on a solicitor client basis, incurred by the Licensor by reason of any claim in relation to any matters set out in this **clause 11**.

# **12. Use of Common Areas, Services and Facilities**

## **12.1 Licensee's covenants and acknowledgements**

- (1) The Licensee acknowledges that the Licensee's right to use the Common Areas and the Facilities is in common with the Licensor and others entitled to such use.
- (2) The Licensee shall not use the Common Areas, the Car Park, the Services or any Facility, item of plant and equipment or Licensor's fixture for a purpose other than that for which was designed or for which it is designated by the Licensor.
- (3) The Licensee shall not do or omit to do any act or thing which might cause or allow the Common Areas:
  - (a) to deteriorate or become impaired except for fair wear and tear;
  - (b) to be in a condition other than a good and sanitary condition; or
  - (c) to be obstructed.

## **12.2 Licensor's reservations**

- (1) The Licensor may cancel, suspend, vary or restrict the Licensee's rights in relation to the Common Areas:
  - (a) to enable work to be carried out;

- (b) to comply with the law or with the Licensor's obligations to any third party; or
- (c) in the interests of good building management,

but in so doing, the Licensor must not prevent access to the Licensed Premises or otherwise materially impair the Licensee's use and enjoyment of the Licensed Premises during normal business hours.

(2) The Licensor controls the Common Areas and has the right to:

- (a) exclude or remove any person from;
- (b) grant rights of use to any person over; or
- (c) restrict access to or use of,

the Common Areas provided that they do not materially affect the use of the Licensed Premises.

(3) The Licensor may, from time to time, at its absolute discretion:

- (a) provide or withdraw any amenity;
- (b) make available any amenity to users and/ or occupiers of the Land on such terms as the Licensor thinks fit,

provided that this does not materially affect access to or egress from or the use of the Licensed Premises during normal business hours.

### **12.3 Licensee to comply with Licensor's directions**

The Licensee must:

- (a) comply with and observe the reasonable requirements of the Licensor in relation to the use and handling of the plant and equipment or any amenity or Facility; and
- (b) not do anything which might interfere with or impair the efficient operation of the plant and equipment or any amenity or Facility, unless as otherwise agreed between the Parties.

### **12.4 Comply with rules and regulations in relation to Common Areas**

The Licensee must comply with all rules and regulations made by the Licensor with respect to the Common Areas and the Land.

### **12.5 Damage to Common Areas**

The Licensee must make good any breakage defect or damage to the Common Areas or to any other part of the Land or any appurtenance or equipment of Facility therein caused by want of care misuse or abuse on the part of the Licensee or the Licensee's Agents or by any breach of this Licence by the Licensee.

## **13. Licensor's Right of Entry**

### **13.1 Entry on reasonable notice**

The Licensee must permit entry by the Licensor or any Authorised Person onto the Licensed Premises without notice in the case of an emergency, and otherwise upon reasonable notice:

- (a) (i) at all reasonable times;

- (ii) with or without workmen and others; and
  - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes:
- (i) to inspect the state of repair of the Licensed Premises and to ensure compliance with the terms of this Licence;
  - (ii) to carry out any survey or works which the Licensor considers necessary, however the Licensor will not be liable to the Licensee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Licensee;
  - (iii) to comply with the Licensor's Covenants or to comply with any notice or order of any authority in respect of the Licensed Premises for which the Licensor is liable; and
  - (iv) to do all matters or things to rectify any breach by the Licensee of any term of this Licence but the Licensor is under no obligation to rectify any breach and any rectification under this **clause 13.1(b)(iv)** is without prejudice to the Licensor's other rights, remedies or powers under this Licence.

## 13.2 Costs of Rectifying Breach

All costs and expenses incurred by the Licensor as a result of any breach referred to at **clause 13.1(b)(iv)** together with any interest payable on such sums will be a debt due and payable by the Licensee to the Licensor on demand.

# 14. Statutory Obligations and Notices

## 14.1 Comply with statutes

The Licensee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Licensed Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Licensed Premises specified at **clause 11**;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Licensed Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Licensed Premises or to the business the Licensee carries on at the Licensed Premises.

## 14.2 Indemnity if Licensee fails to comply

The Licensee indemnifies the Licensor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 14.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 14.1**.

### **14.3 No fetter**

Notwithstanding any other provision of this Licence, the Parties acknowledge that the Licensor is a local government established by the *Local Government Act 1995*, and in that capacity, the Licensor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any written law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Licensor shall not be taken to be in default under this Licence by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Licence fetter the Licensor in performing its statutory obligations or exercising any discretion.

## **15. Report to Licensor**

### **15.1 General obligations**

The Licensee must immediately report to the Licensor:

- (a) any act of vandalism or any incident which occurs on or near the Licensed Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Licensee is aware or should be aware;
- (b) any occurrence or circumstances in or near the Licensed Premises of which it becomes aware which might reasonably be expected to cause, in or on the Licensed Premises, pollution of the environment; and
- (c) all notices, orders and summonses received by the Licensee and which affect the Licensed Premises and immediately deliver them to the Licensor.

## **16. Default**

### **16.1 Events of default**

A default occurs if:

- (a) any Amounts Payable remain unpaid after becoming due and remain unpaid for fourteen (14) days after Notice has been given to the Licensee to pay such Amounts Payable;
- (b) the Licensee is in breach of any of the Licensee's Covenants for fourteen (14) days after a Notice has been given to the Licensee to rectify the breach or to pay compensation in money;
- (c) the Licensee is wound up whether voluntarily or otherwise;
- (d) a controller, as defined by the *Corporations Act 2001* is appointed in respect of the Licensee's interest in the Licensed Premises under this Licence;
- (e) a mortgagee takes possession of the property of the Licensee under this Licence;
- (f) any execution or similar process is made against the Licensed Premises on the Licensee's property;
- (g) the Licensed Premises are vacated, or otherwise not used, in the Licensor's reasonable opinion, for the permitted purpose for six month period; or
- (h) a person other than the Licensee is in occupation or possession of the Licensed Premises or in receipt of a licence fee and profits.

## 16.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 16.1** the Licensor may:

- (a) without notice or demand at any time enter the Licensed Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Licensee determine this Licence and from the date of giving such notice this Licence will be absolutely determined; and
- (c) by notice to the Licensee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Licence will be determined as from the giving of the notice and until the tenancy is determined the Licensee will hold the Licensed Premises from the Licensor as a tenant from month to month under **clause 19**,

but without affecting the right of action or other remedy which the Licensor has in respect of any other breach by the Licensee of the Licensee's Covenants or releasing the Licensee from liability in respect of the Licensee's Covenants.

## 16.3 Licensor may remedy breach

If the Licensee:

- (a) fails or neglects to pay the Amounts Payable by the Licensee under this Licence; or
- (b) does or fails to do anything which constitutes a breach of the Licensee's Covenants,

then, after the Licensor has given to the Licensee notice of the breach and the Licensee has failed to rectify the breach within a reasonable time, the Licensor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Licensee and the Licensee must pay to the Licensor on demand the Licensor's cost and expenses of remedying each breach or default.

## 16.4 Acceptance of Amount Payable by Licensor

Demand for or acceptance of the Amounts Payable by the Licensor after an event of default has occurred will not affect the exercise by the Licensor of the rights and powers conferred on the Licensor by the terms of the Licence or at law and will not operate as an election by the Licensor to exercise or not to exercise any right or power.

## 16.5 Essential terms

Each of the Licensee's Covenants in **clauses 4** (Licence Fee and Other Payments), **6** (Insurance), **7** (Indemnity), **9** (Maintenance, Repair and Cleaning), **11** (Use), **23** (Assignment, Subletting and Charging) and **27** (Goods and Services Tax) are essential terms of this Licence but this clause **16.5** does not mean or imply that there are no other essential terms in this Licence.

## 16.6 Breach of essential terms

If the Licensee breaches an essential term of this Licence then, in addition to any other remedy or entitlement of the Licensor:

- (a) the Licensee must compensate the Licensor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Licensor will be entitled to recover damages against the Licensee in respect of the breach of an essential term; and

- (c) the Licensee covenants with the Licensor that if the Term is determined:
  - (i) for breach of an essential term or the acceptance by the Licensor of a repudiation of this Licence by the Licensee; or
  - (ii) following the failure by the Licensee to comply with any notice given to the Licensee to remedy any default,

the Licensee must pay to the Licensor on demand the total of the Amounts Payable under this Licence which would have been payable by the Licensee for the unexpired balance of the Term as if the Term had expired by effluxion of time together with the losses incurred or reasonably expected to be incurred by the Licensor as a result of the early determination including but not limited to the costs of re-licensing or attempting to re-license the Licensed Premises;

- (d) the Licensee agrees that the covenant set out in this **clause 16.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Licence;
- (e) the Licensee may deduct from the amounts referred to at **clause 16.6(c)** the Licence Fee and other money which the Licensor reasonably expects to obtain by relicensing the Licensed Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) the Licensor must take reasonable steps to mitigate its losses and endeavour to re-license the Licensed Premises at a reasonable Licence Fee and on reasonable terms but the Licensor is not required to offer or accept Licence Fee or terms which are the same or similar to the Licence Fee or terms contained or implied in this Licence.

## 17. Damage or Destruction

If the Licensed Premises or any part of the Licensed Premises are totally or partially destroyed so as to require major rebuilding the Licensee either party may within two (2) months of the destruction or the damage terminate the Term with immediate effect by giving Notice to the other party.

## 18. Option to Renew

If the Licensee at least three (3) months, but not earlier than six (6) months, prior to the date for commencement of the Further Term gives the Licensor a Notice to grant the Further Term and:

- (a) all consents and approvals required by the terms of this Licence or at law have been obtained;
- (b) there is no subsisting default by the Licensee at the date of service of the Notice in:
  - (i) the payment of Amounts Payable; or
  - (ii) the performance or observance of the Licensee's Covenants; and

the Licensor shall grant to the Licensee a licence renewal for the Further Term at the Licence Fee and on the same terms and conditions other than this **clause 18** in respect of any Further Term previously taken or the subject of the present exercise.

## 19. Holding Over

If the Licensee remains in possession of the Licensed Premises after the expiry of the Term with the consent of the Licensor, the Licensee will be a monthly licensee of the Licensor at a Licence

Fee equivalent to one twelfth of the Licence Fee for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Licence provided that all consents required under this Licence or at law have been obtained to the Licensee being in possession of the Licensed Premises as a monthly licensee. The Parties acknowledge and agree that if the Licensee is in possession of the Licensed Premises pursuant to this clause, that this Licence may be terminated by either party upon two months written notice to the other party and upon such termination clauses **20**, **21** and **22** will apply.

## 20. Restore Licensed Premises

Prior to Termination, the Licensee at the Licensee's expense must restore the Licensed Premises to a condition consistent with the observance and performance by the Licensee of the Licensee's Covenants under this Licence, fair wear and tear excepted.

## 21. Yield up the Licensed Premises

### 21.1 Peacefully surrender

On Termination the Licensee must:

- (a) peacefully surrender and yield up to the Licensor the Licensed Premises in a condition consistent with the observance and performance of the Licensee's Covenants under this Licence;
- (b) surrender to the Licensor all keys and security access devices and combination for locks providing an access to or within the Licensed Premises held by the Licensee whether or not provided by the Licensor.

### 21.2 Clause 21.1 to survive termination

The Licensee's obligation under **clause 21.1** will survive Termination.

## 22. Removal of Property from Licensed Premises

### 22.1 Remove property prior to termination

Prior to Termination, unless otherwise mutually agreed between the Parties, the Licensee must remove from the Licensed Premises all property of the Licensee (including without limitation the Equipment) which is not a fixture other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Licensor form an integral part of the Licensed Premises and promptly make good, to the satisfaction of the Licensor, any damage caused by the removal.

### 22.2 Licensor can remove property on re-entry

If the Licensee fails to remove any such fixtures or fittings and any other chattels, stock or goods belonging to the Licensee in accordance with **clause 22.1** within fourteen (14) days from the determination of the Term, the Licensor may at its option:

- (a) cause any such fixtures or fittings to be removed and stored at the cost of the Licensee and any such damage to be made good and any such alterations to be so re-altered and may recover the costs thereof from the Licensee as a liquidated debt payable on demand; or
- (b) elect to treat any such fixtures or fittings and any other chattels, stock or goods of the Licensee to be deemed abandoned by the Licensee and such property shall then be and become the property of the Licensor absolutely.



## 23. No Assignment or Sub-licence

The Licensee must not assign its interest in the Licensed Premises nor sub-licence, part with possession, or dispose of the Licensed Premises or any part of the Licensed Premises.

## 24. Disputes

### 24.1 Referral of dispute: Phase 1

Except as otherwise provided any dispute arising out of this Licence is to be referred in the first instance in writing to the Licensor's Representative as nominated in writing by the Licensor from time to time (**Licensor's Representative**) who shall convene a meeting within ten (10) days of receipt of such notice from the Licensee or such other period of time as is agreed to by the Parties between the Licensor's Representative and an officer of the Licensee for the purpose of resolving the dispute (**Original Meeting**).

### 24.2 Referral of dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 24.1** of this Licence then the dispute shall be referred in writing to the CEO of the Licensor who shall convene a meeting within ten (10) days of the Original Meeting or such other date as is agreed to by the Parties between the CEO and a director or senior managerial employee of the Licensee for the purpose of resolving the dispute.

### 24.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 24.2** of this Licence then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 2012* (as amended from time to time) and the Licensor and the Licensee may each be represented by a legal practitioner.

### 24.4 Payment of Amounts Payable to date of award

The Licensee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Licensee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Licensor and the Licensee then the Licensor will refund to the Licensee the monies paid

## 25. Commercial Tenancy Act

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Licence and a provision of that Act conflicts with a provision of this Licence, then each conflicting provision of this Licence is deemed to be amended to the extent necessary to comply with that Act.

## 26. Caveat

### 26.1 No absolute caveat

The Licensee must not lodge an absolute caveat at Landgate against the Certificate of Title for the Land to protect the interests of the Licensee under this Licence.

## 26.2 CEO & Licensor as attorney

In consideration of the Licensor having granted this Licence to the Licensee, the Licensee irrevocably appoints the Licensor and the CEO of the Licensor jointly and severally:

- (a) for the Term of this Licence;
- (b) for any holding over under this Licence; and
- (c) for a period of six (6) months after Termination,

to be the agent and attorney of the Licensee in its name and on its behalf to sign and lodge at Landgate:

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Licensee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Licensee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Licence,

and the costs of withdrawing any caveat or surrendering this Licence (including the Licensor's solicitor's costs and registration fees) will be borne by the Licensee.

## 26.3 Ratification

The Licensee undertakes to ratify all the acts performed by or caused to be performed by the Licensor, its agent or attorney under this clause.

## 26.4 Indemnity

The Licensee indemnifies the Licensor against:

- (a) any loss arising directly from any act done under this clause; and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Licensee under this clause.

# 27. Goods and Services Tax

## 27.1 Definitions

The following definitions apply for the purpose of this clause:

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Licensor under this Licence, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;
- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Licensor for goods or services or property or any other thing under this Licence; and
- (d) **Supply** means a good or service or any other thing supplied by the Licensor under this Licence and includes but is not limited to a grant of a right to possession of the Licensed Premises.

## **27.2 Licensee to pay GST**

- (1) The Consideration will be increased by the amount of the GST, if any, which the Licensor is required under the Act to pay on any Supply made under this Licence.
- (2) The Licensee must pay any increase referred to in **clause 27.2(1)** whether it is the Licensee or any other person who takes the benefit of any Supply.
- (3) The Licensee must pay the amount of the GST to the Licensor at the same time and in the same manner as the Licensee is required to pay the Consideration under this Licence.

## **27.3 Consideration in kind**

If consideration in kind is accepted by the Licensor for any Supply made under this Licence, the GST amount payable to the Licensor under **clause 27.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Licensor.

### **(1) No Contribution from Licensor**

If the Licensee is required under this Licence to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Licensee is not entitled to any contribution from the Licensor for any GST payable by it to any person.

### **(2) Statement of GST paid is Conclusive**

A written statement given to the Licensee by the Licensor of the amount of the GST that the Licensor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

### **(3) Tax Invoices**

For each payment by the Licensee under this clause the Licensor agrees to promptly deliver to the Licensee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Licensee to claim input tax credits or decreasing adjustments for Supplies.

### **(4) Reciprocity**

If the Licensee furnishes any Supplies to the Licensor under this Licence, then the requirements set out in this clause with respect to the Licensee will apply to the Licensor with the necessary changes.

## **28. Acts by Agents**

All acts and things which the Licensor is required to do under this Licence may be done by the Licensor, the CEO, an officer or the agent, solicitor, contractor or employee of the Licensor.

## **29. Statutory Powers**

The powers conferred on the Licensor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Licence, in addition to the powers conferred on the Licensor in this Licence.

## 30. Notice

### 30.1 Form of delivery

A Notice to a Party must be in writing and may be given or made:

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Licence or any other address nominated by a Party by Notice to the other.

### 30.2 Service of Notice

A Notice to a Party is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 30.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 30.1(b)**, on the second business day following the date of posting of the Notice.

### 30.3 Signing of Notice

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 1987*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

## 31. Severance

If any part of this Licence is or becomes void or unenforceable, that part is or will be severed from this Licence to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

## 32. Variation

This Licence may be varied only by deed executed by the parties subject to such consents as are required by this Licence or at law.

## 33. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the

terms of this Licence do not, to the fullest extent permitted by law, apply to limit the terms of this Licence.

## 34. Further Assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Licence.

## 35. Waiver

### 35.1 No general waiver

Failure to exercise or delay in exercising any right, power or privilege in this Licence by a Party does not operate as a waiver of that right, power or privilege.

### 35.2 Partial exercise of right power or privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

## 36. Governing Law

This Licence is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

## 37. Additional Terms, Covenants & Conditions

Each of the terms, covenants and conditions (if any) specified in **Item 9** of the Schedule are part of this Licence and are binding on the Licensor and the Licensee as if incorporated into the body of this Licence. If there is any inconsistency between the provisions of **Item 9** of the Schedule and the remaining provisions of this Licence, the provisions of **Item 9** of the Schedule will prevail to the extent of that inconsistency.

# Schedule

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## Item 1 Land and Licensed Premises

### Land

Lot 3 on Plan 10939 and being the whole of the land comprised in Certificate of Title Volume 1500 Folio 783.

### Licensed Premises

Means those areas of the building located on the Land as are identified on the sketches annexed hereto as **Annexure 1 (Plan)** and **Annexure 2 (Roof Plan)** and for the avoidance of doubt comprises of:

- (a) a 1m<sup>2</sup> floor area in the room labelled “Strong Room” on the Plan for the half-rack server equipment, an example of which is pictured as **Image 1** in the images annexed hereto as **Annexure 3 (Images)**;
- (b) a 200mm high x 200mm wide area of the external wall of the “Strong Room” for the NBN Satellite Network Termination Device, an example of which is pictured as **Image 2** of the Images;
- (c) a 200mm high x 200mm wide and area of the external wall of the “Strong Room” for the Telstra Fibre distribution point;
- (d) a 1.2 m<sup>2</sup> portion of the roof of the building depicted on the Roof Plan for the erection of the Mimosa B5 5GHz 1.5Gbps backhaul radio antenna, an example of which is pictured as **Image 3** of the Images together with two sets of three guywires,
- (e) a 1.2 m<sup>2</sup> portion of the roof of the building depicted on the Roof Plan for the erection of an NBN satellite dish of approximately 120cm in diameter, an example of which is pictured as **Image 4** of the Images; and
- (f) a 25m long and 100 mm wide area between the “Strong Room” and the roof for cabling which connects the Equipment described in paragraphs (a), (b) and (c) to the Equipment described in paragraphs (d) and (e).

and including all improvements within those areas described above at the Commencement Date and any improvements constructed or erected in those areas during the Term.

## Item 2 Term

Five (5) years commencing on the Commencement Date and expiring on 30 June 2024.

## Item 3 Further Term

Not applicable.

## Item 4 Commencement Date

1 July 2019.

## Item 5 Licence Fee

Thirty dollars (\$30) per annum (exclusive of GST) and payable annually in advance with the first payment due within seven (7) days of the Licensor issuing an invoice.

## Item 6 Permitted Purpose

Installation and maintenance of telecommunications equipment necessary to support an external broadband connection.

## Item 7 Public Liability Insurance

Twenty million dollars (\$20,000,000).

## Item 8 Licence Fee Review Date

1 July in each year of the Term.

## Item 9 Additional Terms, Covenants & Conditions

### 9.1 Telecommunications Act

- (1) The Parties acknowledge and agree that this Licence is without prejudice to any rights of the Licensee pursuant to or arising under the *Telecommunications Act 1997* and any statute, ordinance or regulation promulgated thereunder or replacement thereof.
- (2) To the extent that the Licensee is authorised under this Licence to undertake any activity in the nature of installation or maintenance as those terms are used in the *Telecommunications Act 1997*, the Licensor will not require further notice of that activity to be given under the *Telecommunications Act 1997* if the activity performed by the Licensee in connection with the Licensed Premises or anything in, over or under the Licensed Premises, is an activity that the Licensee is authorised to do under Schedule 3 of the *Telecommunications Act 1997* and prior notice has either been provided to the Licensor in accordance with this Licence or is not required under this Licence.

### 9.2 Electricity connection

The Parties acknowledge and agree that:

- (a) the Licensee will, at its cost, connect the Equipment, or part thereof, to the Licensor's electricity supply and will contribute to the Licensor's electricity expenses in accordance with **clause 4.2(1)(a)**;
- (b) if the Licensor is required to temporarily disconnect the power to the Equipment, the Licensor will, where reasonably practicable to do so, give the Licensee prior Notice of the disconnection and provide an estimate of the outage period if known; and
- (c) The indemnity provided by the Licensee in **clause 7.2** applies to the Licensee's use of the Licensor's electricity supply in accordance with this subclause.

### **9.3 Interference**

- (1) The Licensor acknowledges that the Permitted Purpose relies upon the transmission and reception of microwave radiofrequency signals which may suffer interference from structures or facilities constructed in proximity to the Licensed Premises.
- (2) The Licensor must not:
  - (a) do or permit to be done any thing; or
  - (b) erect or permit the erection of any structure, on or around the Licensed Premises which may, by means of physical or radio interference, affect the Licensee's use of the Licensed Premises in accordance with the Permitted Purpose without first obtaining the written consent of the Licensee, which must not be unreasonably withheld.

### **9.4 Equipment**

The Parties acknowledge and agree that:

- (a) the Equipment shall be and remain the property of the Licensee, notwithstanding that some parts of the Equipment may be or may become affixed to the Licensed Premises;
- (b) the Licensee shall be responsible for maintenance and repair of the Equipment;
- (c) the Licensor shall not be liable in any respect for the Equipment or any damage or loss thereof howsoever occurring; and
- (d) upon Termination of this License, the Licensee shall, at its cost, remove the Equipment and restore the Licensed Premises to a condition consistent with the state of the Licensed Premises at the Commencement Date and in accordance with **clauses 20 and 22**.

### **9.5 Termination by Licensee**

If at any time during the Term:

- (a) the Licensed Premises are affected by radio, physical or other interference which, either permanently or for a sustained period of time, substantially adversely affects the Licensee's use of the Licensed Premises for the Permitted Purposes;
- (b) an application for a permit, licence or other authority permitting the Licensee to lawfully carry on the Permitted Purpose is rejected by the issuing authority and there is no reasonable prospect of approval in the near future;
- (c) an application for a permit, licence or other authority permitting the Licensee to lawfully carry on the Permitted Purpose is cancelled, surrendered or lapses or is rendered invalid or void;
- (d) if, for whatever reason, the Licensee is unable to lawfully carry on the Permitted Purpose at the Licensed Premises in the normal course of its business;
- (e) the operation of the Equipment by the Licensee at the Licensed Premises can no longer satisfy, or is contrary to, the business objectives of the Licensee and the Permitted Purpose; or



(f) the Licensee gives the Licensor at least six (6) months' notice that the Licensee no longer requires the Licensed Premises,

then the Licensee may terminate this Licence by giving the Licensor at least one (1) months' Notice, except if the Licensee has already given Notice pursuant to paragraph (f) above.

# Signing page

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EXECUTED by the parties as a Deed

2020

THE COMMON SEAL of THE SHIRE OF WICKEPIN was hereunto affixed by the authority of a resolution of the Council in the presence of:

\_\_\_\_\_  
Signature of President


\_\_\_\_\_  
(Print Full Name)

\_\_\_\_\_  
Signature of Chief Executive Officer


\_\_\_\_\_  
(Print Full Name)

EXECUTED by PIVOTEL MOBILE PTY LIMITED )  
(ACN 116 239 813) pursuant to Section 127 of the )  
Corporations Act: )

\_\_\_\_\_  
Peter Bolger  
Full Name of Director

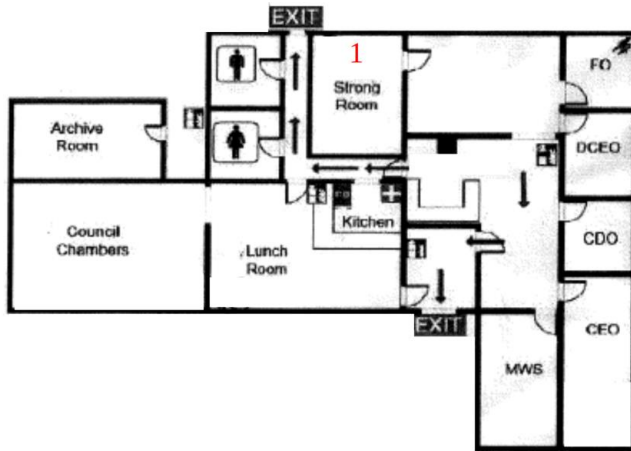
  
\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Robert Sakker  
Full Name of Director/~~Secretary~~  
(Delete whichever designation is incorrect)

  
\_\_\_\_\_  
Signature of Director/~~Secretary~~

# Annexure 1 - Plan

Pivotal Equipment is located within the 'Strong Room' indicated below by the number 1.

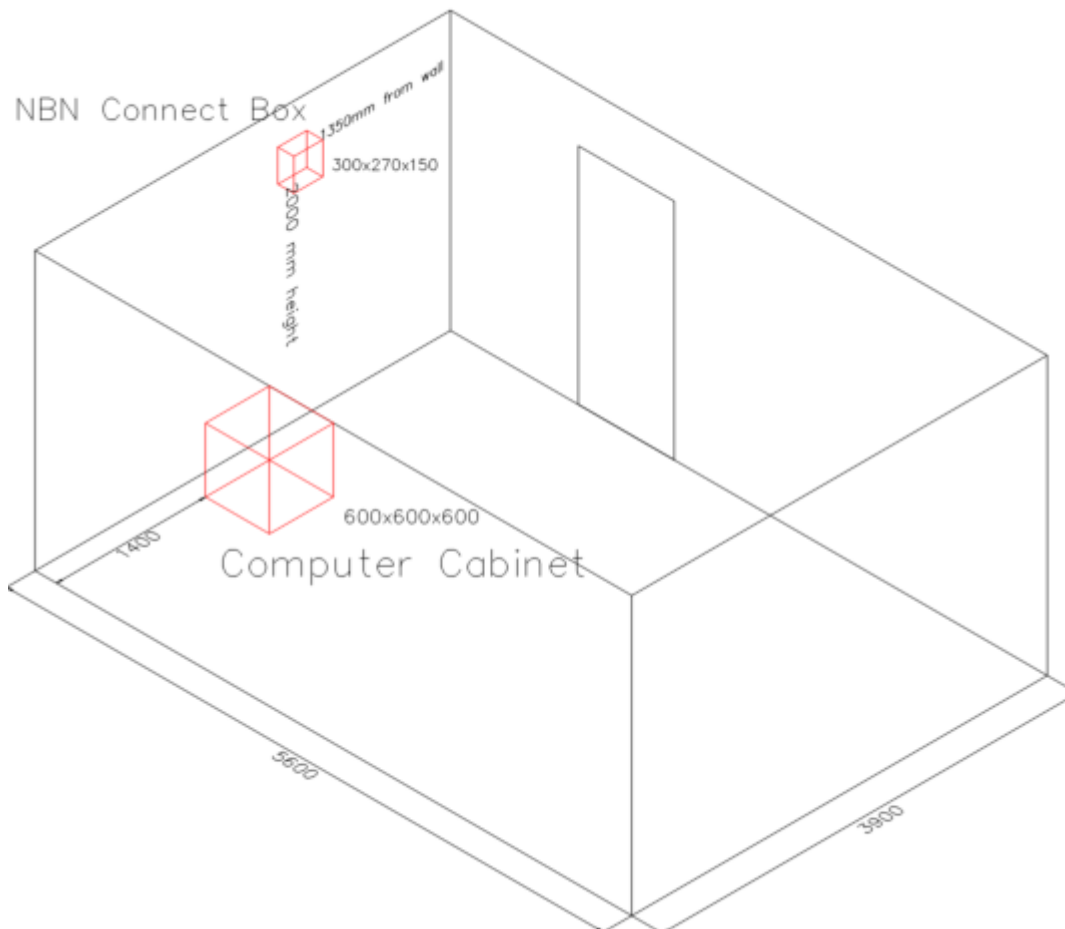


Pivotal Equipment Details of Strong Room licensed areas (Co-shared room)

Licensed areas

- Computer cabinet 600 x 600 x 600 on the floor
- NBN connect box 300 x 270 x 150 mounted on the wall.

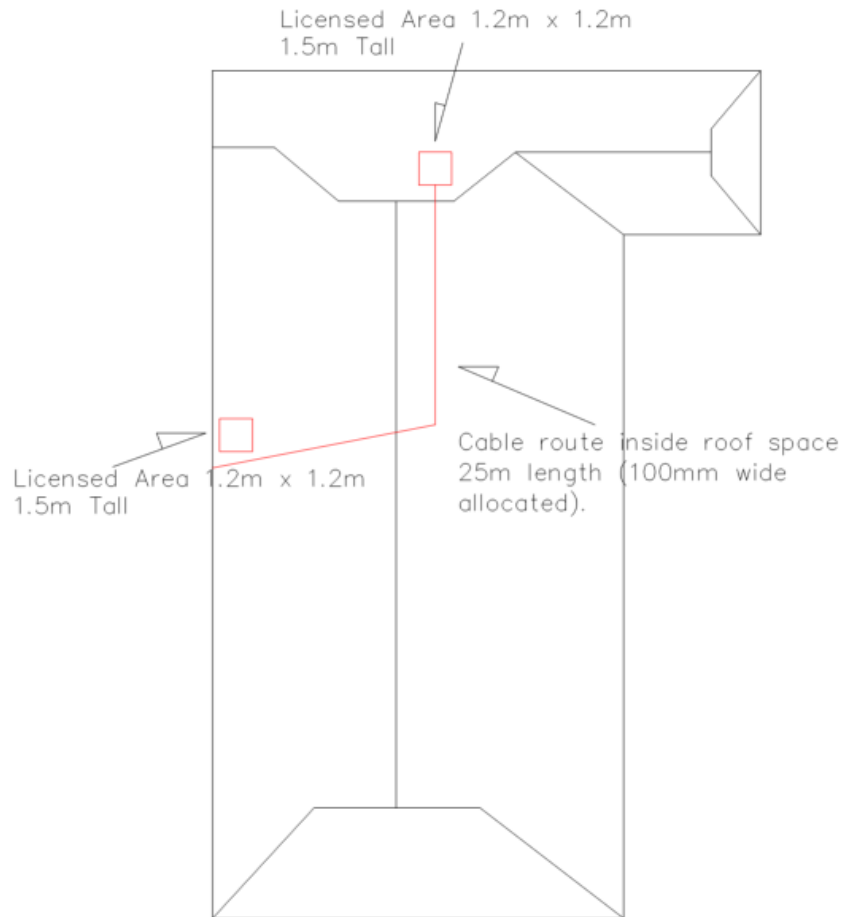
Cables run to the roof equipment through wall cavity



# Annexure 2 – Roof Plan

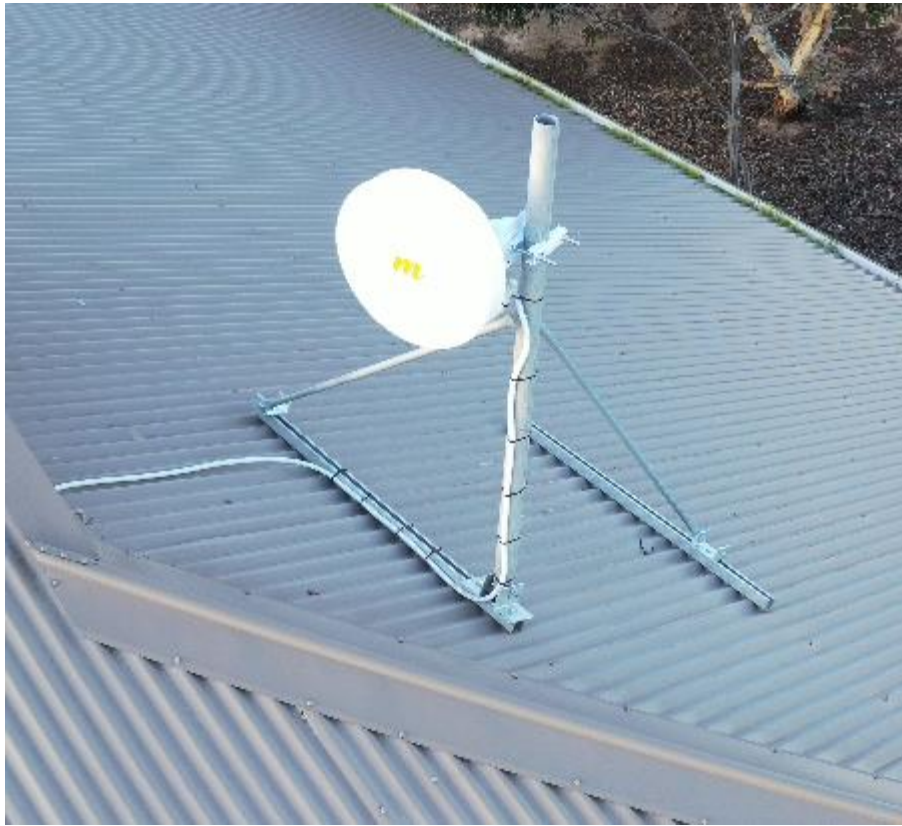
## Pivotal Roof Licensed Areas

Two areas on roof for the Pivotal Mimosa Microwave units and the NBN Satellite connection. Both areas are 1.2m square with antennas mounted on steel structures





**Image 3: Roof Mounted Mimosa B5 5GHz 1.5Gbps backhaul radio antenna**



**Image 4: NBN satellite dish**

