**IMPROVEMENTS NOT TO REVERT**

# [ *insert name of Trust* ]

# AND

**[ *insert name of Carrier* ]**

**LEASE**

**CEMETERIES & CREMATORIA ACT 2003**

## TELECOMMUNICATIONS

EF. NO.

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**APPENDIX A**

**IMPROVEMENTS NOT TO REVERT**

Ref No:

**THIS** **LEASE** commences on the date in Item 1 of Schedule A**BETWEEN** the Lessor and the Lessee

##### Recitals

**WHEREAS**

**A.** Pursuant to s 34 of the *Cemeteries and Crematoria Act 2003*, the Land is permanently reserved under s 4 of the *Crown Land (Reserves) Act 1978* for cemeteries and crematoria purposes.

**B.** The Lessor is established under s 5 of the *Cemeteries and Crematoria Act 2003* and is empowered under s 37 of the said Act to grant a lease of the Land for any purpose approved by the Minister.

**C.** The Lessor, with the approval of the Minister, has agreed to grant to the Lessee a lease to use the Premises in accordance with the terms and conditions set out in this Lease.

###### 1 Demise

The Lessor **Hereby Grants** a lease of the land described in Item 4 of schedule A to the Lessee, for the term, on the terms and conditions following.

###### 2 Reservations

This Lease is granted subject to:-

**2.1** The reservation to Her Majesty in respect of the land and every part of it of:-

**2.1.1** all reserved minerals;

**2.1.2** the rights of access for the purpose of searching for and obtaining reserved minerals; and

**2.1.3** the rights of access for any pipeline works and other purposes necessary to obtain and convey on and from the land any reserved minerals obtained in the land;

**2.2** The right of any person authorised under the *Mineral Resources Development Act 1990* to enter on the land and to mine for gold or minerals within the meaning of that Act and to erect and use mining plant on the same conditions as those to which a person has the right to mine for gold and silver in and upon Crown land, provided that compensation under that Act is paid for any damage to the land by mining; and

**2.3** the right of the Governor in Council to resume the land for mining purposes under Section 205 of the *Land Act 1958*.

**3** **Lessee's Obligations (Positive)**

The Lessee **Hereby Covenants** with the Lessor that during the term the Lessee will -

**3.1 Rent**

Duly and punctually pay the rent or cause it to be paid to the Lessor at the payment address at the times and in the manner provided in Item 6 of schedule A without demand, deduction, set-off or abatement.

**3.2** **Rates and Taxes**

**3.2.1** Duly and punctually pay as and when they respectively fall due all:-

**3.2.1.1** rates and taxes; and

* + - 1. telephone, gas, electricity, heat and other utilities ("utilities") which are provided or available to the premises; and

**3.2.2** If the Lessee defaults in payment of any sum referred to in sub-clause 3.2.1, the Lessor may pay the same and, in addition to the Lessor's other rights, recover that payment as rent in arrears.

**3.2.3** The Lessee, if requested to do so by the Lessor, must produce receipts to the Lessor evidencing payment of the rates and taxes.

**3.2.4** Where there is no separate metering of a utility provided to the premises the Lessee must immediately provide such separate metering at the Lessee's cost and to the Lessor's reasonable satisfaction.

**3.3 Lessee’s Works**

Erect and construct on the premises any Lessee**’**s works only if the same shall have firstly been approved by the Lessor and the Minister under sub-clause 4.1 (which approval must not be unreasonably withheld or delayed), and then strictly in accordance with this clause that is to say:-

**3.3.1** Only of such materials and according to such plans specifications and designs as shall first be approved in writing by the Lessor and the Minister and conformably with all the required statutory, planning and building regulations.

**3.3.2** The Lessee when carrying out the Lessee's works must comply with all laws and the requirements of any authorities which have jurisdiction over the premises, the Lessee's works or the Lessee and must:-

**3.3.2.1** expeditiously apply for, obtain, keep current and observe any conditions of all permits, approvals and consents necessary to carry out the Lessee's works;

**3.3.2.2** give all notices necessary to comply with laws and requirements;

**3.3.2.3** if requested by the Lessor deliver a certified copy of any permit approval or consent issued by any authority; and

**3.3.2.4** pay all fees, charges or levies for obtaining any permit, approval or consent.

**3.3.3** The Lessee must cause the Lessee's works to be constructed in accordance with the plans and specifications and in a proper and workmanlike manner.

**3.3.4** The Lessee must provide at the Lessee's cost everything necessary for the proper execution and completion of the Lessee's works and for the proper performance by the Lessee of the Lessee's obligations under this Lease so that the Lessor will not be responsible for any cost or expense whatsoever incurred or occasioned by carrying out the Lessee's works.

**3.4 Maintenance**

Keep the premises and all additions and improvements to the premises in good order and repair, subject to fair wear and tear and having regard to their respective condition at the commencement date, or if constructed or added or supplied after the commencement date, at the date of such construction, addition or supply and without limiting the generality of the foregoing will:-

**3.4.1**. keep the premises and all other fixtures in a neat and tidy condition; and

**3.4.2** keep the premises free of pest animals and weeds.

**3.5 Notice of Defects**

**3.5.1** Give to the Lessor prompt notice in writing of any accident to or defect or want of repair in any services or fittings in the premises, which are not made good by the Lessee forthwith upon being ascertained, and of any circumstances likely to be or cause any damage risk or hazard to the premises or any person in them;

**3.5.2** Give to the Lessor within 7 days of its receipt by the Lessee a true copy of every notice, proposal or order given, issued or made in respect of the premises and full details of the circumstances thereof;

**3.5.3** Without delay take all necessary steps to comply with any notice, proposal or order referred to in paragraph 3.5.2 which the Lessee is required by law to comply with; and

**3.5.4** At the request of the Lessor make or join with the Lessor in making such objections or representations against or in respect of any notice, proposal or order referred to in paragraph 3.5.2 as the Lessor deems expedient.

**3.6 Removal of advertising**

Remove any sign, advertisement or other notice to which the Lessor's and the Minister’s consent has previously been given if, in the opinion of the Lessor or the Minister, it is or has become unsightly or objectionable and the Lessor or the Minister gives notice to the Lessee requiring its removal.

**3.7 Licences**

Take out and keep current all licences and permits required to carry on every business conducted in the premises.

**3.8** **Inspection**

**3.8.1** After being given reasonable forewarning by the Lessor or the Minister permit the Lessor or the Minister either with or without servants or agents, during daylight hours to enter the premises and to examine and view the repair, condition and cleanliness of the premises and will remedy, to the full extent of the Lessee's obligations hereunder, any defects found pursuant to this clause, or found otherwise, of which notice is given by the Lessor to the Lessee within a reasonable time to be specified in the notice but in any event within not less than 30 days.

**3.8.2** The forewarning will stipulate if the Lessor or the Minister requires to inspect the interior of the Lessee's works and a representative of the Lessee must then be present at the premises during that inspection and must open any door to Lessee's works for the purposes of the inspection, and must render the premises in a safe condition for the Lessor's or the Minister’s servants or agents or otherwise adequately warn them in respect of any part of the premises which are, for any reason, unsafe.

**3.9** **Condition at Termination**

At or prior to the termination or expiration of this Lease, unless the Lessor shall otherwise, in writing and upon such conditions as the Lessor shall impose, agree:-

**3.9.1** remove all the Lessee’s improvements from the land; and

**3.9.2** make good any damage or disfigurement caused to the land by their removal; and

**3.9.3** return the land to the Lessor clean and free from rubbish and in good and substantial order and condition in all respects in accordance with the covenants on the part of the Lessee herein contained.

**3.10 Compliance with Law**

Comply at the Lessee's cost with the provisions of all statutes, regulations and by-laws relating to the premises and all lawful orders or directions made under them and carry out all alterations, additions and repairs to the premises thereby required if such compliance, alteration, addition or repair has either been caused by the Lessee or by the use to which the premises are put.

**3.11 Indemnity**

Indemnify the Lessor and the Crown in respect of any claim or liability, and release and discharge the Lessor and the Crown from any loss or liability for property damage and/or the injury or death of any person which is caused directly or indirectly by the negligence or tortious act of, or the breach of any contract or statutory duty by, the Lessee or any person for whom the Lessee is legally responsible and is consequential to the use or occupation of the premises (other than the act, default or negligence of the Lessor) and all costs, charges and expenses incurred in connection therewith.

**3.12 Arrears and Interest**

Pay to the Lessor:-

**3.12.1** on any monies payable by the Lessee to the Lessor and outstanding for thirty (30) days after notice thereof has been given by the Lessor to the Lessee or on any judgment for the Lessor in an action arising from the Lease, interest at the penalty rate of interest for the time being made payable under the *Penalty Interest Rates Act 1983* computed from the date the monies or judgment became payable until all monies (including interest) on them are paid in full;

**3.12.2** if required by the Lessor, pay upon demand all the Lessor's reasonable and proper legal costs (including the Lessor’s internal legal costs) charged on a solicitor to own client basis, and disbursements payable in respect of or in connection with the preparation and execution of this Lease, any surrender of this Lease, any assignment of this Lease or sub-letting of the premises, the giving of any consent by the Lessor as required by this Lease, the surrender of this Lease, any failure by the Lessee to perform and observe this Lease, or any deed or other document executed in connection with this Lease.

**3.13 Insurance**

Take out and keep current, at the Lessee**’**s own expense, a public risk insurance policy which notes the interest of the Lessor and the Crown and provides for a minimum cover for each accident, claim, or event of the amount specified in Item 10 of schedule A or any reasonable greater amount which either party requires. The cover provided under this policy must not be contributory with any policy taken out by the Lessor.

**3.13.1** Before taking possession of the premises, the Lessee must deliver to the Lessor -

**3.13.1.1** a Certificate of Currency of the policy of insurance in which the insurer or the broker, in addition to all matters usually contained in a Certificate of Currency, certifies that the policy of insurance fully complies with all the provisions of this Lease which apply in respect of that policy of insurance and that it covers the Crown to the full extent required by this Lease; and

**3.13.1.2** the Lessee's written acknowledgement that the Lessee is satisfied that the provisions of the said Certificate of Currency are accurate and that the policy of insurance covers the Crown to the full extent required by this Lease.

**3.13.2** Within seven days of receiving either a further policy of insurance or there being any alteration or variation to the existing policy of insurance (other than an increase in the cover) deliver to the Lessor a further Certificate of Currency and a further written acknowledgement by the Lessee in accordance with paragraph 3.13.1.

**3.13.3** Within seven days of being requested to do so provide a Certificate of Renewal of the policy of insurance to the Lessor.

**3.13.4** After the expiration of any policy of insurance, on request, provide satisfactory evidence of renewal.

**3.13.5** The Lessee must in respect of the policy of insurance:

**3.13.5.1** pay each premium at least fourteen days before the same becomes due;

**3.13.5.2** forthwith deposit reasonable details of the policy of insurance with the Lessor;

**3.13.5.3** forthwith, upon being requested to do so, deposit with the Lessor either the receipt evidencing the payment or a certificate in which the insurer or the broker certifies that such payment has been made to the insurer;

**3.13.5.4** ensure that it cannot be cancelled until the insurer or the broker gives the Lessor 14 days' written notice of its intention to do so; and

**3.13.5.5** ensure that the policy of insurance is taken out with a reputable insurer **provided that** the Lessor, acting reasonably, may require the replacement of any policy of insurance taken out with an insurer the Lessor believes not to be reputable.

**3.14 Fire Prevention, Protection and Suppression**

The Lessee will:-

**3.14.1** carry out promptly all fire prevention, protection or suppression measures upon the premises required or recommended in respect of the premises by any person or authority legally charged with making such requirement or giving such recommendation;

**3.14.2** prevent the burning of any cleared vegetation upon the premises without the Lessor's previous written consent; and

**3.14.3** permit the Lessor either with or without vehicles, machinery, equipment, workmen and others unrestricted entry to the land for all purposes of fire prevention, protection or suppression and to the Lessee's works for all purposes of fire suppression.

**3.15 Lessee’s Further Obligations**

Observe, perform and fulfil the Lessee's further obligations, if any, set out in Item 14 of schedule A.

**4** **Lessee's Obligations (Negative)**

The Lessee **Hereby Covenants** with the Lessor that during the term the Lessee will not:-

**4.1 Lessee’s Works**

Undertake any Lessee**’**s works on the land without first obtaining the Lessor and the Minister's written consent which consent shall not unreasonably be withheld upon the Lessee obtaining planning and/or building approvals, if any, required by law from any relevant local authority.

**4.2 Use of Premises**

Use the premises for any purpose other than the specified purpose without first obtaining the Lessor and the Minister's written consent which can be given or withheld at the absolute discretion of the Lessor and the Minister or be given subject to conditions.

**4.3 Advertising**

Display or permit to be displayed on the premises any externally visible sign, advertisement or notice, other than a sign, advertisement or notice required by law to be displayed only on the premises, or as a prudent safety precaution without first obtaining the Lessor and the Minister's written consent.

**4.4 Noise or Damage**

Subject to the use of the premises for the specified purpose according to law, cause or allow any loud noise or other nuisance, disturbance or annoyance to be made in or to emanate from the premises.

**4.5 Allow Rubbish**

Permit any rubbish to accumulate in or about the premises unless confined in suitable containers.

**4.6 Hazardous Materials**

Keep any hazardous materials on the premises without the Lessor's written consent save a reasonable quantity of any hazardous material which is normally used in any specified purpose actually carried on in or upon the premises and which is kept in compliance with the requirements of any authority charged with regulating the keeping of it.

**4.7** **Assignment**

**4.7.1** Assign, sublet, mortgage or charge this Lease or part with or share possession of the premises or any part of them, other than to a related Body Corporate, without the Lessor and the Minister's written consent which can be given or withheld at the absolute discretion of the Lessor and the Minister or be given subject to conditions **provided that** such consent will not unreasonably be withheld where the Lessee is a Carrier and the proposed mortgage or charge is to be given in the normal course of the Lessee's business or where the Lessee is a Carrier and the proposed assignee or sub-lessee is also a Carrier and the Lessee gives to the Lessor and the Minister -

**in the case of a proposed assignment or of a proposed sub-lease:-**

**4.7.1.1** a written request to consent to assignment or subletting;

**4.7.1.2** the name and address of the proposed assignee or sub-lessee;

**4.7.1.3** a copy of the proposed document of assignment or sub-lease;

**4.7.1.4** such further information as the Lessor and the Minister shall reasonably require;

**and in addition in the case of a proposed assignment:-**

**4.7.1.5** two references as to the financial circumstances of any proposed assignee which is not a Carrier;

**4.7.1.6** payment of the Lessor and the Minister's reasonable and proper legal and other costs reasonably incurred in investigating the proposed assignee or sub-lessee, obtaining any necessary consent to the assigning and preparing, stamping and registering any documents required for the assigning including stamp duty and registration fees; and

**4.7.1.7** provided always that the Lessor reserves the right to require the assignee's performance of the Lessee's obligations under this Lease (the assignee not being a related body corporate of the Lessee or a company whose shares are listed on the Australian Stock Exchange Limited) to be guaranteed by one or more guarantors who are reasonably acceptable to the Lessor the terms of such guarantee to be to the Lessor's reasonable satisfaction.

**4.7.2** Without the prior written consent of the Lessor permit any change in the membership of the Lessee, being a company, or any holding company of the Lessee (unless that holding company is a company whose shares are listed on the Australian Stock Exchange Limited) or in the beneficial ownership of any shares in the capital of the Lessee or any holding company of the Lessee (unless that holding company is a company whose shares are listed on the Australian Stock Exchange Limited) or in the beneficial ownership of the business or assets in the Lessee or part thereof resulting in a change in the effective control of the Lessee existing as at the commencement date. For the purposes of this paragraph, a change in the effective control of the Lessee means a change in the shareholding or voting rights which is more than fifty per cent whether by one or a series of transactions. This paragraph does not apply to the Lessee if the Lessee is the first lessee under this Lease, a related Body Corporate to that Lessee or is a company whose shares are listed on the Australian Stock Exchange Limited.

**4.8 Use as a Dwelling**

Use the premises for living or sleeping otherwise than if the same is a specified purpose or for temporary overnight use.

###### 5 Lessor's Obligations

The Lessor **hereby covenants** with the Lessee that:-

**5.1 Quiet Enjoyment**

If the Lessee pays the rent whenever it is due and does not breach this Lease then the Lessee may use and occupy the premises during the term without interference from the Lessor or from any person lawfully claiming under the Lessor, subject always to the provisions of this Lease and the Lessor's rights under it; and

**5.2 Lessor’s Further Obligations**

The Lessor will observe, perform and fulfil the Lessor's further obligations, if any, set out in Item 14 of schedule A.

###### 6 Mutual Obligations

The Lessor and the Lessee agree as follows:-

**6.1 Ownership of Improvements**

All buildings, structures, fittings, plant, machinery, equipment, chattels and other materials or articles including fixtures and fittings of a structural nature now or hereafter erected or brought onto the land by the Lessee shall, save as herein elsewhere provided, remain the property of the Lessee.

**6.2** **Default - Events of Default**

The following are events of default:

**6.2.1** if the rent or any part of it or if any other monies owing to the Lessor under the Lease is or are in arrears for sixty days, whether formally demanded or not;

**6.2.2** if the Lessee breaches the Lease otherwise than as provided elsewhere in sub-clause 6.2 and fails to remedy that breach within the time specified in the notice requiring the breach to the remedied;

**6.2.3** if defects notified under sub-clause 3.8 are not remedied within the time specified in the notice;

**6.2.4** if the Lessee is a company and an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;

**6.2.5** if the Lessee is a company and ceases to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is by any means appointed;

**6.2.6** if the Lessee is a company and is placed under official management or administration under the *Corporations Act 2001 (Commonwealth)* or enters into a composition, scheme of arrangement or moratorium whether formal or informal with its creditors or financiers;

**6.2.7** if the interest of the Lessee under the Lease is taken in execution;

**6.2.8** if the Lessee or any person claiming through the Lessee conducts any business from the premises after the Lessee has committed an act of bankruptcy;

**6.2.9** if the business formerly conducted in or from the premises permanently ceases to operate;

**6.2.10** if the Lessee fails to comply with any condition for the erection of any Lessee’s works.

**6.3 Forfeiture of Lease**

If any of the events of default specified in the preceding sub-clause occurs then the Lessor may, without prejudice to any other claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of such default, at any time re-enter into and upon the premises or any part of them in the name of the whole and thereupon this Lease shall be absolutely determined.

**6.4** **Re-entry**

The right of re-entry under this Lease and the right to recover damages pursuant to sub-clause 6.9 for breach of any covenant or condition referred to in sub-section 146 (1) of the *Property Law Act 1958* must not be exercised until the expiration of thirty days after the Lessor has served on the Lessee a notice identical to a notice which would have been required had that sub-section applied to this Lease.

**6.5 Lessor May Rectify**

The Lessor, may otherwise than in relation to the Lessee's works, but is not obliged to, remedy any default by the Lessee under this Lease, and whenever the Lessor so elects all reasonable costs incurred by the Lessor (including all legal costs and disbursements of a like nature to those referred to in paragraph 3.12.2) in remedying a default shall constitute a liquidated debt and shall be paid by the Lessee to the Lessor on demand.

**6.6 Waiver**

**6.6.1** The Lessor's failure to take advantage of any default or breach of covenant on the part of the Lessee shall not be or be construed as a waiver of it, nor shall any custom or practice which may grow up between the parties in the course of administering this Lease be construed to waive or to lessen the right of the Lessor to insist upon the timely performance or observance by the Lessee of any obligation of this Lease or to exercise any rights given to the Lessor in respect of any such default.

**6.6.2** A waiver by the Lessor of a particular breach or default shall not be deemed to be a waiver of any breach or default occurring subsequently whether the same or otherwise.

**6.6.3** The demand by the Lessor for, or subsequent acceptance by or on behalf of the Lessor of, rent or any other monies payable under this Lease shall not constitute a waiver of any earlier breach by the Lessee of any covenant or condition of this Lease other than the failure of the Lessee to make the particular payment or payments of rent or other monies so accepted, regardless of the Lessor's knowledge of any earlier breach at the time of acceptance of such rent or other monies.

**6.7 Tender after Determination**

Any monies tendered by the Lessee after the determination of this Lease and accepted by the Lessor may be, and (in the absence of any express election of the Lessor) shall be, applied:

**6.7.1** firstly, on account of the Lessor's reasonable and proper costs of re-entry; and

**6.7.2** secondly, on account of any rent and other monies accrued and due pursuant to this Lease but unpaid at the date of its determination.

**6.8 Essential Terms**

The Lessor and the Lessee agree that each of the following covenants by the Lessee are essential terms of this Lease:-

**6.8.1** to pay the rent;

**6.8.2** to use the premises solely for the specified purpose;

**6.8.3** to comply with laws and requirements;

**6.8.4** to repair the premises;

**6.8.5** not to assign this Lease or sub-let the premises or any part of them without the consent of the Lessor and the Minister;

**6.8.6** to take out and keep current those insurances required to be taken out by the Lessee;

**6.8.7** to pay or reimburse the Lessor's insurance premiums (if required to do so under this Lease);

**6.8.8** to pay or reimburse rates and taxes;

**6.8.9** any further obligations in Item 14 of schedule A unless otherwise stipulated in that obligation ;

**6.8.10** any other covenant in respect of which the Lessee's breach or non-observance is serious, persistent and of a continuing nature.

**6.9** **Damages for Breach**

The Lessee covenants to compensate the Lessor for any breach of an essential term of this Lease and, subject to compliance with sub-clause 6.4, the Lessor may recover damages from the Lessee for such breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this Lease).

**6.10 Repudiation by Lessee**

**6.10.1** If the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any Lease obligations, the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.

**6.10.2** The Lessor may recover damages against the Lessee in respect of repudiation or breach of Lease obligations for the loss or damage suffered by the Lessor during the entire term of this Lease provided that the Lessor's right to recover rent for the balance of the unexpired term is limited to one year's rent.

**6.11 Acceptance of Rent**

The demand for or acceptance by the Lessor of arrears or of any late payment of rent or a sum in part payment shall not constitute a waiver of the essentiality of the Lessee's obligations to pay rent.

**6.12 Acts by the Lessor Not to Constitute Forfeiture**

The Lessor's entitlement to recover damages shall not be affected or limited if any of the following events occur:-

**6.12.1** the Lessee abandons or vacates the land; or

**6.12.2** the Lessor elects to re-enter the land or to terminate the Lease; or

**6.12.3** the Lessor accepts the Lessee's repudiation; or

**6.12.4** the parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of law (other than a re-letting of the land).

**6.13 Lessor May Institute Proceedings at any Time**

The Lessor may at any time in the Lessor's absolute discretion institute legal proceedings claiming damages against the Lessee for the entire Lease term including the period before and after the repudiation, abandonment, termination, acceptance of repudiation or surrender by operation of law referred to in the preceding sub-clause whether the proceedings are instituted either before or after such conduct **provided that** the Lessor's right to recover rent for the balance of the unexpired term is limited to one year's rent.

**6.14 Mitigation**

Nothing in this clause shall operate to relieve the Lessor of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Lessor. The Lessor's conduct taken in pursuance of the duty to mitigate damages shall not, by itself, constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

**6.15 Lessor May Remove and Dispose of Lessee's Improvements**

If the Lessor terminates the Lease or it expires, and the Lessee does not within 90 days thereof remove the Lessee's improvements in accordance with sub-clause 3.9 the Lessor may remove the Lessee's improvements remaining on the land after the date of such termination or expiration, as the case may be, and store them at the Lessee's expense without being liable to the Lessee for trespass, detinue, conversion or negligence. After storing them for at least one month, the Lessor may sell or dispose of the same, by auction, private sale, gift, distribution or otherwise and apply the nett proceeds towards the payment of any monies then owed by the Lessee to the Lessor.

**6.16 Debt Recovery**

All monies payable by the Lessee to the Lessor under this Lease shall be recoverable from the Lessee as liquidated debts payable on demand.

**6.17 Notice to Let**

**6.17.1** If the Lessee has not validly exercised the option to renew this Lease for a further term under sub-clause 6.21, the Lessor may at any time during the last three months of the term place and leave on the perimeter of the land appropriate notices on the land to advise its availability for lease and the Lessor or the Lessor's agent may conduct prospective future lessees through the land (other than the Lessee's works) for the purpose of inspection.

**6.17.2** The Lessor may at any time during the term place and leave appropriate notices on the perimeter of the land to advise its availability for sale and the Lessor or the Lessor's agent may conduct prospective purchasers through the land for the purpose of inspection.

**6.18 Holding Over**

If the Lessee remains in occupation of the land or any part of it after the end of the term without objection by the Lessor, the Lessee shall during such overholding, which shall not in any event exceed any period by law provided, be deemed to be a tenant from month to month at a rent equal to the rent applicable immediately prior to the end of the term, but reduced to a monthly basis, subject to the provisions of this Lease so far as they can be construed to apply to a monthly tenancy and such tenancy may be determined by either party giving one month's notice, which notice may be given on any day.

**6.19 Rent Adjustments**

The rent shall be adjusted in accordance with the provisions in Item 7 of schedule A.

**6.20 Rent and Rates and Taxes**

The Lessee must continue to pay the rent and the rates and taxes even if the Lessee's improvements are destroyed or damaged or rendered inaccessible.

**6.21** **Option for Renewal**

Subject to this sub-clause, at the end of the term, the Lessor must grant and the Lessee must take a further lease of the land with the provisions set out in paragraph 6.21.6 if the Lessee -

**6.21.1** has paid rent punctually during the term;

**6.21.2** has not failed to observe and perform the Lessee's obligations during the term in a way which has been serious or persistent or both;

**6.21.3** notifies the Lessor in accordance with paragraph 6.21.5; and

**6.21.4** between the time of notification and the end of the term, duly and punctually pays rent and observes and performs the Lessee's obligations;

**6.21.5** A notice of exercise of option -

**6.21.5.1** must state clearly that the Lessee wishes to take a further lease of the land in accordance with the option herein contained for the further term specified in Item 11 of schedule A; and

**6.21.5.2** must be given not earlier than 6 months and not later than 3 months before the end of the term.

**6.21.6** Notwithstanding sub-clause 6.25 or any statute or rule of law relating to the service of notices the notice referred to in paragraph 6.21.5 must be received by the person named at the address specified in Item 12 of schedule A and only when received by that person will it be deemed to have been given to the Lessor at that time.

**6.21.7** The provisions of the further lease will be the same as the provisions of this Lease, with the following exceptions -

**6.21.7.1** the commencement date of the new lease shall be the day after the last day of the term of this Lease;

**6.21.7.2** the rent at the commencement of the new lease shall be the rent determined in accordance with Item 7 of schedule A.

**6.21.7.3** it will not provide for an option for a further term unless such an option is required by the option provisions in this Lease in which case the provisions for an option shall accord with the provisions of this clause subject to any variations provided by the option provisions.

**6.21.8** If there is a guarantor of this Lease, the Lessor need not grant a further lease of the land unless the Lessee obtains a further guarantee of the due and punctual observance and performance of the Lessee's obligations, either by the guarantor or by other guarantors acceptable to the Lessor on terms similar to the guarantee to this Lease.

**6.21.9** At the option of the Lessor a Deed of Renewal of lease, in a form acceptable to the Lessor and carrying into effect the requirements for a further lease required by this clause, may be used in lieu of a further lease document.

**6.22 Other Legislation**

All stipulations contained in this Lease shall be construed so as not to infringe the provisions of any Act whether State or Federal but if any such stipulation on its true interpretation infringes any such provisions it shall be deemed to be void and severable.

**6.23 Entire Agreement**

This Lease constitutes the entire agreement between the parties relating to the premises and this Lease. Any prior or simultaneous leases, arrangements, agreements, promises, understandings or undertakings are, unless herein elsewhere stipulated, hereby superseded by this Lease.

**6.24 Lessor's Agents**

Every act or thing to be done, decision to be made or document to be signed pursuant to this lease by the Lessor, including the signing of any notice, and which is not required by law to be done, made or signed by the Lessor personally may be done made or signed by any person authorised by the Lessor to carry out that function in relation to this lease as the Lessor's duly appointed agent.

**6.25 Notices**

A notice other than a notice under sub-clause 7.15 served by either party pursuant to this Lease is valid and effectual if it is signed by that party (if a natural person) or by any Director, Alternate Director, Secretary, Executive Officer, Manager, duly appointed agent, Managing Agent or Solicitor for the time being of, or a person nominated for the time being by that party.

**6.25.1** A notice is sufficiently served on the recipient party if:-

**6.25.1.1** served personally at the recipient party’s registered office; or

**6.25.1.2** served personally on the Lessee or upon the officer of the recipient party, if any, specified in Item 12 of schedule A; or

**6.25.1.3** sent by facsimile transmission to the recipient party’s facsimile machine number specified in Item 12 of schedule A and marked to the attention of the officer of the recipient party, if any, specified in Item 12 of schedule A; or

**6.25.1.4** forwarded by prepaid post (airmail if posted outside Australia) addressed to the recipient party at the address both specified in Item 12 of schedule A or to the Lessee at the Lessee’s registered office or last or usual place of abode or business.

**6.25.2** Provided that a party may by notice to the other party substitute the name of a new officer or a new address, or a new facsimile machine number.

**6.25.3** Subject to paragraph 6.21.6 a notice is deemed to have been duly served if given:-

**6.25.3.1** by prepaid post, two business days after the day it was posted (unless posted by airmail when it shall be five business days after posting);

**6.25.3.2** by facsimile transmission, at the time of transmission to the recipient party’s facsimile machine number unless the time of dispatch is later than 5.00pm in the place to which the facsimile transmission is sent in which case it shall be deemed to have been received at the commencement of business on the next business day in that place. A copy of any notice sent by facsimile transmission must also, on the date of dispatch be sent by prepaid post to the party to whom it was sent by facsimile transmission;

* + - 1. personally, on the date of service.

**6.26 Surrender**

The Lessee while not in default under this Lease may at any time during the term upon giving not less than six months' previous notice to the Lessor surrender this Lease upon the conclusion of that year of the term during which the notice expires.

* 1. **GST**
     1. **GST Definitions**

For the purposes of this clause 6.27:

**“GST”** means GST within the meaning of the GST Act (as amended);

**“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999;*

**“GST Law”** means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;

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

* + 1. **Amounts otherwise payable do not include GST**

Except where express provision is made to the contrary, and subject to this clause 6.27, the *consideration* payable by any party under this lease represents the *value* of any *taxable supply* for which payment is to be made.

* + 1. **Liability to pay any GST**

If a party makes a *taxable supply* in connection with this lease and including the granting of this lease for a *consideration*, which, under clause 6.27.2 or clause 6.27.4, represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply.*

* + 1. **Reimbursements**

If this lease requires the Lessee to pay, reimburse or contribute to an amount paid or payable by the Lessor in respect of an *acquisition* from a third party for which the Lessor is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the Lessee will be the *value* of the *acquisition* by the Lessor plus, if the Lessor’s recovery from the Lessee is a *taxable supply* any GST payable under clause 6.27.3.

**6.27.5** Subject to clause 6.27.6 a party’s right to payment under clause 6.27.3 is subject to a validtax invoice being delivered to the party liable to pay for the taxable supply**.**

* + 1. For an invoice prior to 1 July 2000 for a taxable supply after that date a party’s right to payment under clause 6.27.3 is subject to an invoice which can be relied upon to claim an input tax credit being delivered to the party liable for the taxable supply.

**6.28 Bank Guarantee**

If requested to do so by the Lessor the Lessee (not being the first lessee under this Lease or a related body corporate to that lessee) must, at any time before or during the term of this Lease, provide the Lessor with an unconditional undertaking, in a form approved by the Lessor, given by a bank or financial institution, also approved by the Lessor, (``Bank Guarantee'') for the amount stated in Item 13 of schedule A as security for the performance of the Lessee**’**s obligations under this Lease.

**6.28.1** The secured sum or any part of it is payable and may be appropriated and applied by the Lessor at any time in payment of any loss or damage which the Lessor suffers by reason of any breach or non-observance by the Lessee of the Lessee’s obligations under this Lease as if the secured sum or any part of it was a sum of money due or to become due to the Lessor upon the Lessee’s breach or non-observance of the Lessee’s obligations as aforesaid. Notwithstanding anything express or implied to the contrary, acceptance or appropriation of the secured sum or any part of it does not affect or limit the rights of the Lessor under this lease or operate as a waiver of any of the Lessee’s obligations.

**6.28.2** If the rent is revised or adjusted the secured sum shall, if required by the Lessor, be increased by the same proportion as the increase in the rent, and the amount of the increase in the secured sum must be made upon the date for the payment of the first instalment of the revised rent.

**6.28.3** If the secured sum or any part of it is appropriated by the Lessor, the Lessee must immediately provide the Lessor with a new or additional bank guarantee to reinstate the secured sum to its proper level immediately before such appropriation occurred.

**6.28.4** The bank guarantee will cease to operate on a date being the latest of the expiration of this Lease, the earlier termination of this Lease or the satisfactory completion of all the Lessee’s obligation, including payment to the Lessor of any damages arising from any breach or non-performance of the Lessee’s obligations, under this Lease.

###### 7 Definitions

Unless inconsistent with the context or subject matter of this Lease, the following words or phrases shall bear the following meanings respectively:-

**7.1 “Carrier“** has the same meaning as defined in the *Telecommunications Act 1997 (Commonwealth)*

**7.2 “commencement date“** means the date set out in Item 1 of schedule A;

**7.3 “Crown“** means the Crown in right of the State and includes each employee and agent of the Crown;

**7.4 “hazardous materials“** include all substances which are hazardous, contaminant or pollutant to persons or property or substances under or defined as such by any federal, state or local law;

**7.5 “Item“** followed by a number means the Item of that number in schedule "A" ;

**7.6 “land“** means the land described in Item 4 of schedule A to a depth of 15 metres below the surface and all rights, easements and appurtenances usually and normally enjoyed with that land;

**7.7 “lease year“** means a year of the term computed from the commencement date;

**7.8 “Lessee“** means the person named in Item 3 of schedule A and includes -

**7.8.1** the personal representatives and permitted assigns of any natural person who is a Lessee;

**7.8.2** the successors and permitted assigns of a corporate Lessee; and

**7.8.3** the survivor or survivors of a Lessee comprising more than one person.

**7.9 “Lessee's improvements“** includes all Lessee's works, fittings, plant, machinery, equipment, chattels, signs and other materials or articles including those of a structural nature being existing Lessee's improvements at the date of commencement or erected or brought onto the land by the Lessee during the term;

**7.10 “Lessee's works“** means all buildings, structures, erections and improvements erected or brought onto the land by the Lessee and any alteration, extension or renewal of any buildings, structures, erections or improvements constructed on the land from time to time by the Lessee and includes telecommunication towers and other antennae support structures;

**7.11 "Lessor"** means the Cemetery Trust identified in item 2 of schedule A, established under s 5 of the *Cemeteries and Crematoria Act 2003* to administer the land established as a public cemetery in accordance with s 4 of the said Act and includes the Lessor’s successors and assigns and where it is consistent with the context includes the Lessor’s employees and agents;

**7.12 "Minister"** means the Minister for Health or other Minister for the time being responsible for the administration of the *Cemeteries and Crematoria Act 2003*;

**7.13 “payment address“** means the payment address set out in Item 9 of schedule A or the last variation of it, written notice of which by means of an address specified on a rental invoice or rental account or otherwise has been given to the Lessee;

**7.14 “person“** includes a body corporate as well as an individual;

**7.15 “pest animals“** has the same meaning as contained in the *Catchment and Land Protection Act 1994*;

**7.16 “premises“** means the land and the lessee's improvements;

**7.17 “rates and taxes“** means all existing and future rates, tariffs, (including water by consumption and any special rates or levies) taxes (including land tax) duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the premises or the Lessor or the Lessee or payable by the owner or occupier of the premises in respect of the premises;

**7.18 “related body corporate“** has the same meaning as provided in the *Corporations Act 2001 (Commonwealth)*;

**7.19 “rent“** means the rent set out in Item 6 of schedule A as varied during the term;

**7.20 "reserved mineral"** means all gold and minerals within the meaning of the *Mineral Resources Development Act 1990* and petroleum within the meaning of the *Petroleum Act 1958*;

**7.21 “Schedule“** means a schedule to this Lease;

**7.22 “Special Condition“** means a condition contained in Item 14 of schedule A and has the same force and effect as a clause of this Lease;

**7.23 “specified purpose“** means a specified purpose described in Item 8 of schedule A;

**7.24 “State“** means the State of Victoria;

**7.25 “term“** means the period of time, specified in Item 5 of schedule A commencing on the commencement date, set out in Item 1 of schedule A;

**7.26 “weeds”** includes noxious weeds as defined in the *Catchment and Land Protection Act 1994* and proscribed fauna as described in the *Flora and Fauna Guarantee Act 1988*;

**7.27 “writing“** includes typewriting, printing, photography, lithography and other modes of representing or reproducing words in a visible form and ``written'' has a corresponding meaning.

###### 8 Interpretation

In this Lease-

**8.1 Gender**

A reference importing any gender includes a reference to all other genders.

**8.2 Singular and Plural**

A reference importing the singular includes the plural and vice versa.

**8.3 Headings**

The index, headings and marginal notes are included for ease of reference and shall not alter the interpretation of this Lease.

**8.4 Counting of Days**

If any day appointed or specified by this Lease falls on a Saturday, Sunday or a day appointed under the *Public Holidays Act 1993* as a holiday for the whole day the day so appointed or specified shall be deemed to be the day succeeding the day so appointed or specified which is not in turn a Saturday, Sunday or day so appointed as a holiday for the whole day.

**8.5 Legislation**

References to an Act of Parliament or a Section or Schedule of it shall be read as if the words ``or any statutory modification or re-enactment thereof or substitution therefor'' were added to the reference.

**8.6 Covenants**

If the Lessee comprises more than one person, the covenants and agreements contained in this Lease shall be construed as having been entered into by and shall be deemed to be binding jointly and severally on all and each of the persons who constitute the Lessee.

**8.7 Clauses**

References to clauses, sub-clauses, paragraphs *and sub-paragraphs* are references to clauses, sub-clauses, paragraphs *and sub-paragraphs* of this Lease respectively.

**8.8 Statutory Covenants**

Covenants implied by statute are not incorporated in this Lease, unless the relevant statute provides that certain covenants are to be implied and cannot be excluded by agreement.

**IN WITNESS WHEREOF** the parties have executed this Lease.

Signed sealed and delivered for and on behalf of )

**[insert name of Trust]** )

xxx, in the presence of: )

……………………………………………. ……………………………………

Signature of Witness Signature of Chief Executive

…………………………………………… …………………………………….

Name of Witness (print) Name of Chief Executive (print)

Signed sealed and delivered by **(insert name)** ACN **)**

by its attorney the Company Secretary )

pursuant to Power of Attorney dated )

(insert date)in the presence of: )

…………………………………….. ………………………………………

Witness Company Secretary

……………………………………… ………………………………………….

Full name Full name

**MINISTERIAL ATTESTATION**

Under Section 37 of the *Cemeteries and Crematoria Act 2003* I, The Hon (insert full name) MP, Minister for Health hereby:

· approve the grant of this Lease;

· approve the covenants, exceptions, reservations, terms and conditions contained therein; and

· am satisfied that the purpose for which the Lease is being granted is not detrimental to the purpose for which the Land is reserved.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature) \_\_\_\_ / \_\_\_\_ / 20\_\_

**DATE OF EXECUTION:**

**SCHEDULE A**

**1. Commencement Date:**

**2. Lessor:**

**3. Lessee:**

**4. Land:**

**5. Term:**

**6. Rent:**

**7. Rent Review:**

**8. Specified Purposes:** Construction, maintenance and operation of a

telecommunications network and telecommunications

service

**9. Payment Address:**

**10. Public Risk Insurance:**

**11. Option Provisions:**

**12. Address for Service of Notice:**

**Upon the Lessee**

**Name of Recipient**

**Lessee's Service Address**

**Facsimile number**

**Telephone number**

**Optus Site Code**

**Upon the Lessor**

**Name of Officer**

**Lessor's Service Address**

**Facsimile number**

**Telephone Number**

**13. Bank Guarantee:** Not Applicable

**14. Special Conditions** See Schedule C

**SCHEDULE B**

**RENT REVIEW**

**Rent Review**

The Lessor may review the annual rent on each Review Date as follows;

1 Not earlier than three months before the rent Review Date and not later than sixty days after the rent Review Date the Lessor shall give the Lessee notice of the new rental it proposes be paid by the Lessee during that period or part thereof.

1. Time shall not be of the essence in respect of the Lessor’s rent review notice and any delay by the Lessor in giving notice shall not affect the Lessor’s rights.
2. Within twenty one days of being notified in writing of the proposed new rent the Lessee may give to the Lessor written notice of objection to the proposed new rent and within a further thirty days from the notice of objection supply the Lessor with a rent valuation from a qualified valuer. If no notice of objection is given or if notice is given and no rent valuation is supplied the new rent shall be the new rent as proposed in the Lessor’s notice.
3. If within thirty days from the lodgment with the Lessor of the Lessee’s rent valuation the Lessor and the Lessee are unable to agree on the new rent and a conference of the Lessor’s and Lessee’s valuer's has failed to result in agreement on the rent the new rent shall be determined by a valuer nominated by the President for the time being of the Institute of Valuers and Land Economists Inc (Victoria Division) (“the nominated valuer”) acting as an expert and not as an arbitrator who in making a determination, shall accept representations from either party received within twenty one days of the appointment.
4. The decision of the nominated valuer shall be final and binding and the nominated valuer’s costs and fees must be paid by the parties equally.
5. Until the new rent is agreed or determined the Lessee shall pay rent at the rate applicable immediately prior to the date fixed for review until such time as the new rent is determined.
6. After the new rent is determined the Lessee shall pay the difference if any between the amount of the new rent paid since the date fixed for review.
7. In this clause the words “Review Date” mean the third anniversary of the Commencement Date.

**Method of Determination:**

1. In determining a new rent for the Premises the valuer shall as nearly as possible determine the open market rent value on the date when that rent is to apply for the Premises having regard to the following matters:
2. The Lessor is a willing but not anxious Lessor and the Lessee is a willing but not anxious Lessee;
3. there is a reasonable period within which to negotiate the new rent having regard to the nature of the property and the state of the market;
4. the Lessor and the Lessee are well acquainted with the Premises and aware of any factors which might affect its value;
5. The length of the Term and the period between rent reviews;
6. The terms and obligations of the Lease;
7. The use of the premises as detailed in the Specified Purpose under the Lease;.
8. The rental of comparable premises;
9. Rents paid to the Lessee under any sub leases or licences;
10. but shall disregard the value of any improvements owned by the Lessee, sub-lessees or licencees.

**SCHEDULE C**

**SPECIAL CONDITIONS**

**APPENDIX A**

**PLAN OF LEASED LAND**

PLAN

NOTE:- The area bearings and measurements are approximately given in this plan.

The measurements are in metres and the area is in square metres/hectares.