

**PERMIT TO OCCUPY**  
**Cundinup Exchange, WA**

**PARTIES**

This Permit is made between and binds the following parties:

**Shire of Nannup** ABN 43 038 160 786 of 15 Adam Street, Nannup WA 6275

**(Shire)**

AND

**Amplitel Pty Ltd** ACN 648 133 073 as trustee for the Towers Business Operating Trust of C/- JLL, 242 Exhibition Street, Melbourne, Victoria 3000

**(Amplitel)**

**CONTEXT**

- A The Shire is charged with the care, control and management of the road reserve at 1056 Cundinup South Road under the *Local Government Act 1995* (WA) (**LGA**).
- B The Shire has agreed to grant Amplitel permission to occupy part of the Road reserve for the purposes of constructing and operating a telecommunications Facility from the Permit Area under regulation 17 of the *Local Government (Uniform Local Provisions) Regulations 1996* (WA) (**LGULPR**).

## REFERENCE SCHEDULE

<b>Item 1</b>	<b>Road:</b>	Unsealed road situated between Cundinup South Road and Cundinup-Dudinyillup Road, with Land ID number 3546018
<b>Item 2</b>	<b>Permit Area:</b>	<p>That part of the Road hatched on the plan annexed to this Permit in Annexure A and situated at 1056 Cundinup South Road, Cundinup WA 6275.</p> <p>For Amplitel reference purposes only: JDE: 30953700 Tenure ID: 91604 Node Manager Address ID: 13247 RFNSA Number: 6275005</p>
<b>Item 6</b>	<b>Commencement Date:</b>	The date this Permit is signed by the Shire and Amplitel.
<b>Item 7</b>	<b>Terminating Date:</b>	The date that Amplitel notifies the Shire that Amplitel no longer requires the Permit Area for the Permitted Use.
<b>Item 8</b>	<b>Permit Fee:</b>	Not applicable.
<b>Item 10</b>	<b>Permitted Use:</b>	Use, inspection, construction, installation, replacement, operation, maintenance, alteration, repair, upgrade, access to and from and removal of the Facility for telecommunications, communications and any other lawful purposes in accordance with this Permit.
<b>Item 11</b>	<b>Address for service of notices:</b>	<p><b>Shire:</b></p> <p>Address: 15 Adam Street NANNUP WA 6275</p> <p>Email: nannup@nannup.wa.gov.au</p> <p><b>Amplitel:</b></p> <p>Address: c/- JLL 242 Exhibition Street MELBOURNE VIC 3000</p> <p>Email: leaseadmin@amplitel.com</p>

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

#### 1.1 Definitions

The following words have these meaning in this Permit:

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Western Australia.

**Facility** means any equipment, equipment housing, tower/pole/mast (or similar), antennas, associated ancillary equipment and/or any other fixtures, fittings, structures and cabling as altered or upgraded in accordance with the terms of this Permit belonging to or brought onto the Permit Area by Amplitel, any Related Body Corporate of Amplitel and any licensee of Amplitel (as the case may be).

**Permit** means this document including any Schedules and Annexures to it.

**Reference Schedule** means the Reference Schedule to this Permit.

**Related Body Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).

### 2. GRANT OF PERMIT

- (a) Pursuant to regulations 17(3), 17(4) and 17(5) of the Local Government (Uniform Local Provisions) Regulations 1996, the Shire grants Amplitel permission to occupy the Permit Area on the Road for the Term and for the Permitted Use, on the terms and conditions contained in this Permit.
- (b) In consideration of Amplitel entering into this Permit (including the payment of the Shire's costs under clause 3.2), the Shire agrees that it will not impose any penalty on Amplitel under the Local Government (Uniform Local Provisions) Regulations 1996 in respect of Amplitel's occupation and use of the Road or the Permit Area prior to the Commencement Date of this Permit.

### 3. PAYMENTS

#### 3.1 Permit Fee

The parties acknowledge that there is no ongoing fee payable by Amplitel to the Shire for the use of the Permit Area under this Permit.

#### 3.2 Costs of Permit

Amplitel will contribute \$19,871.65 including GST towards the Shire's reasonable legal fees for the preparation, negotiation, and execution of this Permit.

### 4. USE

#### 4.1 Access to and use of Permit Area and surrounding Road

- (a) The Shire grants a permit to Amplitel to temporarily use so much of the Road adjacent to or adjoining the Permit Area as is reasonably required for the Permitted Use (such as for a cherry picker/crane or similar elevated work platform).

- (b) Amplitel must restore the surface to the part of the Road used to as near as practicably possible its state prior to use by Amplitel.
- (c) The Shire grants a permit to Amplitel to have access to and from the Permit Area and the Facility over the Road during daylight hours and on 24 hours prior notice to the Shire. For the avoidance of doubt, no prior notice of access is required in an emergency. The Shire's contact details to arrange access are contained in Item 1 of the Reference Schedule.
- (d) The Facility remains the property of Amplitel, even if it becomes attached to the Road.

#### **4.2 Security of Permit Area**

- (a) The Shire must not:
  - (i) obstruct or unreasonably impede Amplitel's access to and use of the Permit Area; or
  - (ii) damage, tamper with or interfere with the Facility or its operation.
- (b) The Shire must:
  - (i) comply with Amplitel's safety and security procedures in respect of the Permit Area and the Facility; and
  - (ii) promptly notify Amplitel if the Shire contact person for security and access to the Permit Area changes or the Shire's address to send mail changes.

### **5. ELECTRICITY AND OTHER SERVICES**

The Shire permits Amplitel, at Amplitel's cost, to supply electricity to and from the Facility in accordance with current operations.

### **6. INSURANCE AND INDEMNITY**

#### **6.1 Insurances**

Amplitel agrees to maintain:

- (a) all risks property insurance with a reputable insurer at all times in relation to the Permit Area; and
- (b) public liability insurance with a reputable insurer for at least \$20 million at all times in relation to the Permit Area and Amplitel will include the Shire as an insured to the extent of Amplitel's liability under this Permit.

#### **6.2 Indemnity and liability**

Amplitel will indemnify the Shire for any liability, loss, damage, cost or expense incurred or suffered by the Shire which is caused or contributed (to the extent of the contribution) by Amplitel's negligence or breach of this Permit.

### **7. DEFAULT AND TERMINATION**

#### **7.1 Default and Termination**

If Amplitel fails to perform its obligations under this Permit and Amplitel does not within 40 Business Days from the date of receipt of notice from the Shire either remedy the default or if the default cannot be remedied, pay reasonable compensation to the Shire for the loss or damage suffered by the Shire as a consequence of the default, then the Shire may terminate this Permit by written notice to Amplitel.

## 7.2 Termination

- (a) Despite any other provision of this Permit, if the Permitted Use is compromised (including physical or radio interference), the Permit Area is no longer required, the communications network of any of Amplitel's licensees ceases to operate or Amplitel's licensees vacate, then Amplitel may terminate this Permit on giving to the Shire no less than 6 months' notice at any time.
- (b) If Amplitel exercises its right to terminate this Permit under clause 7.2 (a), Amplitel must, at its cost, reinstate the Permit Area in accordance with clause 7.3.

## 7.3 Reinstatement and Make Good

Within 4 months after the Terminating Date, Amplitel will remove that part of the Facility and make good at its cost any damage to the Road or Permit Area caused by that removal.

## 8. AMPLITEL AS TRUSTEE

The parties acknowledge and agree that:

- (a) Amplitel is a trustee of a trust and enters into this this Permit in that capacity and is bound by this Permit only in that capacity;
- (b) the recourse of the Shire to Amplitel in respect of any obligations and liabilities of Amplitel under or in connection with this Permit is limited to the extent to which the liability can be satisfied out of the assets of the trust out of which Amplitel is actually indemnified in respect of such obligations and liabilities;
- (c) the parties may not sue Amplitel in any capacity other than as trustee of the trust; and
- (d) the provisions of this clause 8 do not apply to any obligation or liability of Amplitel in its capacity as trustee of the trust to the extent that it is not satisfied because under the trust deed of the trust or by operation of law there is a reduction in the extent of Amplitel's indemnification out of the assets of the trust as a result of fraud, negligence or breach of trust on the part of Amplitel.

## 9. MISCELLANEOUS

### 9.1 GST

- (a) Unless otherwise expressly stated, all sums payable or consideration to be provided under or in accordance with the Permit are exclusive of GST.
- (b) If GST is imposed on any supply under or in accordance with the Permit, the recipient of the taxable supply (**receiving party**) must pay to the party making the taxable supply (**supplying party**) an amount equal to the GST payable on or for the taxable supply (**GST amount**).

- (c) The parties agree that this Permit is intended to be a tax invoice which satisfies the requirements of section 29-70(1) of the GST Act.
- (d) If an adjustment event arises in respect of a taxable supply made by a supplying party, the GST amount payable by the receiving party under clause 9.1(b) will be recalculated to reflect the adjustment event and a payment will be made by the receiving party to the supplying party, or by the supplying party to the receiving party, as the case requires.

## 9.2 Application of Laws

- (a) Nothing in this Permit affects, restricts, limits or derogates from the rights, powers and immunities under and by virtue of the Act or any other applicable legislation and/or regulations of the Commonwealth.
- (b) Amplitel must comply with all applicable laws in respect of Amplitel's use of the Permit Area and all applicable laws in relation to the Road and the Shire's property (if any) on the Road.

## 9.3 Notices

- (a) A notice, consent or other communication (**Notice**) under this Permit is only valid if it is in writing and addressed to the recipient to the recipient's address or sent by email to the recipient's email address or email addresses.
- (b) A Notice is deemed received:
  - (i) by email if delivered:
    - (A) by 5.00 pm on a Business Day - at the time (local time in the place of receipt) specified in the delivery confirmation or receipt generated by the sender's email; or
    - (B) after 5.00 pm on a Business Day or on a day that is not a Business Day - on the next Business Day.
  - (ii) if sent by mail, within 7 Business Days after posting to a location within Australia or 10 Business Days after posting to a location outside Australia; or
  - (iii) if delivered by hand, at the time it is given.

## 9.4 Rules for interpreting this Permit

Unless the context otherwise requires:

- (a) A singular word includes the plural, and vice versa.
- (b) Words of inclusion or example are not words of limitation.
- (c) Headings are for convenience only.
- (d) No rule of construction applies to the disadvantage of a party.

- (e) If anything in this Permit is unenforceable, illegal or void then it is severed and the rest of this Permit remains in force.
- (f) A reference to:
  - (i) legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes an executor, an administrator, a permitted substitute or a permitted assign of that party and where the party is a corporation, includes the corporation, its successors and assigns. Where a party consists of two or more persons the obligation of those persons is joint and several and a right of those persons is held by each of them severally; and
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (g) Unless the context otherwise requires, the terms installation and maintenance where they are used in this Permit have the same meanings and include the same activities as are provided under the *Telecommunications Act 1997* (Cth) (the Act).
- (h) Any right given to the Shire or Amplitel (as the case may be) may where the context so permits be exercised by that party's employees, agents, contractors, licensees or others authorised (expressly or implicitly) by that party.
- (i) Any obligation on the Shire or Amplitel (as the case may be) will where the context so permits extend to the actions of that party or that party's authorised employees, agents, contractors, licensees, invitees, or others claiming under or through that party.
- (j) Unless the Permit expressly states otherwise, any party responding to a request for consent or approval must not unreasonably withhold or delay its response or impose any conditions inconsistent with the terms of this Permit. If withholding consent or approval, the responding party must give written reasons with its response.
- (k) Terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST Act**) have the meaning given in that Act.

**EXECUTED AS A DEED** this

day of

20

**EXECUTED BY AMPLITEL**

**SIGNED SEALED AND DELIVERED** by

as attorney for **AMPLITEL PTY LTD**  
**ACN 648 133 073** under power of attorney  
registered no. **O845443** in the presence of:

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Signature of witness

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Signature of Attorney

By executing this deed the attorney states that  
the attorney has received no notice of  
revocation of the power of attorney

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Full name of witness (block letters)

**EXECUTED BY THE SHIRE**

[Shire to provide execution block]



# ANNEXURE A - PERMIT AREA PLAN

