

12 April 2019

The Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP
NSW 1240

Attention: Mr Ed Willett and Ms Deborah Cope

Dear Mr Willett and Ms Cope

RENTAL ARRANGEMENTS FOR TELECOMMUNICATIONS TOWERS ON CROWN LANDS

Thank you for your invitation to comment on the IPART Review of Rental Arrangements for Communications Towers on Crown lands.

Axicom is Australia's leading provider of independently owned wireless infrastructure. We own, operate and manage a portfolio of approximately 2000 towers in Australia, including 79 sites located on Crown lands in NSW. Our customers include major wireless carriers such as Optus, Vodafone, Telstra and nbn, emergency services, various State and Federal government agencies and wireless broadband data service providers.

We encourage wireless operators to co-locate on our existing sites, helping to minimise the environmental impact of network expansion while offering Australia-wide coverage, faster deployment and lower total costs of ownership compared with building duplicate sites. The community, government and all areas of the telecommunications industry (both locally and globally) have long recognised the growing dependence on the critical services which telecommunications provide and there is a growing demand for ease of access to these services. Peak bodies have made it a key mandate of all relevant agendas on infrastructure deployment. One of the key reforms being sought is an 'introduction of uniform national cost-based pricing for land access'¹.

We welcome the opportunity to provide a submission for the IPART Review of Rental Arrangements for Communications Towers on Crown lands. Since the last review in 2013, there has been the crucial decision of the Federal Court in the case of *Telstra Corporation v Queensland* [2016] FCA 1213 (**Telstra Case**)². In that case the Federal Court examined how rents were determined under the *Land Regulation 2009* (Qld) (**Land Regulation**) for communication sites in comparison to rents paid by other commercial users of Crown land and how clause 44 of Schedule 3 of the Telecommunications Act 1997 (Cth) (**Telecommunications Act**) operated in relation to this.

¹ *Communications Day* Issue 5848, 8 April 2019

² Refer to Appendix A for a full copy of the transcript

Clause 44 of Schedule 3 of the Telecommunications Act (**clause 44 of the Telco Act**) specifies that:

"a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;"

The Telstra Case addressed the application of clause 44 of the Telco Act specifically in response to the rental regime of the Queensland government. The Federal Court found that the Land Regulation did discriminate against carriers in breach of clause 44 as carriers were paying more than other users of Crown land and so the State law was of no effect. The Federal Court made it clear that 'price gouging'¹ by the State government was precisely the type of conduct that clause 44 of the Telco Act was designed to prevent.

Specifically, the Court determined that clause 44 *"provides protection for carriers against the effects of discriminatory laws, including protection against the imposition of discriminatory taxes, rents and charges."*²

Since the conclusion of the Telstra case, the Queensland government has adjusted the rents for both carriers under the Telecommunications Act and infrastructure providers, such as Axicom, in order to remove the rental regime which caused both direct and indirect discrimination and clearly breached clause 44 of the Telco Act.

We note that the terms of reference for the IPART review issued by the State government very clearly state that IPART is to have regard to clause 44 of the Telco Act. This review cannot be undertaken by IPART without reference to both:

- (a) the unequivocal precedent set by the Telstra Case; and
- (b) the provisions and application of clause 44 of the Telco Act (as handed down in the Telstra Case).

In light of these two items, IPART has to consider whether the rents paid on communication sites on Crown lands in NSW are higher than the rents paid by other users of Crown lands and, if they are, then IPART can have no other option but to determine that the whole of the current regime is discriminatory and in breach of clause 44 of the Telco Act.

It is Axicom's view that the regulatory regime currently in place in NSW for communication sites is discriminatory. Currently there are different methods for determining rents for different users of Crown lands. This is evident from the rents section of the Department of Industry website at www.industry.nsw.gov.au. This page sets out the fact that there are different methodologies in place for determining rent on Crown lands, depending on the user of the land. The annual minimum rent is specified on that page as \$498.00 from 30 January 2019. Whilst this is a minimum rent, Axicom believes that if the Land Management Agencies were asked to provide evidence of rents paid by other commercial users of Crown lands, this would establish that, based on the area occupied, the rents charged to communications site users are well in excess of rents charged to other

¹ *Telstra Corporation v Queensland* [2016] FCA 1213 [147]

² *Telstra Corporation v Queensland* [2016] FCA 1213 [141]

commercial users. The rent in the 'low' category for standard communication sites is 16x more than the minimum rent specified by the Department of Industry on their website and the rent in the 'high' category for standard communication sites is 60x more. Given the minimum rents specified by the Department of Industry, it is hard to imagine that comparable rates are being paid by other commercial users on Crown land.

Most tenure arrangements on Crown land in NSW are subject to market rent reviews, with the principles for those rent determinations clearly set out in the *Crown Land Management Act 2016*

(NSW) (CLMA). Any improvements that those tenants make to the land are disregarded. This same provision has carried through from, and mirrors, the preceding (now repealed) *Crown Lands Act 1989*. As IPART would be aware, the CLMA is the result of a four year consultation process which saw a number of Acts amalgamated into the new CLMA. The regulated approach to the valuation of land,

disregarding any tenant improvements, was clearly considered critical for inclusion in the CLMA. However, the principles for rent determinations set out in the CLMA (and its predecessor) are ignored for communications sites and a separate regime has been set out depending on which entity is using the land.

Tenants on communications sites in NSW are being discriminated against as they are:

- (a) paying an unnaturally high rent per square metre for their use of Crown land. For example, at Seaforth, Axicom is paying the Land Management Agency a rent in excess of \$700/m²pa for vacant land. This rate is more representative of a rental achieved for Sydney CBD office space, clearly proving the "beyond excessive" nature of rental charged to communications users of Crown lands;
- (b) penalised when compared with other commercial users of Crown land as the communications infrastructure (in which the telecommunications carriers and infrastructure providers have invested millions of dollars), is being taken into account when determining market rents in contravention of the CLMA, the Australian Property Institute and International Valuation standards; and
- (c) paying 'twice' for the site through the co-user fee arrangements which are not present in any other market.

Technology is continually evolving and will continue to transform Australian business and society at an increasing pace. Speed, efficiency and reliability of telecommunications networks are critical to keeping Australia competitive globally. It is essential that any pricing regime for communications uses on government owned land promotes investment rather than discouraging investment via co-user fees, infrastructure owner penalties and excessive discriminatory pricing.

The review by IPART offers the State government the opportunity to correct the existing discriminatory regime and introduce a new, appropriate and fair regime. The precedent set by the Telstra Case and the ensuing regime put in place in Queensland, have clearly provided evidence for a market based, commercial return for the Land Management Agencies whilst also being fair, transparent and easy to administer.

Please see below for Axicom's responses to the issues on which you have sought comments.

1. Do you agree with IPART's proposed approach for this review? Are there any alternative approaches that would better meet the terms of reference, or any other issues we should consider?

Axicom generally supports an IPART Review in line with the terms of reference issued by the State government on 6 November 2018 (**Terms of Reference**). The Issues Paper, prepared by IPART, encompasses a number of considerations which, for the reasons set out in this response, go beyond the Terms of Reference and should not be applicable. Axicom supports a review that relies on recent market evidence for similar purposes and sites, takes into account relevant land valuations, achieves a fair market-based commercial return, and does not result in direct or indirect discrimination against carriers or a particular class of carrier.

Axicom expects a review in line with the Terms of Reference will result in significantly lower rental rates than those set out in the Tribunal's 2013 review. A review in line with the Terms of Reference will bring an end to the existing discriminatory regime which results in the Land Management Agencies obtaining a profit rent at the expense of the communications industry.

More specifically, we comment on the approach as follows:

(a) Estimate the range for 'efficient rents' for communication tower sites on Crown land with different characteristics

The Terms of Reference refer to the fact that the rent on Crown land should reflect 'fair, market-based commercial returns'. Axicom agrees that the Land Management Agencies should seek to achieve a fair, market based commercial return on publicly owned land. However, Axicom does not agree that this equates to the rents reflecting 'efficient rents' as defined in the Issues Paper. We have provided further commentary on this below.

Identifying 'different characteristics' of Crown land is irrelevant if a uniform approach of calculating the underlying, unimproved land value of a relevant parcel is adopted.

(b) Decide on appropriate rent setting methodology and apply this method to decide on efficient rents (or a process for determining those rents) for all sites in 2019-2020

Axicom does not agree that in determining the rent methodology IPART should compare the rents determined under the current methodology with 'efficient rents' as this term is described in the Terms of Reference. This is not an appropriate comparison and we provide further commentary on 'efficient rents' below.

Rent should be based on the market for access to public land. A better approach for IPART to take would be to compare the rents paid on communication sites under the NSW regime with other States. A comparison with private land access is neither appropriate nor correct for the reasons set out in response to question 3 below.

The most appropriate jurisdiction to use as a comparison is Queensland, where the methodology for determining the rent for communication sites is 6% of the unimproved land value. This methodology delivers simplicity, transparency and is cost effective to administer as the land

valuation process by the Valuer General already exists and is already used by the Department of Industry to determine rents for waterfront tenancies on Crown lands.

Adopting this rental arrangement in NSW for communications towers on Crown lands would perfectly comply with the relevant Terms of Reference in that it:

- (a) has regard to **recent market rentals agreed for similar purposes and sites**. The large body of comparable evidence in Queensland (exceeding 500 sites) is for identical purposes and sites, is with a substantially identical land owner, and represents recent market evidence having been confirmed in 2016 (and since the 2013 IPART review of communications tower rentals);
- (b) has regard to **relevant land valuations** by tying rents directly to the value of the underlying land, disregarding improvements made by the tenant;
- (c) achieves a **fair market based commercial return** on the land of 6%;
- (d) is **simple, transparent, and cost reflective** and is reflective of the location of the land, thereby negating the need for different location categories and the unnecessary “high value” sites; and importantly
- (e) ensures that the State of NSW does not breach clause 44 of the Telco Act.

IPART is obliged by the Terms of Reference to consider clause 44 of the Telco Act when determining its methodology and the Federal Court’s decision in the Telstra Case confirmed that the clear legislative purpose of clause 44(1)(a) is to protect carriers and end consumers of carriage services from opportunistic State charges which take undue advantage of the needs of carriers to operate from multiple locations in order to operate their networks.¹

The outcome for the Queensland government following the Federal Court case is that all commercial users of Crown land are now aligned in their rent payments and they pay a percentage of the unimproved land value. This is the most appropriate method for determining rent and IPART should consider the comment made by the Wolfe Committee in 1990 when they conducted a review of land regulation in Queensland. The Committee said:

“The use of unimproved value as a factor in determining rents for Crown leaseholds is soundly based as it measures the value of Crown land, and disregards the improvements and development works either owned by the lease holder or for which he may claim compensation. A rental percentage applied to the unimproved value is a fair way of determining a rent for the use of Crown land. Once a percentage rental is established the rent is then directly related to the unimproved value of and will change as the unimproved value changes.”²

In the Issues Paper, IPART has dismissed using a similar methodology to that which they recommended for use for waterfront tenancies in 2004. This rental methodology determines a “Precinct Statutory Land Value” (using the average per m² statutory land value for the waterfront properties and their adjoining occupancies as a proxy for market value) multiplied by the occupied area and a discount factor. A fixed rate of return is then applied. IPART has dismissed this methodology for use on communication sites on the basis that the value of surrounding land (eg farm land) bears no systemic relationship to the value of Crown land communication tower sites to users and so it is unable to determine the market value for the

¹ *Telstra Corporation v Queensland* [2016] FCA 1213 [130] – [148] and in particular, [147].

² *Telstra Corporation v Queensland* [2016] FCA 1213 [39]

occupancy. IPART also makes the comment that land value is not the sole determinant for communication tower sites.

We believe that IPART is fundamentally wrong in that the only relevant determinant for market rent is the land value. The rental regime in Queensland has been set up on this basis, without the need to determine a market value from the surrounding land, as it is the **unimproved** land value which should be used. This is clearly set out in section 6.5 of the CLMA and IPART did acknowledge in its 2004 review of the method for determining rents for domestic waterfront tenancies that:

“The NSW Valuer-General’s valuations report the unimproved capital value of freehold land, known as the Statutory Land Value (SLV). This value is the relevant measure, because the Crown Lands Act 1989, requires that any rentals on Crown land must be determined for valuations which disregard improvements to the land. In addition, SLV valuations are already widely used, and regularly updated.”

It can clearly be seen that the methodology proposed by IPART of determining “efficient rents” and seeking to take into account the value generated from improvements on the land, and the tenant’s business generally, will result in a continuation of the discrimination against the users of communication sites in NSW and a breach of clause 44 of the Telco Act.

(c) Consider the impact of these rents on current users and decide on transitional arrangements, if required

Transitional arrangements may be appropriate but Axicom’s experience with the Queensland government has proved to be quick, efficient and without the need for transitional arrangements.

Additionally, it must not be pre-determined that there will be an increase of rents following this review as the Terms of Reference specifically provide for IPART to consider “lower or higher rental rates”. In Axicom’s view, if IPART conducts this review correctly and takes into account only relevant and correct factors, any new rental regime cannot result in higher rental rates without breaching clause 44 of the Telco Act, in which case, such a regime is invalid and need not be complied with.

(d) Decide how to adjust rents from year to year and how often they are periodically reviewed

Axicom agrees that this should be determined as part of this review but if the rent is directly related to the unimproved land value, the rents will then increase or decrease in line with the property market.

1 Review into Rentals for Waterfront Tenancies on Crown Land in NSW, section.5.3

2. Do you agree with our proposed definition of efficient rents for communication tower sites on Crown land as the range bounded by a user's willingness to pay and the opportunity cost to the land agency?

Axicom does not agree with IPART's proposal to calculate "efficient rents" and does not accept that the Terms of Reference permit IPART to calculate "efficient rents" in the manner proposed by the review.

The Terms of Reference require IPART to develop a fee schedule that:

- (a) relies on recent market evidence for similar purposes and sites;
- (b) takes into account relevant land valuations;
- (c) is simple, transparent and cost reflective;
- (d) achieves a fair market based commercial return; and
- (e) does not result in direct or indirect discrimination against carriers or a particular class of carrier.

"Willingness to Pay"

Axicom does not accept that estimating a user's willingness to pay is an appropriate method for setting rental arrangements for communications towers on Crown lands.

Rent setting by estimating a user's willingness to pay:

- (a) is outside of the Terms of Reference;
- (b) has no regard for relevant land valuations; and
- (c) results in a breach of Clause 44 of the Telco Act.

"Willingness to pay" is not a consideration to be taken into account in determining fair market value in line with *The Australia and New Zealand Valuation and Property Standards* or International Valuation Principles. It is also not a consideration in s.6.5 of the CLMA which sets out the principles for rent determination on Crown lands in NSW (most notably, that the underlying value or unimproved value of land, is relevant).

Users of Crown land for telecommunications purposes are occupying vacant land and should be charged a fee on that basis only. A price calculated by having reference to a "willingness to pay", or a perceived ability to pay based on the opportunity to earn money from the tenant's investment in the site, bears no relationship to a fair market rent.

Land Management Agencies provide access to public land. Axicom provides third parties with access to telecommunications infrastructure on public land. Axicom has invested millions of dollars in acquiring, operating and maintaining infrastructure and making it available for the deployment of communication services. It has accepted a myriad of risks associated with the infrastructure.

Land management agencies make no investment in the provision of infrastructure on public land and take on no risk associated with it. We respectfully disagree that Land Management Agencies should receive a share of:

- (a) the economic value that primary users derive from the site for transmission purposes; and

- (b) the rent that primary users and infrastructure providers recover from co-users.

These precepts are rarely used in any sphere and, if and when they are, they are adopted solely in a retail setting and typically imposed, where not prohibited, by rapacious large-scale retail landlords (that, unlike the Land Management Agencies, have themselves made significant investments in the premises). This kind of 'turnover rent' concept is entirely incorrect for the purposes of this review and would be a flagrant breach of clause 44 of the Telco Act.

The principle that government should derive revenue from the use of public land should be anchored by the unimproved value of that land and not from either the market's:

- (a) willingness to pay for the use of the land for communication tower purposes; or
- (b) ability to earn revenue from the infrastructure in which it has invested so heavily.

The principles for rent determination, which include disregarding any improvements on the land that were made by the tenant, are clearly set out in s.6.5 of the CLMA. The principles for determining rent on Crown land should be applied consistently for all commercial users and should not be ignored by IPART. To apply them inconsistently results in a breach of clause 44 of the Telco Act.

Estimating a user's "willingness to pay" would likely result in discriminatory pricing. Any amount charged above that charged to other users of Crown land will result in discrimination, directly and indirectly, against carriers or a particular class of carrier and is prohibited under clause 44 of the Telco Act.

"Opportunity Cost"

Axicom does not accept that there is any significant opportunity cost incurred by the Land Management Agencies in the granting of occupancy rights for telecommunications purposes.

On the contrary, there is a benefit to the Land Management Agencies in terms of both income and increased utility and safety for the agencies, and users of the balance of the land, through the provision of wireless communication services.

Opportunity cost to the Land Management Agencies would be limited to the lost ability to charge any other non-telecommunications area for the use of the land e.g. grazing lease, plantation forest together with a small administrative fee in entering into and managing the agreement.

Axicom does not accept that the value of a wind turbine lease is an appropriate comparison for calculation of opportunity cost. Please see our response to Question 6 for further details.

3. What information should we consider to estimate users' willingness to pay (for example market-based commercial rents paid to private land owners)?

Axicom does not accept that estimating a user's willingness to pay is an appropriate method for setting rental arrangements for communications towers on Crown lands.

In addition, we do not consider that it is appropriate for IPART to compare commercial rents charged by private land owners with the rents that the State is permitted to charge under a regulatory regime.

Clause 44 of the Telco Act is specifically designed to protect against disadvantageous or discriminatory treatment by a State or government. Axicom does not propose that the provisions of the Telecommunications Act are intended to ensure consistency of approach between private and public land use. The resulting dichotomous nature of these two markets means that using private commercial land rents as comparisons to determine rents for public or Crown land is inappropriate and erroneous.

This key issue was considered in the Telstra case where the Federal Court considered whether clause 44 of the Telco Act allows the State to treat carriers adversely by imposing higher rents on them than other commercial users on the basis that market rents for leases held by carriers over private land were higher than for other businesses.

The Federal Court considered this and concluded that:

- (a) the Telecommunications Act allows individuals and corporations to discriminate against carriers as their behaviour is not restricted by the Act; but
- (b) in contrast, clause 44 of the Telco Act expressly prohibits discrimination against carriers under State legislation.

The Federal Court specifically determined that:

[146] "If State or Territory governments were intended to be free to charge carriers different rents on the basis that carriers are charged more rent in the private market, the exception would have been directly expressed [in the Telecommunications Act]."

[147] - "the purpose of cl 44(1), namely to promote and protect the long-term interests of end-users of carriage services and to promote accessible and affordable carriage services, is inconsistent with the submission that State and territory governments are permitted to charge carriers higher rents on the basis that carriers are charged more rent in the private market. In fact, price-gouging of this type by State and Territory governments seems precisely the type of conduct that cl 44(1) is designed to prevent".

This determination is a clear decision by the Federal Court on this issue. Even if IPART did not have the benefit of the Telstra Case decision to aid its review, the comparison between private and public land user rents would still be incorrect and inappropriate for the following reasons:

- (a) it would create (and has, in fact, created) a distorted result with inordinately high rents attributable to very small parcels of land;
- (b) the Land Management Agencies have no real alternate use for these very small parcels of land;
- (c) whilst communications sites may be relocated, the nature of the typically large swathes of Crown land mean that the Land Management Agencies may be monopolistic which means a fair market rent is not possible. The 'captive' nature of communications sites on Crown lands

therefore means that private rents are not appropriate comparators for Crown land rents;
and

- (d) neither current market rent nor fair market rent principles would apply because of the 'captive' nature of communications sites on Crown lands.

The Telstra Case and the application of that case in respect of Crown land in Queensland has made it clear that the only appropriate comparison, which is in line with the Terms of Reference, is to consider the rents paid in other jurisdictions for the use of Crown land. Consequently, Axicom recommends the adoption of the Queensland methodology as this does not result in discriminatory pricing. This Federal Court case will necessarily set a benchmark and precedent for any future disputes of this kind.

The table below sets out the freehold value of the land for 6 sites in NSW in comparison to the rent currently paid by Axicom to the State government under the existing IPART regime. The below table assumes a 100% primary user fee and excludes co-user fees which would be payable in addition to this:

Site Location	Freehold value of the land ¹	Area (ha)	UCV Land Value/sqm	Communications Area / Premises (sqm)	IPART Rent (excl co-user fees)	Rent/sqm pa	% of freehold value paid as rent each year	# months to "buy the site"
Seaforth	\$3,520,000	6.46	\$54.48	50.75	\$36,068	\$710.70	1304%	1
Baulkham Hills	\$22,000	0.007	\$319.77	68.5	\$30,056	\$438.77	137%	9
Kangy Angy	\$378,000	17.24	\$2.19	250	\$30,056	\$120.22	5483%	0.2
Kiama	\$1,980,000	5.93	\$33.38	30.5	\$16,697	\$547.44	1640%	1
Willans Hill	\$25,000	0.048	\$51.98	481	\$16,697	\$34.71	67%	18
Eden	\$122,000	28.33	\$0.43	110.6	\$8,014	\$72.46	16825%	0.1

1 NSW Valuer General valuation date is 1 July 2018

The evidence in the above table shows Axicom is paying rent well in excess of the freehold value of the unimproved value of the land each year. On some sites Axicom pays enough rent to buy the freehold land occupied every 2 days.

We believe IPART should invite the Land Management Agencies to provide information of the rents they charge to other commercial users on a per square metre basis. The interpretation of the Telstra Case and the application of clause 44 of the Telco Act make it abundantly clear that charging a higher rent for communications sites than other commercial uses is discriminatory and a clear breach of clause 44 of the Telco Act.

Although Axicom contends, as outlined above, that rents on Crown lands should be based on unimproved land values, evidence in the private market also confirms Land Management Agencies are achieving profit rents from carriers.

The table below provides a sample of leases across the IPART high, medium and low categories.¹ The evidence provided has been recently agreed (since the last IPART Review of Communications Rentals) with private land owners in an open market situation.

Rentals in the high category range from \$7,500 to \$23,500 p.a. gross indicating that the Land Management Agencies achieve a premium of at least 92%, and up to 301%, over the private market.

Rentals in the medium category range from \$6,000 to \$15,000 p.a. gross indicating that the Land Management Agencies achieve a premium of at least 11%, and up to 178% over the private market.

Rentals in the low category range from \$5,500 to \$7,000 p.a. gross indicating that the Land Management Agencies achieve a premium of at least 14%, and up to 119% over the private market.

Furthermore, the leases with private land owners are on significantly more favourable terms and warrant further adjustment (downwards) to be directly comparable with the conditions imposed by the Land Management Agencies. For example, no co-user fees are payable in the event that colocation occurs. This has the effect of magnifying the profit rent achieved by the Land Management Agencies.

¹ Full details of the leases are provided at Appendix B

Site	Lessee	Start Date	Commencing Rent (Private Owner)	IPART Category	IPART Rent (incl co-user fee)	# Co-Users	Penalty v Private Market
Annangrove	NBN	15-Mar-17	\$15,000	High	\$30,056		100%
Rouse Hill	Optus	1-Nov-16	\$23,500	High	\$45,084	1	92%
Dooralong	Telstra	1-May-17	\$7,500	High	\$30,056		301%
Catherine Fields	Axicom	1-May-14	\$18,750	High	\$60,112	2	221%
Gumly Gumly (Wagga)	Optus	1-Dec-16	\$15,000	Medium	\$16,697		11%
Chinderah	Optus	27-Jan-17	\$10,000	Medium	\$16,697		67%
Bowral	NBN	12-Jul-17	\$6,000	Medium	\$16,697		178%
Tamworth	Vodafone	30-Jan-17	\$12,000	Medium	\$16,697		39%
Jindabyne North	NBN	15-May-15	\$6,500	Low	\$8,014		23%
Binjura (Cooma)	NBN	17-Aug-15	\$7,000	Low	\$8,014		14%
Nangudga (Narooma)	Axicom	19-May-14	\$5,500	Low	\$12,021	1	119%
Sandigot Sturt Highway	Optus	1-Jan-17	\$7,000	Low	\$8,014		14%

4. Do market-based rents typically cover all services related to access, use and operation of the land or are there any additional fees charged to users (such as fees for maintenance of access roads)?

Typically rents agreed in the open market are gross rents i.e. outgoings are included, and similarly, include the right to access the premises 24 hours per day.

Access fees are usually paid only when access is required across land owned by unrelated 3rd parties. Communication sites are only accessed by Axicom and the carriers using the communications facility approximately 8-12 times a year, depending on how many carriers are on site.

Land Management Agencies should not charge for access to communications towers at a rate higher than that is charged to other users, including the public, for access to the land. For example, in a National Park any access fee must be limited to the applicable National Park entry fee. In a State Forest, where the public enjoys free access to the Forest, communications site users should also

enjoy free access. We note that Forestry Corporation NSW charges an additional 10% on the rent as a contribution towards maintaining access tracks which should be rejected by IPART to ensure there is no breach of Clause 44 of the Telco Act.

5. What characteristics of a communication tower site are users more willing to pay for? Are these different for users that provide services in different markets?

Axicom does not agree that IPART should be collecting and analysing information related to a user's willingness to pay for a site in order to determine the economic value that users can derive from the site. The Land Management Agencies are providing the land for communication tower sites and the rent should be based on the unimproved value of that land. Any value derived from the user's infrastructure on the site should be disregarded.

Axicom does not possess a matrix of site characteristics, nor does Axicom rely on a "site characteristics matrix" to drive its investment decisions.

6. How should we estimate the land agency's opportunity cost? Does this vary for sites in different locations?

As set out in our answer to question 2, Axicom does not accept that there is any significant opportunity cost incurred by the land agencies in the granting of occupancy rights for communications purposes.

On the contrary, there is a benefit to the Land Management Agencies in terms of both income and increased utility and safety for the agencies and users of the balance of the land through the provision of wireless communication services.

Opportunity cost to the land management agencies could be limited to the lost ability to charge any other non-telecommunications area for the use of the land e.g. grazing lease, plantation forest, together with a small administrative fee in entering into and managing the agreement. The opportunity cost may vary across Land Management Agencies. For example, Forests NSW may be able, in some cases, to utilise the area occupied for plantation forestry. Beyond an administration fee we do not see any opportunity cost to the National Parks & Wildlife Service.

IPART has stated that the 'next best available use for the land' is to be the key defining factor for estimating a Land Management Agency's opportunity cost and has suggested that such 'next best' uses should be commercial uses such as 'wind turbines and forestry.' We do not disagree with the principle of seeking an alternative use but we reject the examples provided on the following basis:

- (a) wind farms and telecommunications towers can, and do, co-exist. Turbines are generally positioned >250m apart from each other to minimise wind shadowing. This leaves ample space for telecommunications towers to be located in between the turbines as the parcels of land occupied by communications tower sites are very small. Globally, there is a growing practice of combining areas ripe for wind energy farms with telecommunications sites for purposes of efficiency and cost effectiveness. There are many examples of this practice globally¹ and there is both an existing and growing practice of this phenomenon here in Australia. Axicom is aware of at least 3 examples where communications towers and wind

¹ For example - Revayu Energy in India, Oy Windside Production in Finland, Light Wind Turbines in Israel

farms co-exist at Waterloo Wind Farm, SA, Breadalbane Wind Farm (Cullerin Range) NSW, and Cape Bridgewater, Vic.

- (b) very few sites are suitable for wind farms as they depend solely on the wind characteristics in the area and proximity to the high voltage grid. Consequently, even if a communications tower did prevent installation of a wind turbine, which it does not, this would only represent a valid comparison for opportunity costs purposes on sites suitable for hosting wind farms, not across the entire Crown lands portfolio;
- (c) the size of the land required for communications sites means that:
 - a. they could effectively be located on many other small parcels within a larger parcel; and
 - b. due to the small size of such communications parcels, Crown lands would otherwise have no use for these sites; and
- (d) under clause 44 of the Telco Act, telecommunications sites are specifically protected by legislation to ensure against discrimination and therefore, it would be incorrect to target such specific examples.

In this instance, IPART should seek advice from the Land Management Agencies as to the land and rental value of the next highest and best use. Land Management Agencies should disclose details of rentals achieved from the land immediately adjacent to the communications premises. Land Management Agencies should also disclose the consideration paid by utility companies for the grant of easements for their infrastructure on Crown land, for example electricity infrastructure. Axicom is of the view that these are appropriate comparisons that IPART should examine.

The interpretation of the Telstra Case and the application of clause 44 of the Telco Act make it abundantly clear that charging a higher rent for communications sites than other commercial uses is discriminatory and a clear breach of clause 44 of the Telco Act.

7. What do you consider to be a 'fair' sharing of any differences between a user's willingness to pay and the opportunity cost of a site?

As mentioned extensively above, "fair sharing of any differences between a user's willingness to pay and the opportunity cost of a site" is not an appropriate method to calculate rent.

Communications site users occupy vacant land. The Crown is entitled to earn a fair return on occupation of the land but is not entitled to earn a profit rent based on the tenant's investment, nor based on any discriminatory fee schedule.

A 6% return on the unimproved capital value of the land is considered appropriate given the large volume of recent comparable evidence on Crown land in Queensland.

8. Does the current market evidence support continuing the existing schedule of rental fees by location? Would there be benefits to increasing or decreasing the number of location categories?

As mentioned at question 3 above, it is not appropriate to compare the rent paid to private land owners for communications sites as they are not prevented from discriminating against carriers under the Telecommunications Act.

As a result, the current market evidence from a comparable jurisdiction supports a location-based methodology but based on land values for those locations and not the artificial categories provided by IPART under the existing regime in NSW.

The existing categories are manifestly unfair because they cover very wide areas and do not take into account natural discrepancies between location-based valuations.

A land valuation methodology would be fairest in the circumstances for the following reasons:

- (a) it is reflective of market practices, particularly with respect to comparable rents for Crown lands in other jurisdictions;
- (b) it does not 'tax' a user's investment in a site; and
- (c) it takes into account the unimproved value of the underlying land which is essentially how Crown lands would be able to determine an alternative use or 'next best use'.

If a percentage of unimproved land value was adopted as a methodology, then a location category would not be required at all. The rating authority in NSW will generally determine a valuation-of-land calculation to determine a rate-payer's liability to pay rates or land tax, and so this mechanism is already in existence.

The benefits of removing the categories are:

- (a) a more appropriate return on the use of public land;
- (b) the easing or lessening of administrative processes; and
- (c) a more fair and equitable treatment of users without the current discriminatory practices.

9. Are the current location categories reflective of recent data on population density?

Please refer to our response to question 8. Axicom believes the location categories should be removed.

10. What is the appropriate rent discount for co-users?

IPART should consider whether additional rents of this nature are imposed in comparable jurisdictions. They are not imposed by the Queensland government for similar sites and this is appropriate market evidence.

It is Axicom's view that co-user fees do not correlate with market practice and should be removed entirely.

It is market practice for a landowner to lease a parcel of land to a tenant for a permitted use. As long as that tenant uses the site for the permitted use, the landowner is not in the habit of charging additional rent to 'subtenants'. This is the case in the private market as well as in Queensland.

The Land Management Agencies' practice of charging additional rents to subtenants has resulted in unnaturally high rents for small parcels of land. The Land Management Agencies' practice has arisen from their desire to seek a return from a particular user of the land, and that user's investment in

infrastructure on that land, as opposed to a return for the actual use of the land. This practice is discriminatory.

A clear example of this is when a carrier sells a tower to an infrastructure provider. In these circumstances, the Land Management Agency's rent increases from 100% (payable by the primary user) to 150% (100% by the infrastructure provider and 50% by the carrier-co-user) even though there has been no change in the land use, the land area or the land value.

In addition, co-user fees discourage the practice of co-location on existing infrastructure. Use of existing infrastructure is an overriding principle in federal telecommunications legislation and smaller providers wishing to access Axicom's sites have been prevented from doing so as a result of the additional fees payable on Crown land sites.

As mentioned in response to earlier questions, rent should only be charged on the unimproved land value and should not be payable based on the user of the land. This would remove the need for co-user fees altogether.

The sample of leases provided below confirms Axicom's view that co-user fees are not commonplace in the current private market.

Site	Council Area	IPART Category	Lessee	Start Date	Area (sqm)	Evidence of Co-User Fee
Annangrove	Hills Council	High	NBN	15-Mar-17	150	No
Rouse Hill	Hills Council	High	Optus	1-Nov-16	60	No
Dooralong	Central Coast Council	High	Telstra	1-May-17	100	No
Catherine Fields	Camden Council	High	Axicom	1-May-14	100	No
Gumly Gumly (Wagga)	Wagga Wagga	Medium	Optus	1-Dec-16	66.5	No
Chinderah	Tweed Heads	Medium	Optus	27-Jan-17	60	No
Bowral	Wingecarribee	Medium	NBN	12-Jul-17	80	No
Tamworth	Tamworth	Medium	Vodafone	30-Jan-17	96	No
Jindabyne North	Snowy Monaro	Low	NBN	15-May-15	96	No
Binjura (Cooma)	Snowy Monaro	Low	NBN	17-Aug-15	96	No
Nangudga (Narooma)	Eurobodalla	Low	Axicom	19-May-14	81.8	No
Sandigot Sturt Highway	Narrandera	Low	Optus	1-Jan-17	89	No

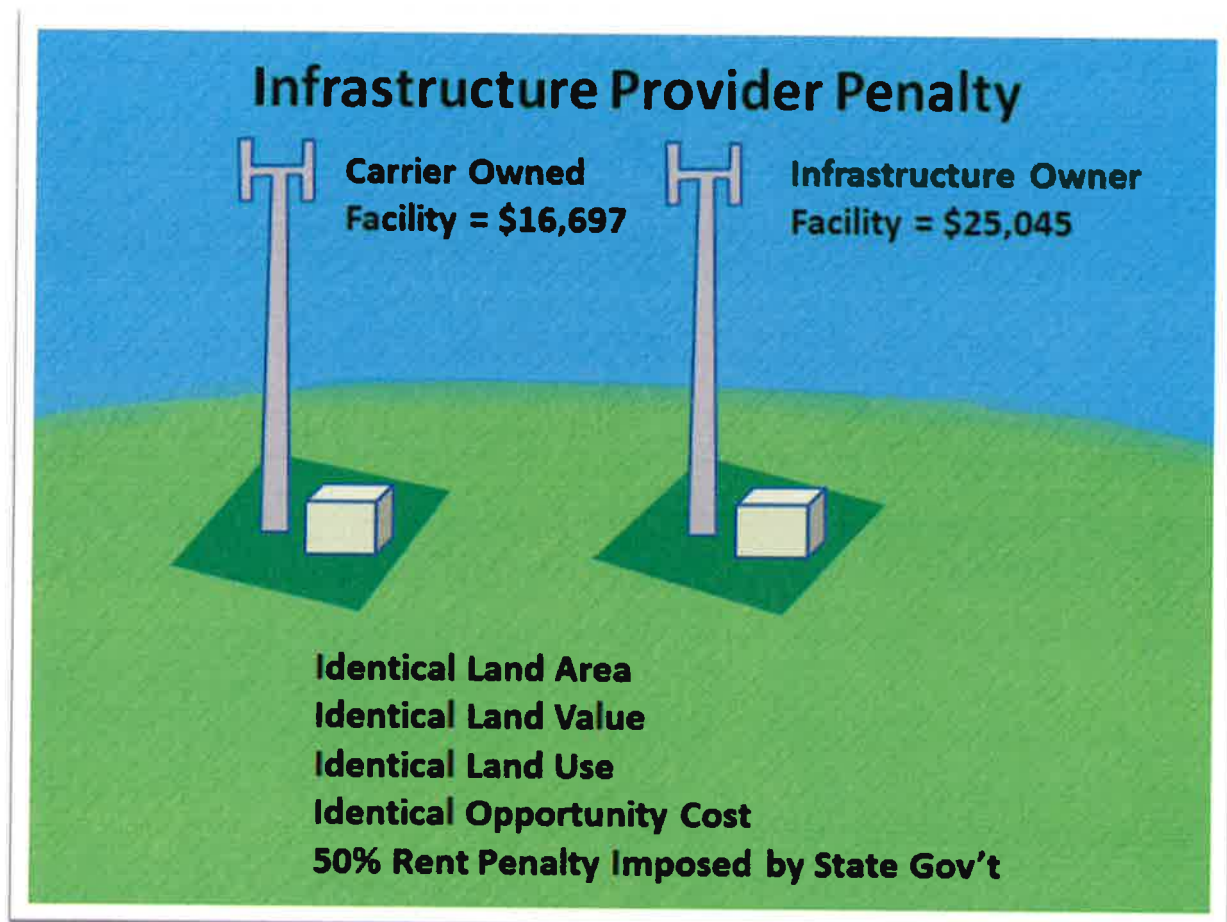
11. Should infrastructure providers receive a discount relative to primary users?

Axicom does not agree with the removal of the Infrastructure Provider discount which increases the rent collected by the Land Management Agencies on Axicom's sites by 30%. The removal of the infrastructure provider discount creates:

- (a) an unjustified windfall gain to the Land Management Agencies;
- (b) a barrier to entry for co-users, contrary to the government's aim of facilitating efficient re-use of infrastructure in Australia; and
- (c) reduced investment by infrastructure providers on Crown land sites.

This is in an era when government should be facilitating the roll out and investment in critical infrastructure.

The current rental regime incorrectly refers to an Infrastructure Provider's discount. It is, in fact, a penalty on infrastructure owners. Axicom, and consequently carriers on Axicom sites, suffer a 50% rent penalty under the current regime. See diagram below.



Pricing of this nature:

- (a) has the effect of directly discriminating against a class of carrier that co-locates on infrastructure providers' towers (where carriers pay their own co-user fees) in direct contravention of Clause 44 of the Telco Act; and

- (b) discourages colocation contravening an overriding principle in federal telecommunications legislation. The Australian Communications and Media Authority (ACMA) states that carriers must “take all reasonable steps to co-locate facilities with the existing facilities of other carriers or public utilities or use public easements”.¹

It is not uncommon that a telecommunications facility is deployed by a carrier and the tower later sold to an infrastructure owner in a “sale and leaseback” style transaction. In this situation the carrier is charged a primary user rate, being 100% of the applicable rate. However, with no change to the land use, land area or land value, the rent increases to 150% of the rate merely due to a partial change in ownership of the tenant’s improvements.

The *Australia and New Zealand Valuation and Property Standards* and s.6.5 of the CLMA dictate that the value of a tenant’s improvements is to be disregarded in any rental valuation. It clearly follows that ownership of those improvements ought not to affect value.

To comply with the Terms of Reference, and to avoid breaching Clause 44 of the Telco Act, all communications tower users (infrastructure owners and carriers) should be charged according to the unimproved value of the land occupied.

The sample of leases provided below confirms Axicom’s view that penalties against Infrastructure Providers are not present in the private market.

Site	Council Area	IPART Category	Lessee	Start Date	Area (sqm)	Evidence of Penalty Against Infrastructure Owners
Annangrove	Hills Council	High	NBN	15-Mar-17	150	No
Rouse Hill	Hills Council	High	Optus	1-Nov-16	60	No
Dooralong	Central Coast Council	High	Telstra	1-May-17	100	No
Catherine Fields	Camden Council	High	Axicom	1-May-14	100	No
Gumly Gumly (Wagga)	Wagga Wagga	Medium	Optus	1-Dec-16	66.5	No
Chinderah	Tweed Heads	Medium	Optus	27-Jan-17	60	No
Bowral	Wingecarribee	Medium	NBN	12-Jul-17	80	No
Tamworth	Tamworth	Medium	Vodafone	30-Jan-17	96	No

¹ <https://www.acma.gov.au/theACMA/legislation-regulation-network-facilities-i-acma>

Site	Council Area	IPART Category	Lessee	Start Date	Area (sqm)	Evidence of Penalty Against Infrastructure Owners
Jindabyne North	Snowy Monaro	Low	NBN	15-May-15	96	No
Binjura (Cooma)	Snowy Monaro	Low	NBN	17-Aug-15	96	No
Nangudga (Narooma)	Eurobodalla	Low	Axicom	19-May-14	81.8	No
Sandigot Sturt Highway	Narrandera	Low	Optus	1-Jan-17	89	No

12. Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public?

The fact that it is stated in the Issues Paper that these groups are paying lower rates as a result of the social and community benefits that they bring which outweighs 'the users' ability to generate revenue' from the communication tower site is fundamentally wrong as a principle. Land Management Agencies should not be charging rent according to the user of the site and that user's ability to generate revenue.

The rent should be paid for the right to access to land and that should be based on the unimproved land value.

Many of the operators which provide services to a variety of sectors (including health, welfare, community services, local community radio, education, disability, aged care, housing etc) are not carriers or even corporate entities. Many services are not-for-profit. The Land Management Agencies could consider granting an appropriate exemption or rebate on this basis but the removal of the co-user fee altogether, as recommended in our response to question 10, would benefit the entities currently entitled to a rebate by doing away with the problem altogether.

Also, as mentioned throughout this submission, the government requires the rollout of critical telecommunications infrastructure in an easy and efficient manner without the impediment of disincentives in the guise of a tax on investment. We imagine that with some of these community services, the imposition of co-user fees would be prohibitive.

13. Should the current rent arrangements based on site-by-site negotiation for high-value sites be continued?

This arrangement should be removed altogether.

None of the Land Management Agencies have entered into negotiations for high value sites.

The unilateral decision by National Parks & Wildlife Service to increase rents by one category as they deemed all of their sites to be 'high value' effectively doubled the rent on their sites. This was after IPART had already taken into account the fact that these sites were located on National Parks land. This is another example of the Land Management Agencies incorrectly seeking to extract the maximum return from a particular type of user of Crown land and so is a breach of clause 44 of the Telco Act.

IPART should recommend that the practice of National Parks to charge rents based on a category above the actual category should cease immediately. National Parks has not consulted on this practice and has not properly implemented the 2013 IPART recommendation as adopted by the State government.

14. Would a valuation formula based on observable site characteristics be a viable alternative for setting rents for high-value sites? If so, what site characteristics would need to be included in the formula to determine the rent?

There should not be an artificial category created as an alternative for 'high value' sites by the Land Management Agencies.

The Land Management Agencies are providing access to their unimproved land. It is the tenant's investment in the infrastructure on a site which makes it valuable. Tenants should not be penalised by the State, through having to pay an increased rate of rent, by virtue of the fact that their investment has attracted co-location. The site might be more valuable to the tenant through its investment in the infrastructure on that site but the unimproved land value has not changed.

If a percentage of unimproved land value is applied, it takes into account the varying land values due to the location of the sites.

No other site characteristics are relevant.

15. Do you agree with our proposed approach for assessing the impact of our recommendations on users?

Transitional arrangements may be appropriate but Axicom's experience with the Queensland government has proved to be quick, efficient and without the need for transitional arrangements.

Axicom believes that the users of communication sites have paid far too much for too long. Potentially, discriminatory pricing has been in place since the IPART recommendation was first adopted by the State government in 2006.

Axicom has the expectation that:

- (a) a lowering of rents would be implemented immediately; and
- (b) appropriate refunds from the Land Management Agencies will be applied for the period in which discriminatory pricing has been incorrectly imposed (in keeping with the result of the Telstra Case and the rollout of appropriate refunds by the Queensland government to all relevant affected parties, all of which has occurred without the need for a transition period).

16. Is the current approach of adjusting rents annually by the CPI appropriate?

Axicom has no objection to CPI increases but if the rent is directly related to the unimproved land value, the rents will then increase or decrease in line with the property market.

17. Should the fee schedule continue to be independently reviewed every five years?

Axicom believes that there should be no need for an independent review of rent every 5 years if the NSW government introduces a regime that is uniform for all commercial users in NSW.

International Comparison

In the UK we have seen a clear indication of the reaction by the industry, the government and the public to the need to ensure and promote the efficient rollout of telecommunications. There can be no denying that telecommunications is critical infrastructure and that its timely and cost-effective roll-out is essential.

This has occurred in tandem with the new European Electronic Communications Code which was adopted by the European Council in November 2018. The new European rules recognise the necessity to stimulate investment in and take up of very high capacity networks and has enforced issues such as the rights to install new telecommunications equipment and the use of spectrum. Under the European rules, the member states are expected to implement their own national versions by 2021.

In the UK, the Digital Economy Act 2017 has already been updated to set out a new Electronic Communications Code (ECC) designed to update regulation to support the timely and cost-effective rollout of critical telecommunications infrastructure. The ECC was designed to strike a balance between the competing interests of relevant stakeholders, namely landowners, operators and the broader public.

One of the key mandates of the ECC is the fundamental change to the compensation or consideration principles. Under the old regime, any consideration to which a landowner would be entitled was based on the amount that would have 'been fair and reasonable if the agreement had been given willingly'.

Under the new Code:

- (a) landowners will no longer be able to either:
 - i. charge premium prices for the use of their land; or
 - ii. charge additional fees for upgrading of equipment or sharing with other operators; and
- (b) consideration will be purely on the basis of the underlying market value of the land without cognisance of the use to which the operator is putting the land. In other words, it will **disregard the fact that the site has a telecommunications use.**

Schedule 1 of the Digital Economy Act 2017 sets out the ECC and specifies at clause 24(3):

'The market value must be assessed on these assumptions ...that the right that the transaction relates to does not relate to the provision or use of an electronic communications network.'

This principle and methodology is entirely in keeping with established land valuation principles and will result in a significant decrease in the amount of consideration payable to landowners. It is a direct reaction to the exorbitant pricing to which operators have been subject over very small parcels of land. The new Code is a clear reaction to the fact that:

- (a) operators should not be subject to ransom demands by landowners for the use of their land; and
- (b) the provision of high quality communications services to the public is of paramount importance, greater in fact than the individual interests of landowners.

In addition, this edict under the ECC will apply to both private **and public** landowners. Both government and private entities alike will be subject to this fundamental principle.

It is abundantly clear that the practice of the existing regime in NSW is contrary in all respects to the practice espoused in other jurisdictions (both internationally and locally – the Queensland government being one such local example). We have seen that in the UK, the government has codified the necessary aspects of the industry and has put in place legislative measures to enforce the principle of fairness and the necessity of critical infrastructure.

The Telstra Case has had the effect of creating certainty around the legislative provisions of clause 44 of the Telco Act in a similar way to the codification of the UK principles around the consideration applicable to small parcels of land. There can be no justification for either higher rents for communications use of Crown land or for co-user fees, both of which limit investment in communications and are in direct conflict with government mandates regarding the accessibility and proliferation of critical infrastructure.

Concluding Comments

There has been a fundamental shift in the industry since the Federal Court's decision in the Telstra case. It is absolutely essential that IPART give due weight to the requirement in the Terms of Reference issued by the State government to consider clause 44 of the Telco Act.

Potentially, discriminatory pricing has been in place since the IPART recommendation was first adopted by the State government in 2006. This is an opportunity for IPART to undertake a thorough review of rents paid on communication sites in comparison to rents paid by other commercial users of Crown land. It is an opportunity for the State government to correct the existing discriminatory regime and introduce a new, appropriate and fair regime.

The precedent set in the Telstra Case by the Federal Court of Australia and the ensuing regime put in place in Queensland, have provided clear evidence for a market based, commercial return for the Land Management Agencies whilst also being fair, transparent and easy to administer.

If you require any further information on the issues raised in this submission, please do not hesitate to contact us.

Yours faithfully



Jane Pollard

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Encl:

- (a) Appendix A - Telstra Case
- (b) Appendix B – Lease schedule & copies of private market leases

FEDERAL COURT OF AUSTRALIA

Telstra Corporation Ltd v State of Queensland [2016] FCA 1213

File number: QUD 202 of 2012

Judge: RANGIAH J

Date of judgment: 14 October 2016

Catchwords: **TELECOMMUNICATIONS** – whether *Land Regulation 2009* (Qld) impermissibly discriminates against carriers by imposing higher rents on carriers than on other businesses for State leases – whether *Land Regulation 2009* (Qld) discriminates by denying carriers a right to appeal against rents – construction of cl 44 of Sch 3 to the *Telecommunications Act 1997* (Cth) to determine whether market rent is a relevant, appropriate or permissible distinction

Legislation: *Australian and Overseas Telecommunications Act 1991* (Cth)
Competition and Consumer Act 2010 (Cth) Pts XIB and XIC
Telecommunications Act 1997 (Cth) ss 3, 7, 26, 30, 42, 56, 484, cl 27, 36, 37, 38, 39, 44 of Sch 3 and Divs 2, 3, 4, 5, 7, 8 of Sch 3
Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) s 12A
Trade Practices Act 1974 (Cth)
Environmental Planning and Assessment Act 1979 (NSW) s 96
Land Act 1994 (Qld) ss 15, 153, 183 (repealed), 199A, 332, 448, Sch 1B and Pt 1, Chapter 5 (repealed)
Land Regulation 1995 (Qld) ss 12, 15, 19 (repealed)
Land Regulation 2009 (Qld) ss 26A, 27, 30, 33, 37A and Sch 12
Land and Other Legislation Amendment Act 2014 (Qld)
Land Act and Other Legislation Amendment Regulation (No 1) 2014 (Qld)
Land Valuation Act 2010 (Qld) ss 5, 6, 7, 19, 26, 72, 105, 147, 155 and 172
Lands Legislation Amendment Act 1991 (Qld)
Local Government Act 1989 (Vic) ss 154 and 155 of Pt 8
Local Government Act 1993 (NSW) s 611

Explanatory Notes for the *Land Bill 1994* (Qld)

Cases cited:	<i>Bayside City Council v Telstra Corporation Ltd</i> (2004) 216 CLR 595 <i>Castlemaine Tooheys Ltd v South Australia</i> (1990) 169 CLR 436 <i>Development Assessment Commission v 3GIS Pty Ltd</i> (2007) 212 FLR 123 <i>Optus Networks Pty Ltd v Rockdale City Council</i> (2005) 144 FCR 158 <i>Telstra Corporation Ltd v Hurstville City Council</i> (2000) 103 FCR 322 <i>Telstra Corporation Ltd v Hurstville City Council</i> (2002) 118 FCR 198 <i>Telstra Corporation Ltd v State of Queensland</i> [2013] FCA 1296
Date of hearing:	26, 27 and 28 April 2016
Date of last submissions:	28 April 2016
Registry:	Queensland
Division:	General Division
National Practice Area:	Commercial and Corporations
Category:	Catchwords
Number of paragraphs:	214
Counsel for the Applicant:	Mr JD McKenna QC with Mr DS Piggott
Solicitor for the Applicant:	King & Wood Mallesons
Counsel for the Respondent:	Mr J Horton QC with Ms A Stoker
Solicitor for the Respondent:	Crown Law

ORDERS

QUD 202 of 2012

BETWEEN: **TELSTRA CORPORATION LTD**
Applicant

AND: **STATE OF QUEENSLAND**
Respondent

JUDGE: **RANGIAH J**

DATE OF ORDER: **14 OCTOBER 2016**

THE COURT ORDERS THAT:

1. The applicant provide a draft of the orders it seeks to the respondent by 4 pm on 19 October 2016.
2. The respondent provide to the applicant its response to the draft orders by 4 pm on 24 October 2016.
3. The parties are to either provide the Court with agreed draft orders or notify the Court that no agreement has been reached by 4 pm on 27 October 2016.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

RANGIAH J:

- 1 The applicant, Telstra Corporation Limited (“Telstra”), is a “carrier” under the *Telecommunications Act 1997* (Cth). Clause 44(1)(a) of Sch 3 to the *Telecommunications Act* provides that State and Territory laws have no effect to the extent that they discriminate or have the effect of discriminating against carriers.
- 2 The *Land Regulation 2009* (Qld) prescribes rents, or methods of calculating rents, for leases over State land in Queensland. Telstra holds approximately 488 such leases.
- 3 Telstra alleges that the *Land Regulation* discriminates against carriers by imposing higher rents on carriers than on other businesses. Telstra seeks declarations that provisions of the *Land Regulation* are invalid and orders for repayment of rent which it claims to have overpaid.
- 4 The respondent, the State of Queensland, admits that the *Land Regulation* has the effect of impermissibly discriminating against carriers in respect of State leases held by carriers in certain areas of low population density in the west and far north of Queensland (“the conceded areas”), but denies Telstra’s allegations in respect of leases in the remainder of Queensland (“the disputed areas”). The State cross-claims for rent which it alleges remains due and payable by Telstra.
- 5 The central issue is whether provisions of Pt 4, Div 1 of the *Land Regulation* impermissibly discriminate or have the effect of discriminating against carriers by imposing higher rents for State leases held by carriers than for leases held by other businesses in the disputed areas. There is also a secondary issue as to whether the *Land Regulation* discriminates against carriers by denying them a right to appeal against rents for their leases.
- 6 The State contends that the *Land Regulation* provisions do not discriminate against Telstra and other carriers in respect of State leases in the disputed areas because the rents imposed on carriers approximate the market rents that carriers would be charged for leases of private land; and a distinction based on market rents is a relevant, appropriate or permissible distinction to draw between carriers and other businesses. The State also argues that the comparator which Telstra relies on to establish its case of discrimination is not an appropriate comparator.

- 7 The resolution of these issues requires detailed consideration of the relevant statutory provisions, as well as valuation evidence called by each party.

FACTS

- 8 Telstra owns and operates the largest and most comprehensive fixed line and mobile telecommunications network in Australia. It is necessary for Telstra to place infrastructure on land throughout Australia, including on State land, in order to operate its network and provide carriage services.
- 9 The infrastructure or facilities comprising Telstra's fixed line network includes: exchanges; optic fibre cabling (underground and overhead); copper cabling (underground and overhead); optical fibre regenerators; radio towers; and, in remote areas, digital radio communications systems, high capacity radio concentrators and multiple drop out units.
- 10 Additional facilities called "base stations" are needed to operate a mobile telephone network. Base stations receive and send radio transmissions to and from mobile telephones. Telstra's base stations comprise Cellular Mobile Telephone Services Base Stations ("CMTS") and microcells.
- 11 When a call is made on Telstra's fixed line telephone network, a signal is transmitted from the caller's telephone through a network of cables, optical fibre, radio towers and exchanges to the recipient's telephone. When a call is made on a mobile telephone, a signal is transmitted from the telephone to antennae which are linked by cabling or radio-link technology into and through the fixed line telephone network.
- 12 Until 1991, Telecom was the only provider of telecommunication services in Australia. By the *Australian and Overseas Telecommunications Act 1991* (Cth), the property and operations of Telecom were vested in the company now known as Telstra Corporation Ltd. A suite of legislation, including the *Telecommunications Act*, was also introduced allowing other telecommunications service providers to compete.
- 13 Telstra is the only carrier with a fixed line telephone network in Queensland. It was unnecessary for competitors to replicate Telstra's fixed line network as Telstra is required to give other carriers reasonable access to its fixed line network. Three carriers, Telstra, Vodafone and Optus, operate retail mobile telephone networks in Queensland. All three have set up mobile telephone infrastructure in populated areas and along some major highways.

However the vast majority of the land area of Queensland is not covered by any mobile telephone service.

- 14 Telstra's infrastructure is situated in a wide variety of urban and rural locations. When Telstra selects sites for the installation of the infrastructure required to provide fixed line or mobile telephone networks, the factors it considers include its universal service obligation, technical constraints, construction and maintenance costs and co-location of services.
- 15 Pursuant to s 12A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth), Telstra is subject to a universal service obligation. That obligation requires Telstra to ensure that all Australians, no matter where they live or conduct business, have reasonable access on an equitable basis to a standard telephone service and payphone service. This means that Telstra must install infrastructure to provide standard telephone services and payphone services in rural and remote areas of Australia, as well as urban areas. The universal service obligation does not apply to mobile telephone services.
- 16 In rural and remote areas, Telstra uses radio towers to transmit radio signals via microwave link over long distances from exchange to exchange. It is necessary for there to be a clear line of sight between radio towers, typically requiring an elevated site. Such sites require good road access and electricity. Telstra also requires land to install exchanges and other facilities.
- 17 In selecting a site for a CMTS facility in more urbanised areas where mobile telephone services are provided, it is necessary for the area of the signal from that facility to overlap with the area of signals from other facilities to ensure continuity of coverage (ie no drop-outs) as a user moves between areas.
- 18 Once infrastructure has been installed, it can be difficult to relocate. For example, the cost of relocating a radio tower can be more than \$1 million.
- 19 Telstra prefers to enter some form of tenure agreement with land owners, rather than relying on statutory rights to enter and occupy land. Telstra's portfolio of leases in Queensland includes leases obtained in the private market, leases of freehold land from government entities, and leases of State land. Telstra also holds licences and permits for installation of facilities on land in Queensland.
- 20 Telstra holds about 894 leases over private land in Queensland. The vast majority of these leases are over land in south-east Queensland or along the east coast, with only about 62

outside these areas. About 83% of Telstra's private leases are used for CMTS sites in urban areas for its mobile network.

- 21 Apart from the south-east corner and the eastern coast, the vast majority of land in Queensland consists of State land. Telstra has about 488 State leases in Queensland. Telstra's State leases spread throughout Queensland, although there are relatively few in south-east Queensland.
- 22 The vast majority of Telstra's State leases are used for radio towers for the fixed line network. Many of these towers are in rural or remote Queensland. Many of the radio tower sites in rural or remote Queensland are in locations where there is no human occupation or alternative use being made of the land.
- 23 Telstra has installed CMTS mobile telephone facilities on only about 53 of its 488 State lease sites.
- 24 What emerges from the evidence is that carriers have an imperative need to install infrastructure on many parcels of land across Queensland in order to operate their telephone networks and other carriage services. Telstra's need is particularly acute because of its universal service obligation. Unlike other carriers, Telstra requires the use of land in even remote parts of Queensland. The bulk of the land in rural and remote areas of Queensland is government-owned.

THE STATUTORY PROVISIONS

The Telecommunications Act 1997 (Cth)

- 25 The *Telecommunications Act* provides a regulatory framework for the provision of carriage services by carriers.
- 26 Under s 7 of the *Telecommunications Act*, a "carrier" is the holder of a carrier licence granted under s 56 by the Australian Communications and Media Authority ("ACMA"). Telstra holds a carrier licence.
- 27 Section 42 allows a carrier to use a network unit to supply a carriage service to the public. A "network unit" is defined in ss 26(1) and 30 as a "line link" which connects distinct places in Australia. A "line" is defined in s 7 to include a wire, cable, optical fibre, tube, conduit or other physical medium used as a continuous artificial guide for carrying communications by means of guided electromagnetic energy.

28 Section 7 defines “carriage service” as a service for carrying communications by means of guided and/or unguided electromagnetic energy.

29 The effect of these provisions is that a carrier is permitted to provide carriage services, such as telephone services, to the public. A telephone service can be a fixed line service or a mobile telephone service.

30 Part 24 consists of a single provision, s 484, which states, “Schedule 3 has effect”. Schedule 3 of the *Telecommunications Act* has the heading “Carriers’ powers and immunities”.

31 The powers given to carriers are set out in Divs 2, 3 and 4 of Pt 1, Sch 3. Division 2 allows a carrier to enter on and inspect land. Under Div 3, the power to install a facility may be exercised where, relevantly, the carrier holds a facility installation permit (which may only be issued by the ACMA if the carrier has made reasonable efforts to negotiate in good faith with the relevant proprietors and administrative authorities), or if the facility is a low-impact facility. Division 4 allows a carrier to maintain the facility once installed.

32 Division 7 deals with the relationship between Divs 2, 3 and 4 and State and Territory laws. Clause 36(1) provides:

Divisions 2, 3 and 4 do not operate so as to authorise an activity to the extent that the carrying out of the activity would be inconsistent with the provisions of a law of a State or Territory.

33 Clause 37 applies to activities authorised by Divs 2, 3 and 4. Despite cl 36(1), cl 37(2) provides that a carrier may engage in such activities despite a law of a State or Territory about a number of specified subjects, including town planning, powers and functions of a local government body, the use of land and tenancy.

34 Clause 38 provides:

38 Concurrent operation of State and Territory laws

It is the intention of the Parliament that, if clause 37 entitles a carrier to engage in activities despite particular laws of a State or Territory, nothing in this Division is to affect the operation of any other law of a State or Territory, so far as that other law is capable of operating concurrently with this Act.

35 Clause 39 provides:

39 Liability to taxation not affected

This Division does not affect the liability of a carrier to taxation under a law

of a State or Territory.

36 Although Telstra has the power under Div 3 to compulsorily install facilities on both privately owned and State land (subject to obtaining a facility installation permit where the facility is not a low-impact facility), its policy is to avoid exercising such power, and to instead negotiate leases which allow it to install and maintain such facilities.

37 Clause 44 appears in Div 8, which has the heading "Miscellaneous". Clause 44 provides, relevantly:

44 State and Territory laws that discriminate against carriers and users of carriage services

(1) The following provisions have effect:

- (a) a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;
- (b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;
- (c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally.

38 Clause 44 is the critical provision in this proceeding. The resolution of the proceeding requires consideration of its meaning and effect.

The Land Act 1994 (Qld)

39 In 1990, the Wolfe Committee conducted a review of land regulation in Queensland. The Wolfe Committee considered the way rents for State leases should be fixed, concluding that the preferred mechanism was to apply a percentage to the unimproved capital value of land. The Committee said:

The use of unimproved value as a factor in determining rents for Crown leaseholds is soundly based as it measures the value of Crown land, and disregards the improvements and development works either owned by the lease holder or for which he may claim compensation. A rental percentage applied to the unimproved value is

a fair way of determining a rent for the use of Crown land. Once a percentage rental is established the rent is then directly related to the unimproved value of and will change as the unimproved value changes.

- 40 The Committee suggested that the rental percentage should vary within the range of 3% (for residential land) to 6% (for commercial and industrial land).
- 41 By the *Lands Legislation Amendment Act 1991* (Qld), Parliament gave effect to the Wolfe Committee's recommendations in relation rents for State land. The *Land Act 1994* (Qld) later finalised the implementation of the recommendations of the Wolfe Committee, as explained in the Explanatory Notes for the *Land Bill 1994* (Qld).
- 42 Section 15(2) of the *Land Act* provides that the Minister may lease unallocated State land for either a term of years or in perpetuity. Section 153 provides that a lease must state the purpose for which it is issued, while s 199A(2) provides that leased land must only be used for the purpose for which the lease was issued.
- 43 Section 448 and Sch 1B provide that the Governor in Council may make regulations about matters including payment of rent, the calculation or setting of rent payable and categories of leases.
- 44 Until 1 July 2014, Pt 1, Ch 5 of the *Land Act* provided that rental periods and rents, or methods of calculating rents, were to be determined by regulation. Section 183 provided:

183 Rent payable generally

- (1) The rent for a lease, licence or permit is –
- (a) if a regulation prescribes an amount for all leases in a category of lease (a prescribed category) – the amount prescribed; or
 - (b) otherwise – the amount calculated by multiplying the rental valuation prescribed under a regulation by the rate prescribed under a regulation.
- ...
- (3) The rate may be a single rate applying to all leases, licences or permits, or a series of rates applying to different categories of leases, licences or permits prescribed under the regulations.
- (4) The rent for a lease, licence or permit –
- (a) must not be less than the minimum prescribed under a regulation, unless the lease is of a prescribed category; and
 - (b) must be calculated in whole dollars.

45 The *Land and Other Legislation Amendment Act 2014* (Qld) deleted Pt 1, Ch 5 of the *Land Act*, including s 183. The *Land Act and Other Legislation Amendment Regulation (No 1) 2014* (Qld) then enacted provisions in the *Land Regulation* with effect from 1 July 2014 to replace the deleted *Land Act* provisions.

The Land Regulation 1995 (Qld)

46 The *Land Regulation 1995* (Qld) gave practical effect to the Wolfe Committee's recommendations concerning the way in which rents for State leases should be calculated.

47 The *Land Regulation 1995* identified 13 categories of leases, licences or permits. The two categories of relevance were categories 4 and 7.

48 Section 12 defined a category 4 lease as a lease used for commercial, industrial or business purposes, which does not fulfil the requirements for another category.

49 Section 15 defined a category 7 lease, relevantly, as a lease used for the provision, relay or transmission of telephonic, television, radio or other electronic communication services for commercial, domestic, emergency or essential services activities. Telstra's leases fell within category 7.

50 Under s 19, the rate of rent prescribed for both category 4 and category 7 leases was 5% of the valuation of the lease for rental purposes.

51 It may be seen that under the *Land Regulation 1995*, the rents to be paid by Telstra and other carriers were calculated on the same basis as the rents for other businesses.

The Land Regulation 2009 (Qld)

52 When it commenced on 1 July 2010, s 27 of the *Land Regulation* prescribed nine categories of leases, numbered from 11 to 16. The *Land Regulation* has since been amended a number of times. It is enough for present purposes to refer to the *Land Regulation* in its current form.

53 There are now 13 rental categories prescribed under s 27. Those categories are numbered from 11.1 to 16. The categories can be described as follows:

- Categories 11.1 and 11.2 – primary production;
- Categories 12.1 and 12.2 – residential;
- Category 13 – business and government core business;
- Categories 14.1 and 14.2 – charities and sporting or recreational clubs;

- Categories 15.1, 15.2, 15.3, 15.4 and 15.5 – communication sites;
- Category 16 – divestment.

54 The categories of primary relevance to this case are categories 13, 15.4 and 15.5.

55 Section 30 of the *Land Regulation* deals with category 13 leases. That section provides:

30 Category 13 lease

- (1) A lease is a category 13 lease if –
- (a) under its conditions the lease may be used for, or it is being used for, a business, commercial or industrial purpose; and
 - (b) the lease does not meet the requirements for another category.
- (2) Also, a lease is a category 13 lease if –
- (a) the lessee is a government leasing entity; and
 - (b) the use of the lease is essential for conducting the lessee's core business.

Examples of a lessee's core business –

operating hospitals, police stations, schools, offices and depots

...

56 Section 33 of the *Land Regulation* deals with category 15 leases. It provides, relevantly:

- (4) A lease is a category 15.4 lease if –
- (a) the lease may be used for, or it is being used for, the provision, relay or transmission of telephonic, television, radio or other electronic communication services for a non-community service activity; and
 - (b) the lease land is in a rural area.
- (5) A lease is a category 15.5 lease if –
- (a) the lease may be used for, or it is being used for, the provision, relay or transmission of telephonic, television, radio or other electronic communication services for a non-community service activity; and
 - (b) the lease land is in an urban area.
- (6) In this section—

...

non-community service activity means an activity relating to the provision of commercial or domestic services...

Example of commercial or domestic services—

mobile phone or cable television services

rural area means a part of the State that is not an urban area.

urban area means a part of the State in the area of a following local government –

- Brisbane City Council
- Gold Coast City Council
- Ipswich City Council
- Logan City Council
- Moreton Bay Regional Council
- Redland City Council
- Sunshine Coast Regional Council.

57 Telstra's leases fall within categories 15.4 and 15.5. It may be seen that the difference between category 15.4 and 15.5 leases is that the former applies to land in rural areas and the latter to land in urban areas.

58 Section 37A of the *Land Regulation* provides, relevantly:

37A Rent for leases of particular categories

- (1) The rent for a rental period for the following leases is the amount calculated by multiplying the rental valuation for the particular lease by the following percentage –

...

- (e) for a category 13 lease – 6%;

...

- (2) The rent for a rental period for the following leases is –

...

- (d) for a category 15.4 lease – \$12,302;

- (e) for a category 15.5 lease – \$18,453.

59 The expression “rental valuation” is defined in Sch 12 of the *Land Regulation* as a “Land Act rental valuation” under the *Land Valuation Act 2010* (Qld).

60 A “rental period” for a lease is defined in s 26A of the *Land Regulation* as a period of one year starting on 1 July.

61 When the *Land Regulation* commenced on 1 July 2010, the prescribed rents for category 15.4 and 15.5 leases (then known as category 15.2 and 15.3 leases) were \$10,000 and \$15,000 respectively. There have been annual increases in the rents for category 15.4 and 15.5 leases

of around 3.5% since then. The rents at the date of trial were \$11,886 and \$17,829 respectively, but have now been increased to the amounts set out in [58] above.

62 It may be seen that under s 37A of the *Land Regulation*, the annual rent for category 13
leases is calculated at 6% of the rental valuation for the lease, but that a fixed annual rent is
imposed for category 15.4 and 15.5 leases. That distinction results in carriers usually paying
higher rents than other businesses for a lease of State land. The distinction is at the heart of
this proceeding.

The Land Valuation Act 2010 (Qld)

63 Under s 5 of the *Land Valuation Act*, the Valuer-General must decide the value of land as
provided for under that Act.

64 Section 72 requires the Valuer-General to make annual valuations of all land in a local
government area.

65 Section 6(1)(c) provides that one of the purposes of such a valuation is the calculation of rent
under the *Land Act*.

66 Section 7 provides that the value of land for non-rural land is its site value. Under s 19(1) if
the land is improved, its site value is its expected realisation under a bona fide sale assuming
all non-site improvements for the land had not been made.

67 Section 7 provides that the value of land for rural land is its unimproved value. Under s 26(1)
if the land is improved, its unimproved value is its expected realisation under a bona fide sale
assuming all site improvements and non-site improvements on the land had not been made.

68 Section 105(1) allows an owner to object to the valuation of the owner's land. An "owner" is
defined in the Schedule to the *Land Valuation Act* to include a lessee of land held from the
State where the lessee must pay *Land Act* rental for the land.

69 Section 147 requires the Valuer-General to consider and decide a properly made objection.
Under s 155, an objector may appeal to the Land Court against an objection decision, and
has, under s 172, a right to a further appeal to the Land Appeal Court.

70 The significance of these provisions is that a business which leases category 13 land has a
right to object to and appeal from the land valuation and thereby challenge the annual rent.
On the other hand, a carrier which leases category 15.4 or 15.5 land has no such rights.

THE AUTHORITIES

71 There are three cases that have construed and applied cl 44 of Sch 3 to the *Telecommunications Act*. I will discuss each of these cases in turn.

Bayside City Council v Telstra Corporation Ltd

- 72 In *Bayside City Council v Telstra Corporation Ltd* (2004) 216 CLR 595, the High Court considered the validity of s 611 of the *Local Government Act 1993* (NSW) (“the NSW Act”) and Pt 8 of the *Local Government Act 1989* (Vic) (“the Victorian Act”).
- 73 Section 611 of the NSW Act conferred power on local Councils to make an annual charge on a person in possession, occupation or enjoyment of a rail, pipe, wire, pole, cable, tunnel or structure laid, erected, suspended, constructed or placed on, under or over a public place. However, s 611(6) and other legislation exempted a number of bodies from the operation of the power, including the Crown, water supply authorities and railway, electricity network and pipeline operators. However, carriers and gas pipeline providers were not exempt.
- 74 Sections 154 and 155 in Pt 8 of the Victorian Act declared that all land in Victoria was rateable and empowered Councils to declare rates and charges on such land. Crown land and land used exclusively for public or municipal services land was exempted from such rates and charges, as were electricity companies and gas suppliers. Carriers were not exempt.
- 75 Telstra and Optus had each installed underground and aerial cables in local government areas. A number of Councils imposed charges or levied rates in respect of the land occupied by the cables. Telstra and Optus brought proceedings against the Councils alleging that s 611 of the NSW Act and Pt 8 of the Victorian Act discriminated, or had the effect of discriminating, against carriers.
- 76 At first instance, Wilcox J dismissed the proceedings, holding that cl 44(1) of Sch 3 was not a law under s 51(v) of the Constitution upon which s 109 of the Constitution could operate so as to render State laws invalid: see *Telstra Corporation Ltd v Hurstville City Council* (2000) 103 FCR 322. Having reached that conclusion, Wilcox J did not go on to consider whether the NSW and Victorian legislation had a discriminatory effect on carriers.
- 77 The Full Court of the Federal Court allowed the appeal, holding that cl 44(1) of Sch 3 was a valid exercise of the Commonwealth’s legislative power, and that the NSW and Victorian legislation discriminated against carriers to the extent that they authorised local government

authorities to impose rates and charges on carriers: see *Telstra Corporation Ltd v Hurstville City Council* (2002) 118 FCR 198.

78 By majority, the High Court dismissed an appeal from the judgment of the Full Court. Callinan J, in dissent, would have upheld the appeal on the basis that cl 44 of Sch 3 was beyond the legislative power of the Commonwealth. His Honour did not go on to consider the question of discrimination.

79 Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ held that cl 44 was constitutionally valid and that the NSW and Victorian legislation discriminated against carriers. McHugh J gave separate reasons, agreeing in the result.

80 The plurality considered the scope of cl 44, saying:

24 There is a question as to the extent of the application of cl 44, and, in particular, cl 44(1)(a)...[I]f a State or Territory law is discriminatory in one of the ways referred to in cl 44, and that discrimination involves adverse treatment that is differential by reference to an appropriate standard of comparison, it will attract the operation of that provision...Similarly...the kind of discrimination against carriers that attracts the potential operation of cl 44 is discrimination against them in their capacity as carriers. Clause 44 is concerned with State or Territory laws which impose discriminatory burdens upon carriers in carrying on activities as carriers authorised by the Telco Act.

(Footnote omitted.)

81 Their Honours then dealt with the application of the law to the facts as follows:

40 Discrimination is a concept that arises for consideration in a variety of constitutional and legislative contexts. It involves a comparison, and, where a certain kind of differential treatment is put forward as the basis of a claim of discrimination, it may require an examination of the relevance, appropriateness, or permissibility of some distinction by reference to which such treatment occurs, or by reference to which it is sought to be explained or justified. In the selection of comparable cases, and in forming a view as to the relevance, appropriateness, or permissibility of a distinction, a judgment may be influenced strongly by the particular context in which the issue arises. Questions of degree may be involved.

41 In the present case, the basis for the claim of discrimination is in a comparison between, on the one hand, the charges and rates imposed and levied in respect of the Telstra and Optus cables, and, on the other hand, the treatment of facilities, which are installed or operated above, on or under public land, by utilities or other users of such space and are said to be comparable...In the present case, however, Telstra and Optus point to a general pattern of State legislative treatment of facilities to which their cables have been made an exception.

42 Clause 44 does not, in terms, identify the kind of comparison that is appropriate for the purpose of considering whether a State law discriminates

against carriers generally. (The comparison involved in deciding whether a State law discriminates against a particular carrier, or a particular class of carriers, is more straightforward.)...

- 43 In relation to aerial cabling, which appears to be what primarily attracted the attention of the local authorities, the facilities installed by electricity authorities constitute an obvious basis of comparison. The fact that they are singled out in the Explanatory Memorandum confirms that the kind of discrimination with which cl 44 is concerned, in its reference to discrimination against carriers generally, is the subjection of carriers, in that capacity, to a burden of a kind to which others in a similar situation are generally not subject, and that a similar situation includes the use of public space for the installation and maintenance of facilities such as cables, pipes, ducts and conduits. In relation to underground facilities, the position is somewhat more complex, but gas pipelines in New South Wales are, apart from the facilities in question in this case, the exception to a general pattern of exemption.
- 44 ...Here there is a clear general pattern of exemptions, and it is sufficient to say that the existence of one other significant exception to that pattern (gas pipelines in New South Wales) does not negate discrimination. In addition, in the case of aerial cabling, there is an obvious basis of comparison, namely electricity facilities, which enjoy an exemption.

(Footnotes omitted.)

- 82 Justice McHugh considered what would amount to a reasonable or permissible distinction in the treatment of carriers and others. His Honour said:

- 68 The Full Court accepted that different treatment amounts to discrimination only if there is no reasonable distinction to justify different treatment. The appellants submitted that the key difference between Telstra and Optus on the one hand and the exempted bodies on the other is that the latter occupy land under statutory authorities granted by the States, while the appellants occupy land under authority granted by the Commonwealth. A State, they submitted, is entitled to prevent councils, which are the custodians of its land, from charging rates to the State's agents.
- 69 However, the question whether a reasonable distinction exists must be examined in light of the law prohibiting discrimination, not the potentially discriminatory law. As Gaudron J and I said in *Castlemaine Tooheys Ltd v South Australia*, a law "is discriminatory if it operates by reference to a distinction which some *overriding law* decrees to be irrelevant". It is of no present relevance whether or not, in exercising their powers under the applicable Local Government Act, councils are acting reasonably in perceiving a difference between State agencies and bodies authorised to carry out functions under federal law, such as Optus and Telstra. The question is whether the *Telecommunications Act* permits Optus and Telstra to be treated differently from State agencies in respect of rates and charges.
- 70 It is true, as Wilcox J noted, that cl 44(1) of Sch 3 to the *Telecommunications Act* provides no criteria by which a court may determine what differences are legitimate and what are illegitimate. His Honour observed that in this respect it differs from other federal statutes which prohibit discrimination and which provide such criteria, for example, the *Racial Discrimination Act 1975* (Cth),

the *Sex Discrimination Act 1984* (Cth) and the *Disability Discrimination Act 1992* (Cth).

- 71 For the purposes of this case, it is unnecessary to determine whether cl 44(1) prohibits *all* differential treatment of carriers. It is sufficient to say that the wide and unconditional language of cl 44(1) suggests that the Commonwealth Parliament intended to protect carriers from special burdens without regard to any policy objective of a State or Territory law which imposed that burden. If the Parliament had intended to allow such policy objectives to be relevant, it would have framed cl 44(1) so as to prohibit only *unreasonable* discrimination.

(Footnotes omitted.)

- 83 His Honour went onto consider the identification of the appropriate comparator:

- 77 Clause 44(1) prohibits discrimination against a particular carrier, class of carriers or carriers generally. If the discrimination alleged was against a particular carrier, the appropriate comparison would probably be other carriers. Where the discrimination is alleged to be against “carriers generally”, however, the issue arises as to the appropriate entity with which “carriers” should be compared. Was the Full Court correct to conclude that the appropriate comparison here was between Optus and Telstra on the one hand and “other bodies which make a similar use of public places” on the other?
- 78 The appellants were unable to suggest any alternative point of comparison. Instead, they resorted to the suggestion that cl 44(1) is designed to prevent only laws *aimed* at carriers, rather than to ensure that carriers receive equal treatment. Such a narrow interpretation of “discrimination” is incompatible with the breadth of cl 44(1). In particular, the reference to the “direct or indirect” *effect* of a State or Territory law leaves no room for such an argument.
- 79 In cases like the present, the allegedly discriminatory law itself provides the comparator for the purpose of cl 44(1). The New South Wales and Victorian Acts confer a power to levy charges or rates on the owners or occupiers of public land, that is, land used for a public purpose. This indicates that the Full Court was correct in comparing the position of carriers with that of other owners or occupiers of public land. In turn, this invites a comparison with electricity suppliers, water suppliers, gas suppliers and other pipeline users. These entities resemble Telstra and Optus in their ownership and/or occupation and use of public land, a use which involves putting wires, cables or pipes over or under the land. Other owners or occupiers of public land, whose use of the land is perhaps less directly comparable with that of Telstra and Optus, include rail authorities, road traffic authorities and public transport authorities. Whether the comparison is made with the first group or the second group, the New South Wales and Victorian Acts exempt all – or in the case of New South Wales, almost all – of these entities from the operation of the legislation. This has the effect that the New South Wales and Victorian Acts authorise charges or rates that discriminate against Telstra and Optus.

(Footnote omitted.)

84 As to the fact that the NSW legislation also imposed charges on gas suppliers, McHugh J said:

80 In New South Wales, gas suppliers are the only bodies apart from Telstra and Optus that are subject to the charges...The Full Court assumed, correctly in my opinion, that this liability on the part of gas network operators did not mean that the New South Wales councils did not discriminate against Telstra and Optus. A person may be discriminated against even if some other person is treated equally unfavourably.

81 If *many* other persons were also treated unfavourably, a question might arise whether the law discriminated against a particular person. This question does not arise in the present case. The great majority of occupiers of public space in New South Wales are exempt from local government charges. That gas suppliers remain subject to these charges does not alter the fact that carriers are treated less favourably than most comparable entities.

(Footnote omitted.)

Development Assessment Commission v 3GIS Pty Ltd

85 In *Development Assessment Commission v 3GIS Pty Ltd* (2007) 212 FLR 123, the respondent, a joint venture company formed by two carriers, applied for a development approval for a telecommunications facility, but the planning authority refused the application.

86 In obiter, Bleby J (within whom Doyle CJ and Sulan J agreed) said:

65 In short, the argument is that to the extent that a demand need might be required to be established and measured against its effect on visual amenity, a telecommunications provider is singled out and treated differently from any other applicant for development approval. A carrier would be subject "to a burden of a kind to which others in a similar situation are generally not subject".

66 The Telecommunications Facilities provisions of the Development Plan apply only to telecommunications carriers licensed under the *Telco Act*. No-one else is authorized to operate a facility. Whether the applicant for development approval is the carrier or a third party as lessor of the facility, it is a facility dedicated to a carriage service. The ability of the carrier to provide the service depends on the installation of the facility. The burden of establishing the relevant demand need will therefore fall on the carrier. Alternatively, it is the carrier and only the carrier who will be adversely affected if the burden is not discharged. No other applicant for development approval, including any other infrastructure provider, is required to prove such a need. The carrier is therefore singled out and treated differently from any other applicant for development approval.

67 Accordingly, on the information available and if it were necessary to do so, I would hold that the requirements of the Development Plan, insofar as they require proof of demand need in the area covered by the proposed facility, would be invalid by virtue of the operation of clause 44 of Sch 3 as discriminating against carriers generally or at least the class of carriers who are required to obtain development approval for the installation of facilities in

accordance with the requirements of the Development Act.

(Footnote omitted.)

Optus Networks Pty Ltd v Rockdale City Council

87 In *Optus Networks Pty Ltd v Rockdale City Council* (2005) 144 FCR 158, Tamberlin J held that s 96(1A) of the *Environmental Planning and Assessment Act 1979* (NSW) was invalid to the extent that it purported to authorise the Council to delete conditions of development approval requiring the developer to “underground” Optus’ television cables. The developer, Meriton, had originally been required to arrange for overhead powerlines belonging to two electricity suppliers and overhead cables owned by Optus to be placed underground. The practical effect of deleting the condition in respect of the television cables was that Optus had to meet the costs of undergrounding the cables instead of the developer. On the other hand, the developer was still required to negotiate the costs of undergrounding the powerlines with the electricity suppliers.

88 Tamberlin J noted the breadth of cl 44, saying:

22 The first matter to note is that the language of the clause is broad. It is not limited to the direct effect of the exercise of power under a law. It is not limited to direct or indirect effect. Nor is it limited to the direct or indirect effect of the operation of the law itself but rather it extends to the exercise of a power **under** the law. The expression “under” is extensive and in the context of discriminatory provisions it is appropriate to give it a broad meaning. The provision is not concerned with motive or intent but rather with the consequence or effect of the exercise of authority of power under the law. Sch 3 is expressly concerned with the powers and immunities of carriers and should be interpreted with this in mind. Accordingly, it is not relevant that s 96(1A) is non-discriminatory on its face. The issue is whether the law confers an authority which, if and when it is exercised, leads to discrimination against the carrier. The proper approach is to examine the operational effect or result or outcome of the exercise of the power.

89 His Honour said that in considering the indirect effect of the deletion of the condition, it was useful to consider Optus’ position before and after the condition was deleted. His Honour said:

27 After the deletion of the requirement affecting Optus, which imposed a condition on Meriton to underground the Optus lines, the result was that Meriton, in practical terms, would need to negotiate the undergrounding with EA and SRA but was no longer required to negotiate with Optus for removal of the Optus cable. The obligation on Meriton to underground the lines carried with it in its practical operation an obligation on Meriton to arrange for this to be permitted by the three authorities. As a result of the deletion of the condition in respect of the Optus cable, there was no obligation to negotiate with Optus because cl 51 of the *Telco Act* operated to require Optus

to remove the cables. This meant that while EA and SRA could demand payment or other terms to carry out the Council conditions in relation to conduits and undergrounding, Optus could not demand terms for removal of its cable. Therefore, the effect of the decision to remove the requirement only as against Optus placed Optus in a disadvantageous position in comparison with the positions of EA and SRA in respect of lines and cables suspended over the same spaces from the same poles.

90 The Council sought to contend that the different treatment of Optus was permissible on the basis that there was no clear class of comparators. Tamberlin J rejected that submission holding that the electricity authorities were relevant comparators as they used the same poles for overhead lines and cables, and because the cables could reasonably be considered to have had similar visual and environmental effects.

91 His Honour also rejected a submission that the differential treatment of Optus was permissible because there was differential treatment by the Council as between the two electricity entities.

ACCOUNTING EVIDENCE

92 Telstra called an accountant, Natalie McKay, to give evidence.

93 Ms McKay has calculated that the total amount of rent payable under the *Land Regulation* by Telstra to the State in the period from 1 July 2010 to 30 June 2016 for Telstra's category 15.4 and 15.5 leases was \$32,913,145. In contrast, the rent payable if Telstra's leases instead fell within category 13 would be \$3,176,007. That is a difference of \$29,737,138.

94 Telstra has stopped paying rent at the rates prescribed for category 15.5 and 15.5 leases and has instead been paying rent at the rate for category 13 leases. Telstra's conduct was the subject of an unsuccessful application for interlocutory relief: *Telstra Corporation Ltd v State of Queensland* [2013] FCA 1296. Ms McKay has calculated that if Telstra has only been required to pay category 13 rent since 1 July 2010, Telstra has overpaid rent to the State in the amount of \$7,827,967 in the period to 30 June 2016.

95 Ms McKay was cross-examined as to matters she had and had not taken into account, but not as to the figures she had arrived at. I accept Ms McKay's evidence.

THE SUBMISSIONS

96 Telstra submits that the provisions of the *Land Regulation* which determine the rent payable for State leases are laws that discriminate, or which have the effect (directly or indirectly) of discriminating against carriers. Telstra argues that carriers are treated adversely in

comparison to other businesses which hold State leases because, firstly, carriers pay higher rents and, secondly, carriers have no statutory right to appeal against the rents that are prescribed.

- 97 Telstra notes that the annual rents for category 13 leases are set at 6% of the land valuation, but the rents for categories 15.4 and 15.5 are fixed amounts, currently \$12,302 and \$18,453 respectively. Telstra argues that if carriers' rents were calculated in the same way as the rents for other businesses, they would pay much less rent. In aggregate, it is presently required to pay 10 times more than it would be required to pay under category 13. Telstra has not attempted a lease-by-lease comparison of the rent it pays compared to the rent that would be payable under category 13. It also argues that other businesses are treated more favourably than carriers because other businesses effectively have a right to object to and appeal against rents, whereas carriers do not.
- 98 In its written submissions, the State concedes that the *Land Regulation* does treat carriers detrimentally by charging them more than other leaseholders, and that it does so based on the fact that carriers use the leased areas for communications purposes or their purposes as carriers. However, the State submits that, other than in the conceded areas, such detrimental treatment does not contravene cl 44 of Sch 3.
- 99 The State's argument starts with the premise that the rents imposed under the *Land Regulation* for category 15.4 and 15.5 leases, except in the conceded areas in the north and western regions of Queensland, approximate the market rents payable by carriers for leases over privately owned land. The State, at least implicitly, accepts that market rents for leases granted to other businesses over privately owned land are lower.
- 100 However the State argues that that it is entitled to take a "market approach" and to "seek market rates for making available for use" State land. The State submits that the distinction drawn by the *Land Regulation* between carriers and other businesses on a market basis is a "relevant, appropriate or permissible distinction" that the *Telecommunications Act* allows to be made.
- 101 The State's pleading and written submissions also raise an argument that category 13 leases are not an appropriate comparator to use when deciding whether there is discrimination within cl 44(1) of Sch 3 because Telstra's leases and circumstances are different to those of other businesses; and because the rental calculation used for category 13 leases cannot be

used for category 15.4 and 15.5 leases. That argument seemed somewhat inconsistent with the State's concession that it does treat carriers detrimentally by charging them more than other leaseholders. By the end of the State's oral submissions, I understood the State to no longer pursue that argument and to instead argue that, once it is seen that a distinction on the basis of market rents may lawfully be applied, it is apparent that it is not appropriate to make a comparison between rents payable under category 13 and those payable under category 15. However, the State's initial argument was not expressly abandoned and I will consider it in case my understanding of the State's position is wrong.

102 The State's premise that the rents for category 15.4 and 15.5 leases, except in respect of the conceded areas, approximate the rents payable for leases granted to carriers in the private market relies upon the evidence of a valuer, Rodney Brett. Mr Brett applies a "mass appraisal system", rather than a valuation of market rent on a lease-by-lease basis. Mr Brett's methodology is to start with the *Land Regulation* system under which there is a rural zone (category 15.4) and an urban zone (category 15.5), but then split the rural zone into two zones. He assesses the low population density parts of the rural zone as having a lower market rent than the medium density parts of that zone. Mr Brett's opinion is that rents imposed under the *Land Regulation* for category 15.4 and 15.5 leases approximate the rents in the private market for the medium density parts of the rural zone and the urban zone respectively, but not the low density parts of the rural zone.

103 Telstra's response to the State's submissions is that the *Telecommunications Act* cannot be construed as allowing State and Territory legislation to treat carriers detrimentally on the basis that the market rents for carriers for leases over private land are higher. Telstra also argues that category 13 lessees are an appropriate comparator.

104 Telstra also relies on the evidence of a valuer, Lawrence John Hamilton, to dispute the factual premise of the State's argument, namely that rents imposed under the *Land Regulation* for category 15.4 and 15.5 leases approximate rents for carriers for private land in areas other than the conceded areas. Mr Hamilton's opinion is that Mr Brett has not applied a mass appraisal process, or has not properly applied such a process.

CONSIDERATION

The issues

- 105 The State admits that the *Land Regulation* impermissibly discriminates against carriers contrary to cl 44 of Sch 3 to the *Telecommunications Act* by imposing higher rents on carriers than other businesses in respect of State leases in the conceded areas. The conceded areas are described more precisely at [178] of these reasons.
- 106 That leaves for determination the question of whether the *Land Regulation* impermissibly discriminates against carriers in its operation on leases in the disputed areas, namely the remainder of Queensland. There is also a second question, whether the *Land Regulation* impermissibly discriminates or has the effect of discriminating against carriers by allowing other businesses, but not carriers, to appeal against the rents for leases over State land.
- 107 The first question requires consideration of two issues. The first is whether the *Telecommunications Act* allows State and Territory governments to treat carriers adversely by imposing higher rents in the disputed areas on the basis that market rents for leases over private land are higher for carriers than for other businesses. The second is whether rents for State leases in the disputed areas in fact approximate the market rents that carriers would be charged by the owners of private land.
- 108 Before directly addressing the issues in dispute, it is useful to consider some aspects of the parties' submissions concerning the operation of the *Land Regulation*.
- 109 Section 33 of the *Land Regulation* deals with leases granted for communications purposes. Under that section, a category 15.4 or 15.5 lease "may be used for...the provision, relay or transmission of telephonic, television, radio or other electronic communication services for a non-community service activity." It is not in dispute that the activities of carriers performing functions under the *Telecommunications Act* come within this description.
- 110 It may be noted that leases held by television and radio providers which are not carriers, also fall within categories 15.4 and 15.5. In *Bayside*, the High Court alluded to an argument that if many businesses are treated unfavourably, a question might arise as to whether the law can be said to discriminate against carriers. No such argument has been raised in this case.
- 111 The difference between category 15.4 and category 15.5 leases is that the former are over land in "rural areas", while the latter are over land in "urban areas". An "urban area" is defined in s 33(b) of the *Land Regulation* as one within the local government area of the

Brisbane City Council, Gold Coast City Council, Ipswich City Council, Logan City Council, Moreton Bay Regional Council, Redland City Council or Sunshine Coast Regional Council. A “rural area” is any other area in Queensland.

- 112 The holder of a category 15.4 lease is required to pay an annual rent which is currently \$12,302, while the holder of a category 15.5 lease pays \$18,453. The rents are fixed under the *Land Regulation*, and there is no provision for any challenge to the amount of rent.
- 113 Under s 30 of the *Land Regulation*, a lease is a category 13 lease if the lease may be used for a business, commercial or industrial purpose and the lease does not meet the requirements for another category; or if the lessee is a government leasing entity and the use of the lease is essential for conducting the lessee’s core business. Telstra’s case of discrimination focuses on a comparison of the treatment of carriers with the treatment of businesses with category 13 leases. Telstra does not rely upon any favourable treatment of government leasing entities. Nor does it rely on the favourable treatment of primary producers, charities, sporting or recreational clubs.
- 114 Under s 37A of the *Land Regulation*, the annual rent payable for category 13 leases is 6% of the rental valuation calculated under the *Land Valuation Act*. The rental valuation is effectively the unimproved value of the particular land that is leased. The rent for category 13 leases is calculated on a lease-by-lease basis; whereas there is a single fixed rent for a category 15.4 lease and a single fixed rent for a category 15.5 lease. A category 13 lessee is entitled to appeal against such a valuation, allowing the lessee to challenge the amount of the annual rent.
- 115 The State concedes that the *Land Regulation* “does treat Telstra and Carriers detrimentally by charging them more than other leaseholders”. That blanket concession makes it unnecessary for Telstra to undertake a lease-by-lease comparison between the rent it pays for its category 15.4 and 15.5 leases and the rent that businesses with category 13 leases would pay.
- 116 The State also concedes that the *Land Regulation* treats carriers detrimentally “based on a material attribute (i.e. the fact they use leases for communications/carrier purposes)”. This amounts to a concession that the detrimental treatment of carriers is in their capacity as carriers.

- 117 Telstra submits that the provisions of the *Land Regulation* are discriminatory on their face, or, alternatively, that the direct and indirect effects of the provisions are discriminatory. Telstra has not specified precisely what provisions are discriminatory, but presumably refers to at least ss 30, 33 and 37A.
- 118 Contrary to Telstra's submission, s 37A of the *Land Regulation* does not, on its face, discriminate against carriers. It sets a method for calculating rents for category 13 leases and prescribes fixed rents for category 15.4 and 15.5 leases. That does not mean that the rent for a particular category 15.4 or 15.5 lease will necessarily be higher than for a category 13 lease – it depends on the land valuation for each particular lease. Sections 30 and 33 could have no adverse effect on carriers in the absence of s 37A having such an effect. Therefore, the provisions of the *Land Regulation* are not discriminatory on their face.
- 119 However, cl 44 of Sch 3 extends to laws that “would have the effect...of discriminating” against carriers. The State's concession that the *Land Regulation* does treat carriers detrimentally by charging them more than other leaseholders amounts to an admission that the *Land Regulation* has a detrimental effect.

Whether market rent is a relevant, appropriate or permissible distinction

- 120 I will turn to the first of the issues identified earlier, namely whether cl 44 of Sch 3 to the *Telecommunications Act* allows State and Territory governments to treat carriers adversely by imposing higher rents on the basis that market rents for leases held by carriers over private land are higher than for other businesses.
- 121 The State submits that the provisions of the *Land Regulation* which have the effect of imposing higher rent on carriers than other businesses are not invalid under cl 44 of Sch 3 because a “market approach” is a “relevant, appropriate or permissible distinction”. That language is taken from the judgment of the plurality in *Bayside* at [40], which, in turn, seems to be largely drawn from the judgment of Gaudron and McHugh JJ in *Castlemaine Tooheys Ltd v South Australia* (1990) 169 CLR 436 at 478, where their Honours said:

A law is discriminatory if it operates by reference to a distinction which some overriding law decrees to be irrelevant or by reference to a distinction which is in fact irrelevant to the object to be attained; a law is discriminatory if, although it operates by reference to a relevant distinction, the different treatment thereby assigned is not appropriate and adapted to the difference or differences which support that distinction.

- 122 In *Bayside*, McHugh J explained at [69] that in considering whether a distinction is relevant or permissible, the question is whether the *Telecommunications Act* permits carriers to be treated differently. The State correctly accepts that if applying a market approach is to be regarded as producing a relevant, appropriate or permissible distinction, that must appear as a matter of construction of the *Telecommunications Act*.
- 123 There are two possible ways of conceiving the State's argument. The first is that the *Telecommunications Act* allows the *Land Regulation* to treat carriers adversely on the basis that the market rent for carriers is different to the market rent for other businesses. The second is that the *Land Regulation* treats carriers and other businesses equally by charging each of them the market rate applicable to their respective leases, with differential but permissible effect. The State's characterisation of its case was inconsistent. The State's concession that it treats carriers detrimentally by charging them more than other leaseholders seems to indicate that it characterises its argument in the first of these ways, but the State's submissions also seemed to rely on the alternative characterisation at times. I will deal with both characterisations of the State's arguments together because both rely upon construction of the *Telecommunications Act*.
- 124 The State's submission that the distinction drawn by the *Telecommunications Act* between carriers and other businesses on the basis of market rents is made by reference to the objects of that Act, to the fact the regulatory framework incorporates a special regime for regulating anti-competitive conduct and from the objects of the *Land Act*.
- 125 The objects of the *Telecommunications Act* are set out in s 3. That section provides, relevantly:

3 Objects

- (1) The main object of this Act, when read together with Parts XIB and XIC of the *Competition and Consumer Act 2010*, is to provide a regulatory framework that promotes:
 - (a) the long-term interests of end-users of carriage services or of services provided by means of carriage services; and
 - (b) the efficiency and international competitiveness of the Australian telecommunications industry; and
 - (c) the availability of accessible and affordable carriage services that enhance the welfare of Australians.
- (2) The other objects of this Act, when read together with Parts XIB and XIC of the *Competition and Consumer Act 2010*, are as follows:

- (a) to ensure that standard telephone services and payphones are:
 - (i) reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and
 - (ii) are supplied as efficiently and economically as practicable; and
 - (iii) are supplied at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community;
- ...
- (d) to promote the development of an Australian telecommunications industry that is efficient, competitive and responsive to the needs of the Australian community;
- ...
- (g) to promote the equitable distribution of benefits from improvements in the efficiency and effectiveness of:
 - (i) the provision of telecommunications networks and facilities; and
 - (ii) the supply of carriage services;
- ...

126 The State relies on the objects set out in ss 3(2)(a)(ii), (d) and (g), which, it submits, use “market terms”. The State argues that these objects show that telecommunications “is not to be a protected industry any longer”, and is intended to be a “competitive industry”.

127 The State reinforces its submission by pointing to the references in the objects to Pts XIB and XIC of the *Competition and Consumer Act 2010* (Cth). In *Bayside*, the plurality noted that Pts XIB and XIC of what was then the *Trade Practices Act 1974* (Cth) formed part of the regulatory framework for carriers. Part XIB sets up a special regime for regulating anti-competitive conduct in the telecommunications industry and prohibits carriers from engaging in anti-competitive conduct. The object of Pt XIC is to promote the long-term interests of end-users of carriage services or services provided by carriage services.

128 The State also relies on the objects of the *Land Act*, a Queensland statute. Under s 4, those objects include managing land for the benefit of the people of Queensland by having regard to “a market approach in land dealings”. The State contends that this object can be taken into account in the construction of the *Telecommunications Act* because of the operation of cl 38 of Sch 3 to the *Telecommunications Act*.

- 129 I understand the State's overall submission to be that the *Telecommunications Act* does not seek to immunise carriers from the forces operating in a competitive market, and, in fact, deliberately seeks to expose them to such forces. This is said to promote a construction of the *Telecommunications Act* that allows State and Territory legislation to treat carriers adversely, or with adverse effect, by imposing higher rents on the basis that market rents for leases over private land are higher for carriers than for other businesses.
- 130 It can be accepted that the *Telecommunications Act* does not purport to give carriers complete immunity from the operation of market forces. However, the question is whether cl 44(1) of Sch 3 operates to give carriers some protection from the discriminatory application of such forces under State or Territory legislation, and the extent of that protection. That question must be answered by reference to the language and purpose of cl 44(1) in the context of Pt 1 of Sch 3 and the *Telecommunications Act* as a whole.
- 131 Schedule 3 to the *Telecommunications Act* deals with the powers and immunities of carriers. Divisions 2, 3 and 4 of Pt 1 describe the powers of carriers to enter and inspect land and install and maintain facilities on that land. Carriers may install facilities on land if, relevantly, they have a facility installation permit, or the facility is a low-impact facility.
- 132 Division 5 sets out conditions relating to the carrying out of authorised activities. Div 6 deals with applications for facility installation permits.
- 133 Division 7 and, in part, Division 8 regulate the relationship between carriers' powers and immunities under the *Telecommunications Act* and the operation of State and Territory laws.
- 134 Division 7 commences with cl 36(1), which provides that Divs 2, 3 and 4 do not operate so as to authorise an activity to the extent that the carrying out of the activity would be inconsistent with the provisions of a law of a State or Territory.
- 135 Clause 36(1) is subject to cl 37, which provides that a carrier may engage in an activity authorised by Divs 2, 3 or 4 despite laws of a State or Territory about specified matters, including town planning, the powers and functions of a local government body, the use of land and tenancy. Telstra submits that cl 37 applies only to installation and maintenance of low-impact facilities as defined in cl 6(3), but in my view it also applies to, relevantly, the installation of facilities under a facility installation permit.
- 136 Clause 38 then provides that it is the intention of Parliament that if cl 37 entitles a carrier to engage in activities despite particular laws of the State or Territory, nothing in Div 7 is to

affect the operation of any other law of the State or Territory, so far as such other laws are capable of operating concurrently with the *Telecommunications Act*.

- 137 Clause 39 provides that Div 7 does not affect the liability of a carrier to taxation under the law of a State or Territory.
- 138 Clause 44 is then found in Div 8, Pt 1 of Sch 3. Clause 44(1)(a) provides that the law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating against a particular carrier, a particular class of carriers or against carriers generally. Under cl 44(1)(b) a person must not exercise a power under such a law to the extent to which the law so discriminates; and under cl 44(1)(c) a person is not required to comply with such a law to the extent to which the law discriminates.
- 139 The purpose of cl 44(1) can be discerned from its context in Pt 1 of Sch 3 and the objects of the *Telecommunications Act*. Section 3(1) provides that the main objects include providing a regulatory framework that promotes the long-term interests of end-users of carriage services and the availability of accessible and affordable carriage services that enhance the welfare of Australians. Under s 3(2) the other objects of the Act include ensuring that standard telephone services and payphones are reasonably accessible to all people in Australia on an equitable basis and supplied as efficiently and economically as practicable.
- 140 These objects are reflected in the powers and immunities granted to carriers under Pt 1 of Sch 3. The provision of carriage services requires the transmission of electromagnetic energy through a network of infrastructure to connect distant places in Australia. This requires carriers to have access to many parcels of land in a wide range of areas for the installation of infrastructure essential for the network. Telstra's universal service obligation, recognised in cl 27 of Sch 3, means that it requires land throughout Australia, urban, rural and remote. There is a risk that land owners, private or government, will inappropriately or unreasonably resist the installation of infrastructure on their land. This is addressed by Pt 1 giving carriers the power to compulsorily enter land and install a low-impact facility or, by obtaining a facility installation permit, install another facility.
- 141 There is also a risk that State and Territory governments will jeopardise the availability and affordability of carriage services by taking undue advantage of the particular needs of carriers for the use of government-owned land to the detriment of the wider Australian community.

To address this problem, cl 44(1) provides protection for carriers against the effects of discriminatory laws, including protection against the imposition of discriminatory taxes, rents and charges. Clause 39 confirms the liability of a carrier to taxation under the laws of a State or Territory, but cl 44(1) prevents such laws from discriminating against carriers or having the effect of discriminating against carriers. In *Telstra Corporation Ltd v Hurstville City Council* (2002) 118 FCR 198 at [24], the Full Court described the object of cl 44 as “to prevent State or Territory legislatures from enacting potentially unfairly discriminatory legislation which would burden the activities of a carrier”. More specifically, cl 44(1) can be seen as a legislative mechanism to promote and protect the long-term interests of end-users of carriage services and promote accessible and affordable carriage services, including the provision of standard telephone services and payphones to all Australians. This purpose is particularly evident when viewed against Telstra’s universal service obligation and the fact that the bulk of rural and remote land, at least in Queensland, is government-owned.

142 Clause 44(1) is cast in broad and absolute terms. It does not, on its face, allow any exception to the prohibition against the law of the State or Territory discriminating against carriers. Nor is any such exception expressly contained in any other provision of the *Telecommunications Act*. If any exception, such as the exception contended for by the State, is to be found, then it must be found by implication from the subject matter, scope and purpose of the *Telecommunications Act*.

143 The objects of the *Telecommunications Act* relied on by the State and Pts XIB and XIC of the *Competition and Consumer Act* appear to be concerned with the promotion of competition between carriers within the telecommunications industry and the prevention of anti-competitive conduct by carriers for the benefit of end-users. That is consistent with the legislative movement away from a government monopoly towards a competitive industry, and is supported by the references in the objects of the *Telecommunications Act* to the interests of end-users and affordability of carriage services. If, as the State submits, the objects are intended to indicate that carriers as a class are not to be protected from competitive market forces, such an intention is not directly expressed.

144 The State’s submission that the objects of the *Land Act* can be taken into account in the construction of the *Telecommunications Act* because of the operation of cl 38 of Sch 3 to the *Telecommunications Act* is innovative. The State has not referred to any authority in support of its proposition that the objects of a State Act can be used to construe a Commonwealth

Act. In any event, the effect of cl 38 is no more than that the operation of State and Territory legislation is not affected except to the extent provided in cl 37. It does not purport to import State or Territory legislation such that it can be used in the construction of the *Telecommunications Act*.

145 Even accepting the objects of the *Telecommunications Act* can be construed as not seeking to protect carriers from competitive market forces, or even deliberately seeking to expose them to such forces, such an intention appears at a very broad level. The State's contention is that such an intention implies that carriers may be treated adversely under State or Territory legislation on the basis that the market rent for leases over private land for carriers is higher than for other businesses, or that such legislation may impose upon carriers the market rent for communications leases even if that produces a differential effect.

146 The *Telecommunications Act* allows individuals and corporations to discriminate against carriers. That is apparent from the fact that neither cl 44(1) nor any corresponding provision restricts the behaviour of such individuals or corporations. In contrast, cl 44(1) expressly prohibits discrimination against carriers under State or Territory legislation. It is clear that the legislative intention is to treat individuals and corporations differently from State and Territory governments. Individuals and corporations are free to charge carriers whatever rent the market commands, just as they are free to charge other businesses whatever rent they are able to extract. Clause 44(1) is quite inconsistent with the submission that State and Territory governments are in the same position. If State and Territory governments were intended to be free to charge carriers different rents on the basis that carriers are charged more rent in the private market, the exception would have been directly expressed. The State relies on the objects of the *Telecommunications Act* to infer such an exception, but those objects, unsupported by any substantive provision, are too imprecise and indefinite to overcome the express and explicit prohibition of discrimination against carriers under State and Territory legislation contained in cl 44(1).

147 In addition, the purpose of cl 44(1), namely to promote and protect the long-term interests of end-users of carriage services and to promote accessible and affordable carriage services, is inconsistent with the submission that State and Territory governments are permitted to charge carriers higher rents on the basis that carriers are charged more rent in the private market. In fact, price-gouging of this type by State and Territory governments seems precisely the type of conduct that cl 44(1) is designed to prevent.

148 I therefore reject the State's submission that the imposition of higher rents on carriers than on
other businesses under the *Land Regulation*, on the basis of market rents for communications
leases in the private market, is a relevant, appropriate or permissible distinction.

The appropriate comparator

149 Telstra submits that in deciding whether the *Land Regulation* discriminates against carriers
contrary to cl 44(1), it is not appropriate to compare the treatment of carriers in category 15
with the treatment of other businesses in category 13. As I have said, I understand the State's
ultimate submission to be that such a comparison is not appropriate if the distinction drawn
between carriers and other businesses on the basis of rents charged in the private market is a
relevant, appropriate or permissible distinction. As I have rejected the State's submission
that such a distinction is relevant, appropriate or permissible, the State's argument concerning
the comparator falls away.

150 However, in case I have misunderstood the State's ultimate submission, I will consider the
argument as it was pleaded and described in the State's written submissions. That
submission is that leases held by carriers are too dissimilar to those held by businesses in
category 13 to provide an appropriate basis for comparison. The submission continues that as
the only comparator Telstra points to are businesses holding category 13 leases, there is no
other category of persons or entities to which the treatment of carriers can be compared. It
concludes that as there is no appropriate comparator, there can be no finding of
discrimination.

151 The State argues that category 13 leaseholders are too dissimilar to provide an appropriate
comparator because: such businesses are not bulk leaseholders as Telstra is; the land the
subject of category 13 leases varies widely in size, whereas Telstra's leases are more
uniformly sized; the uses of category 13 land are diverse, whereas Telstra uses the land it
leases for the same main purpose; and carriers are able to derive co-location revenue, whereas
category 13 leaseholders are not.

152 Clause 44(1) prohibits discrimination under State and Territory laws against a particular
carrier, a class of carrier or against carriers generally. The identification of an appropriate
comparator is not likely to be difficult where the discrimination alleged is against a particular
carrier or a particular class of carriers, but may be more difficult where, as in this case, the
discrimination is alleged to be against carriers generally.

- 153 However, in this case, as in *Bayside*, the allegedly discriminatory law itself provides the comparator for the purpose of cl 44(1). Only carriers and certain other businesses such as television and radio providers fall into categories 15.4 and 15.5 under s 33 of the *Land Regulation*. The State has not pleaded or argued that such other businesses have any relevance to the question of discrimination under cl 44(1). Therefore the application of categories 15.4 and 15.5 to leases held by such other businesses can be left aside for the purpose of the comparison exercise. Neither has the State contended that leases held by businesses for primary production, which have their own distinct category, have any relevance. They can also be left aside. In these premises, the categorisation of leases held by businesses involves a dichotomy between carriers and other businesses. If State land is leased by a carrier for the purposes of providing carriage services the lease will fall into category 15; if leased by another business, it will fall into category 13. This dichotomy makes it appropriate to compare the treatment of carriers with leases in category 15 with the treatment of other businesses with leases in category 13.
- 154 The fact that businesses holding category 13 leases may have a differing number of leases, different sized leases and carry out different business activities does not matter for the purpose of selecting an appropriate comparator. All State leases held by carriers are in one category (with two sub-categories), while all such leases held by other relevant businesses are in another. The *Land Regulation* itself selects the appropriate comparator.
- 155 Under s 332 of the *Land Act*, the holder of any State lease may, with the Minister's approval, sublease the land. It is possible for the holders of category 13 leases to derive income from subleasing. Therefore, the fact that it is possible for carriers to derive co-location revenue does not mean that businesses holding category 13 leases are not an appropriate comparator.
- 156 The State's pleadings and written submissions also contend that businesses in category 13 are not an appropriate comparator because the method of rental calculation applicable to category 13 leases cannot be used for category 15 leases. This submission is difficult to understand. Until the commencement of the *Land Regulation* on 1 July 2010, the rent for leases held by carriers was ascertained in exactly the same way as it was for other businesses, namely by taking 5% of the unimproved land value. Under s 5 of the *Land Valuation Act*, the Valuer-General must decide the value of all land in Queensland. A purpose of the valuation exercise is the calculation of rent under the *Land Act*. The calculation of rent for category 15

leases has been done in the past, and can be done, in the same way as for category 13 leases. I therefore reject this aspect of the State's argument.

Whether there is discrimination because the Land Regulation imposes more rent on carriers are charged more rent than other businesses

- 157 Businesses holding leases in category 13 are an appropriate comparator. The State concedes that the *Land Regulation* treats carriers detrimentally by imposing more rent on carriers than other leaseholders. This concession encompasses the treatment of carriers in comparison to businesses holding category 13 leases. The distinction made by the *Land Regulation* is not a relevant, appropriate or permissible distinction.
- 158 I find that ss 30, 33 and 37A of the *Land Regulation* have the effect of discriminating against carriers, including Telstra, which hold leases over State land in Queensland for the purpose of carrying on activities authorised by the *Telecommunications Act*.
- 159 Telstra's case is that the *Land Regulation* has had the effect of discriminating against carriers generally since its commencement. The State has not suggested that its concessions are limited to the current position. I also find that ss 30, 33 and 37A of the *Land Regulation* have had the effect of discriminating against carriers which hold leases over State land in Queensland for the purpose of carrying on activities authorised by the *Telecommunications Act* since the commencement of those provisions on 1 July 2010.
- 160 Clause 44(1)(a) of Sch 3 to the *Telecommunications Act* provides that a law of a State or Territory has no effect "to the extent to which" the law would have the effect of discriminating against carriers generally. Sections 30, 33 and 37A of the *Land Regulation* have the effect of discriminating against carriers generally to the extent that they have the effect of imposing higher rents on carriers which hold leases over State land for the purpose of carrying on activities allowed under the *Telecommunications Act* than for businesses which hold category 13 leases. In other words, those provisions have no effect to the extent that they impose annual rents on such carriers that exceed 6% of the "rental valuation" of the leased land as defined in Sch 12 of the *Land Regulation*.
- 161 The effect of cl 44(1)(b) is that a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under *Land Regulation* to the extent identified above. Further, the effect of cl 44(1)(c) is that carriers are not required to comply with the *Land Regulation* to the extent identified above.

162 Telstra advanced an argument that where carriers are affected because their subsidiaries or related entities are treated adversely, the subsidiaries or related entities are not required to comply with the *Land Regulation* to that extent. The evidence does not allow me to reach any conclusion on that issue.

163 The State's cross-claim depends upon a finding that the *Land Regulation* does not amount to discrimination against carriers within cl 44 of Sch 3 to the *Telecommunications Act*. As I have found to the contrary, the cross-claim must fail.

Whether there is discrimination because there is no right to appeal against category 15.4 and 15.5 rents

164 Telstra also argues that the *Land Regulation* discriminates against carriers because businesses holding category 13 leases have the right to, in effect, appeal against the rents they are charged, whereas carriers do not have such a right.

165 Under s 37A(1)(e) of the *Land Regulation*, the rent for a category 13 lease is calculated at 6% of the "rental valuation for the particular lease". The expression "rental valuation" is defined in Sch 12 of the *Land Regulation* as a "Land Act rental valuation" under the *Land Valuation Act*.

166 Section 105 of the *Land Valuation Act* allows an owner to object to the valuation of the owner's land. "Owner" is defined in the Schedule to the *Land Valuation Act* to include a lessee of land leased from the State where the lessee must pay *Land Act* rental for the land. Section 155 allows an objector to appeal to the Land Court and s 173 allows a further appeal to the Land Appeal Court.

167 The holder of a category 13 lease is entitled to object to and appeal against the land valuation and, in this way, challenge the annual rent that is imposed under s 37A(1) of the *Land Regulation*. In contrast, there is no mechanism which allows carriers to appeal against the rents fixed under s 37A(2) of the *Land Regulation*.

168 By imposing a method of determining rents for category 13 leaseholders that allows those leaseholders the opportunity to appeal against the rents assessed as payable, s 37A of the *Land Regulation* has the effect of treating category 13 leaseholders more favourably than carriers. This amounts to discrimination within cl 44(1) of Sch 3.

169 It follows that s 37A of the *Land Regulation* is of no effect to the extent to which it has the effect of denying carriers a right to appeal against the rent they are charged. It is unclear

what this means in practical terms. There was no argument as to whether the words “of no effect” in cl 44(1)(a) give rise to a positive obligation on the part of the State to allow carriers a right to appeal against rents.

Whether the rents imposed for category 15.4 and 15.5 leases approximate the rents charged for private leases held by carriers

170 The State contends that the rents imposed by the *Land Regulation* for category 15.4 and 15.5 leases held by carriers reasonably approximate the market rents carriers are charged for private leases in Queensland. That is the factual premise underlying the State’s principal argument that the distinction made by the *Land Regulation* between carriers and other businesses on the basis of market rent is a relevant, appropriate or permissible distinction. In light of my rejection of the State’s principal argument, the correctness or otherwise of the factual premise cannot affect the outcome. However, I will proceed to consider the premise in case I am wrong.

171 The State seeks to demonstrate that if State land the subject of Telstra’s leases were leased as private land instead of under the *Land Regulation*, the annual rents achieved for those leases would be approximately the same as the rents imposed for category 15.4 and 15.5 leases. The State accepts that it bears the onus of proving that the rents for category 15.4 and 15.5 leases reasonably approximate the market rates for private leases held by carriers.

172 The State contends that a “mass appraisal basis”, rather than a lease-by lease valuation, is an appropriate way to conduct the valuation exercise. In support of this contention, it submits the *Land Regulation* itself adopts such an approach by dividing leases held by carriers into two categories, rural land and urban land. The State also relies on the opinion of Mr Brett that the large number and diversity of the leases held by Telstra makes it preferable to adopt a mass appraisal basis.

Mr Brett’s evidence

173 Mr Brett states that the principal factor relevant to assessment of the market for communication leases is the rents paid for similar sites throughout the State. Mr Brett was provided with data concerning 894 private leases held by Telstra in Queensland, as well as 75 private leases held by other carriers. He has not taken into account 103 of Telstra’s leases where the annual rent is nominal (ie \$0 or \$1).

- 174 Mr Brett comments that the homogenous nature of the category 15.4 and 15.5 leases, lessees and uses lends them to a prescribed rent approach under the *Land Regulation* within appropriately defined regions. Mr Brett points out that all the sites are owned by one lessor (the State) and most are leased to a single lessee (Telstra). All are used for the same or substantially the same purpose, on the same terms and conditions, with rent to be assessed annually on the same day. He says that while the sites are geographically diverse, they can reasonably be grouped together in a manner accommodating locational differences.
- 175 Mr Brett states that land in the seven category 15.5 local government areas in the south-east corner of Queensland, with their high urban and commercial density, attracts significantly higher rents than the rest of the State.
- 176 Mr Brett's opinion is that it is appropriate to divide the category 15.4 local government areas into two categories, which he describes as medium density areas and low density areas.
- 177 The medium density areas have been selected on the basis that they contain the State's major provincial towns, a reasonable level of urbanisation and major connecting highways. These areas are local government areas of the Bundaberg Regional Council, Burdekin Shire Council, Cairns Regional Council, Douglas Shire Council, Fraser Coast Regional Council, Gympie Regional Council, Gladstone Regional Council, Lockyer Valley Regional Council, Scenic Rim Regional Council, Southern Downs Regional Council, Mackay Regional Council, Rockhampton Regional Council, Toowoomba Regional Council, Townsville City Council and Whitsunday Regional Council.
- 178 The low density areas comprise the remainder of the category 15.4 local government areas. These are the areas that I have described as "the conceded areas". They are in the west and far north of Queensland.
- 179 Mr Brett calculates that the median rent for private leases held by carriers in the seven urban local government areas is \$19,547 per annum and the average rent is \$19,871 per annum. He considers the market rent for private leases in such urban areas is \$20,000 per annum. He notes that this market rent exceeds the amount prescribed under s 37A for category 15.5 leases. On this basis, Mr Brett concludes that the prescribed rent for category 15.5 leases reasonably approximates the market rent for private leases.
- 180 Mr Brett states that data for the private leases held by Telstra and other carriers in the category 15.4 areas demonstrate that significantly different rents are achieved for the medium

density areas than for the lower density areas. Mr Brett calculates that the average annual rent for private leases in the medium density areas is \$10,556, while the median is \$9,773. He seems to consider that the market rent for private leases in the medium density local government areas is \$10,360 per annum. Mr Brett concludes that the prescribed rent for category 15.4 leases reasonably approximates the market rent for private leases in the medium density areas.

- 181 Mr Brett calculates that for the low density areas, the average annual rent is \$6,187 and the median is \$5,732. He further divides the low density areas into eastern and western parts and calculates a weighted average of \$4,500 per annum. He concludes that the prescribed rent for category 15.4 leases significantly exceeds the market rent for private leases in the category 15.4 area. That conclusion forms the basis of the State's concession that the *Land Regulation* does discriminate against carriers in respect of the conceded areas.

Mr Hamilton's evidence

- 182 In response to Mr Brett's evidence, Telstra relies on the evidence of another expert valuer, Mr Hamilton.
- 183 Mr Hamilton agrees with Mr Brett that given the large number and geographical spread of category 15.4 and 15.5 leases, it is preferable to adopt a mass appraisal process to ascertain the private market rates for leases of land to carriers. Mr Hamilton's evidence seems to be that either Mr Brett has not properly applied a mass appraisal process, or that Mr Brett's method is not a mass appraisal process at all. Mr Hamilton's evidence is unclear in this respect.
- 184 Mr Hamilton describes the method of valuation performed by the Valuer-General under the *Land Valuation Act* as a form of mass appraisal. He states that it is not feasible to revalue each property in Queensland individually and mass appraisal methodology is an effective and legitimate method for the creation of updated values in an efficient and timely manner. He states that mass appraisal depends upon a valuer being able to identify subgroups of properties whose valuation is likely to move "in step". It first requires identification of a subgroup of properties, known as a sub-market area. A sub-market area is a grouping of properties with either a highest and best usage within an area readily defined by an administrative or geographic boundary, or readily associated with a geographic or topographic feature where the market movement is similar for all properties. The set of properties is definable by common attributes that are perceived to be similarly affected by

common market forces and will therefore likely move in unison. Subsets of properties may be created where the market evidence identifies a subgroup that responds differently and supports a separate factor.

- 185 Mr Hamilton's opinion is that mass appraisal then requires the identification of typical, or benchmark, properties within a sub-market area that will be inspected and valued in the conventional way against the available sales evidence to test the proposed market changes for that area. A benchmark property is an individual property within a sub-market area that is representative of a larger group of similar properties, based on land value, land use or other property characteristics. Other relevant characteristics may include location, area, zoning and topography.
- 186 Mr Hamilton states that mass appraisal of individual lots is only valid if the value attached to each property meets the definition of market value, namely the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties each acted knowledgeably, prudently and without compulsion.
- 187 Mr Hamilton states that the use of a mass appraisal process for the valuation of assessable properties is not an exercise in averaging. He says that aggregating and averaging sales evidence is contrary to good valuation practice because the resulting values do not necessarily reflect market value.
- 188 Mr Hamilton indicates that he could support one of two mass appraisal techniques to assess the rent for leases that fall into category 15.4 or 15.5 that would be achieved in the private market. The first technique would be to adopt the same approach as for category 13 leases, but to determine the percentage of the individual valuation which represents an appropriate rent. It may be noted that neither Mr Hamilton nor Mr Brett have attempted to apply this method.
- 189 The second mass appraisal technique which Mr Hamilton could support is a market based approach analysing comparable rentals for properties leased for a similar purpose. Mr Hamilton says that to apply this technique, it would be necessary to carefully define the subcategories of category 15.4 and 15.5 leases, since the type of telecommunication installation varies significantly from site to site. The market rent appears to vary from

location to location even within similar locations and the market places greater value on CMTS installations, compared to installations such as radio towers.

- 190 Mr Hamilton states that in developing a system of subgroups for mass appraisal purposes, geographical location would plainly be useful, but is not the only determinant of the appropriate subgrouping. He says that this is most clearly demonstrated by the fact that different market rents are paid for CMTS installations compared to other installations in the same locality.
- 191 Mr Hamilton accepts that a mass appraisal process could be adopted provided that the rent is determined based on market rental evidence, the grouping of leases takes into account the type of installation on the land and there is a sufficient number of subgroupings to reflect the diversity of leases, including the location and type of infrastructure installed.
- 192 Mr Hamilton disagrees with Mr Brett's view that three sub-market areas are adequate for mass appraisal purposes. He does not consider that it is possible to accurately assess the market rental based on only three geographical sub-regions.
- 193 Mr Hamilton's written reports are not clear as to precisely what he regards as a "mass appraisal process" and what its function is. In his oral evidence, he seemed to indicate that a mass appraisal process is one that is used to determine the *change* in the value of a basket of properties within a sub-market area. His evidence, as I understand it, was that before such a mass appraisal process can be used, there must be a valuation of each individual property. The change in value of each individual property can be assumed to be the same as the change in the value of a benchmark property within the sub-market area. The effect of Mr Hamilton's oral evidence is that a mass appraisal process is not used to determine the value of an individual property, but merely the change in the value of a property. On this basis, and contrary to some indications in his reports, Mr Hamilton does not seem to accept that Mr Brett is applying a recognised mass appraisal process at all.
- 194 Mr Hamilton states that Mr Brett's method contains insufficient sub-market areas, given the geographical spread of Queensland and the different types of infrastructure installed on the leased areas. He also says that the comparable evidence has been broadly averaged and very limited direct comparisons have been undertaken. Further, he says that the averaging process, apart from dividing the leased areas into three broad geographical areas, does not take into account other factors that impact on rent including the commencement date of the

leases, the state of the market for Telstra leases, terms and conditions of the leases, rent review provisions and works required by the lessee to prepare for the installation of equipment.

195 Mr Hamilton disagrees with Mr Brett's assessment that Telstra's State leases have a homogenous nature. He notes that Telstra's lease sites vary widely in terms of the infrastructure involved, property location, the services available, vehicular access, land area and topography.

196 Mr Hamilton notes that for approximately 80% of Telstra's State leases, the prescribed rent exceeds the Valuer-General's appraisal of the value of the land itself. This is contrary to what he would expect if the rents reflected market rates.

Mr Brett's response to Mr Hamilton's criticism

197 Mr Brett agrees that it is appropriate to establish sub-market areas, and notes that he has referred to these as categories. He says his method seeks to achieve a reasonable balance between the number of categories and the efficiency and cost effectiveness of rent valuations in each category. He notes that division into additional sub-market areas requires an ever-increasingly detailed examination of lease, location or physical features of each property. He notes that given the State-wide spread of leases with different sub-characteristics, it is not possible to select a single benchmark property that is representative of an identified sub-market.

198 Mr Brett accepts that averaging of rents would be contrary to good practice in circumstances where the value of a single property is assessed by averaging the prices paid for a number of other properties, some of which may be quite dissimilar to the property being valued. However, he says that his intention here is to establish a rent applicable to a number of properties within identifiable sub-markets, some of which will have different characteristics, by reference to a body of rents being paid for a range of other properties within the same sub-market and used for the same or a similar purpose.

Consideration of valuation evidence

199 Mr Brett's opinion is that the rents imposed by the *Land Regulation* for category 15.4 and 15.5 leases reasonably approximate the market rents carriers are charged for private leases in the disputed areas. Mr Hamilton has challenged the methodology applied by Mr Brett in arriving at that opinion, but has not himself expressed an opinion on the issue. It follows that

the issue to be determined is whether Mr Brett's opinion is based upon a sufficiently reliable methodology to allow me to accept his opinion.

200 It is necessary to bear in mind the nature and limits of the exercise that Mr Brett was asked to perform by the State and the relevance of that exercise in the context of the proceeding. The State's case is that the *Land Regulation* sets the rents for category 15.4 and 15.5 leases by reference to the market rents that carriers would pay for private leases, or at least has that effect in the disputed areas. This is consistent with a Regulatory Impact Statement ("RIS") laid before the Legislative Assembly with the new *Land Regulation* on 9 February 2010. The RIS discussed the difficulty involved in ascertaining market rents for telecommunication sites and proposed that rents for such sites be set according to their purpose and location. The RIS continued:

It is considered that in the current market, appropriate fixed rents would be \$10,000 per annum for rural leases and \$15,000 per annum for urban uses. These rates are consistent with market rates and rates charged by other government departments for such sites.

201 The figures proposed in the RIS for fixed rents were adopted in the *Land Regulation* and it may be inferred that they were adopted on the basis that they were thought to be consistent with market rates. The Governor in Council's purpose or intention in setting the fixed rents is not relevant to the question of whether there is discrimination against carriers for the purpose of cl 44 of Sch 3 to the *Telecommunications Act*. However, the question presently being considered is a different one, namely whether the rates for category 15.4 and 15.5 leases reasonably approximate market rates. I accept that the Governor in Council's intention was that the prescribed rents should approximate market rents. The issue is whether the State can demonstrate that the Governor in Council achieved that intention.

202 In attempting to impose market rates of rent for category 15.4 and 15.5 leases, s 37A of the *Land Regulation* is a blunt instrument. It takes into account only the purpose of the lease and the classification of the leased land as either rural or urban. It does not take into account other factors that might be relevant to the rental value of such land, such as the precise location, the size of the leased land, zoning, topography and the type of facility installed. The rates for category 15.4 and 15.4 leases attempt to approximate the market rental for private leases, but do not purport to precisely reflect the market. That approach is unsurprising given the legislative function of the *Land Regulation* and its application to every lease of State land in Queensland for communication purposes.

- 203 The approach taken by the State to the valuation exercise in this case reflects the approach taken under the *Land Regulation*. The State has asked Mr Brett to provide his opinion as to whether the fixed rents for category 15.4 and 15.5 leases reasonably approximate the market rents for private leases. Mr Brett was not asked for his opinion as to whether the fixed rents are in fact market rates for private leases. That exercise would have required individual assessment of each of Telstra's 488 State leases.
- 204 Mr Hamilton criticises the exercise performed by Mr Brett and says, in effect, that it is too imprecise to allow Mr Brett's opinions to be relied on. Mr Hamilton particularly criticises the averaging exercise performed by Mr Brett and the limited number of sub-market areas he has used. He also notes that there were a number of features of the leases which could affect the rental value which were not considered by Mr Brett.
- 205 Mr Brett's methodology is to divide Queensland into three zones, namely urban, medium density rural and low density rural, on the basis that the median and average rents for land used for communication purposes within each of these zones is different. The State's case is to the effect that each State lease within a particular zone has approximately the same rental value. Mr Brett's view is that this rental value is approximately the median rent for private leases in each zone. An important feature of Mr Brett's methodology is his reasoning that State leases are sufficiently homogeneous that all communications leases within a particular zone can be taken to have approximately the same rental value.
- 206 Category 15.4 and 15.5 leases do have a broad level of homogeneity. The State is the lessor for each lease and the lessee in each case is Telstra, or one of only several carriers. The predominant type of facility installed on the leased land is broadly similar, namely radio towers in rural land and CMTS in urban land. The terms and conditions of the leases are the same and rent is payable annually at the same time. I accept Mr Brett's evidence that two major factors affecting the market rent for private telecommunication leases are the purpose for which the land is to be used and the location of the land. Mr Brett's methodology takes into account both factors at a broad level.
- 207 However, I consider that Mr Brett's methodology is too imprecise to give rise to an opinion that can be accepted. The division of land into only three sub-market areas is not adequate to reflect the diversity of areas and corresponding different market rents for communications leases in Queensland. It does not adequately take into account the nature of the facilities to be installed. For example, rents are generally higher where CTMS facilities are to be

installed. It fails to take into account the timing of lease negotiations. There is evidence that the introduction of competition amongst mobile telephone carriers in 1991 led to a period of anxiety amongst lessees and higher rents, which has abated since 2002/2003. It does not take into account whether the land is occupied or unoccupied as existing infrastructure can be used for CTMS facilities. It does not take into account other market factors such as access to roads and electricity, opportunity cost to the lessor and community perception as to adverse health risks.

- 208 Mr Brett acknowledges that he has not taken into account all the factors relevant to the rental valuation of category 15.4 and 15.5 land. I am not satisfied that his evidence is reliable in the absence of such factors being taken into account, or in the absence of firm evidence that these factors would not make a significant difference to his opinion as to whether the prescribed category 15.4 and 15.5 rents reasonably approximate the private market.
- 209 Mr Brett's method produces seemingly incongruous results. For example, his evidence is to the effect that the rental value of land leased by Telstra in the Brisbane City Council area for a radio tower where the underlying land value is \$540,000 is the same as for land leased in the Ipswich City Council area for a CMTS facility where the value of the land is \$41,500. A factor which demonstrates the likelihood of the proposition that category 15.4 and 15.5 rents reflect private market rents is the observation of Mr Hamilton that over 80% of Telstra's State leases have annual rents that exceed the Valuer-General's valuations of the land itself.
- 210 I broadly accept Mr Hamilton's criticisms of Mr Brett's methodology, with one qualification. I do not think it matters whether Mr Hamilton considers that Mr Brett's methodology can or cannot be regarded as a mass appraisal approach. If Mr Brett had gone further by using more sub-market areas and taking into account more variables, the methodology he used might well have been adequate to allow a single rental value for each sub-market area to be accepted. While such an exercise would have been time consuming and expensive, the State has conceded that it carries the onus of proof on the issue.
- 211 I am not satisfied that the methodology used by Mr Brett is sufficiently reliable to allow me to accept his opinion that the approximate annual market rent is \$10,360 for category 15.4 leases and \$20,000 for category 15.5 leases in the disputed areas.

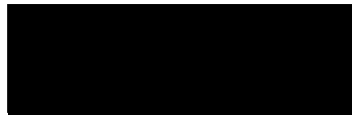
- 212 I find that the State has not proved that the rents prescribed for categories 15.4 and 15.5
reasonably approximate the market rents for leases over private land for communication
purposes in the disputed areas.

CONCLUSION

- 213 The findings I have made mean that Telstra's application must succeed and the State's cross-
claim must be dismissed.
- 214 The relief sought by Telstra includes various declarations and orders for the repayment of
rent overpaid by Telstra. I indicated in the course of the trial that I would provide my reasons
and then hear from the parties as to the precise form of relief that should be granted. I will
make orders requiring Telstra to provide draft orders to the State so that the parties can
attempt to agree upon a form of orders.

I certify that the preceding two
hundred and fourteen (214)
numbered paragraphs are a true copy
of the Reasons for Judgment herein
of the Honourable Justice Rangiah.

Associate:



Dated: 14 October 2016

ANNEXURE B

LEASE SCHEDULE

PRIVATE MARKET RENTAL, CO-USER FEE, AND TREATMENT OF INFRASTRUCTURE PROVIDERS EVIDENCE

Note: All leases struck post IPART Review of rental arrangements for communications towers on Crown land July 2013

Site	Attachment	Lease Registered	Council Area	IPART Category	Lessee	Start Date	Commencing Rent (Private Owner)	Net/Gross	Escalation	Area (sqm)	Evidence of Co-User Fee	Evidence of Penalty Against Infrastructure Owners	Additional Access Fee	IPART Rent (incl co-user fee)	# Co-Users	IPART Profit Rent/Penalty v Private Market
Annangrove	B1	AM90697U	Hills Council	High	NBN	15-Mar-17	\$15,000	Gross	2.5%	150	No	No	No	\$30,056		100%
Rouse Hill	B2	AM487324A	Hills Council	High	Optus	1-Nov-16	\$23,500	Gross	3%	60	No	No	No	\$45,084	1	92%
Dooralong	B3	AN296493P	Central Coast Council	High	Telstra	1-May-17	\$7,500	Gross	3%	100	No	No	No	\$30,056		301%
Catherine Fields	B4	Pending	Camden Council	High	Axicom	1-May-14	\$18,750	Gross	CPI	100	No	No	No	\$60,112	2	221%
Gumly Gumly	B5	AN130859B	Wagga Wagga	Medium	Optus	1-Dec-16	\$15,000	Gross	-	66.5	No	No	No	\$16,697		11%
Chinderah	B6	AM663822C	Tweed Heads	Medium	Optus	27-Jan-17	\$10,000	Gross	3%	60	No	No	No	\$16,697		67%
Bowral	B7	AN176658D	Wingecarribee	Medium	NBN	12-Jul-17	\$6,000	Gross	2.5%	80	No	No	No	\$16,697		178%
Tamworth	B8	AM884360W	Tamworth	Medium	Vodafone	30-Jan-17	\$12,000	Gross	3.0%	96	No	No	No	\$16,697		39%
Jindabyne North	B9	AJ911100P	Snowy Monaro	Low	NBN	15-May-15	\$6,500	Gross	2.5%	96	No	No	No	\$8,014		23%
Binjura (Cooma)	B10	AJ942070V	Snowy Monaro	Low	NBN	17-Aug-15	\$7,000	Gross	2.5%	96	No	No	No	\$8,014		14%
Nangudga	B11	AI698821H	Eurobodalla	Low	Axicom	19-May-14	\$5,500	Gross	2.5%	81.8	No	No	No	\$12,021	1	119%
Sandigot Sturt Highway	B12	AM808036	Narrandera	Low	Optus	1-Jan-17	\$7,000	Gross	2%	89	No	No	No	\$8,014		14%

Form: 07L
Release: 1309

LEASE

New South Wales
Real Property Act 1900



AM90697U

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only.

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

Part of the Land at Folio Identifier 2/510756 shown hatched on the Plan in ANNEXURE B

(B) LODGED BY

Document Collection Box 273L	Name, Address or DX, Telephone, and Customer Account Number if any InfoTrack Pty Ltd GPO Box 4029 Sydney NSW 2001 Ph: 02 8203 7600 LLPN: 124725J Reference (optional): 32494591	CODE L
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(C) LESSOR

The lessor leases to the lessee the property referred to above.

(D) Encumbrances (if applicable): Mortgage Registered Number AJ405774 to National Australia Bank Limited

(E) LESSEE

NBN Co Limited (ACN 136 533 741)

(F) TENANCY:

- (G)
1. **TERM:** 5 Years
 2. **COMMENCING DATE:** 15 March 2017
 3. **TERMINATING DATE:** 14 March 2022
 4. With an **OPTION TO RENEW** for a period of N/A set out in clause N/A of N/A.
 5. With an **OPTION TO PURCHASE** set out in clause N/A of N/A.
 6. Together with and reserving the **RIGHTS** set out in ANNEXURE A
 7. Incorporates the provisions or additional material set out in ANNEXURE(S) A to B hereto.
 8. Incorporates the provisions set out in **MEMORANDUM** filed [REDACTED] as / registered LEASE No. N/A
 9. The **RENT** is set out in Item 5 of ANNEXURE A.

DATE 18 / 11 / 2018
dd mm yyyy

(H) I certify that I am an eligible witness and that the lessor signed this dealing in my presence. [See note* below.]

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness: SEE EXECUTION PAGE 27

Signature of lessor:

Name of witness:

Address of witness:

Note: where applicable, the lessor must complete the statutory declaration below.

I certify that I am an eligible witness and that the lessee signed this dealing in my presence. [See note* below]

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness: SEE EXECUTION PAGE 26

Signature of lessee:

Name of witness:

Address of witness:

(I) **STATUTORY DECLARATION***

- I _____
solemnly and sincerely declare that—
1. The time for the exercise of option to renew / option to purchase in expired lease No. _____ has ended;
 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at _____ in the State of _____ on _____

in the presence of _____ of _____,

☐ Justice of the Peace (J.P. Number _____) ☐ Practising Solicitor

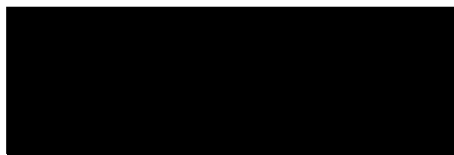
☐ Other qualified witness [specify] _____,

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID no.]

Signature of witness: _____ Signature of lessor: _____

* As the services of qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.



CD

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Annexure A

Information Table

Parties Notice Details

Name Carossel Pty Ltd (ACN 138 170 797) as trustee for the Carbone Property Trust

ABN [REDACTED]

Short form name Landlord

Notice details Address: [REDACTED]
[REDACTED]
Telephone: [REDACTED]
Facsimile:
Attention: [REDACTED]

Name NBN Co Limited

ACN 136 533 741

Short form name NBN Co

Notice details Address: Level 11, 100 Arthur Street, North Sydney,
New South Wales 2060
Facsimile: 02 9926 1901
Attention: Chief Legal Counsel

Items

Item 1 **Premises** (clause 1.1)

That part of the Land hatched on the plan in Annexure B being part of the property known as 167 Annangrove Road, Annangrove, New South Wales 2156 as described by Folio Identifier 2/510756.

Site name: Annangrove

Site number: NBN-2GOZ-2ROU-5101

Item 2 **Date of Commencement** (clause 1.1)

15 March 2017

Item 3 **Date of Expiration** (clause 1.1)

14 March 2022

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- Item 4 **Term** (clause 1.1)
5 Years
- Item 5 **Rent** (clause 1.1)
\$15,000.00 per annum payable from the First Payment Date.
- Item 6 **Nominated Account for payment of Rent** (clause 4.5)
As notified by the Landlord in writing to NBN Co from time to time.
- Item 7 **First Payment Date**
Date of Commencement, but not earlier than 4 weeks after the date of this Lease.
- Item 8 **Contact Person** (clause 6.2)
Contact person for all Rent and payment matters:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile:
NBN Co: NBN Co Accounts Payable
Telephone: 02 9927 4151
Address: 100 Arthur Street, North Sydney, New South Wales 2060
Email: accountspayable@nbnco.com.au
Contact person for non-legal matters relating to access and Equipment:
Landlord: Dominic Carbone
Telephone: 0414 468 778
Facsimile:
NBN Co: NBN Co Network Operations Support
Telephone: 1800 626 762 (option 5)
Contact person for all other non-legal matters relating to this Lease:
Landlord: Dominic Carbone
Telephone: 0414 468 778
Facsimile:
NBN Co: NBN Co Commercial Network Manager
Email: wirelesssservices@nbnco.com.au
Contact person for all legal matters relating to this Lease:
Landlord: Dominic Carbone
Telephone: 0414 468 778

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Facsimile:

NBN Co: Chief Legal Counsel

Facsimile: 02 9926 1901

Item 9 Special Conditions (clause 1.4)

1. Clause 4.4 is deleted and replaced with:

"4.4 GST

- (a) Unless stated to the contrary, all payments to be made by NBN Co under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by NBN Co to the Landlord under the Lease is consideration for a supply by the Landlord under the Lease on which the Landlord must pay GST, NBN Co must also pay the Landlord an additional amount equal to the GST payable (**GST Amount**) by the Landlord on that supply.
- (b) Subject to clause 4.4(d), NBN Co will issue recipient created tax invoices (RCTIs) for the taxable supplies made by the Landlord to NBN Co under this Lease. For the purpose of NBN Co issuing RCTIs the parties agree:
 - (i) NBN Co may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) The Landlord will not issue a tax invoice in respect of any supply it makes to NBN Co under this Lease; and
 - (iii) Each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs.
- (c) If a payment to a party under this Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (d) If NBN Co notifies the Landlord in writing that NBN Co will no longer issue RCTIs then:
 - (i) clause 4.4(b) will not apply from the date specified in the notification until NBN Co withdraws the notification by a further notice to the Landlord; and
 - (ii) during the period specified in clause 4.4(d)(i), the Landlord must issue a tax invoice to NBN Co for any

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taxable supply made by the Landlord to NBN Co under this Lease before the consideration payable for that supply is due and NBN Co need not pay the GST Amount for a particular taxable supply until such time as the Landlord has issued a tax invoice to NBN Co for that supply.

- (e) Notwithstanding any other provision of this clause 4.4, the Landlord acknowledges and warrants that at the time of entering into this Lease it is not registered, required to be registered, nor liable, for GST and will not make any claim against NBN Co in relation to GST arising under or in connection with this Lease.
- (f) In the event that the Landlord becomes registered for GST, the Landlord must notify NBN Co of this in writing and on and from the date NBN Co receives the notice, NBN Co will pay the relevant additional GST amounts in accordance with clause 4.4."

2. Clause 10.3 is deleted and replaced with:

"10.3 NBN Co's additional rights to terminate

NBN Co may also terminate this Lease by notice to the Landlord at any time by giving not less than 12 months notice expiring on any day."

3. Clause 13.8 is deleted and replaced with:

"13.8 Landlord as trustee

The Landlord enters into this Lease as trustee of the Carbone Property Trust (Trust). The Landlord warrants both in its personal capacity and as trustee of the Trust:

- (a) this Lease is for the benefit of the Trust;
- (b) it is the sole trustee of the Trust;
- (c) it has been validly appointed as trustee of the Trust and has not defaulted in the performance and observance of its obligations as trustee of the Trust;
- (d) it has the authority to enter into, or become the landlord under, this Lease in its capacity as trustee of the Trust;
- (e) it has the right to be fully indemnified out of the Trust assets for obligations incurred under this Lease and the Trust assets are sufficient to satisfy that right;
- (f) no action has been taken or proposed to terminate the Trust;
- (g) the Trust has been validly created, is not void or voidable, and is in existence;

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- (h) there are no reasonable grounds to suspect the Landlord or the Trust are unable to pay their debts as and when they become payable;
- (i) it has not committed any breach of the Trust or done anything which has prejudiced or limited its rights or indemnity;
- (j) it has not delegated any of its powers as trustee or exercised any power of appointment; and
- (k) it will not (without NBN Co's consent):
 - (i) retire, cease to act or be removed or replaced as trustee of the Trust;
 - (ii) appoint another trustee;
 - (iii) terminate the Trust;
 - (iv) change the Trust deed;
 - (v) restrict the trustee's right to be indemnified in clause 13.8(e);or
 - (vi) restrict the ability of the trustee to comply with its obligations under this Lease."

4. Clause 14.1 is deleted and replaced with:

"14.1 NBN Co to pay costs and disbursements

- (a) NBN Co must pay all registration fees in relation to this Lease. Subject to clause 14.1(b), each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation, completion and registration of the Lease.
- (b) NBN Co will reimburse the Landlord's reasonable legal costs, charges and expenses for the preparation, negotiation, execution and registration of this Lease (including any Consecutive Leases) up to an aggregate maximum of \$1,500.00 (excluding GST) which is payable within 21 days after that date on which NBN Co has received all of the following:
 - (i) supporting evidence of the costs incurred by the Landlord;
 - (ii) NBN Co's original copy of the registered Lease; and
 - (iii) the mortgagee's consent to the Lease (where applicable)."

General Conditions

1 Defined terms & interpretation

1.1 Defined terms

In this Lease:

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

Adjoining Land means any land owned by the Landlord which adjoins the Land.

APRA means Australian Prudential Regulation Authority.

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

Carrier has the meaning given to it in the Act.

Code means the *Telecommunications Code of Practice 1997*.

Consecutive Lease means a lease of the Premises between the Landlord and NBN Co other than this Lease, which is granted at the same time as this Lease in respect of periods either prior or subsequent to the Term.

Date of Commencement means the date stated in Item 2.

Date of Expiration means the date stated in Item 3.

Determination means the *Telecommunications (Low Impact Facilities) Determination 1997*.

Equipment means those items of plant and/or equipment brought onto the Land by NBN Co for the use permitted by this Lease.

First Payment Date means the date stated in Item 7.

General Conditions means the part of this Lease described as General Conditions.

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

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

Information Table means the part of this Lease described as Information Table.

Item means an item in the Information Table.

Jurisdiction means the state or territory of the Commonwealth of Australia in which the Land is situated.

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Land means the land described in the Certificate of Title (or title reference) referred to on the front page of the Lease.

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

Landlord's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by the Landlord.

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

NBN Co means the lessee described on the front page of the Lease and its successors and assigns and where the context permits, its employees, agents, invitees and contractors.

NBN Co's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by NBN Co.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Reputable Insurer means an insurer who is:

- (a) a reputable APRA authorised insurer(s); or
- (b) APRA exempt and maintains a Standard & Poor's rating of A minus or higher (or an equivalent rating agency rating).

Special Conditions means the special conditions in Item 9.

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

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

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

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- (d) an expression importing a natural person includes any company, partnership, joint venture, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit, information table or schedule is a reference to a part and clause of and a party, annexure, exhibit, information table and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (i) month means a calendar month;
- (j) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (k) "includes" in any form is not a word of limitation;
- (l) any parties, persons, facts, events or documents alternatively or collectively shall be construed as a reference to all of them and to each and any one or more of them; and
- (m) any organisations, associations, societies, groups or bodies shall in the event that any of them ceases to exist or is reconstituted renamed or replaced or that any of its powers or functions are transferred to any other entity body or group refer respectively to any such entity body or group established or constituted in lieu thereof or succeeding to similar power or functions.

1.3 Third parties

Any covenant (whether express or implied) by a party to this Lease not to do or omit any act or thing shall be deemed to extend to an obligation not to permit any third party to do or to omit the same.

1.4 Special Conditions

The parties acknowledge and agree that the Special Conditions take precedence over the General Conditions to the extent of any inconsistency between the Special Conditions and the General Conditions.

2 Implied covenants and powers

2.1 Not used

2.2 Exclusion of implied covenants

The obligations and powers implied in the Lease by sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) are expressly excluded.

2.3 Inclusion of implied covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease and which are applicable to NBN Co.

2.4 Contravention of Statute - severance

If any provision of the Lease or its application to any party or in any circumstances is or becomes void, voidable, unenforceable or invalid because of any Statute or otherwise, such provision must in any such case and to such extent be severed from the Lease, and the Lease must be read as though such provision did not form part of the Lease at that time.

3 Term of Lease and holding over

3.1 Term of the Lease

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

3.2 Yearly tenancy holding over

If NBN Co occupies the Premises after the Date of Expiration (other than pursuant to a Consecutive Lease or the grant of a further lease) NBN Co must do so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy. Either party may terminate the yearly tenancy by giving not less than 12 months' notice to the other party expiring on any day.

4 Payment

4.1 NBN Co's Covenant

NBN Co must pay the Rent to the Landlord during the Term.

4.2 Payment of Rent

- (a) Subject to clauses 4.2(b) and 4.2(c), the Rent will be paid annually in advance to the Landlord or to any other person the Landlord notifies to NBN Co. Any notification must be served at least 30 days prior to the date for payment of Rent.
- (b) The first Rent payment will be:
 - (i) for the part year commencing on the First Payment Date and ending on the day prior to the anniversary of the Date of Commencement following the First Payment Date; and

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- (ii) made within 30 days after the First Payment Date.
- (c) For the avoidance of doubt, no Rent will be payable in respect to the period commencing on the Date of Commencement and ending on the day prior to the First Payment Date.
- (d) The second and each subsequent Rent payment will be made on each anniversary of the Date of Commencement after the First Payment Date.
- (e) If an instalment of Rent is for a period of less than one year, the instalment for that period is apportioned on a daily rate for the relevant lease year.

4.3 Rent Reviews

The Rent will be increased by 2.5% on each anniversary of the Date of Commencement.

4.4 GST

- (a) Unless stated to the contrary, all payments to be made by NBN Co under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by NBN Co to the Landlord under the Lease is consideration for a supply by the Landlord under the Lease on which the Landlord must pay GST, NBN Co must also pay the Landlord an additional amount equal to the GST payable (**GST Amount**) by the Landlord on that supply.
- (b) Subject to clause 4.4(d), NBN Co will issue recipient created tax invoices (**RCTIs**) for the taxable supplies made by the Landlord to NBN Co under this Lease. For the purpose of NBN Co issuing RCTIs the parties agree:
 - (i) NBN Co may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) The Landlord will not issue a tax invoice in respect of any supply it makes to NBN Co under this Lease;
 - (iii) Each party acknowledges and warrants that at the time of entering into this Lease, it is registered for GST; and
 - (iv) Each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs.
- (c) If a payment to a party under this Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.

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- (d) If NBN Co notifies the Landlord in writing that NBN Co will no longer issue RCTIs then:
 - (i) clause 4.4(b) will not apply from the date specified in the notification until NBN Co withdraws the notification by a further notice to the Landlord; and
 - (ii) during the period specified in clause 4.4(d)(i), the Landlord must issue a tax invoice to NBN Co for any taxable supply made by the Landlord to NBN Co under this Lease before the consideration payable for that supply is due and NBN Co need not pay the GST Amount for a particular taxable supply until such time as the Landlord has issued a tax invoice to NBN Co for that supply.

4.5 EFT payments

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

4.6 Pro rata refund of Rent

In the event of termination of the Lease pursuant to clause 10.2 or 10.3 the Landlord must forthwith refund to NBN Co prepaid Rent on a pro rata basis.

4.7 Gross Rent

The Landlord acknowledges the Rent is a 'gross' rent and is inclusive of all rates, taxes (excluding GST), statutory and building outgoings.

5 Use

5.1 Permitted use

NBN Co will use the Premises for the purpose of constructing, maintaining and operating a telecommunications facility, network and service and such use includes any use allowed under the Act and may do all such things as may be necessary or convenient for this purpose. NBN Co may at any time during the Term install, remove, modify, vary, maintain, use and operate on the Premises such Equipment as is necessary for the use permitted by this Lease now and in the future.

5.2 Adjacent Land

- (a) The Landlord grants to NBN Co the right to use so much of the Land and Adjoining Land which is adjoining and adjacent to the Premises or any installation of NBN Co as is reasonably required during installation, erection, construction, dismantling, repair, replacement,

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variation, renewal and maintenance of the telecommunications facility, network and service. After using the Land or Adjoining Land for such use, NBN Co will restore the surface of any part of the Land or Adjoining Land as so used as near as practicably possible to its state prior to such use by NBN Co to the reasonable satisfaction of the Landlord.

- (b) The Landlord grants to NBN Co the right to undertake landscaping and/or plant or remove any vegetation on so much of the Land and Adjoining Land as is required by NBN Co to comply with any requirements, notices or orders of any Government Agency or as is otherwise reasonably required by NBN Co. NBN Co will be responsible for the maintenance and upkeep of any such landscaping or vegetation only to the extent required by the relevant Government Agency.

5.3 Requirements of Government Agencies

NBN Co must comply promptly with any applicable Statute in respect of NBN Co's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises. NBN Co is not liable for structural alterations to any of the Landlord's fixtures or facilities unless caused or contributed to by NBN Co's particular use or occupation of the Premises.

5.4 Cabling

- (a) For the purpose of the operation of NBN Co's telecommunications facility, network and service, the Landlord will permit NBN Co to:
 - (i) install, erect, construct, dismantle, maintain, repair, replace, vary, add and use above or below ground cabling to and from the Premises and any other installations of NBN Co and to connect to adjoining roads or services; and
 - (ii) where necessary to construct supports for that cabling, on the Land.
- (b) When exercising its rights under this clause, NBN Co must:
 - (i) not cause any lasting material damage to the Land or material interference with the Landlord; and
 - (ii) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by NBN Co to the reasonable satisfaction of the Landlord.

5.5 Non-contiguous Premises

In the event of parts of the Premises not being contiguous one with the other or the Premises being partly or wholly on the rooftop of a building on the Land NBN Co may run such above or below ground cabling, wiring, conduit, earthing straps, cable trays and support structures over the Land or within or upon the

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building on the Land on which the Premises are situated as are necessary for its safe, continuous and proper use of the Premises but in doing so NBN Co must not cause any material damage to the Land or material interference with the Landlord.

5.6 Consents

- (a) The Landlord hereby irrevocably consents to NBN Co making, at its cost, any application for consent or approval to any Government Agency to use or develop the Premises for the use referred to in clause 5.1 and consents to NBN Co exercising and procuring (at its cost) every right and appeal arising from the determination of any such application or the failure to determine the application.
- (b) The Landlord must sign all documentation and do all such things as NBN Co or any person nominated by NBN Co reasonably requires (at NBN Co's cost) to authorise or assist in obtaining consent or approval from any Government Agency to use or develop the Premises for the use referred to in clause 5.1.

6 Access to the Premises

6.1 Access

- (a) The Landlord consents to NBN Co and persons authorised by NBN Co without the need for prior approval and with or without materials, equipment, plant and other apparatus and vehicles entering the Land or Adjoining Land (including any access track referred to in clause 6.1(b)) for the purpose of using the Premises and installations of NBN Co under this Lease and exercising its rights under the Lease at all times of the day and night during the Term.
- (b) The Landlord consents to NBN Co:
 - (i) upgrading any existing access track over the Land and/or Adjoining Land to the Premises to a standard which is suitable for NBN Co's access to the Premises; or
 - (ii) constructing an all-weather access track over the Land and/or Adjoining Land to provide access to the Premises if there is no suitable existing access track to the Premises.
- (c) Despite any clause in this Lease, at the expiry (or earlier termination) of this Lease, NBN Co will not be required to make good or restore the surface of any access track which is upgraded or constructed by NBN Co under clause 6.1(b).

6.2 Contact person

- (a) The Landlord and NBN Co must each nominate a contact person to contact about non-legal matters relating to access and Equipment and other non-legal matters relating to this Lease. The relevant contact

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persons, as at the Date of Commencement, are stated in Item 8 of the Information Table.

- (b) The Landlord and NBN Co must each nominate a contact person to contact about legal matters relating to this Lease. The relevant contact persons, as at the Date of Commencement, are stated in Item 8 of the Information Table.
- (c) The contact persons in Item 8 of the Information Table may be changed by the relevant party at any time by notice in writing to the other.

7 Insurance

7.1 Obligation to insure

- (a) NBN Co must have in force and maintain with a Reputable Insurer for the Term a valid and enforceable public liability insurance policy to the value of at least \$20,000,000 for any one occurrence.
- (b) The Landlord must have in force and maintain with a Reputable Insurer for the Term a valid and enforceable public liability insurance policy to the value of at least \$10,000,000 for any one occurrence.
- (c) The Landlord must inform its public liability insurer of the Lease and do all things necessary to ensure that the insurance policy covers the Landlord with respect to the activities contemplated within the Lease.

7.2 Evidence of Insurance

On request (and on no more than two occasions per year):

- (a) by the Landlord, NBN Co will produce to the Landlord satisfactory evidence, including certificates of currency, of the insurance policy required under clause 7.1(a); and
- (b) by NBN Co, the Landlord will produce to NBN Co satisfactory evidence, including certificates of currency, of its insurance policy referred to in clause 7.1(b).

7.3 Global Policy

NBN Co may effect its insurance in clause 7.1 pursuant to an insurance policy which is not specific as to the location of risk.

8 Installation

8.1 Construction and alterations

- (a) NBN Co may at NBN Co's discretion and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law, do anything in accordance with the permitted use of the Premises as set

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out in this Lease, including, without limitation, to install, erect, construct, dismantle, repair, replace, renew, add, vary and maintain upon the Premises security fencing and any building or buildings as necessary now or in the future to shelter the Equipment and a free standing monopole, lattice tower, guyed mast, multi-sided antenna support structure or other antenna support structure of sufficient height now or in the future to meet NBN Co's telecommunications requirements and all necessary connecting appurtenances.

- (b) NBN Co shall be entitled to paint any installations referred to in clause 8.1(a) (including, without limitation, any monopole, lattice tower, fencing or buildings) with any colour as may be required by a Government Agency in connection with any planning consent.

8.2 NBN Co property

Despite the extent of any affixation, the Equipment and all other fixtures, fittings, plant and other items brought onto or erected on the Land by or on behalf of NBN Co, at all times remains the absolute property of NBN Co.

9 Electricity supply

9.1 Electricity connection

The Landlord must, at NBN Co's cost, permit NBN Co to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of NBN Co's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter, installed by NBN Co at its own cost, so that NBN Co is directly accountable for payment of electricity consumed by it on the Premises.

9.2 Easement for electricity purposes

- (a) If, pursuant to clause 9.1, NBN Co is required to connect to an electricity supply on or over the Land or on or over Adjoining Land, the Landlord must grant an easement for electricity purposes across that part of the Land or the Adjoining Land to enable NBN Co to connect the Premises to that electricity supply on terms as may be required by the electricity supplier (**Easement**). NBN Co will be responsible for preparing the Easement documentation and must pay the relevant land titles office fees for registration of the Easement, or reimburse the Landlord for such registration fees.
- (b) In anticipation of the grant of Easement, the Landlord hereby consents to NBN Co entering, or permitting the relevant electricity supplier to enter, the Land or the Adjoining Land from the Date of Commencement to construct electricity infrastructure and associated structures required for the purpose of the proposed electricity supply.

10 Termination

10.1 Termination by the Landlord

If:

- (a) NBN Co commits a material breach of any of its obligations including payment of Rent, the Landlord may serve notice on NBN Co requiring remedy of the breach within a reasonable time having regard to the nature of the breach specified in the notice (**Trigger Notice**) such period to be not less than 21 days; and
- (b) NBN Co does not remedy the breach within the time specified in the Trigger Notice, the Landlord may serve notice on NBN Co requiring remedy of the breach within a further reasonable time having regard to the nature of the breach such period to be not less than 60 days (**Default Notice**); and
- (c) NBN Co does not remedy the breach within the period specified in the Default Notice,

the Landlord may terminate this Lease by serving notice to NBN Co at any time before the breach is remedied.

10.2 Termination by NBN Co

In addition to any rights NBN Co may have to terminate this Lease for breach of the Landlord's Covenants:

- (a) if the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of NBN Co or inaccessible by any means of access; or
- (b) if any application for a required consent or permit for the installation and use of the Premises as part of a telecommunications facility, network or service is rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (c) any application to a Government Agency for a required consent, permit or licence for the installation and use of the Premises as part of a telecommunications facility, network or service is granted to NBN Co with conditions unacceptable to it in its absolute and unfettered discretion or is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (d) if the Premises are rendered unfit for NBN Co's use described in clause 5.1 by reason of the emergence of physical, radio or other interference; or
- (e) if the Premises can no longer be used for the use described in clause 5.1, or the Premises are no longer required by NBN Co,

then NBN Co may terminate the Lease immediately by notice to the Landlord.

10.3 NBN Co's additional rights to terminate

NBN Co may also terminate this Lease by notice to the Landlord:

- (a) at any time before it substantially commences construction work to install the Equipment on the Premises (excluding placement of survey pegs or delivery of materials and the Equipment); or
- (b) at any time by giving not less than 6 months notice expiring on any day.

10.4 Effect on rights or liabilities

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

10.5 NBN Co to yield up

NBN Co must, by no later than 6 months after the Date of Expiration (unless there is in place after this Lease a Consecutive Lease or further lease between the Landlord and NBN Co, and in any event subject to clause 14.2), earlier termination of the Lease or such other date as the Landlord and NBN Co agree in writing, yield up the Premises in good repair and clean condition fair wear and tear excepted having regard to their condition at the Date of Commencement of the Lease.

10.6 Removal of NBN Co's fixtures and chattels

NBN Co must, by no later than 6 months after the Date of Expiration (unless there is in place after this Lease a Consecutive Lease or further lease between the Landlord and NBN Co, and in any event subject to clause 14.2), earlier termination of the Lease or such other date as the Landlord and NBN Co agree in writing, remove from the Premises all above ground cabling and fixtures, fittings, plant, machinery, and other items erected or brought by it onto the Premises or the Land.

10.7 Rent abatement

- (a) If the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of NBN Co or inaccessible by any means of access, then except to the extent that such damage or destruction is caused by the wrongful or negligent act or omission of NBN Co, the Rent will abate in proportion to the extent to which NBN Co is inhibited from carrying on the use permitted by this Lease from the date upon which the destruction or damage occurs until the earlier of the date upon which it is repaired and the date of termination of the Lease pursuant to clause 10.2(a).
- (b) If there is a dispute between the parties as to the proportion of Rent to be abated pursuant to clause 10.7(a) which is not resolved within

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20 days after notice by one party to the other of the nature of the dispute then:

- (i) the dispute may be referred by either party for determination by an expert who is an appropriate practising professional appointed at the request of either party (**Expert**), by:
 - (a) the president of the professional body most appropriate to determine the dispute or, if the parties are unable to agree on the appropriate body, the president for the time being of the Law Society of the Jurisdiction; or
 - (b) if there is no such body in existence at the time of the request, the president for the time being of an equivalent body;
- (ii) each party may make a submission either orally or in writing to the Expert within 20 days after that appointment;
- (iii) in making a determination the Expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) consider any submission made to it by a party; and
 - (c) provide the parties with a written statement of reasons for the determination;
- (iv) in the absence of manifest error the determination of the Expert is conclusive and binding on the parties;
- (v) the costs of the Expert will be shared equally between the parties unless otherwise determined by the Expert; and
- (vi) if the Expert fails to deliver a determination within 20 days after the last day on which the parties are entitled to make submissions, either party may require the appointment of a further Expert under clause 10.7(b)(i) to determine the dispute.

10.8 Termination of consecutive leases

This Lease will terminate automatically if there exists any Consecutive Lease the commencing date of which precedes the Date of Commencement and:

- (a) NBN Co gives notice to the Landlord not later than the date which is 3 months prior to the Date of Commencement that it no longer requires the Premises; or
- (b) that Consecutive Lease is terminated for any reason.

11 Notices

11.1 Method of service

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

11.2 Time of service

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

11.3 Change of address

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

12 Assignment and subletting

12.1 NBN Co not to assign

NBN Co must not assign the Lease except under clause 12.2 or with the prior written consent of the Landlord under clause 12.3.

12.2 Assignment to a Related Body Corporate or a Carrier

NBN Co may from time to time assign the Lease to a Related Body Corporate of NBN Co or to a Carrier or to the holder of a Nominated Carrier Declaration (as those terms are defined in the Act) or to a party in conjunction with the sale of the whole or part of NBN Co's telecommunications network or to a Government Agency.

12.3 Assignment

Subject to clause 12.2 NBN Co may assign the Lease with the prior written consent of the Landlord, such consent not to be unreasonably withheld.

12.4 Release following assignment

If this Lease is assigned, NBN Co will cease to be liable for any NBN Co's Covenants which arise, or are liable to be performed, on or after the date of assignment. However, NBN Co is not released in respect of breaches of NBN Co's Covenants which arose before the date of assignment.

12.5 Subletting

NBN Co may sublet, licence, part with or share its right to possession of the Premises without requiring the consent of the Landlord.

13 Landlord's covenants

13.1 Quiet enjoyment

The Landlord covenants that NBN Co may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person rightfully claiming through the Landlord. The Landlord must not do anything which derogates from its grant of the Premises to NBN Co under this Lease.

13.2 Restriction on Landlord's use of the Land

The Landlord covenants that the Landlord will not itself nor will it permit any third party to do anything on the Land which is likely to cause physical, radio or other interference which obstructs, interrupts or impedes the use or operation of NBN Co's telecommunications facility, network or service. If NBN Co advises the Landlord of any breach by the Landlord of its covenant the Landlord will, to the extent that it is within its power to do so, use all reasonable endeavours at its expense to forthwith remedy such breach.

13.3 Landlord's covenant

The Landlord covenants that the Landlord will not itself nor will it permit any third party to, store on, dispose of on or transport to or over the Land any hazardous substance which is likely to cause interference with NBN Co's use of the Premises. If NBN Co advises the Landlord of any breach by the Landlord of its covenant the Landlord will, to the extent that it is within its power to do so, use all reasonable endeavours at its expense to forthwith remedy such breach.

13.4 Sale or dealings with the Land by the Landlord

The Landlord must not sell, transfer, subdivide or otherwise deal with its interests in the Land (so far as it relates to the Premises and any areas used by NBN Co for access to or use of the Premises) unless it first procures that the transferee or other relevant person provides a deed poll in favour of NBN Co, in a form required by NBN Co, under which that person agrees to comply with all of the Landlord's Covenants as if that person were the Landlord party originally named in this Lease.

13.5 Consent of Mortgagee or Chargee

If the Land is subject to any mortgage or charge, the Landlord must, at its cost, obtain the mortgagee or chargee's consent to this Lease in a form which is reasonably acceptable to NBN Co and which does not impose additional conditions on NBN Co.

13.6 Registration

The Landlord must attend to registration and do all things reasonably necessary to enable the registration of the Lease at the relevant Land Titles Office in the Jurisdiction.

13.7 Contamination

- (a) The Landlord warrants that, at the Date of Commencement, the Land does not contain substances hazardous to health or safety.
- (b) If any cleanup of the Land is required by Statute or because substances are present on the Land which are hazardous to health or safety, and is not caused by the activities of NBN Co on the Land, then the Landlord must, upon written request from NBN Co, at the Landlord's cost, carry out such cleanup as may be required to comply with the Statute or deal with the hazard to health or safety.

14 Miscellaneous

14.1 NBN Co to pay costs and disbursements

NBN Co must pay all registration fees in relation to this Lease. Each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation, completion and registration of the Lease.

14.2 Without prejudice – Telecommunications Act

- (a) This Lease is without prejudice to, and nothing in this Lease affects, restricts, limits or derogates from any right, power and immunity of NBN Co under or by virtue of any Statute including, without limitation, NBN Co's rights under Schedule 3 of the Act.
- (b) The parties acknowledge that, in relation to the Premises, the installation of any Equipment deemed to be low impact pursuant to the Determination, or the maintenance of any of the Equipment on the Land, by or for NBN Co is undertaken in exercise of the rights of NBN Co pursuant to Divisions 2, 3 and/or 4 (as the case may be) of Schedule 3 to the Act.
- (c) To the extent that an activity performed by NBN Co in connection with the Premises or anything in, over or under the Premises, is an activity that NBN Co is authorised to do under Schedule 3 of the Act, the Landlord waives its right to be given a notice under clauses 17 and 18 of Schedule 3 of the Act, and also waives any rights that it has to object to the activities that, but for this clause, would have been the subject of a notice under clauses 17 and 18 of Schedule 3 of the Act.
- (d) The Landlord agrees that, in light of the terms of this Lease, it will not make any claim against NBN Co in relation to clause 42 of Schedule 3 to the Act.
- (e) The operation of this clause and any waiver given under this clause will survive the termination or expiry of this Lease. Any rights obtained by NBN Co under Schedule 3 of the Act will continue in accordance with the Act, notwithstanding the termination or expiry of this Lease.

14.3 Governing law

This Lease is governed by the laws of the Jurisdiction and the Commonwealth of Australia and the Landlord and NBN Co submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction.

14.4 Entire Agreement

This Lease contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

14.5 No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Lease will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

14.6 No Merger

The rights and obligations of the parties will not merge on completion of any transaction under this Lease.

14.7 Counterparts

If this Lease consists of signed counterparts, each is an original and all of the counterparts together constitute the same document.

14.8 Confidentiality

- (a) The parties each agree that the terms of this Lease are confidential. Except to the extent necessary to comply with its terms, a party must not disclose this Lease or the contents of this Lease to any third party without the prior written consent of each other party.
- (b) It is not a breach of clause 14.8(a) for a party to disclose this Lease or the contents of this Lease if that disclosure:
 - (i) is required by law or by any Government Agency or regulatory body (including any relevant stock exchange); or
 - (ii) is of information which is publicly available through no fault of the party making the disclosure; or
 - (iii) is necessary in order to obtain consent to this Lease from a third party (in connection with registration of this Lease or otherwise), provided the recipient is under an obligation to keep the information disclosed confidential;
 - (iv) is to the party's professional advisers, bankers, financial advisers and financiers, provided the recipient is under an obligation to keep the information disclosed confidential; or
 - (v) is to any of its employees, agents and contractors to whom it is necessary to disclose the information, provided the recipient is

NSW Base Lease Document
Version 4

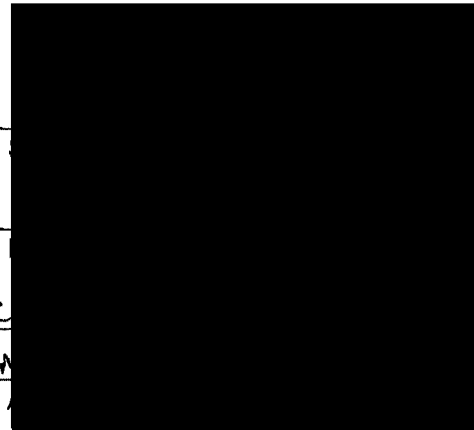
under an obligation to keep the information disclosed
confidential.

NSW Base Lease Document
Version 4

EXECUTED as a Deed

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4689 No: 895 (and I declare that I have no notice of revocation of the said power of attorney)



Mark Reynolds
General Manager
Network Technology Procurement

Position of Attorney

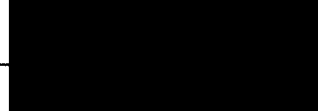
I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4689 No: 895 (and I declare that I have no notice of revocation of the said power of attorney)



Margaret Gotsopoulos
Name of Witness **Paralegal**
Level 11, 100 Arthur Street
North Sydney NSW 2060

Address of Witness



Gordon Spence
Name of Attorney **Regional Manager**
Infrastructure Services

Position of Attorney

NSW Base Lease Document
Version 4

EXECUTED by Carrossel Pty Ltd (ACN 138 170 797) in accordance with s127(1) of the
Corp

Sign

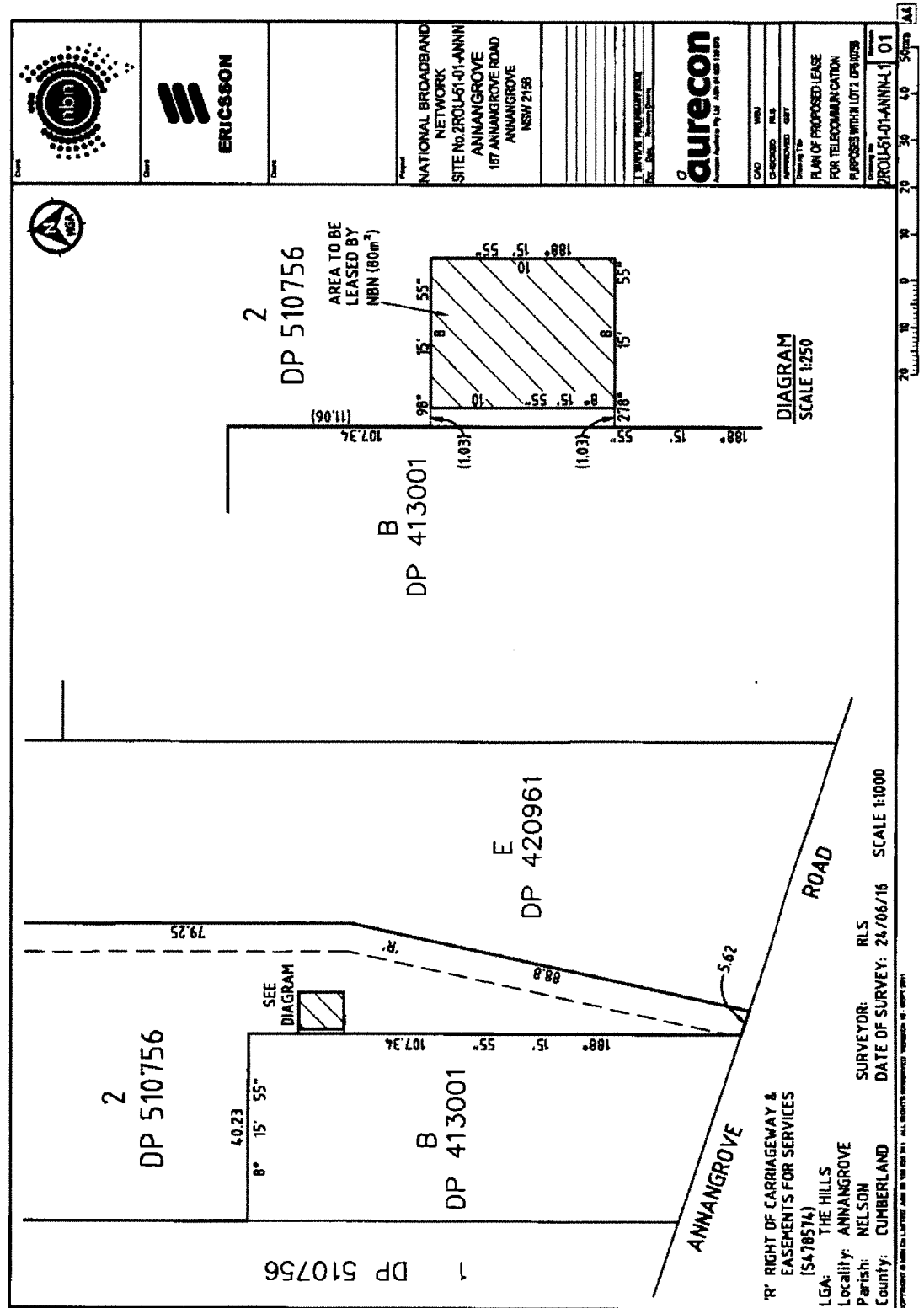
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Annexure B

Plan

NSW Base Lease Document
Version 4



Film with:AM90697



National Australia Bank Limited
ABN 12 004 044 937

CONSENT TO LEASE

Annexure to Lease between:

[REDACTED]

[REDACTED]

Part of the Land at Folio Identifier 2/510756 shown hatched on the Plan in ANNEXURE B, being part of the property known as [REDACTED]

Sequential Lease: 1 of 4 (2017 - 2022)

Lease dated:

[REDACTED]

[REDACTED]

SIGNED SEALED AND DELIVERED for and on)
behalf of NATIONAL AUSTRALIA BANK LIMITED)
ABN 12 004 044 937 by its Attorney who holds the)
position of Level 3 Attorney under Power of)
Attorney Registered No. 39 Book 4512 in the)
presence of:)

[REDACTED]

STUART MCMORRAT
ASSOCIATE

Print Name

[REDACTED]

Attorney Signature
SUZY GRANT
SENIOR BUSINESS
BANKING MANAGER

Print Name of Attorney

Form: 07L
Licence: 03-09-102
Licensee: Minter Ellison

LEASE
New South Wales
Real Property Act 1900



AM487324A

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

19/6

(A) TORRENS TITLE

Property leased
Part Lot 17 in DP 838563 -
The area hatched in black on the plan forming Annexure B and more particularly described in Item 1

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number, if any	CODE
599D	MINTER ELLISON 1 Farrer Place, Sydney Telephone (02) 9921 8888 Reference: JPA:1142608 RS	L

(C) LESSOR

[Redacted]

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable): AK358991

(E) LESSEE

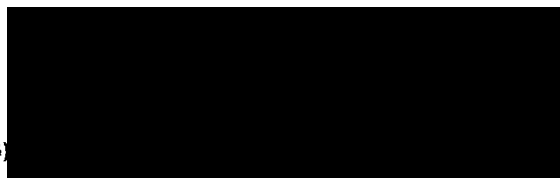
OPTUS MOBILE PTY LIMITED ACN 054 365 696

(F)

TENANCY:

(G)

- TERM:** Five years
- COMMENCING DATE:** 1 November 2016
- TERMINATING DATE:** 31 October 2021
- With an **OPTION TO RENEW** for a period of N.A. set out in clause N.A. of N.A.
- With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
- Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.
- Incorporates the provisions or additional material set out in **ANNEXURE(S)**
- Incorporates the provisions set out in N.A. with the Land and Property Management Authority as No(s) N.A.
- The **RENT** is set out in item No. 5 of Information table



DATE:

21 February 2017

- (H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: CAPITAL HOLDINGS (ROUSE HILL) PTY LTD

Authority:  (th)

Signature of

Name of au

Director

Office held

Signature of

Name of au

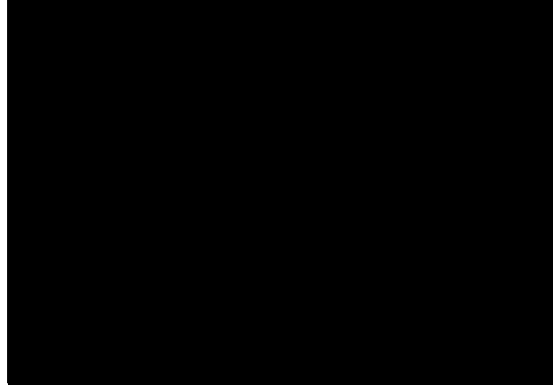
Director

Office held

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.



Certified correct for the purposes of the Real Property Act 1900 by the lessee's attorney who



***s17 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.*

Ref: JPA:LJK 1142608

Optus Mobile Lease 1

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Page 2 of 18

Note: where applicable, the lessor must complete the statutory declaration below.

(I) **STATUTORY DECLARATION ***

I

solemnly and sincerely declare that-

1. The time for the exercise of option to renew in expired lease No _____ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900

Made and subscribed at _____ in the State of New South Wales on _____
in the presence of _____ of _____

☐ Justice of the peace ☐ Practising Solicitor ☐ Other qualified witness (specify)

****** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person *OR* I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months *OR* I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was.....

Signature of witness:

Signature of lessor:

* As the services of a qualified witness cannot be provided at lodgement, the declaration should be signed and witnessed prior to lodgement. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

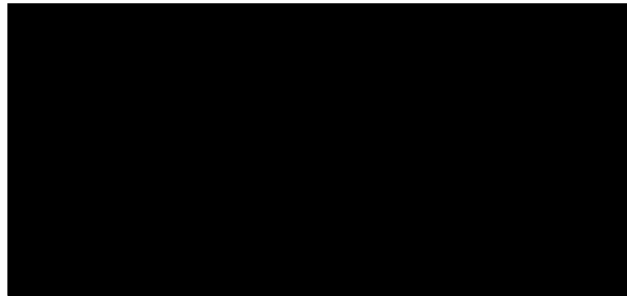
****s17 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.**
MinterEllison | Ref: 1142608 Optus Mobile Lease 1

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

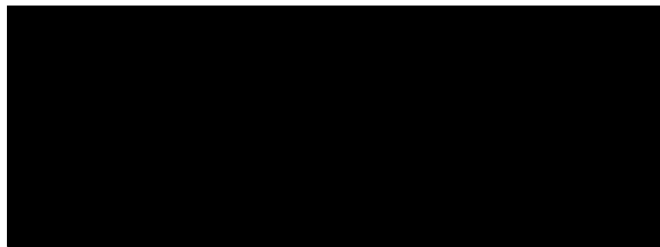
Annexure A - Information table

Parties

Name
ABN
Short form name
Notice details



Name
Short form name
Notice details



Site code S2647

Items

- | | |
|---------------|---|
| Item 1 | Premises (clause 1.1)

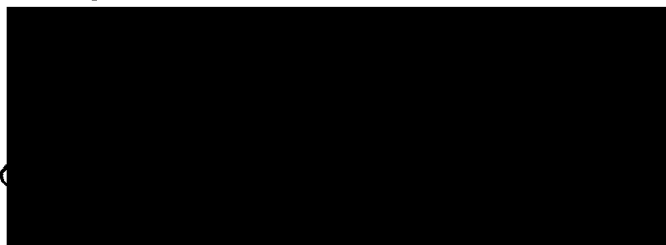
That part of the Land hatched in black on the plan in Annexure B being part of the property known as 346-348 Annangrove Road, Rouse Hill |
| Item 2 | Commencement Date (clause 1.1)

1 November 2016 |
| Item 3 | Expiry Date (clause 1.1)

31 October 2021 |
| Item 4 | Term (clause 1.1)

Five years |
| Item 5 | Rent (clause 1.1)

\$23,500 (plus GST, if any) during the first year of the Term, and increased by 3% on each anniversary of the Commencement Date throughout the Term |



Item 6

Nominated Account (clause 4.3)

Bank: National Australia Bank Limited
Branch: [REDACTED]
Account Name: Capital Holdings
BSB No: [REDACTED]
Account No [REDACTED]

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In the Lease:

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

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

Carrier means a carrier as defined in the Act.

Commencement Date means the date stated in Item 2.

Expiry Date means the date stated in Item 3.

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

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

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

Item means an item appearing in the Information table.

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

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

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

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

Month means calendar month.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

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

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

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

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

1.2 Interpretation

In the Lease, unless the context otherwise requires:

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

2. Implied covenants and powers

2.1 Exclusion of implied covenants

The obligations and powers implied in the Lease by sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) are expressly excluded.

2.2 Inclusion of implied covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease.

2.3 Contravention of Statute - severance

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

3. Term of Lease and holding over

3.1 Term of the Lease

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

3.2 Yearly tenancy - holding over

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

4. Payment

4.1 Lessee's Covenant

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

4.2 Payment of Rent

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

4.3 EFT payments

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

4.4 Rates, taxes and outgoings

The parties acknowledge and agree that:

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

4.5 Definitions

In this clause 4.5 and clauses 4.6 to 4.8:

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

4.6 ABN

- (a) The Lessor warrants that the Lessor:
 - (i) has an ABN; or

- (ii) does not have an ABN, on the basis it is not entitled to have one under the *A New Tax System (Australian Business Number) Act 1999*; and
 - (iii) if it appoints a third party to manage the leasing of the Premises on its behalf and the third party's ABN is quoted in any tax invoice, invoice or other document relating to the Lease, the third party does so as agent for the Lessor in accordance with Australian Taxation Office's public ruling GSTR 2000/37: agency relationships and the application of the law.
- (b) If the Lessor does not have an ABN or the Lessor's ABN is cancelled, the Lessor must immediately notify the Lessee and unless the Lessor provides evidence that the Lessor is not entitled to have an ABN under the *A New Tax System (Australian Business Number) Act 1999*, the Lessor acknowledges that the Lessee will be required to deduct from each payment to the Lessor, PAYG withholding tax pursuant to section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*.
- (c) If the Lessor does not comply with its obligations or breaches any warranty under this clause 4.6, the Lessor indemnifies the Lessee for any tax, charge, fine, penalty or other impost which the Lessee incurs or becomes liable to pay as a result of the Lessor's default or breach of warranty.

4.7 Lessor registered for GST

The following provisions apply in relation to GST:

- (a) Unless stated to the contrary, all payments to be made by the Lessee under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by the Lessee to the Lessor under the Lease is consideration for a supply by the Lessor under the Lease on which the Lessor must pay GST, the Lessee must also pay the Lessor an additional amount equal to the GST payable by the Lessor on that supply.
- (b) The Lessor must issue a tax invoice to the Lessee for any excluded taxable supply made by the Lessor to the Lessee under the Lease before the consideration payable for that supply is due and the Lessee need not pay for a particular excluded taxable supply until such time as the Lessor has issued a tax invoice to the Lessee for that supply.
- (c) The parties agree that the Lessee will issue RCTIs for the taxable supplies made by the Lessor to the Lessee under the Lease except for any supplies that the parties agree in writing are excluded taxable supplies. As at the date of the Lease the only agreed excluded taxable supplies are those supplies for which the Lessor has already issued a tax invoice to the Lessee. For the purpose of the Lessee issuing RCTIs the parties agree:
- (i) the Lessee may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) the Lessor will not issue a tax invoice in respect of any supply it makes to the Lessee under the Lease other than an excluded taxable supply;
 - (iii) each party acknowledges and warrants that at the time of entering into the Lease, it is registered for GST; and
 - (iv) each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs. If the Lessor breaches its obligations under this clause 4.7(c)(iv) and the Australian Taxation Office determines the RCTI is not validly issued and requires the Lessee to repay any input tax credit, the Lessor:

- (A) must immediately refund the overclaimed input tax credit amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credit.
- (d) If a payment to a party under the Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (e) If the Lessee notifies the Lessor in writing that the Lessee will no longer issue RCTIs then clause 4.7(c) will not apply from the date specified in the notification until the Lessee withdraws the notification by a further written notice to the Lessor. While clause 4.7(c) does not apply the parties agree that all taxable supplies made by the Lessor to the Lessee under the Lease are excluded taxable supplies to which clause 4.7(b) applies.

4.8 Lessor not registered for GST

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

5. Use of Premises

5.1 Permitted use

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

5.2 Adjoining Land

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

- (c) After temporarily using the Land adjoining and adjacent to the Premises or any installation of the Lessee, the Lessee will restore the surface of the Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor.
- (d) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.2.

5.3 Requirements of Government Agencies

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

5.4 Cabling

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

5.5 Consents

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

6. Access to the Premises

- (a) The Lessor consents to the Lessee and persons authorised by the Lessee without the need for prior notice and with or without materials, plant and other apparatus and vehicles entering the Land for the purpose of using the Premises and exercising its rights under the Lease at all times of the day and night during the Term.
- (b) In exercising its rights under clause 6(a), the Lessee must not cause any:
 - (i) material damage to the Land or any structures on the Land; or

- (ii) unnecessary or unreasonable interference with the Lessor or any other occupier of the Land.
- (c) The Lessor agrees that where the Lessee installs, upgrades or maintains at its cost any access track or electricity connection to the Premises then:
 - (i) any other person (except the Lessor) who wishes to utilise the Lessee's track or connection must contribute to the cost of installation, upgrading and maintenance as apportioned by the Lessee; and
 - (ii) the Lessor must not grant or allow to be granted to any third party an interest or a right to use the Lessee's track or connection until that party first reaches an agreement with the Lessee as to the terms and amount of the contribution.

7. Insurance, indemnities and release

7.1 Obligation to insure

The Lessee will insure against any loss or damage which is commonly covered by public risk or liability insurance in respect of the Premises.

7.2 Lessee's assumption of responsibilities

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

7.3 Negligence or default of Lessor

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

8. Installation and maintenance

8.1 Repair and maintenance

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

8.2 Construction and alterations

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

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

9. Electricity supply

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

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

10. Termination

10.1 Events of termination

If:

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

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

10.2 Effect on rights or liabilities

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

10.3 Lessee to yield up

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

10.4 Removal of Lessee's fixtures and chattels

The Lessee must:

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

remove (subject to clause 14.2) from the Premises all above ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises. The Lessee must pay a monthly licence fee equal to one-twelfth of the annual rate of Rent payable immediately prior to the Expiry Date and pay for electricity consumed by it on the Premises during the period that any ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises remain on the Premises.

10.5 Termination of holding over

Either the Lessor or the Lessee may terminate the yearly tenancy under clause 3.2 by giving the other six months' prior written notice.

10.6 Termination of prior leases

If any lease in favour of the Lessee whether registered on the title to the Land or not in relation to a period prior to the Term is validly terminated for any reason (other than by effluxion of time), the Lease, without the necessity for any further action on the part of the Lessor or the Lessee, will be automatically terminated.

10.7 Additional Right of Termination

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

10.8 Refund of Rent on termination

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

11. Notices

11.1 Method of service

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

11.2 Time of service

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

11.3 Change of address

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

12. Assignment and subletting

12.1 Lessee not to assign or sublet

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

12.2 Assignment or sublease to a Related Body Corporate

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

12.3 Assignment or subletting

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

13. Lessor's covenants

13.1 Quiet enjoyment

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

13.2 Restriction on Lessor's use of the Land

The Lessor must not itself knowingly, nor will it knowingly permit any third party to do anything on the Land which is likely to cause physical or radio interference which obstructs, interrupts or impedes the use or operation of the Lessee's telecommunications network and telecommunications service and in the event of the Lessee notifying the Lessor of any breach of this clause, the Lessor must remove such interference. This clause 13.2 does not apply to any third party occupying the Land or part thereof under a lease or licence which commenced before the Lessee's first date of occupation.

13.3 Lessor's covenant

The Lessor covenants that the Lessor will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on, or transport to or over the Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises and in the event of the Lessee notifying the Lessor of any breach by the Lessor of this clause the Lessor must remove such hazardous substance. This clause 13.3 does not apply to any third party occupying the Land or part thereof under a lease or licence which commenced before the Lessee's first date of occupation.

13.4 No concurrent or superior lease or other dealing

The Lessor must not

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

without the Lessee's prior written consent, such consent not to be unreasonably withheld or delayed.

14. Miscellaneous

14.1 Lessee to pay costs and disbursements

The Lessee must:

- (a) pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) on the Lease;
- (b) pay the Lessor's reasonable mortgagee's consent fees for consenting to the Lease (and any subsequent lease completed at the same time as the Lease); and
- (c) following registration of the Lease, pay the Lessor's reasonable legal costs of preparation and completion of the Lease to a maximum of \$2,500 plus GST for the Lease (and any subsequent lease completed at the same time as the Lease).

14.2 Without prejudice

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

14.3 Governing law

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

14.4 Application for subdivision

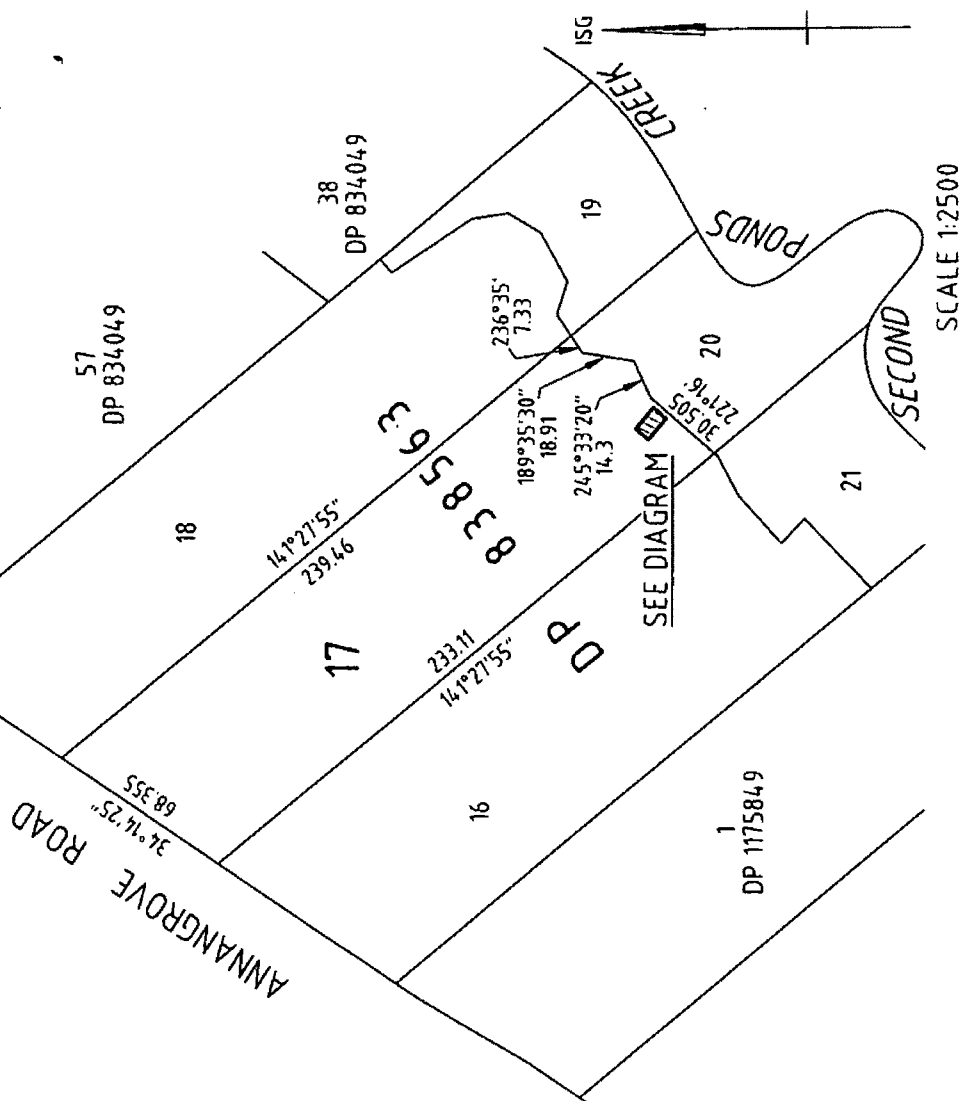
The Lessee acknowledges that the Lessor may apply for approval of proposals for the subdivision of the whole of the Land of which the Premises forms part. The Lessor will provide the Lessee with copies of the proposed plan of subdivision and associated documentation. The Lessee will promptly sign and return to the Lessor any consents or other documents necessary to enable the Lessor to carry out the application for subdivision provided the subdivision does not materially impact the Lessee's use or rights of access.

Annexure B

Plan referred to in Item 1

Annexure to Lease of premises known as 346-348
Annangrove Road, Rouse Hill

L.G.A.: THE HILLS
Locality: ROUSE HILL
Parish: NELSON
County: CUMBERLAND



SCALE 1:2500

ALL DIMENSIONS IN METRES

SITE S2847
ANNANGROVE WEST
348 ANNANGROVE ROAD
LEASE PLAN

DWG
NO.


SHT NO.	DESCRIPTION	DATE	TIME	BY
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DIAGRAM
SCALE 1:



 SURRELINE GEOMATICS SPATIAL SOLUTIONS 35 GEOFFREY STREET CONSTITUTION HILL NSW 2145 TEL (02) 9896 8025	CT: T7/B38563 Owner: CAPITAL HOLDINGS (ROUSE HILL) PTY LTD Address: 346-348 ANNANGROVE ROAD ROUSE HILL NSW 2155	ORDER	DRAWN	CHKD	AMENDMENT	EXAM	APPD	DATE	ISS
	NOTE: Covenants or Restriction to user have not been investigated for the purpose of this plan	NA	KM	CW	Original	GM	PS	27/8/16	1
SVY I CW/KM	REF 16298								



FILM WITH

AM 487324 Consent to Lease

National Australia Bank Limited
ABN 12 004 044 937

Annexure to Lease 1 of 4

FROM [REDACTED]
TO [REDACTED]
DATE [REDACTED]
FOLIO IDENTIFIER [REDACTED]

National Australia Bank Limited ABN 12 004 044 937 as Mortgagee under **Mortgage Number AK358991** hereby consents to the within Lease subject to and without in any way limiting abridging affecting or prejudicing the rights powers and remedies of the Mortgagee under the said Mortgage(s) (or any of them) which rights powers and remedies shall remain in full force and effect as if this consent had not been given Save and Except that so long as the covenants conditions and provisions of the within Lease are duly observed and performed the Mortgagee will in the event of the exercise of the power of sale or other power or remedy of the Mortgagee on default under the said Mortgage(s) (or any of them) exercise the same subject to the then subsisting rights of the Lessee(s) under the within Lease And this limited consent is also given on the express condition that the consent of the Mortgagee is procured in all cases where the consent of the Lessor(s) is necessary under the within Lease which consent will not be unreasonably withheld where the consent of the Lessor(s) is not to be unreasonably withheld pursuant to the Lease and the Mortgagee shall not be obliged to perform any covenant or agreement by the Lessor(s) contained in the within Lease except where the Mortgagee exercises its rights under the said Mortgage to the exclusion of the Lessor and that all rights powers and remedies of the Lessor(s) under the within Lease shall absolutely vest in and be exercisable and enforceable by the Mortgagee immediately upon the Mortgagee giving notice to the Lessee(s) of demand to enter into receipt of the rents and profits of the leased premises.

Signed at _____ this [REDACTED]

**Level 4, 14 Childers Street
Canberra ACT 2601**

(Day)

(Month)

(Year - cyy)

SIGNED SEALED AND DELIVERED for and)
on behalf of **NATIONAL AUSTRALIA BANK**)
LIMITED ABN 12 004 044 937 by its)
Attorney who holds the position of)
Level 3 Attorney under)
Power of Attorney Registered No. 39 Book)
4512 in the presence of:)

[REDACTED]
Print Name

[REDACTED]
Print Name of Attorney

B3



Form: 07L
 Licence: 01-05-028
 Licensee:

LEASE

AN296493P

New South Wales
 Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any

STAMP
 DUTY

Office of State Revenue use only

(A) TORRENS
 TITLE

Property leased: if appropriate, specify the part or premises

FOLIO IDENTIFIER 14/809638, PART BEING THE AREA HATCHED ON THE PLAN ANNEXED AND MARKED "B"

(B) LODGED BY

Delivery
 Box

Name, Address or DX and Telephone

CODE

124E LLPN: 123620V

Reference AGS-7321230

GlobalX Legal Solutions Pty Ltd
 Level 3, 175 Castlereagh Street
 SYDNEY 2000
 Ph: 13 5669

L

(C) LESSOR

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

TELSTRA CORPORATION LIMITED ACN 051 775 556

(F)

TENANCY:

- (G) 1. TERM: FIVE (5) YEARS
2. COMMENCING DATE: 1 MAY 2017
3. TERMINATING DATE: 30 APRIL 2022
4. With OPTION TO RENEW for a period of NA
 set out in NA
5. With an OPTION TO PURCHASE set out in clause NA
6. Together with and reserving the RIGHTS set out in clause NA
7. Incorporates the provisions set out in ANNEXURES A, B & C hereto.
8. Incorporates the provisions set out in NA filed at Department of Lands, Land and Property Information Division
 as No. NA
9. The RENT is set out in ITEM No. 8 OF THE REFERENCE SCHEDULE

DATE:

(H)

I certify that the person(s) signing opposite, with whom
I am personally acquainted or as to whose identity I am
otherwise satisfied, signed this instrument in my presence.

Signature of witness:

Name of witness:

Address of witness:

FOR EXECUTION SEE PAGES 24 & 25.

Certified correct for the purposes of the Real
Property Act 1900 by the lessor.

Signature of lessor:

I certify that the person(s) signing opposite, with whom
I am personally acquainted or as to whose identity I am
otherwise satisfied, signed this instrument in my presence.

Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real
Property Act 1900 by the lessee.

Signature of lessee:

(I) STATUTORY DECLARATION

I,
solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended;
2. The lessee under that lease has not exercised the option.

Made and subscribed at
on
in the presence of—

in the

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

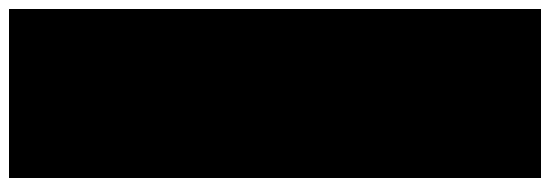
Qualification of witness:

This is Annexure "A" referred to in the CMTS Lease of Land between Ian James Spruce and Patricia Steel Spruce as Lessor and Telstra Corporation Limited as Lessee dated 18 DECEMBER 2017


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REFERENCE SCHEDULE

Item 1	Lessor:	Name:	
		Address:	
		Tel:	
		Email:	
Item 2	Lessee:	Name:	Telstra Corporation Limited
			Director, Telstra Property
		Address:	c/- Jones Lang LaSalle Level 34, 242 Exhibition Street MELBOURNE VIC 3000
		Attention:	Property Management Director
		Email:	Telstra.Notices@ap.jll.com and F0901953@team.telstra.com
Item 3 (Clause 1.1)	Premises:	An area of approximately 100 square metres being that part of the Land hatched on the plan annexed to this Lease in Annexure "B" and situated at 1598 Dooralong Road, Lemon Tree NSW 2259.	
Item 4 (Clause 1.1)	Land:	Folio Identifier 14/809638	
Item 5 (Clause 1.1)	Term:	Five (5) years	
Item 6 (Clause 1.1)	Commencement Date:	1 May 2017	
Item 7 (Clause 1.1)	Terminating Date:	30 April 2022	
Item 8 (Clause 1.1)	Rent:	\$7,500.00 per annum, subject to clause 3.1(b).	
Item 9 (Clause 3.1)	Payment of Rent:	Yearly in advance on the Commencement Date and each anniversary of the Commencement Date by way of electronic funds transfer.	
Item 10 (Clause 3.6)	Permitted Use:	Installation, inspection, maintenance, construction, excavation, replacement, repair, renewal, alteration, upgrade, cleaning, operation, access to and from and removal of the Facility on the Land in accordance with this Lease including the exercise of any rights as set out in the Act.	

Item 11 **Not used**

Item 12 **Review of Rent:** The Rent is to be increased on each Review Date by 3% per
(Clause 3.1) annum during the Term.

Item 13 **Not used**

Item 14 **Statutory provisions not** Sections 84, 84A and 85 of the *Conveyancing Act 1919*
(Clause 1.2) **applying:** (NSW)

DATE [REDACTED]

PARTIES

The Lessor.

The Lessee.

RECITALS

- A. The Lessor is the owner of the Land.
- B. The Lessor has agreed to grant and the Lessee has agreed to accept a lease of the Premises on the terms and conditions of this Lease.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Lease:

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

Active Area means those areas around the antennas marked red and yellow in the drawings contained in the SSD.

Ancillary Equipment means any associated fixtures, fittings and equipment required to maintain transmission and includes remote radio units, tower mounted amplifiers and associated mounts and supports.

Business Day means a day that is not a Saturday, Sunday or public holiday in the State.

Carrier has the same meaning as is contained in the Act and includes a party acting in reliance upon a nominated carrier declaration made under Part 3 of the Act.

Carrier Requirements means the Lessee's obligation to comply with legislation, by-laws, policies, industry standards or codes, community obligations and technical requirements.

Commencement Date means the date specified in Item 6.

Emergency means circumstances where access must be provided without delay to protect:

- (a) the integrity of the Lessee's telecommunications network or the Facility; or
- (b) the health or safety of persons; or
- (c) the environment; or
- (d) property; or

(e) maintenance of an adequate level of service or to prevent loss of transmission.

Facility means the telecommunications facility being the equipment housing, tower (if any), security fence, antennas, associated ancillary equipment and/or any other fixtures, fittings, structures, and cabling as altered, upgraded and/or added to in the Lessee's absolute discretion from time to time.

Item means an item in the Reference Schedule.

Land means the land described in Item 4.

Lease means this lease and any equitable lease or common law tenancy evidenced by this lease.

Lessee means the party named in Item 2.

Lessor means the party named in Item 1.

Permitted Use means the use specified in Item 10.

Premises means the premises leased to the Lessee as described in Item 3.

Reference Schedule means the reference schedule in this Lease.

Related Body Corporate means:

- (a) a related body corporate; or
- (b) a body corporate of which the Lessee is either an associated entity or a related body corporate of an associated entity

as each of those terms are defined in the *Corporations Act 2001* (Cth).

Rent means the amount specified in Item 8 as varied on any Review Date under this Lease.

Review Date means each anniversary of the Commencement Date during the Term or any Further Term.

Services means electricity and any telecommunications services.

SSD means the Site Safety Documentation comprising the EME guide (formerly known as the radio communications site management book), the Site Compliance Report and the Site Compliance Certificate (as updated from time to time), access to a copy of which has been or will be provided to the Lessor by the Lessee.

State means the state or territory in which the Land is located.

Term means the term of this Lease as specified in Item 5 which begins on the Commencement Date and ends on the Terminating Date.

Terminating Date means the date specified in Item 7.



1.2 Rules for interpreting this Lease

Unless the context otherwise requires:

- (a) A singular word includes the plural, and vice versa.
- (b) A word which suggests one gender includes the other genders.
- (c) If a word is defined, another part of speech using contextual variations of that word has a corresponding meaning.
- (d) Words of inclusion or example are not words of limitation.
- (e) Headings are for convenience only, and do not affect interpretation.
- (f) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Lease or any part of it.
- (g) As far as possible all provisions will be construed so as not to be invalid, illegal or unenforceable.
- (h) If anything in this Lease is unenforceable, illegal or void then it is severed and the rest of this Lease remains in force.
- (i) A reference to:
 - (i) legislation (including subordinate 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;
 - (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; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (j) Unless the context otherwise requires, the terms *installation* and *maintenance* (and contextual variations of those terms) where they are used in this Lease, have the same meanings and include the same activities as are provided under the Act.
- (k) The word *agreement* includes an undertaking or other binding arrangement or understanding in writing (and, only where expressly allowed by this Lease, includes oral agreement).

- (l) Where a party consists of two or more persons or a term is used in this Lease to refer to more than one party:
 - (i) an obligation of those persons is joint and several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any other reference to that party or that term is a reference to each of those persons separately, so that (for example):
 - (A) a representation, warranty or undertaking is given by each of them separately; and
 - (B) a reference to that party or that term in the default clause in this Lease is a reference to each of those persons separately.
- (m) Any right given to the Lessor or the Lessee (as the case may be) may where the context so permits be exercised by that party's employees, agents, contractors or others authorised (expressly or implicitly) by that party.
- (n) Any obligation on the Lessor or the Lessee (as the case may be) will, where the context so permits, extend to the actions of that party or its authorised employees, agents, contractors, licensees, invitees, or others claiming under or through that party.
- (o) Without limiting any other rights of the Lessee, all licence, appurtenant and ancillary rights created in favour of the Lessee under this Lease in respect of or in connection with the Land run with the leasehold interest granted to the Lessee and will bind all successors, executors, transferees, assigns and other persons having an interest in the Land or any part of it from time to time.
- (p) The statutory provisions in Item 14 (if any) do not apply to this Lease.

1.3 Good Faith

The parties enter into this Lease in good faith and agree to act in a reasonable and co-operative manner.

1.4 Consents

Where the consent or approval of either party is required under this Lease, then the consenting party must:

- (a) not unreasonably withhold or delay its consent or approval;
- (b) not impose any conditions on any consent or approval which are inconsistent with the terms of this Lease; and
- (c) if withholding consent or approval, provide written reasons for this at the time the withholding is notified.

2. DEMISE

2.1 Lessee Rights

The Lessor leases the Premises to the Lessee for the Term and for the Permitted Use and grants a licence to the Lessee over the Land (which licence is coupled with and runs with the leasehold interest) to:

- (a) have unrestricted access to and from the Premises and the Facility at all times, with or without all necessary vehicles, equipment and workmen;
- (b) lay electricity cables over, under or within the Land to connect the Facility to the public electricity supply and to transmit electricity through those cables;
- (c) lay communication cables and any other cables through or within the Land in connection with the Permitted Use and to use those cables;
- (d) repair, replace, renew, alter, maintain and upgrade the cables referred to in clauses 2.1(b) and 2.1(c);
- (e) install any and all antennas and associated Ancillary Equipment where necessary, including, where applicable, as specified on the plan annexed to this Lease in Annexure "C" and alter the location of the antennas and associated Ancillary Equipment on the Land from time to time, in the Lessee's absolute discretion;
- (f) use the common areas and services on the Land (if any) as may be necessary for the Lessee's use and enjoyment of the Premises and the Facility; and
- (g) use so much of the Land adjoining and adjacent to:
 - (i) the Premises; or
 - (ii) any installation, improvement or property of the Lessee,

as is reasonably required during installation, erection, construction, repair, replacement, renewal, maintenance and operation of the Facility. The Lessee must restore the adjoining and adjacent Land as far as practicably possible to its condition prior to such use by the Lessee. In exercising these rights the Lessee will endeavour not to materially and substantially interfere with the rights of the other occupants of the Land.

2.2 Security

- (a) In accessing the Premises and the Facility pursuant to clause 2.1(a), the Lessee must comply with any reasonable security arrangements of the Lessor of which the Lessee has received notice.
- (b) The Lessor must notify the Lessee of the Lessor's contact person for security purposes (including name, postal address, email address and phone number) who will be available 24 hours a day 7 calendar days a week. This person will be an Authorised Representative as contemplated by clause 7.1.

- (c) In an Emergency, the Lessor must arrange for its security staff or contractor to give the Lessee access to the Premises and the Facility within 2 hours of notification by the Lessee to the Lessor or the Lessor's contact person nominated under clause 2.2(b). The Lessee's notification may be given in person, by post, telephone or email.
- (d) As soon as practicable after the Commencement Date, the Lessor must:
 - (i) notify its contact person nominated under clause 2.2(b) of the obligation set out at clause 2.2(c); and
 - (ii) ensure that its contact person nominated under clause 2.2(b) and any relevant security staff or contractor have processes in place to facilitate the Lessor's access obligations in clause 2.2(c).
- (e) The Lessee will reimburse the Lessor the cost of the Lessor's reasonable security expenses in providing Emergency access under clause 2.2(c) within 20 Business Days of receipt of a tax invoice from the Lessor.

3. LESSEE'S COVENANTS

3.1 Rent and Rent Review

- (a) The Lessee must pay the Rent in the manner set out in Item 9.
- (b) The Rent is a gross rent inclusive of all outgoings and is to be reviewed on each Review Date in accordance with Item 12.

3.2 Condition of Premises

- (a) Subject to clause 3.2(b), the Lessee must keep the Premises in good repair and condition (having regard to the condition of the Premises as at the Commencement Date) excluding fair wear and tear and any damage caused by fire, flood, lightning, storm, war or act of God.
- (b) The Lessee is not obliged to carry out any capital or structural works under clause 3.2(a) unless the work is required because of the negligent act or omission of the Lessee.

3.3 Reinstatement and Make Good

- (a) Within 3 months after the Terminating Date or earlier determination of the Lease the Lessee must remove that part of the Facility located above the surface of the Land, and make good at its cost any damage to the Land or Premises caused by such removal.
- (b) The parties agree that the period of 3 months referred to in clause 3.3(a) is not regarded as holding over for the purposes of clause 5.3 and Rent is not payable by the Lessee during this period.

3.4 Assignment

- (a) The Lessee must not assign this Lease, sublet or part with possession of the whole or part of the Premises, without the consent of the Lessor.

- (b) Despite clause 3.4(a), the Lessee may assign the Lease, sublet, licence or part with possession of the whole or part of the Premises to a:

- (i) Related Body Corporate; or
- (ii) a Carrier

without the Lessor's consent. The Lessee must notify the Lessor of any dealing referred to in this clause 3.4(b) within 3 months of its occurrence.

- (c) With effect from the date of assignment of this Lease by the Lessee, the assignor Lessee and the Lessor release each other from all obligations and liabilities under this Lease, but without prejudice to any prior claim or remedy which either party may have against the other.
- (d) For the avoidance of doubt, and for the purposes of this clause 3.4 a reference to the 'Lease' includes any licence rights granted to the Lessee in this Lease and any rights which are appurtenant or ancillary to this Lease, and a reference to the 'Premises' includes any areas over which the Lessee holds licence, appurtenant or ancillary rights.

3.5 Services

- (a) The Lessee may install separate metering for the Services to the Premises.
- (b) The Lessee must install separate metering for the Services to the Premises if:
- (i) requested by the Lessor; and
 - (ii) it is reasonably able and permitted by any relevant authority to do so.
- (c) The Lessee will bear the cost of separate metering under clause 3.5(a) or under clause 3.5(b) and must pay to the suppliers all charges for the separately metered Services that are consumed or used by the Lessee.
- (d) The Lessor acknowledges and agrees that the Lessee may transfer ownership of some or all of the electricity cables installed under clause 2.1(b) to a third party electricity supplier for the supply of electricity to the Facility.
- (e) Where requested by the Lessee, to enable the Lessee to connect the Facility to an electricity supply over, under or within the Land, the Lessor must grant an easement for electricity purposes across part of the Land on terms as may be required by the electricity supplier. The Lessor consents to the Lessee permitting the relevant electricity supplier to enter the Land from the Commencement Date.

3.6 Use of Premises

The Lessee:

- (a) may carry out any structural work required for the installation of the Facility; and
- (b) may only use the Premises for the Permitted Use.

4. LESSOR'S COVENANTS

4.1 Quiet Enjoyment

- (a) So long as the Lessee pays the Rent and performs its obligations under this Lease, it is entitled to quiet enjoyment of the Premises and to undertake the Permitted Use on the Land without any interruption by the Lessor or any person lawfully claiming through the Lessor or in any other manner.
- (b) The Lessor must not manipulate, tamper with, interfere with, damage, deface, remove or destroy the Facility or any part of it or its operation and must comply with the Lessee's reasonable directions in relation to the Facility.
- (c) The Lessor agrees that it must notify the Lessee, both in accordance with the contact details in Item 2 and any contact details provided on the signage referred to in clause 4.1(d) of any proposed access by the Lessor which requires entry to the Premises or approach to the Active Area so that the Lessee can ensure that the Lessor is aware of the Lessee's safety and security procedures. The Lessor must comply with the Lessee's safety and security procedures.
- (d) The Lessee has the right to erect signage around the Premises and the Facility for the purposes of complying with Australian safety standards. The Lessor must comply with the Lessee's signage when entering the Premises or approaching the Active Area.

4.2 Non-derogation from Grant

The Lessor must not derogate from its grant of this Lease to the Lessee and this obligation of the Lessor is not excluded or in any way limited by any other provision of this Lease.

4.3 Subsequent Occupiers

- (a) Where the Lessor proposes to grant rights of occupancy on the Land to:
 - (i) other Carriers or occupiers; or
 - (ii) third parties and those rights include the right to operate radio communications and/or telecommunications equipment on the Landthe Lessor must first:
 - (iii) promptly give notice to the Lessee of such a proposal; and
 - (iv) where the grant is likely to adversely affect, impair or interfere with (**Affect**) the Lessee's Permitted Use, the Lessor must also obtain the Lessee's consent to such a proposal.
- (b) In considering a request for consent under clause 4.3(a) the Lessee will determine if its Permitted Use will be Affected.
- (c) If the Lessee establishes during the Term that changes to other Carriers' or occupiers' facilities after the initial installation of the facility by the other Carrier or occupier Affect the

Lessee's Permitted Use, the Lessor, immediately upon receipt of notice from the Lessee, either must:

- (i) arrange for the other Carrier or occupier to modify its facility or the operation of it so that it no longer Affects the Lessee's Permitted Use;
 - (ii) arrange for the relocation of the other Carrier's or occupier's facility so that it no longer Affects the Lessee's Permitted Use; or
 - (iii) terminate the arrangement with the other Carrier or occupier.
- (d) The Lessor's obligations under clauses 4.3(a)(iv) and 4.3(c) are essential terms of this Lease. The Lessee may treat the Lessor's breach of an essential term as a repudiation of this Lease and may terminate this Lease for breach of this essential term and for repudiation. This clause does not prevent any other obligations under this Lease from being essential terms.

4.4 Condition of Land

The Lessor must repair, maintain and keep in good and substantial repair the Land (including all fixtures and fittings of the Lessor if any) subject always to the obligations of the Lessee under this Lease.

4.5 Permits and Approvals

The Lessor:

- (a) irrevocably authorises the Lessee, at the Lessee's expense, to make applications to any relevant authority for any necessary permits, consents and approvals to enable the development, construction and use of the Facility in accordance with the Permitted Use and to exercise and procure (at the Lessee's discretion) every right of appeal arising from the determination of any such application or the failure to determine such application; and
- (b) must sign all documentation and provide all assistance required by the Lessee, or any person nominated by the Lessee to obtain the permits, consents and approvals referred to in clause 4.5(a).

4.6 Consent of Mortgagee or Chargee

If the Premises are subject to a mortgage or charge, the Lessor must obtain the unconditional mortgagee's or chargee's consent to this Lease and the Lessee must pay the mortgagee's or chargee's reasonable consent costs.

4.7 Intentionally Deleted

4.8 Surrender

- (a) The Lessee may terminate this Lease on giving the Lessor no less than 20 Business Days' notice at any time where it is unable to comply with or satisfy any Carrier Requirements provided that this right to terminate is only available to the Lessee prior to completion of the initial installation of the Facility.

- (b) Despite any other provision of this Lease, the Lessor covenants that if factors affect the Lessee's use of the Premises to the extent that:
 - (i) the Permitted Use is compromised or the Premises are no longer required by the Lessee; or
 - (ii) the level of service provided by the Lessee to its customers falls below the coverage level acceptable to the Lessee or as a result of significant network changes, the Facility ceases to operate as a part of the Lessee's telecommunications network; or
 - (iii) there is an emergence of radio interference or physical interference which, in the Lessee's opinion, materially interferes with the Permitted Use or the performance of the Facility

then the Lessee may terminate this Lease on giving to the Lessor no less than 6 months' notice at any time.

- (c) If the Lessee exercises its right to terminate this Lease under clause 4.8(a) or clause 4.8(b):
 - (i) it must at its cost reinstate the Premises in accordance with clause 3.3; and
 - (ii) that termination is without prejudice to any prior claim or remedy which either party may have against the other.

4.9 No Restriction on Commonwealth Legislation

- (a) Nothing in this Lease affects, restricts, limits or derogates from the rights, powers and immunity of the Lessee under and by virtue of the Act or any other applicable legislation and/or regulations of the Commonwealth.
- (b) The Lessor agrees pursuant to clause 17(5) Division 5 Part 1 of Schedule 3 of the Act to waive its right to:
 - (i) be given a notice under clause 17(1) Division 5 Part 1 of Schedule 3 of the Act of the Lessee's exercise of its powers to inspect and/or install a low impact installation and to maintain the Facility; and
 - (ii) object to an activity which would have been the subject of a notice if not for the operation of this clause.
- (c) The operation of this clause survives the expiry or termination of this Lease.

4.10 Access Track and/or Power Connection

Where the Lessee installs, upgrades or maintains at its cost any access track or power connection then any other person (except the Lessor) who wishes to utilise the access track or power connection, must share in the cost of installation, upgrading and maintenance as apportioned by the Lessee. The Lessor must ensure that any subsequent grant of a lease or licence to a third party includes an obligation on that lessee or licensee to bear such apportioned costs.

4.11 Lessee's Property

The Facility remains at all times the property of the Lessee, even if it becomes attached to the Land.

4.12 Contamination

The Lessor:

- (a) warrants that at the Commencement Date, the Land and the Premises do not contain substances hazardous to health or safety; and
- (b) confirms that:
 - (i) in respect of the Land; and
 - (ii) in respect of the Premises, so far as the Lessor is aware or reasonably should be aware,

the warranty in clause 4.12(a) remains true at all times during the Term and any holding over period.

4.13 Refund of Rent on Termination

If this Lease is terminated by the Lessee prior to the Terminating Date pursuant to clauses 4.8 or 5.1(c), the Lessor must, within 20 Business Days of the date of termination, refund to the Lessee any Rent paid in advance for that portion of the Term after the date of termination.

4.14 Events Affecting Land

If:

- (a) the Lessor sells or otherwise disposes of its interest in the whole or any part of the Land;
- (b) the Lessor receives a notice, or would reasonably be aware, of a proposal for development occurring on adjoining land;
- (c) the Lessor changes its address for notices; or
- (d) a mortgagee or any other person becomes entitled to the receipt of Rent and other payments under the Lease or becomes entitled to any of the rights and obligations of the Lessor under this Lease

the Lessor must give the Lessee prompt notice of the above circumstances and, if it fails to do so, then the Lessor releases the Lessee from, and must compensate the Lessee for, all claims for which the Lessee may become liable as a result of the Lessor's failure or delay in notifying the Lessee of the above circumstances.

5. MUTUAL COVENANTS

5.1 Default and Re-entry

- (a) If the Rent is 1 month in arrears or if the Lessee fails to perform its other obligations under this Lease and the Lessee does not within:
 - (i) 20 Business Days in the case of non-payment of Rent; and
 - (ii) 60 Business Days in the case of all other breaches,from the date of receipt of notice from the Lessor providing reasonable particulars of the default:
 - (iii) remedy the default; or
 - (iv) if the default cannot be remedied, pay reasonable compensation to the Lessor for the loss or damage suffered by the Lessor as a consequence of the default,then the Lessor may re-enter upon the Premises without interfering with the Facility and subject to all laws relating to the Facility.
- (b) This Lease determines on the Lessor's re-entry but without prejudice to any prior claim or remedy which either party may have against the other.
- (c) If any of the Lessor's covenants and conditions contained or implied in this Lease are not punctually performed or observed, and such default continues for a period of 30 Business Days after notice specifying such default is served on the Lessor, then the Lessee may terminate this Lease by notice to the Lessor. On the serving of the notice of termination by the Lessee this Lease is at an end, but without prejudice to any prior claim or remedy which either party may have against the other.

5.2 Costs of Lease

- (a) The Lessee must contribute to the Lessor's reasonable legal fees and disbursements for the preparation, negotiation and execution of this Lease an amount not exceeding \$1,500.00.
- (b) If stamp duty or registration fees are:
 - (i) payable on this Lease; and
 - (ii) the relevant law makes the Lessee liable to pay themthe Lessee will pay the applicable stamp duty or registration fees.

5.3 Holding Over

- (a) If the Lessee occupies the Premises after the Terminating Date without demand for possession by the Lessor and the Lessee is not entitled to or does not want a new lease, then the Lessee occupies the Premises under a yearly tenancy.

- (b) The Lessee occupies the Premises at the same Rent payable prior to the Terminating Date, subject to review in accordance with clause 3.1, and otherwise on the same terms as this Lease, so far as they can be applied to a yearly tenancy.
- (c) Either party may terminate the yearly tenancy by giving no less than 1 year's notice to the other (which notice may expire at any time).

5.4 Intentionally Deleted

6. INSURANCE AND INDEMNITY

6.1 Property Insurance - Lessee to self insure

For so long as Telstra Corporation Limited (or its corporate successor) is the Lessee, the Lessor acknowledges that the Lessee will self insure the respective rights and interests of the Lessor and the Lessee for damage which must be repaired by the Lessee under this Lease.

6.2 Lessee to insure if self insurance ceases

If the Lessee:

- (a) elects to discontinue; or
- (b) is unable to continue,

the self insurance referred to in clause 6.1, the Lessee must effect such insurance with an insurer reasonably approved by the Lessor against the insurable risks required under this Lease.

6.3 Workers' Compensation Insurance

For so long as Telstra Corporation Limited (or its corporate successor) is the Lessee, the Lessor acknowledges that the Lessee holds a licence pursuant to the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

6.4 Public Liability Insurance

- (a) For so long as Telstra Corporation Limited (or its corporate successor) is the Lessee, the Lessor acknowledges that the Lessee has a global insurance policy which includes public liability insurance in excess of \$20 million and which includes the Lessor as an insured to the extent required in this Lease.
- (b) If requested in writing by the Lessor, the Lessee will provide the Lessor with a letter confirming the Lessee's insurance as specified under this clause, such request not to be made more than once a year during the Term.

6.5 Indemnity

- (a) The Lessee indemnifies the Lessor against any liability, loss, damage, costs or expenses incurred or suffered by the Lessor which is caused solely and directly by:
 - (i) a breach of this Lease by the Lessee; or

- (ii) the negligence of the Lessee or an employee or agent of the Lessee acting within the scope of their authority.
- (b) The indemnity provided by the Lessee under this clause 6.5 will not exceed \$20 million per event and in the aggregate.
- (c) The liability of the Lessee to indemnify the Lessor under this clause 6.5 must be reduced proportionately to the extent that any act or omission of the Lessor contributed to the liability, loss, damage, costs or expenses.
- (d) In defending or settling any claim, action or demand the subject of an indemnity under this clause 6.5, the Lessor must follow the Lessee's reasonable instructions.
- (e) The Lessor must not settle any claim, action or demand the subject of an indemnity under this clause 6.5 without obtaining the prior consent of the Lessee, and the Lessor must take reasonable steps to mitigate any liability, loss, damage, costs or expenses including taking reasonable court action to defend any claim, action or demand made against the Lessor.

7. NOTICES

7.1 Authorised Representative

In this clause 7.1 Authorised Representative:

- (a) *in the case of the Lessor* - means the Lessor, a director of the Lessor (if the Lessor is a company) or any other person (including an agent or lawyer) notified by the Lessor to the Lessee as its Authorised Representative; and
- (b) *in the case of the Lessee* - means the Property Management Director set out at Item 2, or any other person (including an authorised employee or officer of the Lessee, an agent or lawyer) notified by the Lessee to the Lessor as its Authorised Representative.

7.2 How to give a notice

Subject to clause 7.3, a notice, consent or other communication under this Lease is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by email to that person's email address or email addresses (where they are specified in the Reference Schedule, or as notified to the other party in writing from time to time). Where more than one email address is specified, the notice consent or other communication must be sent to all specified email addresses.

7.3 Oral Notice

Where this Lease expressly permits that a notice may be given orally, then:

- (a) *in the case of a notice from the Lessor* - the notice can be given by the Lessor's Authorised Representative; and
- (b) *in the case of a notice from the Lessee* - the notice can be given by the Lessee's Authorised Representative.

7.4 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) where it is given by email:
 - (i) *if delivered 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
 - (ii) *if delivered after 5.00 pm on a Business Day or on a day that is not a Business Day* - on the next Business Day after the time (local time in the place of receipt) specified in the delivery confirmation or receipt generated by the sender's email;
- (b) where it is sent by mail:
 - (i) within Australia - 7 Business Days after posting; or
 - (ii) to or from a place outside Australia - 10 Business Days after posting; and
- (c) if it is given orally - at the time it is given.

7.5 Address for notices

A person's address and email are those set out below that person's name in the relevant Item in the Reference Schedule in this Lease, or as the person notifies the sender.

8. GST

8.1 Recovery of GST

If one party (**supplying party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**receiving party**) must also pay an amount (**GST amount**) equal to the GST payable in respect of that supply.

8.2 Time for payment of GST amount

Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.

8.3 Indemnity and reimbursement payments

If one party must indemnify or reimburse another party (**payee**) for any loss or expense incurred by the payee, the required payment does not include any amount which the payee (or an entity that is in the same GST group as the payee) is entitled to claim as an input tax credit, but will be increased under clause 8.1 if the payment is consideration for a taxable supply.

8.4 Adjustment events

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 8.1 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.

8.5 Interpretation

In this Lease:

- (a) 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, unless the context makes it clear that a different meaning is intended; and
- (b) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
- (c) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

8.6 Time limit on payment of the GST amount

Notwithstanding any other provision in this Lease, the receiving party is not required to pay the GST amount referred to in clause 8.2 unless it has received a tax invoice in respect of the supply (or, if section 156-5(1) of the GST Act applies to the supply, the periodic or progressive component of the supply) from the supplying party within three years and 11 months after the end of:

- (a) the first calendar month in which any of the consideration for the supply (or the periodic or progressive component of the supply) is provided; or
- (b) if an invoice is issued prior to the provision of any of the consideration for the supply (or the periodic or progressive component of the supply), the calendar month in which the invoice is issued.

9. TERMINATION OF SUBSEQUENT LEASES AND PRIOR LEASE

(a) In this clause 9:

- (i) **Subsequent Lease** means a lease, if any, between the Lessor and the Lessee of the Premises for a period of time commencing after the Terminating Date; and
- (ii) **Prior Lease** means a lease, if any, between the Lessor and Lessee of the Premises for a period of time prior to the Commencement Date.

(b) The Lessee may terminate any Subsequent Lease for any reason in its absolute discretion by giving the Lessor written notice at least 1 month before the Terminating Date. The Subsequent Lease terminates on the date of the Lessee's notice.

(c) If a Prior Lease is validly terminated (other than by the effluxion of time), this Lease will automatically terminate on the same date as the Prior Lease is validly terminated.

(d) If:

(i) the Lessee gives the Lessor notice that it is terminating a Subsequent Lease under clause 9(b); or

(ii) as a result of the termination of a Prior Lease, this Lease terminates under clause 9(c),

the Lessor and Lessee agree:

(iii) to promptly execute a surrender of the Subsequent Lease or this Lease in registrable form;

(iv) the termination of the Subsequent Lease or this Lease is without prejudice to any prior claim or remedy which either party may have against the other under the Subsequent Lease or this Lease;

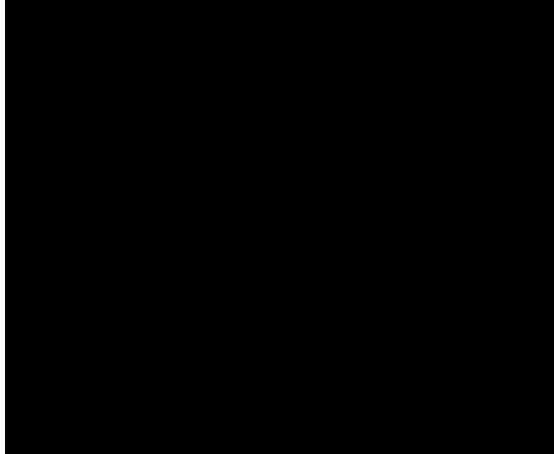
(v) the Lessee must at its cost attend to the preparation, stamping and registration of the surrender of the Subsequent Lease or this Lease; and

(vi) the Lessor must immediately produce the certificate of title for the Land to the Registrar-General's Office, if it is required, to enable the surrender of the Subsequent Lease or this Lease to be registered.

EXECUTED AS A DEED this 18TH day of DECEMBER 2017

EXECUTED BY LESSEE

I certify that ANTHONY SEPTIMUS O'DONNELL
PROPERTY SERVICES MANAGER, with whom I am personally
acquainted or as to whose identity I am otherwise satisfied, signed this document in my presence as attorney
for **TELSTRA CORPORATION LIMITED** under Power of Attorney registered book 4457 No. 829

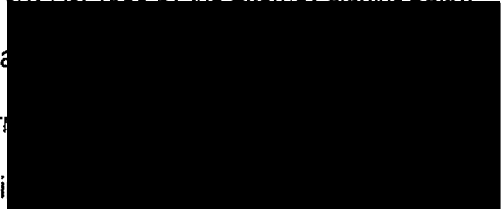


Certified correct for the purposes of the Real
Property Act 1900 by the attorney signing below

Signa

Attorn

Signi



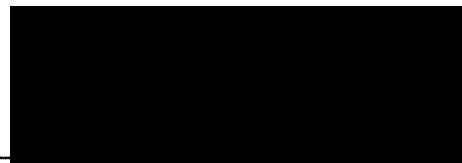
By executing this document the attorney states that
the attorney has received no notice of revocation of
the power of attorney

EXECUTED BY LESSOR

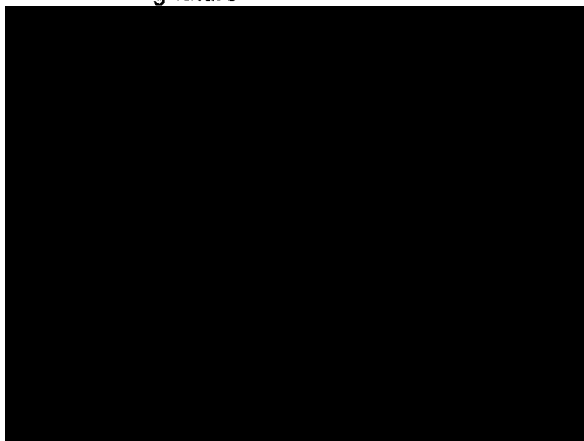
I certify that the person (s) signing as Lessor, with
whom I am personally acquainted or as to whose
identity I am otherwise satisfied, signed this
instrument in my presence.

Certified correct for the purposes of the Real
Property Act 1900 by the Lessor

Signed By: **IAN JAMES SPRUCE**



Witness Signature



Lessor Signature



I certify that the person (s) signing as Lessor, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the Lessor

Signed By:

[REDACTED]

Witness Signature


[REDACTED]

Lessor Signature

[REDACTED]

ANNEXURE B - PREMISES PLAN

This is Annexure "B" referred to in the CMTS Lease of Land between Ian James Spruce and Patricia Steel



Plan forming Annexure " " to Lease
 of Land at Lemon Tree
 by
 to
 dated the Day of

L.G.A.: CENTRAL COAST
 Locality: LEMON TREE
 Parish: OLNEY
 County: NORTHUMBERLAND

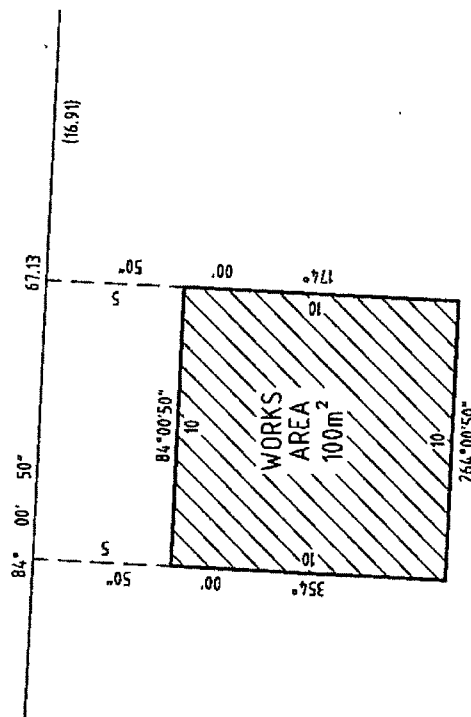
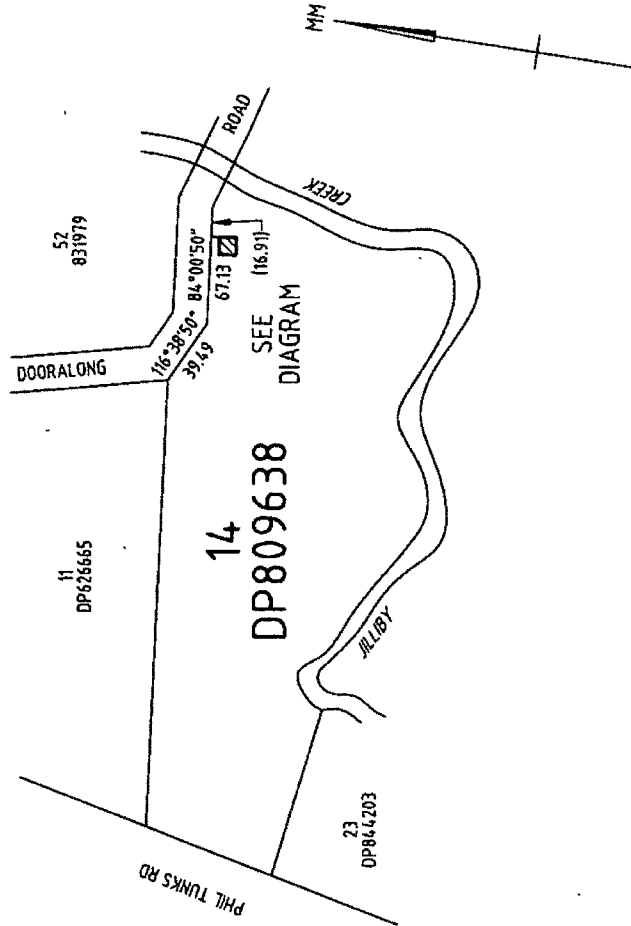


DIAGRAM
 SCALE 1:250



SCALE 1:4000

ALL DIMENSIONS IN METRES

JDE No.

ORDER	DRAWN	CHKD	AMENDMENT	EXAM	APPD	DATE	ISS
NA16429.01	CW	KM	Original 30053617W0080 - VPL	GM	MM	5/06/17	1

Telstra	
MOBILE NETWORK SITE 310311	
LEMON TREE	
SITE TENURE PLAN	
1598 DOORALONG RD LEMON TREE NSW 2259	
DWG NO.	SHT NO.
N110290	G1 INDEX

visionstream

CT: 14/809638

Owner: IAN & PATRICIA SPRUCE
 Address: 1598 DOORALONG RD
 LEMON TREE

NOTE: Covenants or Restriction to user have not been investigated for the purpose of this plan

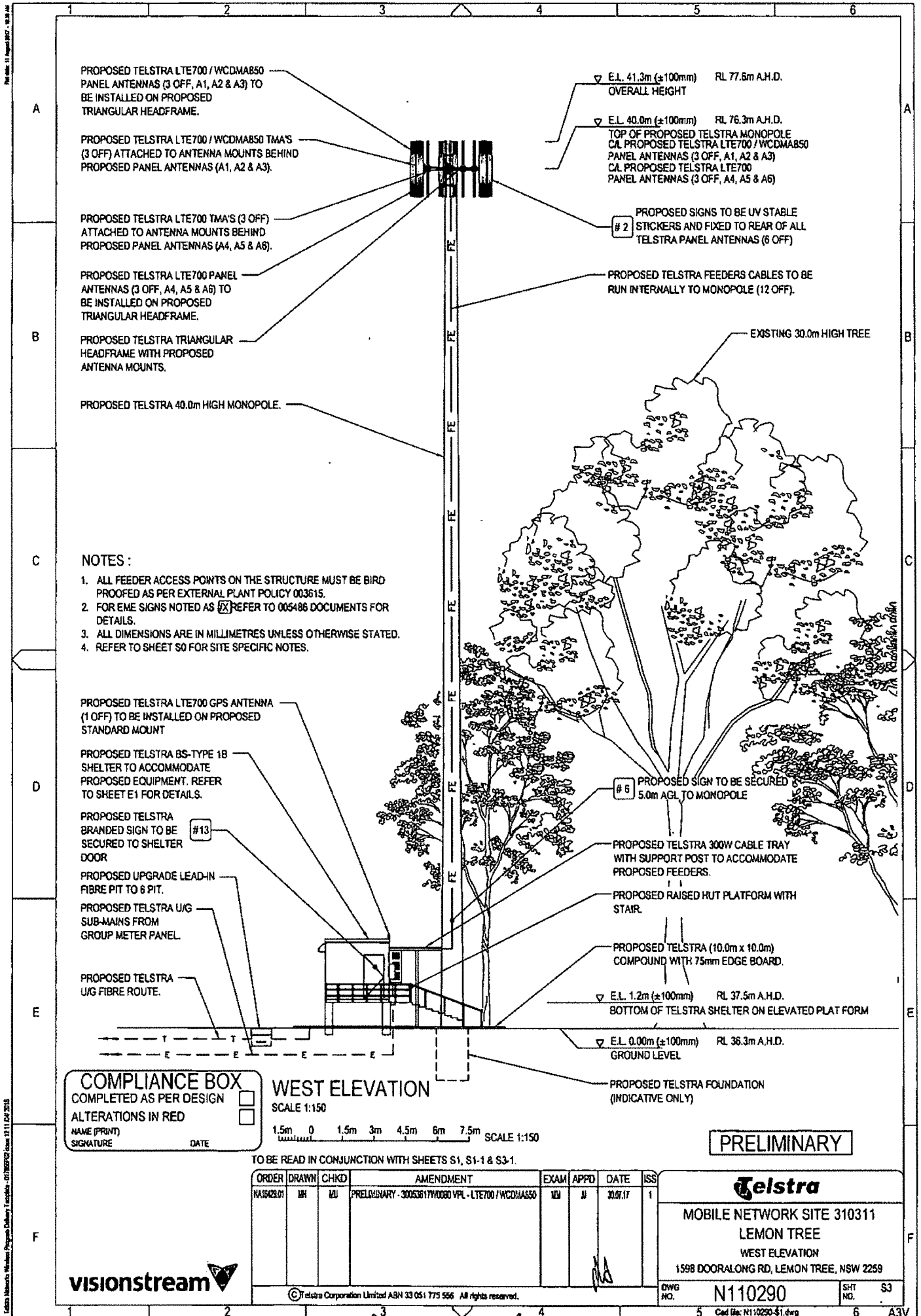
SURELINE
GEOMATICS
 SPATIAL SOLUTIONS
 25 GEOFFREY STREET
 CONSTITUTION HILL NSW 2145
 TEL (02) 9896 8025

SVT KH/CW REF 17107

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ANNEXURE C - ANTENNA PLAN

This is Annexure "C" referred to in the CMTS Lease of Land between [REDACTED] as Lessor and Telstra Corporation Limited as Lessee dated 18 DECEMBER 2017



Form: 07L
Release: 4-1

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) **TORRENS TITLE**

Property leased

Part of the land contained in Certificate of Title 102/1173578 being the premises hatched on the plan in Schedule 1 of Annexure A of this Lease also known as 793 camden Valley way Catherine Fields

(B) **LODGED BY**

Document
Collection

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

L

(C) **LESSOR**

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) **LESSEE**

(F)

TENANCY:

(G) 1. **TERM** 5 YEARS

2. **COMMENCING DATE** 1 MAY 2014

3. **TERMINATING DATE** 30 APRIL 2019

4. With an **OPTION TO RENEW** for a period of N.A.
set out in clause N.A. of

5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A hereto.

8. Incorporates the provisions set out in N.A.
No. N.A.

9. The **RENT** is \$ 5 of THE REFERENCE SCHEDULE IN ANNEXURE A

DATE

29.5.2014

(H) I certify that I am an attorney signed this [See note* below].

Signature of witness:

Name of witness:
Address of witness:

ALDO B. MEZZANOTTE
Solicitor & Barrister
Suite 10, 30 Nelson St,
Fairfield NSW 2165

Certified correct for the purposes of the Real Property Act 1900 by the lessor's attorney who signed this dealing pursuant to the power of

Signature of attorney:

Attorney's name:
Signing on behalf of:
Power of attorney-Book:
-No.: 4570
968

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence. [See note* below].

Signature of witness:

Name of witness:
Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the lessee's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of attorney:

Attorney's name:
Signing on behalf of:
Power of attorney-Book:
-No.

(i) STATUTORY DECLARATION*

I

solemnly and sincerely declare that—

1. The time for the exercise of option to in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on
in the presence of of

☐ Justice of the Peace (J.P. Number:) ☐ Practising Solicitor

☐ Other qualified witness [specify]

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was a [Omit ID No.]

Signature of witness:

Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ANNEXURE A

1 DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In the Lease:

Acquirer means any person who is to acquire an interest in the Premises during the Term as a result of any dealing (including without limitation any transferee, mortgagee, chargee or lessee);

Adjoining Land means that part of the Land adjoining and adjacent to the Premises;

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

Commencing Date means the date stated in Item 2;

Construction Date means the date nominated by the Lessee set out in the Construction Notice;

Construction Notice means a notice in the form set out in Annexure D;

Expiry Date means the date stated in Item 3;

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

GST includes any replacement or subsequent similar tax;

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

Item means a numbered item in the Reference Schedule;

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

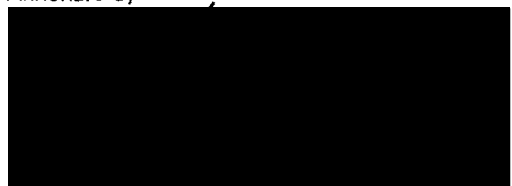
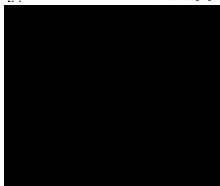
Lease means the lease or tenancy that exists between the Lessor and the Lessee in relation to the Premises of whatever nature and whether at law or in equity as evidenced in whole or in part by this document;

Lessee means the lessee described on the front page of the Lease and its successors and assigns or, if the Lessee is a natural person, its executors, administrators and assigns;

Lessee's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by the Lessee;

Lessee's Equipment means any fixtures, fittings, additions, plant, machinery and equipment in the Premises whether installed or carried out by, belonging to or brought onto the Premises by the Lessee, its sub-tenants and licensees (as the case may be);

Lessee's Works means the Lessee's works described in Annexure B;



Lessor means the lessor described on the front page of the Lease and its successors and assigns or, if the Lessor is a natural person, its executors administrators and assigns;

Minimum Specifications means the infrastructure and associated equipment specified in the drawings in Annexure C;

Month means a calendar month;

Notice Period means the period between 6 months and 3 months prior to each Termination Date;

Option means the further term (if any) in Item 9;

Permitted Use means the use described in clause 5.1;

Premises means the premises stated in Item 1;

Reference Schedule means the schedule attached to the Lease;

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

Rent means the amount stated in Item 5 as adjusted in accordance with clause 18.2;

Sequential Lease means a lease to the Lessee of the Premises (other than the Lease) which is entered into at the same time as the Lease but which is for a period either before or after the Term;

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

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

Tax Invoice includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises; and

Term means the term of the Lease stated in Item 4;

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of and a party, annexure, exhibit and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) where consent is required to be given under the Lease, unless otherwise expressly stated, such consent must not be unreasonably withheld or delayed;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it; and
- (k) a covenant or agreement on the part of two or more persons binds them jointly and severally.

2 IMPLIED COVENANTS AND POWERS

2.1 Exclusion of Implied Covenants

The covenants, powers and provisions implied in leases by any law (including sections 84, 84A and 85 of the *Conveyancing Act 1919 (NSW)*) do not apply to this Lease.

2.2 Contravention of Statute - Severance

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

3 TERM OF LEASE AND HOLDING OVER

3.1 Term of the Lease

The Term commences on the Commencing Date and expires on the Expiry Date, subject to the terms of the Lease.

3.2 Yearly Tenancy - Holding Over

If the Lessee occupies the Premises after the Expiry Date (other than pursuant to the grant of a Sequential Lease) the Lessee must do so as a yearly tenant on the same terms and conditions as the Lease in so far as they apply to a yearly tenancy. Either party may end that tenancy on giving 12 months' notice to the other.

4 PAYMENT

4.1 Lessee to Pay Rent

- (a) The Lessee must pay the Rent to the Lessor during the Term.

- (b) The Rent is to be adjusted on each anniversary of the Commencing Date during the Term and any Option (**Adjustment Date**) by CPI calculated using the following formula:

$$\text{new rent} = \text{current rent} \times \frac{a}{b}$$

where:

- a* is the last published CPI before the Adjustment Date; and
- b* is the last published CPI before the previous Adjustment Date (or, in the case of the first Adjustment Date, before the Commencing Date).

- (c) The Lessee must pay the new rent from the Adjustment Date.
- (d) For the purpose of this clause 4.1:

CPI means the All Groups Consumer Price Index for the State capital city published by the Australian Bureau of Statistics. If that index no longer exists, or if the basis of calculating it changes, it means an index that the President of the Australian Property Institute (State Division) decides reflects changes in the cost of living in the State capital city.

4.2 Payment of Rent

The Rent must be paid annually in advance to the Lessor or to any other person the Lessor notifies to the Lessee provided such notification is received by the Lessee at least 30 days prior to the date for payment of the Rent.

4.3 GST

- (a) Definitions and interpretation

Terms defined in the GST Act have the same meaning in this clause unless provided otherwise.

- (b) GST pass on

If GST is or will be imposed on a supply made under or in connection with the Lease, the supplier may, to the extent that the consideration otherwise provided for that supply under the Lease is not stated to include an amount in respect of GST:

- (1) increase the consideration otherwise provided for that supply under the Lease by the amount of that GST; or
- (2) otherwise recover from the recipient the amount of that GST.

- (c) Tax Invoices/Adjustment Notes

The right of the supplier to recover any amount in respect of GST under the Lease on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

4.4 EFT Payments

The Lessee may pay Rent by Electronic Funds Transfer (EFT) to the account Item 8 or such other account in Australia nominated by the Lessor provided notice of account details is received by the Lessee at least 30 days prior to the date for payment of Rent. Payment by EFT by the Lessee's banker to the nominated account by the due date is a full discharge of the payment.

4.5 Pro Rata Refund of Rent

- (a) If the Lease is terminated by either party for any reason (whether under clause 10.1, or otherwise), the Lessor must within 30 days of receiving a written demand, reimburse the Lessee for Rent and any other amounts payable under the Lease and all other Sequential Leases which commence after the Expiry Date of the Lease for the period from the date of termination to the expiry date of the final lease in the series of Sequential Leases.

- (b) Before dealing with its interest in the Premises, the Lessor must procure that the Acquirer enters into a deed with the Lessee on terms reasonably acceptable to the Lessee in which the Acquirer covenants with the Lessee to:

- (1) comply with the Lessor's obligations under this clause 4.5; and
- (2) not to transfer its interest in the Premises to any person unless the Acquirer first procures that that person enters into a deed with the Lessee on the same terms as are referred to in this clause 4.5 as if that person was the Acquirer.

4.6 Interest on Overdue Amounts

- (a) Either party must pay the other on demand interest on any amount due and payable by that party under the Lease at the rate of interest charged by the Lessor's bankers in respect of overdrafts not exceeding \$100,000.
- (b) Interest payable under this clause will be calculated from and including the due date for payment under the Lease up to and including the date on which payment is received in full by the other party.

5 USE OF PREMISES

5.1 Permitted Use

The Lessee must use the Premises for the purpose of constructing, maintaining and operating a communications facility and incidental uses.

5.2 Adjoining Land

- (a) The Lessor grants to the Lessee, its sub-tenants and licensees the right to use so much of the Adjoining Land or any installation of the Lessee as is reasonably required during the installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the Premises for the Permitted Use.
- (b) After using the Adjoining Land the Lessee must restore the surface to that part of the Adjoining Land used to as near as practicably possible its state prior to use by the Lessee, its sub-tenants and licensees to the Lessor's reasonable satisfaction.

- (c) **Clause 7.3** applies to the exercise by the Lessee of its rights under this clause.

5.3 Requirements of Government Agencies

- (a) Subject to paragraph (b), the Lessee must promptly comply with any Statute in respect of the Lessee's particular use and occupation of the Premises including any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or their use.
- (b) The Lessee is under no liability for structural or capital alterations or works unless caused or contributed to by the Lessee's particular use and occupation of the Premises. The Lessee is not required to comply with any Statute, notice or requirement which would have issued irrespective of whether the Lessee was in occupation of the Premises.

5.4 Cabling

The Lessor grants to the Lessee, its sub-tenants and licensees the right to install, maintain, repair, replace and use on the Land above or below ground cabling to and from the Premises and where necessary to construct supports for such cabling. In exercising its rights under this clause the Lessee must:

- (a) not cause any lasting material damage to the Land or material interference to the Lessor; and
- (b) restore the surface of the Land as used as nearly as practicably possible to its state prior to use by the Lessee, its sub-tenants and licensees to the Lessor's reasonable satisfaction.

Clause 7.3 applies to the exercise by the Lessee of its rights under this clause.

5.5 Non-contiguous Premises

If any part of the Premises is not contiguous with another part of the Premises (whether on the rooftop of a building or otherwise), the Lessee, its sub-tenants and licensees may at its own cost install and run such above or below ground cabling, wiring, piping, earthing straps, conduit and support structures over the Land as is necessary for the safe, continuous and proper use of the Premises for the Permitted Use. In exercising its rights under this clause, the Lessee must not cause any lasting material damage to the Land or material interference to the Lessor.

5.6 Consents

- (a) The Lessor irrevocably authorises the Lessee at its own cost to:
- (1) submit any application for consent or approval to any Government Agency to use or develop the Premises for the Permitted Use; and
 - (2) exercise and procure every right of appeal arising from or in connection with any such application or the failure to determine the application.
- (b) The Lessor must sign all documents and do all things reasonably necessary (at the Lessee's cost) to authorise or assist the Lessee or any person nominated by the Lessee in obtaining consent or approval from any Government Agency to use or develop the Premises for the Permitted Use.

5.7 Guy Anchors and Guy Wires

- (a) The Lessor grants to the Lessee, its sub-tenants and licensees the right to use so much of the Adjoining Land as is reasonably required for the purpose of:
 - (1) installing and maintaining guy anchors on the Adjoining Land to support the Lessee's antenna support structure on the Premises; and
 - (2) running guy wires from those guy anchors on the Adjoining Land to the Lessee's antenna support structure on the Premises.
- (b) The Lessor must not use or interfere with the Lessee's guy anchors or guy wires.
- (c) The provisions of **clause 7.3** apply to the exercise by the Lessee of its rights under this clause.

6 ACCESS TO THE PREMISES

- 6.1** The Lessor grants to the Lessee, its sub-tenants, licensees and authorised persons the right to enter onto and access the Land at any time during the day and night with or without materials, plant, vehicles and other apparatus for the purpose of accessing the Premises and exercising its rights under the Lease.

7 INSURANCE, INDEMNITIES AND RELEASE

7.1 Obligation to Insure

The Lessee must:

- (a) at its own cost, effect and maintain during the Term and any overholding, public risk insurance in respect of the Premises for at least \$20 million with a reputable insurer against liability for bodily injury, property damage and any other risk which is commonly covered by public risk insurance;
- (b) punctually pay all premiums payable in respect of the insurance; and
- (c) promptly give to the Lessor on request a certificate of currency in respect of the insurance noting the interest of the Lessor as owner of the Premises.

7.2 Lessee's Release

The Lessee:

- (a) occupies and uses the Premises at its own risk; and
- (b) releases to the full extent permitted by law the Lessor and its agents, contractors employees from all claims and demands of every kind resulting from any accident, damage, death or injury occurring in the Premises except to the extent that the accident, damage, death or injury is caused or contributed to by the neglect, act, omission or default of the Lessor, its agents, contractors or employees.

7.3 Lessee's Indemnity

Subject to **clause 7.4** the Lessee indemnifies the Lessor against all costs, liability, claims, loss or damage incurred or suffered in respect of any loss, damage or injury to persons in or on any part of the Premises to the extent caused or contributed to by the Lessee or its agents, contractors or employees.

7.4 Negligence or Default of Lessor

The indemnities in **clause 7.3** do not apply to any cost, liability, claim, loss or damage to the extent caused or contributed to by the neglect, act, default or omission of the Lessor or its agents, contractors or employees in which case, the Lessor remains responsible to the extent of the contribution.

8 INSTALLATION AND MAINTENANCE

8.1 Repair and Maintenance

- (a) The Lessee must during the Term maintain the Premises in a good order and repair having regard to the condition they were in as at the Commencing Date, except for:
 - (1) fair wear and tear; and
 - (2) damage by fire, explosion, storm, tempest, lightning, earthquake, floods, riots, civil commotion, aircraft accident, objects falling from aircraft, acts of God and any other risk against which the Lessor or a prudent lessor would insure or has insured or is obliged to insure under the Lease.
- (b) The Lessee is not responsible under any circumstances for structural or capital repairs or maintenance unless required because of the act, omission, neglect or default of the Lessee or its agents, contractors or employees and the damage is not the subject of the exceptions referred to in clause 8.1(a)(2).

8.2 Construction and Alterations

- (a) Subject to paragraph (b), the Lessee may at its own cost during the Term install, erect, construct, dismantle, repair, replace, renew and maintain on the Premises any security fencing, building or buildings necessary now or in the future to shelter communications equipment, a free standing monopole, guy tower, multi-sided antenna structure or other antenna support structure of sufficient height now or in the future to accommodate communications equipment and all necessary connecting appurtenances.
- (b) In exercising its rights under paragraph (a), the Lessee must comply with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law.

9 ELECTRICITY SUPPLY

- (a) To enable the Lessee to use the Premises for the Permitted Use, the Lessee must at the Lessee's cost:
 - (1) connect the Premises to an electricity supply; and

- (2) install on the Premises such earthing apparatus as is necessary for the safe continuous use of the Lessee's Equipment for the Permitted Use.
- (b) The Lessor must provide the Lessee with all consents, approvals, rights and easements necessary to enable the Premises to be connected to an electricity supply.
- (c) The supply of electricity to the Premises must be made using a dedicated usage meter (installed by the Lessee at the Lessee's cost) so the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it from the Premises.

10 TERMINATION

10.1 Events of Termination

If:

- (a) the Premises are damaged or destroyed or access is interrupted so as to render the Premises or any part wholly or substantially unfit for the Lessee's use and occupation under the Lease or the Premises are rendered inaccessible by any means; or
- (b) the Lessee commits a material breach of any of its obligations under the Lease (of which the Lessee has first been given written notice specifying the breach and which breach is not waived by the Lessor or remedied by the Lessee within a reasonable time (having regard to the nature of the breach)); or
- (c) any application to a Government Agency for a required consent or permit to enable the Lessee, its sub-tenants or licensees to use the Premises for the Permitted Use is rejected, cancelled, lapses or is otherwise terminated or is granted to the Lessee, its sub-tenants or licensees on terms unacceptable to that party (in its absolute discretion) and no further or replacement consent or permit can reasonably be obtained.
- (d) the Premises are rendered unfit for use by the Lessee, its sub-tenants or licensees by reason of the emergence of significant physical or radio interference;
- (e) the network of any of the Lessee's subtenants or licensees ceases to operate; or
- (f) the Lessee's subtenants or licensees vacate the Premises

then the Lease may be terminated effective immediately on notice by the Lessee in the case of paragraphs (a), (c) (d) (e) and (f) and by the Lessor in the case of paragraph (b).

10.2 Lessee to Yield Up

The Lessee must at the end of the Lease give back the Premises in accordance with the Lessee obligations under the Lease.

10.3 Removal of Lessee's Equipment

- (a) Subject to the Lessee, its sub-tenants and licensee's rights and obligations under the *Telecommunications Act (Cth) 1997*, the Lessee must at or prior to the end of the Lease or on such other date agreed between the parties remove from the Premises all above ground Lessee's Equipment. The Lessee must make good any damage caused during such removal.

- (b) The Lessor acknowledges that the Lessee's Equipment remains the property of the Lessee, its sub-tenants or licensees (as the case may be).

10.4 Effect on Rights or Liabilities

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

11 NOTICES

11.1 Method of Service

Any notice given under the Lease by either party to the other must be in writing and is given for all purposes by delivery in person, by post or by facsimile addressed to the receiving party at the address set out in Item 6 in the case of the Lessor and in Item 7 in the case of the Lessee.

11.2 Time of Service

A notice given in under the Lease is deemed to be duly served in the case of posting 2 Business Days after the date of posting and in the case of facsimile, on the first Business Day after the date of transmission (providing the sending party receives a facsimile machine verification report indicating that the notice has been transmitted).

11.3 Change of Address

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

12 ASSIGNMENT / SUBLETTING

12.1 Assignment

- a) Subject to clauses 12.1 (b) and (c), the Lessee must not assign the Lease without the prior written consent of the Lessor, such consent not to be unreasonably withheld or delayed.
- b) If the Lessor fails to respond within 21 days of a request for consent being made by the Lessee under clause 12.1(a), then the Lessee may assign this Lease without further recourse to the Lessor.
- c) The Lessee may at any time assign the Lease to a Related Body Corporate of the Lessee.

12.1 Subletting

The Lessee may sublease or licence the Premises (or any part) on notice to the Lessor.

13 LESSOR'S COVENANTS

13.1 Quiet Enjoyment

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

13.2 Restriction on Lessor's Use of the Land

- (a) The Lessor must not itself knowingly nor must it knowingly permit any third party to do anything on the Land which is likely to cause physical or radio interference which obstructs, interrupts or impedes the use of the Premises for the Permitted Use.
- (b) If the Lessee advises the Lessor of any breach of this clause, the Lessor must, in good faith, use its every best endeavours to promptly remove any such interference, to the extent that it is within its power to do so.
- (c) The Lessor must not enter into any leases, licences or other arrangements with any third party to permit the erection of other communications towers or equipment on the Land.

13.3 Lessor's Covenant

- (a) The Lessor must not knowingly, nor knowingly permit any third party to store on, dispose of on or transport to or over the Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises under the Lease.
- (b) If the Lessee notifies the Lessor of any breach under this clause, the Lessor must, to the extent that it is within its power to do so, use its every best endeavours at its own cost to promptly remedy such breach.

13.4 Further Restriction on Lessor's Use of the Land

- (a) The Lessor must not sell, lease, licence or use the Land and building for the placement of other communications networks or communications services or both or grant a lease of the Premises which is concurrent or superior to this Lease.
- (b) The Lessor's obligation in (a) is an essential term of this Lease.
- (c) The Lessee may treat the Lessor's breach of an essential term (including a breach of clause 13.4(a)) as a repudiation of this Lease and:
 - (1) may terminate this Lease for breach of the essential term and for repudiation; and
 - (2) the Lessee will be entitled to compensation for loss or damage suffered by the Lessee as a consequence of the repudiation, breach or other default.

14 MISCELLANEOUS

14.1 Lessee to Pay Costs and Disbursements

- (a) Subject to paragraphs (b) and (c), each party must pay its own costs of and incidental to the Lease (including the negotiation, preparation, and finalisation of the Lease and any other transaction arising from the Lease (for example: assignment, subletting) together with any costs of obtaining any consents).

- (b) The Lessee must contribute to the Lessor's legal costs for the negotiation, preparation and finalisation of the Lease and the Sequential Leases up to a maximum of \$1,500 plus GST, any contribution being payable within 14 days of the later of:
 - (i) execution of the Lease and the Sequential Leases by the Lessor; and
 - (ii) receipt of a tax invoice [REDACTED] evidencing the Lessor's [REDACTED]
- (c) The Lessee must pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) together with cost for registration of the Lease.

14.2 Governing Law

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

15 SEQUENTIAL LEASES

15.1 Application of clause 15

This clause 15 applies:

- (a) despite any other provision of the Lease; and
- (b) where one or more Sequential Leases are entered into in respect of the Premises.

15.2 Sequential Lease

- (a) Where a Sequential Lease commences on the day after the Expiry Date, any provisions of the Lease in relation to:
 - (1) the lessee's right to hold over after the expiration of the Lease;
 - (2) the lessee's obligation to remove any items from the Premises;
 - (3) the lessee's obligation to make good the Premises,which would normally apply on the expiration of the Lease, do not apply until the expiration of the final Sequential Lease. [REDACTED]
- (b) If the Lease is transferred, then (despite any other provision of any Sequential Lease), the Sequential Leases which are expressed to commence after the date of the transfer are deemed to be assigned to the same transferee and with effect from the same date.
- (c) If a Sequential Lease which commenced prior to the Commencing Date is or has been transferred, then the Lease is deemed to be transferred to the same transferee with effect from the same date.
- (d) If a Sequential Lease which commenced prior to the Commencing Date terminates other than by expiration, then the Lease is terminated with effect from the same date.

- (e) If the Lessee gives to the Lessor notice no later than 6 months prior to the Commencing Date that the Lessee no longer requires to occupy the Premises, then the Lease terminates with effect from the date of service of the notice.

16 LESSEE WORKS, CONSTRUCTION DATE AND TERMINATION PRIOR TO CONSTRUCTION DATE

16.1 Lessee's Works

- (a) Subject to clauses 18.1(d) and (e), the Lessee may carry out the Lessee's Works on the Premises and the Adjoining Land (as necessary).
- (b) Notwithstanding any other provision of this Lease the Lessee may install all of the infrastructure, buildings and equipment set out or detailed in the Minimum Specifications, as well as all associated and necessary cabling and support requirements.
- (c) In carrying out the Lessee's Works clauses 5.2 to 7 apply.
- (d) Prior to commencement of the Lessee's Works the Lessee must serve on the Lessor a Construction Notice nominating the Construction Date.
- (e) The Lessee cannot commence the Lessee's Works until on or after the Construction Date.

16.2 Rent

- (a) The Rent from the Commencing Date to the day prior to the Construction Date is ten per centum (10%) of the rent specified in Item 5 (as adjusted pursuant to Item 5).
- (b) The Rent from the Construction Date is the rent specified in Item 5 (as adjusted pursuant to Item 5) and is payable in accordance with clause 4.2.
- (c) The Lessee must pay the Rent from the Commencing Date to the day prior to the Construction Date annually in advance to the Lessor or to any other person the Lessor notifies to the Lessee provided that such notification is received by the Lessee at least 30 days prior to the date for payment of the Rent.
- (d) Despite payment of the Rent in advance the Lessee must pay to the Lessor the balance of the Rent payable from the Construction Date until the date the next annual payment is due following the Construction Date.
- (e) The parties agree that from 1 January 2018, this clause 16.2 will be deleted and the Rent in Item 5 of the Reference Schedule (pro rata and escalating in accordance with clause 4.1) will be payable.

16.3 Early Termination

- (a) The Lessee may terminate this Lease at any time prior to the Construction Date effective immediately on notice by the Lessee.

- (c) If the Lessee terminates this Lease under this clause 16.3, the Lessee may provide the Lessor with a surrender of lease form for the Lease and any Sequential Lease and, if the Lessee provides the surrenders, the Lessor must execute them and return them to the Lessee within 10 Business Days of receipt. The Lessee must lodge the surrenders for registration within 10 Business Days of receipt.

17 LESSOR'S MORTGAGEE CONSENT TO LEASE

- (a) The Lessor must provide a letter of consent from the Lessor's mortgagee consenting to this Lease in a form acceptable to the Lessee.
- (b) Despite any other provision in the Lease, the Lessee will not be required to pay the Rent or any part of it unless and until the Lessor complies with the provisions of this clause 17.
- (c) The Lessor must ensure that any title deed to the Land is produced at the Titles Office for the purposes of enabling registration of the Lease within a reasonable time of execution of the Lease (not being more than 2 weeks after execution of the Lease).
- (d) Any breach of this clause by the Lessor will entitle the Lessee to terminate the Lease immediately and the provisions of clause 4.5 and 10.4 will apply.

18 RIGHT TO LODGE CAVEAT

The Lessor consents to the Lessee lodging a caveat on the title to the Land at any time giving notice of the Lessee's rights under this Lease until registration.

19 SURVEY

- (a) As soon as reasonably practicable after the Construction Date, the Lessee must, at the Lessee's cost, obtain a survey plan of the Premises for annexing to the Lease ("Survey Plan").
- (b) The Lessee must provide a copy of the Survey Plan to the Lessor for approval within 10 Business Days of receiving it.
- (c) The Lessor must give or withhold its consent to the Survey Plan within 10 Business Days of receiving it. The Lessor must provide reasons for withholding its consent to the Survey Plan.
- (d) The Lessor consents to the Lessee annexing the Survey Plan to the Lease when the Lessor provides its consent to the Survey Plan as a replacement for the plan inserted in Schedule 1 at the date of execution of this Lease.

REFERENCE SCHEDULE

Item 1 Premises (clause 1.1)

That part of the Land hatched on the plan in **Schedule 1** being part of the property known as 793 Camden Valley Way Catherine Fields NSW

Item 2 Commencing Date (clause 1.1)

1 May 2014

Item 3 Expiry Date (clause 1.1)

30 April 2019

Item 4 Term (clause 1.1)

5 years

Rent (clause 1.1)

~~\$18,750 plus GST~~ during the first year of the Term, and reviewed and adjusted annually thereafter for the balance of the Term in accordance with clause 4.1.

Item 6 Contact at Lessor (clause 11.1)

Name:

Address:

Telephone Number:

Facsimile Number: N/A

Item 7 Contact at Lessee (clause 11.1)

Name: Director, Corporate & Legal Affairs

Crown Castle Australia Pty Ltd

Address: Level 1, 754 Pacific Highway

CHATSWOOD NSW 2067

Telephone Number: (02) 9495 9000

Facsimile Number: (02) 9495 9100

Item 8 Nominated Account (clause 4.4)

Not applicable

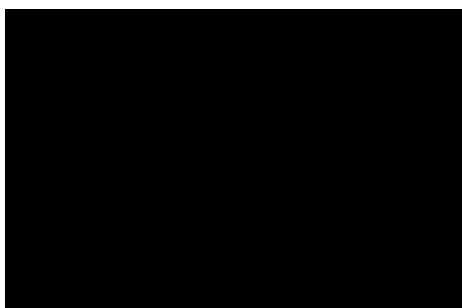
Item 9 Options (~~clause Error Reference source not found~~)

Not applicable

SCHEDULE 1 – PREMISES PLAN



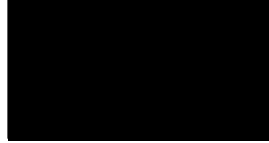
Lease Area
Approx. 100m²



793 Camden Valley
Way, Catherine
Fields
Lot 102
DP1173578
(Approximate
boundary due to
road widening)

We hereby certify this Lease to be correct for the purposes of the *Real Property Act 1900*

SIGNED SEALED AND DELIVERED for and on)
behalf of Salvatore Spatari by his duly)
appointed attorney Bruno Spatari under power)
of attorney registered Book 4570)
No. 5)



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

Solicitor & Barrister
Suite 10, 30 Nelson St,
Fairfield NSW 2165

SIGNED SEALED AND DELIVERED for and on)
behalf of Crown Castle Australia Pty Limited ACN)
090 873 019 by its duly appointed attorney Jeremy)
Michael Cochran under power of attorney)
registered Book 4643 No 46 in the presence of:)

Crown Castle Australia Pty Limited ACN 090 873
019 by its attorney



attorney has received no notice of revocation of the power of attorney

Name of Witness (BLOCK LETTERS)

Address of Witness

ANNEXURE B

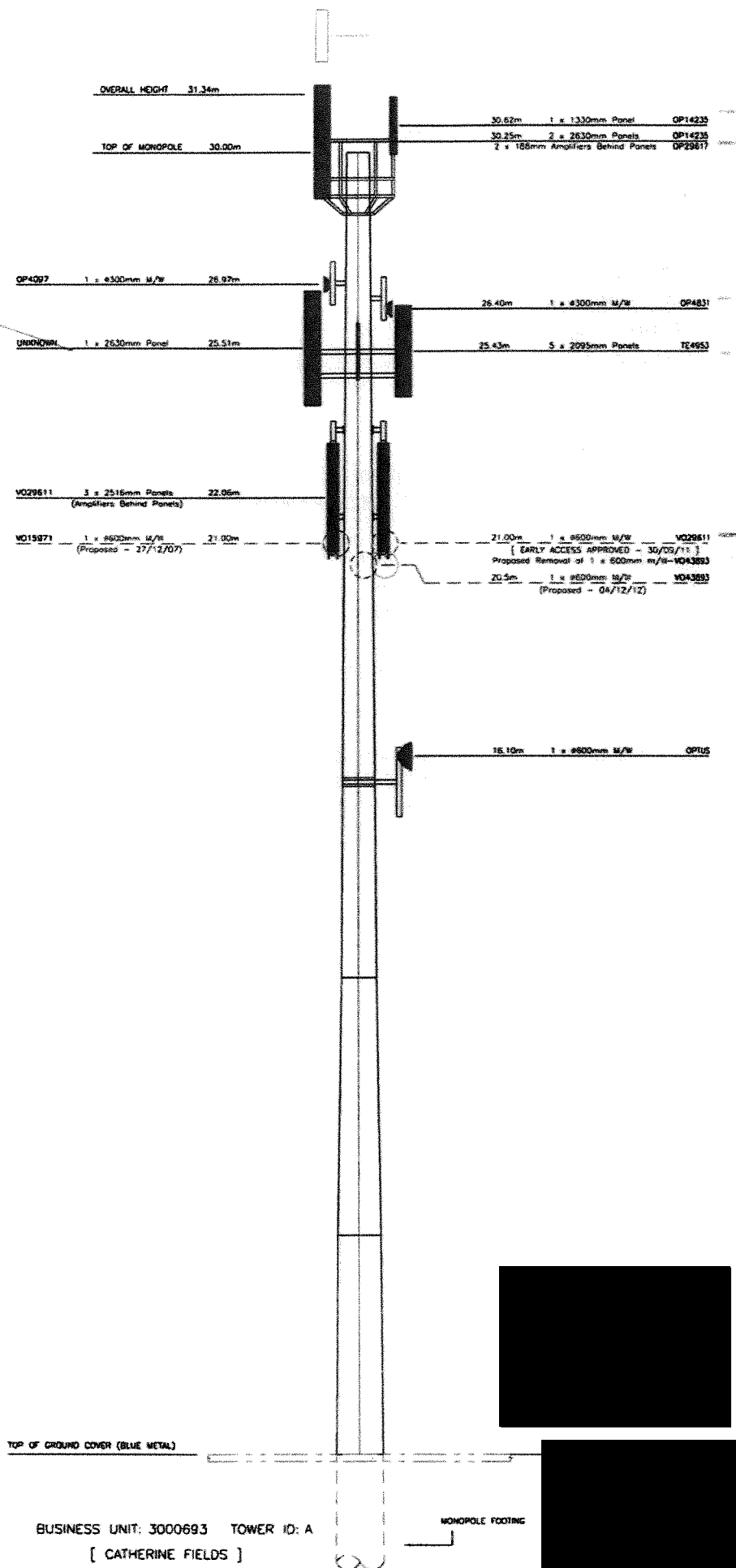
Lessee's Works

All of the Lessee's works to install on the Premises an operational communications facility, including but not limited to the following works:

1. the installation on the Land of above or below ground cabling to and from the Premises and where necessary the construction of supports for such cabling;
2. the installation, erection, construction and dismantling on the Premises of any security fencing, building or buildings necessary to shelter communications equipment, a free standing monopole, guy tower, multi-sided antenna structure or other antenna support structure of sufficient height necessary to accommodate communications equipment and all necessary connecting appurtenances;
3. the connection of the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power); and
4. the installation on the Land of such earthing apparatus as is necessary for the safe continuous use of the Lessee's Equipment for the Permitted Use.

ANNEXURE C

Plan of Minimum Specifications



FOPS TO CONFIRM THE
CARRIER AND SIZE OF
PANEL
05/11/12

ANNEXURE D

Construction Notice

To: [REDACTED]

Attention: [REDACTED]

Property: [REDACTED]

The Lessee gives you notice that the date it intends to commence construction of the Lessee's Works pursuant to the Lease between the Lessor and the Lessee dated _____ is _____ (**Construction Date**).

Words defined in the Lease have the same meaning in this notice.

Date:

SIGNED SEALED AND DELIVERED for and on behalf of)
Crown Castle Australia Pty Limited ACN 090 873 019 by)
its duly appointed attorney Jeremy Michael Cochran)
under power of attorney registered Book
4643. No 46 in the presence of:

Crown Castle Australia Pty Limited ACN 090 873
019 by its attorney

.....
Signature of witness

.....
Signature of attorney

By executing this deed the attorney states that
the attorney has received no notice that its
authority to do so has been revoked.

.....
Name of witness
(please print)

Form: 07L
Licence: 04-03-333
Licensee: King & Wood Mallesons

LEASE

New South Wales
Real Property Act 1900



AN130859B

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

D197263

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises
Folio identifier Auto Consol 7389-167

Part of the Land in Lot B in DP 397723 shown hatched black on the plan in Annexure B and more particularly described in Item 1 of the Information table of Annexure A

(B) LODGED BY

Document
Collection
Box

41J

Name, Address or DX, Telephone, and Customer Account Number if any
King & Wood Mallesons DX 113 Sydney T +61 2 9296 2000

LLPN: 123003U

Reference (optional): S2809

CODE

L

(C) LESSOR

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable) 1. 2. 3.

(E) LESSEE

Optus Mobile Pty Limited ACN 054 365 696

OFF L AG112179

(F)

TENANCY:

(G) 1. TERM

Five years

2. COMMENCING DATE 1 December 2016

3. TERMINATING DATE 30 November 2021 ✓

4. With an OPTION TO RENEW for a period of N.A. set out in N.A.

5. With an OPTION TO PURCHASE set out in N.A.

6. Together with and reserving the RIGHTS set out in N.A.

7. Incorporates the provisions or additional material set out in ANNEXURE(S) A & B hereto.

8. Incorporates the provisions set out in MEMORANDUM filed pursuant to section 80A Real Property Act 1900 as / registered LEASE No. N.A.

9. The RENT is set out in item 5 of the Information table to Annexure A

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Page 1 of 23 ✓

CT Prod By 392C
Date: 16-2-2018
For: L.

Extra Fee Raised.

DATE 10,05,2017
dd mm yyyy

Certified correct for the purposes of the Real Property Act 1900. [Attesting witness - see note** below].

(H)

EXECUTED by Artemiou
Superannuation Pty Ltd in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by
authority of its directors:

S
*

Name of director/company secretary* (block
letters)

*delete whichever is not applicable

I certify that I am an eligible witness and that

Panayiotis Ar
presence

Signature of w

Name of witne

Address of wit

Signa

I certify that I
Artemiou sign

Signature of w

Name of witne

Address of wit

**Note: where applicable, the lessor must
complete the statutory declaration below.**

I certify that I am an eligible witness and that
presence as attorney for **OPTUS MOBILE PTY LIMITED (ACN 054 365 696)**
book 4210 No. 62.

Signature of witness

Name of witness:

Address of witness:

1 Lyonpark Road, Macquarie Park NSW 2113.....

Signature of Attorne

Attorney's name:

Signing on behalf of

OPTUS MOBILE PTY LIMITED

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

(I) **STATUTORY DECLARATION***

I

solemnly and sincerely declare that—

1. The time for the exercise of option to renew in expired lease No. _____ has ended;
2. The Tenant (Lessee) under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at _____ in the State of _____ on _____

in the presence of _____ of _____,

☐ Justice of the Peace (J.P. Number: _____)

☐ Practising Solicitor

☐ Other qualified witness [specify]

**** who certifies the following matters concerning the making of this statutory declaration by the person who made it:**

1. I saw the face of the person *OR* I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months *OR* I have confirmed the person's identity using an identification document and the document I relied on was a _____ *[Omit ID No.]*

Signature of witness: _____

Signature of lessor: _____

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

**** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.**

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Page 3 of 23

1309

Annexure A Lease

This is the Annexure A referred to in the lease between:

Mobile Pty Limited and **Optus**

dated

of the premises known as 3871 Sturt Highway Gumly Gumly, New South Wales 2652

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Information table

Parties		
Lessor	Name	[REDACTED]
	ABN	50 112 373 536
	Address	Lot B Flowerdale Road, Wagga Wagga New South Wales 2650
	Telephone	[REDACTED]
	Email	[REDACTED]
	Attention	[REDACTED]
Lessee	Name	Optus Mobile Pty Limited
	ACN	054 365 696
	Address	1 Lyonpark Road, Macquarie Park, New South Wales 2113
	Postal Address	PO Box 888, North Ryde, New South Wales 1670
	Telephone	(02) 8113 5128
	Email	mdsspropertyissues@optus.com.au
	Attention	National Site Acquisition Co-ordinator
Site Code	S2809	
Items		
Item 1 Premises (clause 1.1)	That part of the Land hatched in black on the plan in Annexure B being part of the property known as 3871 Sturt Highway, Gumly Gumly NSW 2652.	
Item 2 Commencement Date (clause 1.1)	1 December 2016	
Item 3 Expiry Date (clause 1.1)	30 November 2021	
Item 4 Term (clause 1.1)	Five years	

Item 5	\$15,000.00 during the Term of the lease
Rent (clause 1.1)	

**Item 6
Nominated
Account
(clause 4.3)**

Bank:

Branch:

Account Name:

BSB No:

Account No:

General terms

1 Defined terms and interpretation

1.1 Defined terms

In the Lease:

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

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

Carrier means a carrier as defined in the Act.

Commencement Date means the date stated in Item 2.

Expiry Date means the date stated in Item 3.

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

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

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

Item means an item appearing in the Information table.

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

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

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

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

Month means calendar month.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Rent Commencement Date means the earlier of:

- (a) the date the Lessee substantially commences physical installation of the Lessee's Telecommunications Equipment on the Premises;
- (b) the date the Lessee identifies in a notice to the Lessor of the Lessee's intention to commence physical installation of the Lessee's Telecommunications Equipment on the Premises; or
- (c) the fifth anniversary of the Commencement Date.

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

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

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

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

1.2 Interpretation

In the Lease, unless the context otherwise requires:

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

2 Implied covenants and powers

2.1 Exclusion of implied covenants

The obligations and powers implied in the Lease by sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) are expressly excluded.

2.2 Inclusion of implied covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease.

2.3 Contravention of Statute - severance

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

3 Term of Lease and holding over

3.1 Term of the Lease

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

3.2 Yearly tenancy - holding over

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

4 Payment

4.1 Lessee's Covenant

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

4.2 Payment of Rent

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

4.3 EFT payments

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

4.4 No payment of Rent until physical installation

Despite any other provision in the Lease, the Lessee is not obliged to pay Rent from the Commencement Date to the Rent Commencement Date, and if the Rent Commencement Date is not an anniversary of the Commencement Date, the Lessee is only required to pay a pro rata of the Rent from the Rent Commencement Date to the next anniversary of the Commencement Date.

4.5 Rates, taxes and outgoings

The parties acknowledge and agree that:

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

4.6 Definitions

In this clause 4.6 and clauses 4.7 to 4.9:

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

4.7 ABN

- (a) The Lessor warrants that the Lessor:
 - (i) has an ABN; or
 - (ii) does not have an ABN, on the basis it is not entitled to have one under the *A New Tax System (Australian Business Number) Act 1999*; and
 - (iii) if it appoints a third party to manage the leasing of the Premises on its behalf and the third party's ABN is quoted in any tax invoice, invoice or other document relating to the Lease, the third party does so as agent for the Lessor in accordance with Australian Taxation Office's public ruling GSTR 2000/37: agency relationships and the application of the law.
- (b) If the Lessor does not have an ABN or the Lessor's ABN is cancelled, the Lessor must immediately notify the Lessee and unless the Lessor provides evidence that the Lessor is not entitled to have an ABN under the *A New Tax System (Australian Business Number) Act 1999*, the Lessor acknowledges that the Lessee will be required to deduct from each payment to the Lessor, PAYG withholding tax pursuant to section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*.

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

4.8 Lessor registered for GST

The following provisions apply in relation to GST:

- (a) Unless stated to the contrary, all payments to be made by the Lessee under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by the Lessee to the Lessor under the Lease is consideration for a supply by the Lessor under the Lease on which the Lessor must pay GST, the Lessee must also pay the Lessor an additional amount equal to the GST payable by the Lessor on that supply.
- (b) The Lessor must issue a tax invoice to the Lessee for any excluded taxable supply made by the Lessor to the Lessee under the Lease before the consideration payable for that supply is due and the Lessee need not pay for a particular excluded taxable supply until such time as the Lessor has issued a tax invoice to the Lessee for that supply.
- (c) The parties agree that the Lessee will issue RCTIs for the taxable supplies made by the Lessor to the Lessee under the Lease except for any supplies that the parties agree in writing are excluded taxable supplies. As at the date of the Lease the only agreed excluded taxable supplies are those supplies for which the Lessor has already issued a tax invoice to the Lessee. For the purpose of the Lessee issuing RCTIs the parties agree:
 - (i) the Lessee may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) the Lessor will not issue a tax invoice in respect of any supply it makes to the Lessee under the Lease other than an excluded taxable supply;
 - (iii) each party acknowledges and warrants that at the time of entering into the Lease, it is registered for GST; and
 - (iv) each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs. If the Lessor breaches its obligations under this clause 4.8(c)(iv) and the Australian Taxation Office determines the RCTI is not validly issued and requires the Lessee to repay any input tax credit, the Lessor:
 - (A) must immediately refund the overclaimed input tax credit amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credit.
- (d) If a payment to a party under the Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount

of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.

- (e) If the Lessee notifies the Lessor in writing that the Lessee will no longer issue RCTIs then clause 4.8(c) will not apply from the date specified in the notification until the Lessee withdraws the notification by a further written notice to the Lessor. While clause 4.8(c) does not apply the parties agree that all taxable supplies made by the Lessor to the Lessee under the Lease are excluded taxable supplies to which clause 4.8(b) applies.

4.9 Lessor not registered for GST

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

5 Use of Premises

5.1 Permitted use

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

5.2 Adjoining Land

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

the Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor.

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

5.3 Requirements of Government Agencies

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

5.4 Cabling

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

5.5 Non contiguous Premises

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

5.6 Consents

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

6 Access to the Premises

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

7 Insurance, indemnities and release

7.1 Obligation to insure

The Lessee will insure against any loss or damage which is commonly covered by public risk or liability insurance in respect of the Premises.

7.2 Lessee's assumption of responsibilities

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

7.3 Negligence or default of Lessor

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

8 Installation and maintenance

8.1 Repair and maintenance

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

8.2 Construction and alterations

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

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

9 Electricity supply

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

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

10 Termination

10.1 Events of termination

If:

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

- (e) as a result of network changes, the Premises cease to operate as or are not required to be a part of the Lessee's telecommunications network;
- (f) the Lessor commits a breach of a material obligation and has not remedied that breach within a reasonable period of notice from the Lessee having regard to the nature of the breach; or
- (g) the Lessor breaches an obligation under clause 13.4 and/or clause 13.5,

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

10.2 Effect on rights or liabilities

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

10.3 Lessee to yield up

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

10.4 Removal of Lessee's fixtures and chattels

The Lessee must:

- (a) within 6 months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and the Lessee);
- (b) within a reasonable period of earlier termination of the Lease; or
- (c) by such other date as the Lessor and the Lessee agree in writing,

remove (subject to clause 14.2) from the Premises all above ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises.

10.5 Termination of holding over

Either the Lessor or the Lessee may terminate the yearly tenancy under clause 3.2 by giving the other six months' prior written notice.

10.6 Termination of prior leases

If any lease in favour of the Lessee whether registered on the title to the Land or not in relation to a period prior to the Term is validly terminated for any reason (other than by effluxion of time), the Lease, without the necessity for any further action on the part of the Lessor or the Lessee, will be automatically terminated.

10.7 Additional Right of Termination

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

10.8 Refund of Rent on termination

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

11 Notices

11.1 Method of service

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

11.2 Time of service

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

11.3 Change of address

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

12 Assignment and subletting

12.1 Lessee not to assign

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

12.2 Assignment to a Related Body Corporate or a Carrier

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

12.3 Assignment

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

12.4 Subletting

The Lessee may sublet, part with or share its right to possession of the Premises upon written notice to the Lessor.

13 Lessor's covenants

13.1 Quiet enjoyment

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

13.2 Restriction on Lessor's use of the Land

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

13.3 Lessor's covenant

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

13.4 No concurrent or superior lease or other dealing

The Lessor must not:

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

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

13.5 Last right of refusal

- (a) The Lessor must not sell the Sale Land to a Proposed Purchaser or enter into any Sale Documentation with a Proposed Purchaser without first serving on the Lessee the Offer to Purchase.
- (b) If within 20 Business Days of receipt by the Lessee of the Offer to Purchase the Lessee serves the Notice of Acceptance then the Lessor must within a further 10 Business Days prepare and forward to the Lessee the Contract, unless the parties have agreed otherwise.
- (c) The Lessee must within 15 Business Days of receipt of the Contract, return to the Lessor the Lessee's counterpart of the Contract, duly executed together with a cheque for the deposit (if required), for the purpose of effecting an unconditional exchange of contracts.
- (d) The Lessor must effect an exchange of the Contract within 5 Business Days of receipt of the executed Contract and deposit (if required) and if the Lessor fails to do so, the Lessor agrees to be bound by the Contract from the expiration of the 5 Business Day period as if it had been executed by the Lessor and exchanged.

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

14 Miscellaneous

14.1 Lessee to pay stamp duty

The Lessee must pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) on the Lease.

14.2 Without prejudice

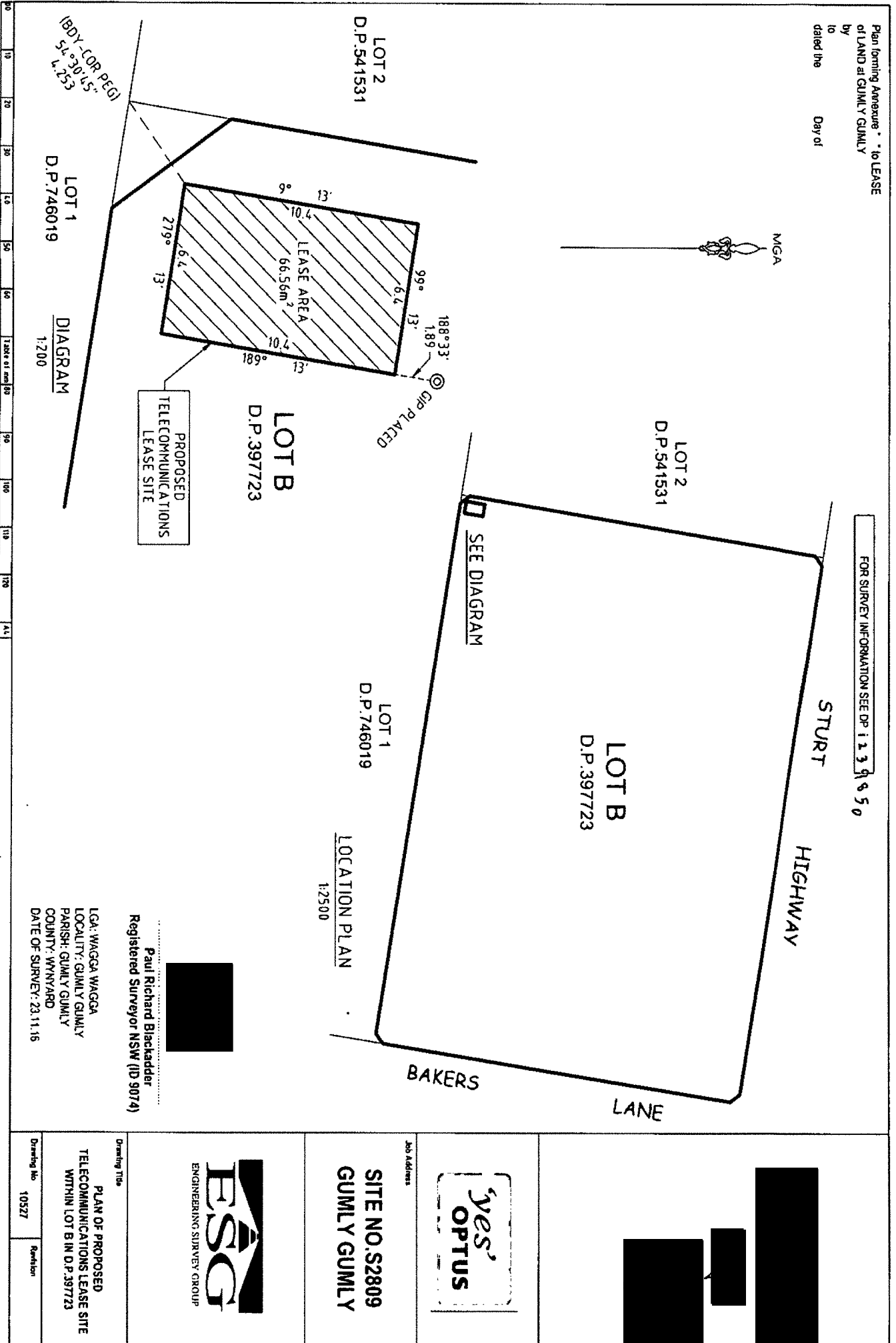
- (a) The Lease is without prejudice to the Lessee's rights under Schedule 3 of the Act.
- (b) To the extent that the Lessee undertakes maintenance (as that term is defined under Schedule 3 of the Act), the Lessor agrees that it does not require the Lessee to give notice of that activity under Schedule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

14.3 Governing law

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

Annexure B Plan referred to in Item 1

Annexure to Lease of premises known as 3871 Sturt Highway Gumly Gumly NSW 2652.



Licence: 03-09-102
Licensee: Minter Ellison

LEASE

New South Wales
Real Property Act 1900



AM663822C

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises information required by this form for the establishment and maintenance of the RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased

Folio identifier 6/830659

Part being more particularly described in Item 1

(B) LODGED BY

Document Collection Box 599D	Name, Address or DX, Telephone, and Customer Account Number, if any MINTER ELLISON 1 Farrer Place, Sydney Telephone (02) 9921 8888	CODE L
	Customer Account Number: 123438 S Reference: JP: 1143565 <i>MA</i>	

(C) LESSOR

[Redacted Lessor Information]

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable): AG878190

(E) LESSEE

OPTUS MOBILE PTY LIMITED ACN 054 365 696

(F)

TENANCY:

- (G) 1. **TERM:** Five years
2. **COMMENCING DATE:** 27 February 2017
3. **TERMINATING DATE:** 26 February 2022
4. With an **OPTION TO RENEW** for a period of N.A.
set out in clause N.A. of N.A.
5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.
7. Incorporates the provisions or additional material set out in **ANNEXURE(S) A and B** hereto.
8. Incorporates the provisions set out in N.A. with the Land and Property Management Authority as No(s). N.A.
9. The **RENT** is set out in item No. 5 of Information

RELODGED

- 1 SEP 2017

TIME: 10:30

Rachel Johnston
24.07.17
Authorised to
make this
alteration
[Signature]

Minter Ellison | Ref: JPA 1143565

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

ME_135274187_1

CT PROD. 35D
10/8/17 FOR L

DATE:

11.07.2017

(H) I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.
[See note** below].

Signature of witness

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.
[See note** below].

Signature of witness

Name of witness

Address of witness

1 Lyonpark Road, Macquarie Park NSW 2113

Certified copy of
Property Act
signed this
attorney's presence

Signature

Attorney's name

OPTUS MOBILE PTY LIMITED

Signing on behalf of

Power of attorney - Book 4210
- No 62

****s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.**

Note: where applicable, the lessor must complete the statutory declaration below.

(I) STATUTORY DECLARATION *

I

solemnly and sincerely declare that-

1. The time for the exercise of option to renew in expired lease No _____ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900

Made and subscribed at _____ in the State of New South Wales on
in the presence of _____ of

☐ Justice of the peace ☐ Practising Solicitor ☐ Other qualified witness (specify)

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was.....

Signature of witness:

Signature of lessor:

* As the services of a qualified witness cannot be provided at lodgement, the declaration should be signed and witnessed prior to lodgement. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

Annexure A - Information table

Parties

Name	[REDACTED]
ABN	901 858 445 39
Short form name	Lessor
Notice details	Postal address: [REDACTED] Telephone: [REDACTED] Email: [REDACTED]
Name	Optus Mobile Pty Limited ACN 054 365 696
Short form name	Lessee
Notice details	Postal address: 1 Lyonpark Road, Macquarie Park NSW 2113 PO Box 888, North Ryde NSW 1670 Telephone: (02) 8113 5128 Email: mdsspropertyissues@optus.com.au Attention: National Site Acquisition Co-ordinator
Site code	B1363

Items

Item 1	Premises (clause 1.1) That part of the Land hatched in black on the plan in Annexure B being part of the property known as Lot 6 DP 830659 Tweed Valley Way, Chinderah NSW 2487
Item 2	Commencement Date (clause 1.1) 27 January 2017
Item 3	Expiry Date (clause 1.1) 26 January 2022
Item 4	Term (clause 1.1) Five years
Item 5	Rent (clause 1.1) \$10,000.00 (plus GST, if any) during the term of the Lease and increased by 3% on each anniversary of the Commencement Date

Item 6

Nominated Account (clause 4.3)

Bank: [REDACTED]

Branch: [REDACTED]

Account [REDACTED]

BSB No: [REDACTED]

Account No: [REDACTED]

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In the Lease:

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

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

Carrier means a carrier as defined in the Act.

Commencement Date means the date stated in Item 2.

Expiry Date means the date stated in Item 3.

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

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

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

Item means an item appearing in the Information table.

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

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

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

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

Month means calendar month.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Rent Commencement Date means the earlier of:

- (a) the date the Lessee substantially commences physical installation of the Lessee's Telecommunications Equipment on the Premises;

- (b) the date the Lessee identifies in a notice to the Lessor of the Lessee's intention to commence physical installation of the Lessee's Telecommunications Equipment on the Premises; or
- (c) the fifth anniversary of the Commencement Date.

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

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

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

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

1.2 Interpretation

In the Lease, unless the context otherwise requires:

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

2. Implied covenants and powers

2.1 Exclusion of implied covenants

The obligations and powers implied in the Lease by sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) are expressly excluded.

2.2 Inclusion of implied covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease.

2.3 Contravention of Statute - severance

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

3. Term of Lease and holding over

3.1 Term of the Lease

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

3.2 Yearly tenancy - holding over

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

4. Payment

4.1 Lessee's Covenant

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

4.2 Payment of Rent

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

4.3 EFT payments

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

4.4 No payment of Rent until physical installation

Despite any other provision in the Lease, the Lessee is not obliged to pay Rent from the Commencement Date to the Rent Commencement Date, and if the Rent Commencement Date is not an anniversary of the Commencement Date, the Lessee is only required to pay a pro rata of the Rent from the Rent Commencement Date to the next anniversary of the Commencement Date.

4.5 Rates, taxes and outgoings

The parties acknowledge and agree that:

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

4.6 Definitions

In this clause 4.6 and clauses 4.7 to 4.9:

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

4.7 ABN

- (a) The Lessor warrants that the Lessor:
 - (i) has an ABN; or
 - (ii) does not have an ABN, on the basis it is not entitled to have one under the *A New Tax System (Australian Business Number) Act 1999*; and
 - (iii) if it appoints a third party to manage the leasing of the Premises on its behalf and the third party's ABN is quoted in any tax invoice, invoice or other document relating to the Lease, the third party does so as agent for the Lessor in accordance with Australian Taxation Office's public ruling GSTR 2000/37: agency relationships and the application of the law.
- (b) If the Lessor does not have an ABN or the Lessor's ABN is cancelled, the Lessor must immediately notify the Lessee and unless the Lessor provides evidence that the Lessor is not entitled to have an ABN under the *A New Tax System (Australian Business Number) Act 1999*, the Lessor acknowledges that the Lessee will be required to deduct from each payment to the Lessor, PAYG withholding tax pursuant to section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*.
- (c) If the Lessor does not comply with its obligations or breaches any warranty under this clause 4.7, the Lessor indemnifies the Lessee for any tax, charge, fine, penalty or other impost which the Lessee incurs or becomes liable to pay as a result of the Lessor's default or breach of warranty.

4.8 Lessor registered for GST

The following provisions apply in relation to GST:

- (a) Unless stated to the contrary, all payments to be made by the Lessee under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by the Lessee to the Lessor under the Lease is consideration for a supply by the Lessor under the Lease on which the Lessor must pay GST, the Lessee must also pay the Lessor an additional amount equal to the GST payable by the Lessor on that supply.
- (b) The Lessor must issue a tax invoice to the Lessee for any excluded taxable supply made by the Lessor to the Lessee under the Lease before the consideration payable for that supply is due and the Lessee need not pay for a particular excluded taxable supply until such time as the Lessor has issued a tax invoice to the Lessee for that supply.
- (c) The parties agree that the Lessee will issue RCTIs for the taxable supplies made by the Lessor to the Lessee under the Lease except for any supplies that the parties agree in writing are excluded taxable supplies. As at the date of the Lease the only agreed

excluded taxable supplies are those supplies for which the Lessor has already issued a tax invoice to the Lessee. For the purpose of the Lessee issuing RCTIs the parties agree:

- (i) the Lessee may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
- (ii) the Lessor will not issue a tax invoice in respect of any supply it makes to the Lessee under the Lease other than an excluded taxable supply;
- (iii) each party acknowledges and warrants that at the time of entering into the Lease, it is registered for GST; and
- (iv) each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs. If the Lessor breaches its obligations under this clause 4.8(c)(iv) and the Australian Taxation Office determines the RCTI is not validly issued and requires the Lessee to repay any input tax credit, the Lessor:
 - (A) must immediately refund the overclaimed input tax credit amount to the Lessee; and
 - (B) indemnifies the Lessee for any interest, fines or penalties imposed on the Lessee as a result of overclaiming any input tax credit.
- (d) If a payment to a party under the Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (e) If the Lessee notifies the Lessor in writing that the Lessee will no longer issue RCTIs then clause 4.8(c) will not apply from the date specified in the notification until the Lessee withdraws the notification by a further written notice to the Lessor. While clause 4.8(c) does not apply the parties agree that all taxable supplies made by the Lessor to the Lessee under the Lease are excluded taxable supplies to which clause 4.8(b) applies.

4.9 Lessor not registered for GST

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

5. Use of Premises

5.1 Permitted use

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

5.2 Adjoining Land

- (a) The Lessor grants to the Lessee the right to temporarily use so much of the Land adjoining and adjacent to the Premises or any installation of the Lessee as is reasonably required during installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the telecommunications network and the telecommunications service.
- (b) When exercising its rights pursuant to this clause 5.2 the Lessee must use its reasonable endeavours to cause minimal disruption and inconvenience to the Lessor as far as is practicable.
- (c) After temporarily using the Land adjoining and adjacent to the Premises or any installation of the Lessee, the Lessee will restore the surface of the Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor.
- (d) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.2.

5.3 Requirements of Government Agencies

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

5.4 Cabling

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

5.5 Non-contiguous Premises

In the event of parts of the Premises not being contiguous one with the other or the Premises being partly or wholly on the rooftop of a building on the Land the Lessee may run such above or below ground cabling, wiring, piping, earthing straps, conduit and support structures over the

Land or within or upon the building on the Land on which the Premises are situated as are necessary for its safe, continuous and proper use of the Premises but in doing so the Lessee must not cause any material damage to the Land or material interference with the Lessor.

5.6 Consents

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

6. Access to the Premises

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

7. Insurance, indemnities and release

7.1 Obligation to insure

The Lessee will insure against any loss or damage which is commonly covered by public risk or liability insurance in respect of the Premises.

7.2 Lessee's assumption of responsibilities

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

7.3 Negligence or default of Lessor

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

8. Installation and maintenance

8.1 Repair and maintenance

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

8.2 Construction and alterations

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

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

9. Electricity supply

For the purpose of carrying out the Lessee's use of the Premises the Lessor must at the Lessee's request and at the Lessee's cost provide to the Lessee the ability to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of the Lessee's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter so that the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it on the Premises.

10. Termination

10.1 Events of termination

If:

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

- (e) as a result of network changes, the Premises cease to operate as or are not required to be a part of the Lessee's telecommunications network;
 - (f) the Lessor commits a breach of a material obligation and has not remedied that breach within a reasonable period of notice from the Lessee having regard to the nature of the breach; or
 - (g) the Lessor breaches an obligation under clause 13.4 and/or clause 13.5,
- then the Lease may be terminated immediately by notice, by the Lessee in the case of subclauses (a), (c), (d), (e), (f) or (g) and by the Lessor in the case of subclause (b).

10.2 Effect on rights or liabilities

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

10.3 Lessee to yield up

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

10.4 Removal of Lessee's fixtures and chattels

The Lessee must:

- (a) within 6 months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and the Lessee);
- (b) within a reasonable period of earlier termination of the Lease; or
- (c) by such other date as the Lessor and the Lessee agree in writing,

remove (subject to clause 14.2) from the Premises all above ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises.

10.5 Termination of holding over

Either the Lessor or the Lessee may terminate the yearly tenancy under clause 3.2 by giving the other six months' prior written notice.

10.6 Termination of prior leases

If any lease in favour of the Lessee whether registered on the title to the Land or not in relation to a period prior to the Term is validly terminated for any reason (other than by effluxion of time), the Lease, without the necessity for any further action on the part of the Lessor or the Lessee, will be automatically terminated.

10.7 Additional Right of Termination

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

10.8 Refund of Rent on termination

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

11. Notices

11.1 Method of service

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

11.2 Time of service

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

11.3 Change of address

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

12. Assignment and subletting

12.1 Lessee not to assign

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

12.2 Assignment to a Related Body Corporate or a Carrier

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

12.3 Assignment

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

12.4 Subletting

The Lessee may sublet, part with or share its right to possession of the Premises upon written notice to the Lessor.

13. Lessor's covenants

13.1 Quiet enjoyment

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

13.2 Restriction on Lessor's use of the Land

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

13.3 Lessor's covenant

The Lessor covenants that the Lessor will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on, or transport to or over the Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises and in the event of the

Lessee notifying the Lessor of any breach by the Lessor of this clause the Lessor must remove such hazardous substance.

13.4 No concurrent or superior lease or other dealing

The Lessor must not:

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

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

13.5 Last right of refusal

- (a) The Lessor must not sell the Sale Land to a Proposed Purchaser or enter into any Sale Documentation with a Proposed Purchaser without first serving on the Lessee the Offer to Purchase.
- (b) If within 20 Business Days of receipt by the Lessee of the Offer to Purchase the Lessee serves the Notice of Acceptance then the Lessor must within a further 10 Business Days prepare and forward to the Lessee the Contract, unless the parties have agreed otherwise.
- (c) The Lessee must within 15 Business Days of receipt of the Contract, return to the Lessor the Lessee's counterpart of the Contract, duly executed together with a cheque for the deposit (if required), for the purpose of effecting an unconditional exchange of contracts.
- (d) The Lessor must effect an exchange of the Contract within 5 Business Days of receipt of the executed Contract and deposit (if required) and if the Lessor fails to do so, the Lessor agrees to be bound by the Contract from the expiration of the 5 Business Day period as if it had been executed by the Lessor and exchanged.
- (e) If the Lessee does not serve a Notice of Acceptance or notifies the Lessor that it does not wish to purchase the Sale Land, then the Lessor may sell the Sale Land to the Proposed Purchaser on terms and conditions not more favourable than the terms and conditions of the Offer to Purchase.
- (f) Despite any other clause, if the Lessor decides to offer the Land for sale by auction it may do so subject to giving to the Lessee at least 20 Business Days' written notice of the proposed auction.
- (g) In this clause:
 - (i) **Sale Land** means the Land or any part of it comprising the Premises;
 - (ii) **Proposed Purchaser** means anyone other than the Lessee;
 - (iii) **Sale Documentation** means genuine bona fide and binding documentation to sell the Sale Land;
 - (iv) **Offer to Purchase** means a notice from the Lessor to the Lessee offering to sell the Sale Land to the Lessee containing:
 - (A) details of the price and the other terms and conditions that have been accepted by the Proposed Purchaser; and
 - (B) a copy of the Sale Documentation which is to be signed or has been signed by or on behalf of the Proposed Purchaser;

- (v) **Notice of Acceptance** means a notice by the Lessee to the Lessor that the Lessee will purchase the Sale Land; and
- (vi) **Contract** means a contract for the sale of the Sale Land between the Lessor and the Lessee containing the same terms and conditions as were set out in the Sale Documentation.

14. Miscellaneous

14.1 Lessee to pay costs and disbursements

The Lessee must:

- (a) pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) on the Lease;
- (b) pay the Lessor's reasonable mortgagee's consent fees for consenting to the Lease (and any subsequent lease completed at the same time as the Lease); and
- (c) following registration of the Lease, pay the Lessor's reasonable legal costs of preparation and completion of the Lease to a maximum of \$2,000.00 for the Lease (and any subsequent lease completed at the same time as the Lease).

14.2 Without prejudice

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

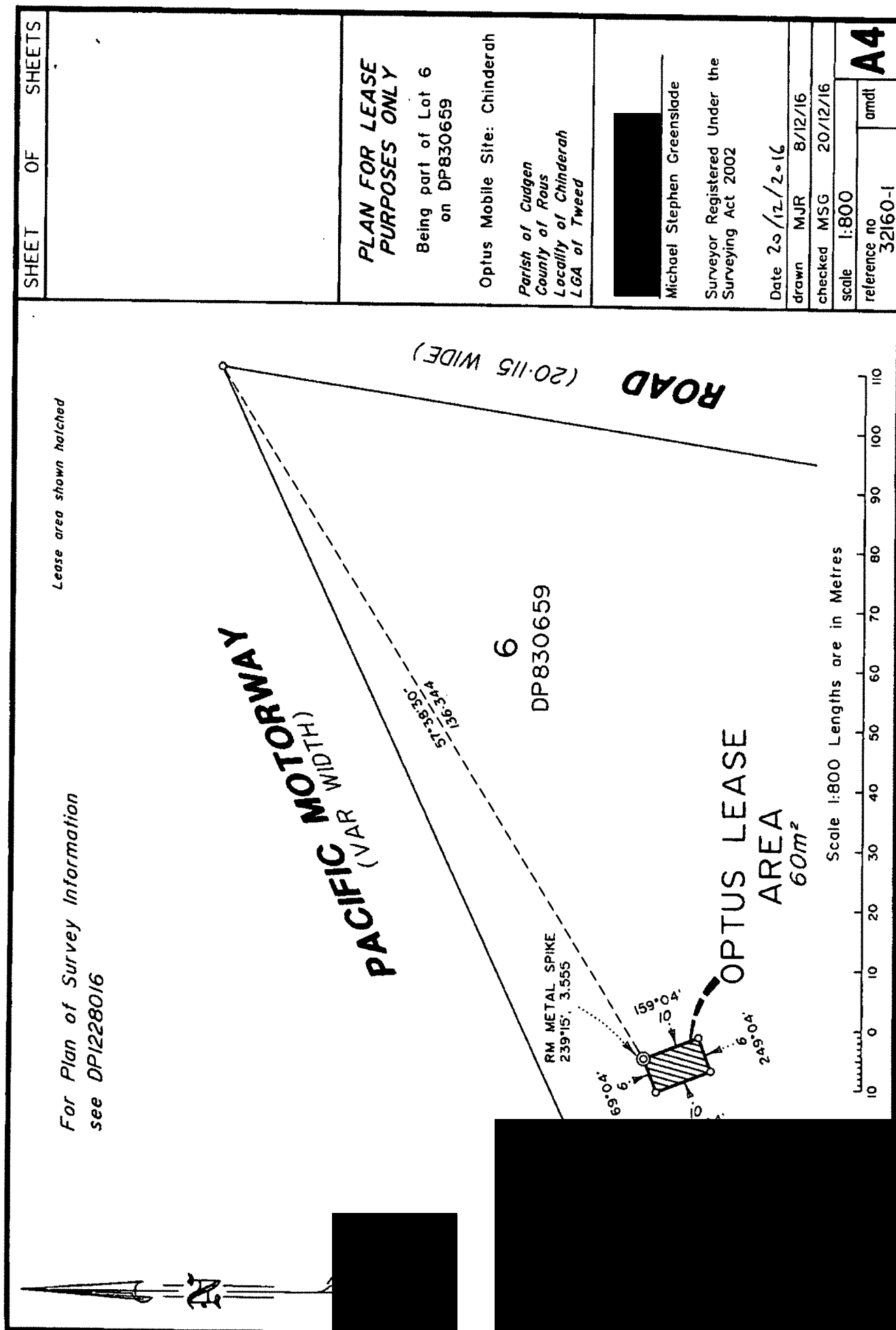
14.3 Governing law

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

Annexure B

Plan referred to in Item 1

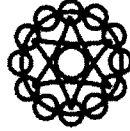
Annexure to Lease of premises known as Lot 6 DP 830659
Tweed Valley Way, Chinderah NSW 2487



SPAINS

SOLICITORS & ATTORNEYS

ABN 98 658 237 995



FILM WITH

AM663822

Registrar-General
Land and Property Information
SYDNEY 2001

Your Ref.: [REDACTED]

Our ref: DS:160092

30 January 2017

Dear Sir / Madam:

Re: [REDACTED] to Optus Mobile Ltd
Site B1346: Part 6/830659, Tweed Valley Way, Chinderah

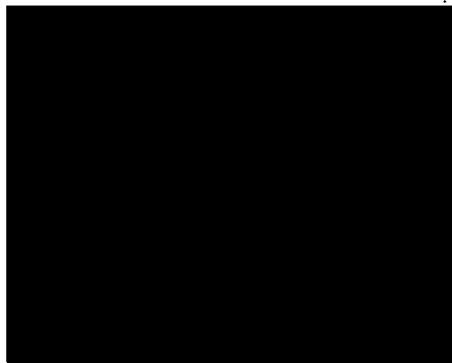
We act for [REDACTED] a
[REDACTED] the registered proprietors of the above lot.

Our clients wish to lease a surveyed portion of the lot to Optus for a telecommunications monopole.
The lease is for five (5) years with a further three (3) options to renew that same term.

Andrew Noel Brinsmead has registered [REDACTED] against the title to the lot.

Please be advised that Andrew Noël Brinsmead as caveator consents to registration of the said lease.

Yours Faithfully,

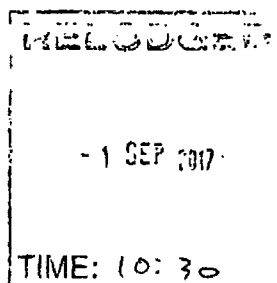


David Spain.

Principal: David William Spain
B.A. LL.B (Hons); LL.M.
Solicitor, Supreme Courts of
Queensland and NSW, and the
High Court of Australia

ALL CORRESPONDENCE TO:
P.O. Box 8115
Gold Coast Mail Centre Q 9726

Email: dspain@spains.com.au



GOLD COAST OFFICE
Level 15
Corporate Centre One
2 Corporate Court,
Bundall Q Australia 4217
Telephone: (+61) 07 5574 0755
Facsimile: (+61) 07 5574 0855

NIGHTCAP RANGE OFFICE
Telephone: (+61) 02 6689 1964
Facsimile: (+61) 02 6689 1946

B7

Form: 07L
Release: 1309

LEASE



AN176658D

New South Wales
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only.

4138-80 Plan Fee

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

Part of the Land at Folio Identifier 42/793538 shown hatched on the Plan in ANNEXURE B

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
273L	InfoTrack Pty Ltd GPO Box 4029 Sydney NSW 2001 Ph: 02 8203 7600 LLPN: 124725J Reference (optional): CS/44578990	L

(C) LESSOR

[Redacted]

The lessor leases to the lessee the property referred to above.

(D) Encumbrances (if applicable): NIL

(E) LESSEE

NBN Co Limited (ACN 136 533 741)

(F) TENANCY:

- (G)
1. TERM: 5 Years
 2. COMMENCING DATE: 12 July 2017
 3. TERMINATING DATE: 11 July 2022
 4. With an OPTION TO RENEW for a period of N/A set out in clause N/A of N/A.
 5. With an OPTION TO PURCHASE set out in clause N/A of N/A.
 6. Together with and reserving the RIGHTS set out in ANNEXURE A
 7. Incorporates the provisions or additional material set out in ANNEXURE(S) A to B hereto
 8. Incorporates the provisions set out in MEMORANDUM LEASE No. N/A
 9. The RENT is set out in Item 5 of ANNEXURE A.

Pro 340 X 2/3/2018 L

DATE

7 1021 2018
dd mm yyyy

(H) I certify that I am an eligible witness and that the lessor signed this dealing in my presence. [See note* below.]

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness: SEE EXECUTION PAGE 26

Signature of lessor:

Name of witness:

Address of witness:

Note: where applicable, the lessor must complete the statutory declaration below.

I certify that I am an eligible witness and that the lessee signed this dealing in my presence. [See note* below]

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness: SEE EXECUTION PAGE 25

Signature of lessee:

Name of witness:

Address of witness:

(I) STATUTORY DECLARATION*

- I _____
solemnly and sincerely declare that—
1. The time for the exercise of option to renew / option to purchase in expired lease No. _____ has ended;
 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at _____ in the State of _____ on _____
in the presence of _____ of _____.

☐ Justice of the Peace (J.P. Number _____) ☐ Practising Solicitor

☐ Other qualified witness [specify] _____.

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID no.]

Signature of witness: _____ Signature of lessor: _____

* As the services of qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

Annexure A

Information Table

Parties Notice Details

Name	[REDACTED]	
ABN	[REDACTED]	
Short form name	Landlord	
Notice details	Address:	[REDACTED]
	Telephone:	[REDACTED]
	Facsimile:	N/A
	Attention:	[REDACTED]
	[REDACTED]	
Name	NBN Co Limited	
ACN	136 533 741	
Short form name	NBN Co	
Notice details	Address:	Level 11, 100 Arthur Street, North Sydney, New South Wales 2060
	Facsimile:	02 9926 1901
	Attention:	Chief Legal Counsel

Items

Item 1	Premises (clause 1.1) That part of the Land hatched in black on the plan in Annexure B being part of the property known as 3510 Old Hume Highway, Berrima, New South Wales 2257 as described by Folio Identifier 42/793538. Site name: Berrima Site number: NBN-2CBZ-2MTT-5108
Item 2	Date of Commencement (clause 1.1) 12 July 2017
Item 3	Date of Expiration (clause 1.1) 11 July 2022
Item 4	Term (clause 1.1) 5 Years

NSW Base Lease Document
Version 4

- Item 5 **Rent** (clause 1.1)
\$6,000.00 per annum payable from the First Payment Date.
- Item 6 **Nominated Account for payment of Rent** (clause 4.5)
As notified by the Landlord in writing to NBN Co from time to time.
- Item 7 **First Payment Date**
The date NBN Co substantially commences construction work to install the Equipment on the Premises (excluding placement of survey pegs or delivery of materials and the Equipment).
- Item 8 **Contact Person** (clause 6.2)
Contact person for all Rent and payment matters:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile: N/A
NBN Co: NBN Co Accounts Payable
Telephone: 02 9927 4151
Address: 100 Arthur Street, North Sydney, New South Wales 2060
Email: accountspayable@nbnco.com.au
Contact person for non-legal matters relating to access and Equipment:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile: N/A
NBN Co: NBN Co Network Operations Support
Telephone: 1800 626 762 (option 5)
Contact person for all other non-legal matters relating to this Lease:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile: N/A
NBN Co: NBN Co Commercial Network Manager
Email: wirelesssservices@nbnco.com.au
Contact person for all legal matters relating to this Lease:
Landlord: Philip Boyce - Philip Boyce & Associates
Telephone: 02 4861 6790
Facsimile: 02 4861 6792

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NBN Co: Chief Legal Counsel
Facsimile: 02 9926 1901

Item 9 **Special Conditions** (clause 1.4)

1. Clause 4.4 is deleted and replaced with:

4.4 GST

- (a) Unless stated to the contrary, all payments to be made by NBN Co under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by NBN Co to the Landlord under the Lease is consideration for a supply by the Landlord under the Lease on which the Landlord must pay GST, NBN Co must also pay the Landlord an additional amount equal to the GST payable (**GST Amount**) by the Landlord on that supply.
- (b) Subject to clause 4.4(d), NBN Co will issue recipient created tax invoices (RCTIs) for the taxable supplies made by the Landlord to NBN Co under this Lease. For the purpose of NBN Co issuing RCTIs the parties agree:
 - (i) NBN Co may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) The Landlord will not issue a tax invoice in respect of any supply it makes to NBN Co under this Lease; and
 - (iii) Each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs.
- (c) If a payment to a party under this Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (d) If NBN Co notifies the Landlord in writing that NBN Co will no longer issue RCTIs then:
 - (i) clause 4.4(b) will not apply from the date specified in the notification until NBN Co withdraws the notification by a further notice to the Landlord; and
 - (ii) during the period specified in clause 4.4(d)(i), the Landlord must issue a tax invoice to NBN Co for any taxable supply made by the Landlord to NBN Co under

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this Lease before the consideration payable for that supply is due and NBN Co need not pay the GST Amount for a particular taxable supply until such time as the Landlord has issued a tax invoice to NBN Co for that supply.

- (e) Notwithstanding any other provision of this clause 4.4, the Landlord acknowledges and warrants that at the time of entering into this Lease it is not registered, required to be registered, nor liable, for GST and will not make any claim against NBN Co in relation to GST arising under or in connection with this Lease.
- (f) In the event that the Landlord becomes registered for GST, the Landlord must notify NBN Co of this in writing and on and from the date NBN Co receives the notice, NBN Co will pay the relevant additional GST amounts in accordance with clause 4.4."

General Conditions

1 Defined terms & interpretation

1.1 Defined terms

In this Lease:

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

Adjoining Land means any land owned by the Landlord which adjoins the Land.

APRA means Australian Prudential Regulation Authority.

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

Carrier has the meaning given to it in the Act.

Code means the *Telecommunications Code of Practice 1997*.

Consecutive Lease means a lease of the Premises between the Landlord and NBN Co other than this Lease, which is granted at the same time as this Lease in respect of periods either prior or subsequent to the Term.

Date of Commencement means the date stated in Item 2.

Date of Expiration means the date stated in Item 3.

Determination means the *Telecommunications (Low Impact Facilities) Determination 1997*.

Equipment means those items of plant and/or equipment brought onto the Land by NBN Co for the use permitted by this Lease.

First Payment Date means the date stated in Item 7.

General Conditions means the part of this Lease described as General Conditions.

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

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

Information Table means the part of this Lease described as Information Table.

Item means an item in the Information Table.

Jurisdiction means the state or territory of the Commonwealth of Australia in which the Land is situated.

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Land means the land described in the Certificate of Title (or title reference) referred to on the front page of the Lease.

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

Landlord's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by the Landlord.

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

NBN Co means the lessee described on the front page of the Lease and its successors and assigns and where the context permits, its employees, agents, invitees and contractors.

NBN Co's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by NBN Co.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Reputable Insurer means an insurer who is:

- (a) a reputable APRA authorised insurer(s); or
- (b) APRA exempt and maintains a Standard & Poor's rating of A minus or higher (or an equivalent rating agency rating).

Special Conditions means the special conditions in Item 9.

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

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

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

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- (d) an expression importing a natural person includes any company, partnership, joint venture, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit, information table or schedule is a reference to a part and clause of and a party, annexure, exhibit, information table and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (i) month means a calendar month;
- (j) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (k) "includes" in any form is not a word of limitation;
- (l) any parties, persons, facts, events or documents alternatively or collectively shall be construed as a reference to all of them and to each and any one or more of them; and
- (m) any organisations, associations, societies, groups or bodies shall in the event that any of them ceases to exist or is reconstituted renamed or replaced or that any of its powers or functions are transferred to any other entity body or group refer respectively to any such entity body or group established or constituted in lieu thereof or succeeding to similar power or functions.

1.3 Third parties

Any covenant (whether express or implied) by a party to this Lease not to do or omit any act or thing shall be deemed to extend to an obligation not to permit any third party to do or to omit the same.

1.4 Special Conditions

The parties acknowledge and agree that the Special Conditions take precedence over the General Conditions to the extent of any inconsistency between the Special Conditions and the General Conditions.

2 Implied covenants and powers

2.1 Exclusion of implied covenants

The obligations and powers implied in the Lease by sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) are expressly excluded.

2.2 Inclusion of implied covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease and which are applicable to NBN Co.

2.3 Contravention of Statute - severance

If any provision of the Lease or its application to any party or in any circumstances is or becomes void, voidable, unenforceable or invalid because of any Statute or otherwise, such provision must in any such case and to such extent be severed from the Lease, and the Lease must be read as though such provision did not form part of the Lease at that time.

3 Term of Lease and holding over

3.1 Term of the Lease

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

3.2 Yearly tenancy holding over

If NBN Co occupies the Premises after the Date of Expiration (other than pursuant to a Consecutive Lease or the grant of a further lease) NBN Co must do so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy. Either party may terminate the yearly tenancy by giving not less than 12 months' notice to the other party expiring on any day.

4 Payment

4.1 NBN Co's Covenant

NBN Co must pay the Rent to the Landlord during the Term.

4.2 Payment of Rent

- (a) Subject to clauses 4.2(b) and 4.2(c), the Rent will be paid annually in advance to the Landlord or to any other person the Landlord notifies to NBN Co. Any notification must be served at least 30 days prior to the date for payment of Rent.
- (b) The first Rent payment will be:
 - (i) for the part year commencing on the First Payment Date and ending on the day prior to the anniversary of the Date of Commencement following the First Payment Date; and
 - (ii) made within 30 days after the First Payment Date.
- (c) For the avoidance of doubt, no Rent will be payable in respect to the period commencing on the Date of Commencement and ending on

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the day prior to the First Payment Date.

- (d) The second and each subsequent Rent payment will be made on each anniversary of the Date of Commencement after the First Payment Date.
- (e) If an instalment of Rent is for a period of less than one year, the instalment for that period is apportioned on a daily rate for the relevant lease year.

4.3 Rent Reviews

The Rent will be increased by 2.5% on each anniversary of the Date of Commencement.

4.4 GST

- (a) Unless stated to the contrary, all payments to be made by NBN Co under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by NBN Co to the Landlord under the Lease is consideration for a supply by the Landlord under the Lease on which the Landlord must pay GST, NBN Co must also pay the Landlord an additional amount equal to the GST payable (**GST Amount**) by the Landlord on that supply.
- (b) Subject to clause 4.4(d), NBN Co will issue recipient created tax invoices (**RCTIs**) for the taxable supplies made by the Landlord to NBN Co under this Lease. For the purpose of NBN Co issuing RCTIs the parties agree:
 - (i) NBN Co may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) The Landlord will not issue a tax invoice in respect of any supply it makes to NBN Co under this Lease;
 - (iii) Each party acknowledges and warrants that at the time of entering into this Lease, it is registered for GST; and
 - (iv) Each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs.
- (c) If a payment to a party under this Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (d) If NBN Co notifies the Landlord in writing that NBN Co will no longer issue RCTIs then:

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- (i) clause 4.4(b) will not apply from the date specified in the notification until NBN Co withdraws the notification by a further notice to the Landlord; and
- (ii) during the period specified in clause 4.4(d)(i), the Landlord must issue a tax invoice to NBN Co for any taxable supply made by the Landlord to NBN Co under this Lease before the consideration payable for that supply is due and NBN Co need not pay the GST Amount for a particular taxable supply until such time as the Landlord has issued a tax invoice to NBN Co for that supply.

4.5 EFT payments

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

4.6 Pro rata refund of Rent

In the event of termination of the Lease pursuant to clause 10.2 or 10.3 the Landlord must forthwith refund to NBN Co prepaid Rent on a pro rata basis.

4.7 Gross Rent

The Landlord acknowledges the Rent is a 'gross' rent and is inclusive of all rates, taxes (excluding GST), statutory and building outgoings.

5 Use

5.1 Permitted use

NBN Co will use the Premises for the purpose of constructing, maintaining and operating a telecommunications facility, network and service and such use includes any use allowed under the Act and may do all such things as may be necessary or convenient for this purpose. NBN Co may at any time during the Term install, remove, modify, vary, maintain, use and operate on the Premises such Equipment as is necessary for the use permitted by this Lease now and in the future.

5.2 Adjacent Land

- (a) The Landlord grants to NBN Co the right to use so much of the Land and Adjoining Land which is adjoining and adjacent to the Premises or any installation of NBN Co as is reasonably required during installation, erection, construction, dismantling, repair, replacement, variation, renewal and maintenance of the telecommunications facility, network and service. After using the Land or Adjoining Land for such use, NBN Co will restore the surface of any part of the Land or

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Adjoining Land as so used as near as practicably possible to its state prior to such use by NBN Co to the reasonable satisfaction of the Landlord.

- (b) The Landlord grants to NBN Co the right to undertake landscaping and/or plant or remove any vegetation on so much of the Land and Adjoining Land as is required by NBN Co to comply with any requirements, notices or orders of any Government Agency or as is otherwise reasonably required by NBN Co. NBN Co will be responsible for the maintenance and upkeep of any such landscaping or vegetation only to the extent required by the relevant Government Agency.

5.3 Requirements of Government Agencies

NBN Co must comply promptly with any applicable Statute in respect of NBN Co's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises. NBN Co is not liable for structural alterations to any of the Landlord's fixtures or facilities unless caused or contributed to by NBN Co's particular use or occupation of the Premises.

5.4 Cabling

- (a) For the purpose of the operation of NBN Co's telecommunications facility, network and service, the Landlord will permit NBN Co to:
 - (i) install, erect, construct, dismantle, maintain, repair, replace, vary, add and use above or below ground cabling to and from the Premises and any other installations of NBN Co and to connect to adjoining roads or services; and
 - (ii) where necessary to construct supports for that cabling, on the Land.
- (b) When exercising its rights under this clause, NBN Co must:
 - (i) not cause any lasting material damage to the Land or material interference with the Landlord; and
 - (ii) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by NBN Co to the reasonable satisfaction of the Landlord.

5.5 Non-contiguous Premises

In the event of parts of the Premises not being contiguous one with the other or the Premises being partly or wholly on the rooftop of a building on the Land NBN Co may run such above or below ground cabling, wiring, conduit, earthing straps, cable trays and support structures over the Land or within or upon the building on the Land on which the Premises are situated as are necessary for its safe, continuous and proper use of the Premises but in doing so NBN Co

must not cause any material damage to the Land or material interference with the Landlord.

5.6 Consents

- (a) The Landlord hereby irrevocably consents to NBN Co making, at its cost, any application for consent or approval to any Government Agency to use or develop the Premises for the use referred to in clause 5.1 and consents to NBN Co exercising and procuring (at its cost) every right and appeal arising from the determination of any such application or the failure to determine the application.
- (b) The Landlord must sign all documentation and do all such things as NBN Co or any person nominated by NBN Co reasonably requires (at NBN Co's cost) to authorise or assist in obtaining consent or approval from any Government Agency to use or develop the Premises for the use referred to in clause 5.1.

6 Access to the Premises

6.1 Access

- (a) The Landlord consents to NBN Co and persons authorised by NBN Co without the need for prior approval and with or without materials, equipment, plant and other apparatus and vehicles entering the Land or Adjoining Land (including any access track referred to in clause 6.1(b)) for the purpose of using the Premises and installations of NBN Co under this Lease and exercising its rights under the Lease at all times of the day and night during the Term.
- (b) The Landlord consents to NBN Co:
 - (i) upgrading any existing access track over the Land and/or Adjoining Land to the Premises to a standard which is suitable for NBN Co's access to the Premises; or
 - (ii) constructing an all-weather access track over the Land and/or Adjoining Land to provide access to the Premises if there is no suitable existing access track to the Premises.
- (c) Despite any clause in this Lease, at the expiry (or earlier termination) of this Lease, NBN Co will not be required to make good or restore the surface of any access track which is upgraded or constructed by NBN Co under clause 6.1(b).

6.2 Contact person

- (a) The Landlord and NBN Co must each nominate a contact person to contact about non-legal matters relating to access and Equipment and other non-legal matters relating to this Lease. The relevant contact persons, as at the Date of Commencement, are stated in Item 8 of the Information Table.

- (b) The Landlord and NBN Co must each nominate a contact person to contact about legal matters relating to this Lease. The relevant contact persons, as at the Date of Commencement, are stated in Item 8 of the Information Table.
- (c) The contact persons in Item 8 of the Information Table may be changed by the relevant party at any time by notice in writing to the other.

7 Insurance

7.1 Obligation to insure

- (a) NBN Co must have in force and maintain with a Reputable Insurer for the Term a valid and enforceable public liability insurance policy to the value of at least \$20,000,000 for any one occurrence.
- (b) The Landlord must have in force and maintain with a Reputable Insurer for the Term a valid and enforceable public liability insurance policy to the value of at least \$10,000,000 for any one occurrence.
- (c) The Landlord must inform its public liability insurer of the Lease and do all things necessary to ensure that the insurance policy covers the Landlord with respect to the activities contemplated within the Lease.

7.2 Evidence of Insurance

On request (and on no more than two occasions per year):

- (a) by the Landlord, NBN Co will produce to the Landlord satisfactory evidence, including certificates of currency, of the insurance policy required under clause 7.1(a); and
- (b) by NBN Co, the Landlord will produce to NBN Co satisfactory evidence, including certificates of currency, of its insurance policy referred to in clause 7.1(b).

7.3 Global Policy

NBN Co may effect its insurance in clause 7.1 pursuant to an insurance policy which is not specific as to the location of risk.

8 Installation

8.1 Construction and alterations

- (a) NBN Co may at NBN Co's discretion and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law, do anything in accordance with the permitted use of the Premises as set out in this Lease, including, without limitation, to install, erect, construct, dismantle, repair, replace, renew, add, vary and maintain

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upon the Premises security fencing and any building or buildings as necessary now or in the future to shelter the Equipment and a free standing monopole, lattice tower, guyed mast, multi-sided antenna support structure or other antenna support structure of sufficient height now or in the future to meet NBN Co's telecommunications requirements and all necessary connecting appurtenances.

- (b) NBN Co shall be entitled to paint any installations referred to in clause 8.1(a) (including, without limitation, any monopole, lattice tower, fencing or buildings) with any colour as may be required by a Government Agency in connection with any planning consent.

8.2 NBN Co property

Despite the extent of any affixation, the Equipment and all other fixtures, fittings, plant and other items brought onto or erected on the Land by or on behalf of NBN Co, at all times remains the absolute property of NBN Co.

9 Electricity supply

9.1 Electricity connection

The Landlord must, at NBN Co's cost, permit NBN Co to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of NBN Co's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter, installed by NBN Co at its own cost, so that NBN Co is directly accountable for payment of electricity consumed by it on the Premises.

9.2 Easement for electricity purposes

- (a) If, pursuant to clause 9.1, NBN Co is required to connect to an electricity supply on or over the Land or on or over Adjoining Land, the Landlord must grant an easement for electricity purposes across that part of the Land or the Adjoining Land to enable NBN Co to connect the Premises to that electricity supply on terms as may be required by the electricity supplier (**Easement**). NBN Co will be responsible for preparing the Easement documentation and must pay the relevant land titles office fees for registration of the Easement, or reimburse the Landlord for such registration fees.
- (b) In anticipation of the grant of Easement, the Landlord hereby consents to NBN Co entering, or permitting the relevant electricity supplier to enter, the Land or the Adjoining Land from the Date of Commencement to construct electricity infrastructure and associated structures required for the purpose of the proposed electricity supply.

10 Termination

10.1 Termination by the Landlord

If:

- (a) NBN Co commits a material breach of any of its obligations including payment of Rent, the Landlord may serve notice on NBN Co requiring remedy of the breach within a reasonable time having regard to the nature of the breach specified in the notice (**Trigger Notice**) such period to be not less than 21 days; and
- (b) NBN Co does not remedy the breach within the time specified in the Trigger Notice, the Landlord may serve notice on NBN Co requiring remedy of the breach within a further reasonable time having regard to the nature of the breach such period to be not less than 60 days (**Default Notice**); and
- (c) NBN Co does not remedy the breach within the period specified in the Default Notice,

the Landlord may terminate this Lease by serving notice to NBN Co at any time before the breach is remedied.

10.2 Termination by NBN Co

In addition to any rights NBN Co may have to terminate this Lease for breach of the Landlord's Covenants:

- (a) if the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of NBN Co or inaccessible by any means of access; or
- (b) if any application for a required consent or permit for the installation and use of the Premises as part of a telecommunications facility, network or service is rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (c) any application to a Government Agency for a required consent, permit or licence for the installation and use of the Premises as part of a telecommunications facility, network or service is granted to NBN Co with conditions unacceptable to it in its absolute and unfettered discretion or is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (d) if the Premises are rendered unfit for NBN Co's use described in clause 5.1 by reason of the emergence of physical, radio or other interference; or
- (e) if the Premises can no longer be used for the use described in clause 5.1, or the Premises are no longer required by NBN Co,

then NBN Co may terminate the Lease immediately by notice to the Landlord.

10.3 NBN Co's additional rights to terminate

NBN Co may also terminate this Lease by notice to the Landlord:

- (a) at any time before it substantially commences construction work to install the Equipment on the Premises (excluding placement of survey pegs or delivery of materials and the Equipment); or
- (b) at any time by giving not less than 6 months notice expiring on any day.

10.4 Effect on rights or liabilities

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

10.5 NBN Co to yield up

NBN Co must, by no later than 6 months after the Date of Expiration (unless there is in place after this Lease a Consecutive Lease or further lease between the Landlord and NBN Co, and in any event subject to clause 14.2), earlier termination of the Lease or such other date as the Landlord and NBN Co agree in writing, yield up the Premises in good repair and clean condition fair wear and tear excepted having regard to their condition at the Date of Commencement of the Lease.

10.6 Removal of NBN Co's fixtures and chattels

NBN Co must, by no later than 6 months after the Date of Expiration (unless there is in place after this Lease a Consecutive Lease or further lease between the Landlord and NBN Co, and in any event subject to clause 14.2), earlier termination of the Lease or such other date as the Landlord and NBN Co agree in writing, remove from the Premises all above ground cabling and fixtures, fittings, plant, machinery, and other items erected or brought by it onto the Premises or the Land.

10.7 Rent abatement

- (a) If the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of NBN Co or inaccessible by any means of access, then except to the extent that such damage or destruction is caused by the wrongful or negligent act or omission of NBN Co, the Rent will abate in proportion to the extent to which NBN Co is inhibited from carrying on the use permitted by this Lease from the date upon which the destruction or damage occurs until the earlier of the date upon which it is repaired and the date of termination of the Lease pursuant to clause 10.2(a).
- (b) If there is a dispute between the parties as to the proportion of Rent to be abated pursuant to clause 10.7(a) which is not resolved within

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20 days after notice by one party to the other of the nature of the dispute then:

- (i) the dispute may be referred by either party for determination by an expert who is an appropriate practising professional appointed at the request of either party (**Expert**), by:
 - (a) the president of the professional body most appropriate to determine the dispute or, if the parties are unable to agree on the appropriate body, the president for the time being of the Law Society of the Jurisdiction; or
 - (b) if there is no such body in existence at the time of the request, the president for the time being of an equivalent body;
- (ii) each party may make a submission either orally or in writing to the Expert within 20 days after that appointment;
- (iii) in making a determination the Expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) consider any submission made to it by a party; and
 - (c) provide the parties with a written statement of reasons for the determination;
- (iv) in the absence of manifest error the determination of the Expert is conclusive and binding on the parties;
- (v) the costs of the Expert will be shared equally between the parties unless otherwise determined by the Expert; and
- (vi) if the Expert fails to deliver a determination within 20 days after the last day on which the parties are entitled to make submissions, either party may require the appointment of a further Expert under clause 10.7(b)(i) to determine the dispute.

10.8 Termination of consecutive leases

This Lease will terminate automatically if there exists any Consecutive Lease the commencing date of which precedes the Date of Commencement and:

- (a) NBN Co gives notice to the Landlord not later than the date which is 3 months prior to the Date of Commencement that it no longer requires the Premises; or
- (b) that Consecutive Lease is terminated for any reason.

11 Notices

11.1 Method of service

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

11.2 Time of service

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

11.3 Change of address

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

12 Assignment and subletting

12.1 NBN Co not to assign

NBN Co must not assign the Lease except under clause 12.2 or with the prior written consent of the Landlord under clause 12.3.

12.2 Assignment to a Related Body Corporate or a Carrier

NBN Co may from time to time assign the Lease to a Related Body Corporate of NBN Co or to a Carrier or to the holder of a Nominated Carrier Declaration (as those terms are defined in the Act) or to a party in conjunction with the sale of the whole or part of NBN Co's telecommunications network or to a Government Agency.

12.3 Assignment

Subject to clause 12.2 NBN Co may assign the Lease with the prior written consent of the Landlord, such consent not to be unreasonably withheld.

12.4 Release following assignment

If this Lease is assigned, NBN Co will cease to be liable for any NBN Co's Covenants which arise, or are liable to be performed, on or after the date of assignment. However, NBN Co is not released in respect of breaches of NBN Co's Covenants which arose before the date of assignment.

12.5 Subletting

NBN Co may sublet, licence, part with or share its right to possession of the Premises without requiring the consent of the Landlord.

13 Landlord's covenants

13.1 Quiet enjoyment

The Landlord covenants that NBN Co may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person rightfully claiming through the Landlord. The Landlord must not do anything which derogates from its grant of the Premises to NBN Co under this Lease.

13.2 Restriction on Landlord's use of the Land

The Landlord covenants that the Landlord will not itself nor will it permit any third party to do anything on the Land which is likely to cause physical, radio or other interference which obstructs, interrupts or impedes the use or operation of NBN Co's telecommunications facility, network or service. If NBN Co advises the Landlord of any breach by the Landlord of its covenant the Landlord will, to the extent that it is within its power to do so, use all reasonable endeavours at its expense to forthwith remedy such breach.

13.3 Landlord's covenant

The Landlord covenants that the Landlord will not itself nor will it permit any third party to, store on, dispose of on or transport to or over the Land any hazardous substance which is likely to cause interference with NBN Co's use of the Premises. If NBN Co advises the Landlord of any breach by the Landlord of its covenant the Landlord will, to the extent that it is within its power to do so, use all reasonable endeavours at its expense to forthwith remedy such breach.

13.4 Sale or dealings with the Land by the Landlord

The Landlord must not sell, transfer, subdivide or otherwise deal with its interests in the Land (so far as it relates to the Premises and any areas used by NBN Co for access to or use of the Premises) unless it first procures that the transferee or other relevant person provides a deed poll in favour of NBN Co, in a form required by NBN Co, under which that person agrees to comply with all of the Landlord's Covenants as if that person were the Landlord party originally named in this Lease.

13.5 Consent of Mortgagee or Chargee

If the Land is subject to any mortgage or charge, the Landlord must, at its cost, obtain the mortgagee or chargee's consent to this Lease in a form which is reasonably acceptable to NBN Co and which does not impose additional conditions on NBN Co.

13.6 Registration

The Landlord must attend to registration and do all things reasonably necessary to enable the registration of the Lease at the relevant Land Titles Office in the Jurisdiction.

13.7 Contamination

- (a) The Landlord warrants that, at the Date of Commencement, the Land does not contain substances hazardous to health or safety.
- (b) If any cleanup of the Land is required by Statute or because substances are present on the Land which are hazardous to health or safety, and is not caused by the activities of NBN Co on the Land, then the Landlord must, upon written request from NBN Co, at the Landlord's cost, carry out such cleanup as may be required to comply with the Statute or deal with the hazard to health or safety.

14 Miscellaneous

14.1 NBN Co to pay costs and disbursements

NBN Co must pay all registration fees in relation to this Lease. Each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation, completion and registration of the Lease.

14.2 Without prejudice – Telecommunications Act

- (a) This Lease is without prejudice to, and nothing in this Lease affects, restricts, limits or derogates from any right, power and immunity of NBN Co under or by virtue of any Statute including, without limitation, NBN Co's rights under Schedule 3 of the Act.
- (b) The parties acknowledge that, in relation to the Premises, the installation of any Equipment deemed to be low impact pursuant to the Determination, or the maintenance of any of the Equipment on the Land, by or for NBN Co is undertaken in exercise of the rights of NBN Co pursuant to Divisions 2, 3 and/or 4 (as the case may be) of Schedule 3 to the Act.
- (c) To the extent that an activity performed by NBN Co in connection with the Premises or anything in, over or under the Premises, is an activity that NBN Co is authorised to do under Schedule 3 of the Act, the Landlord waives its right to be given a notice under clauses 17 and 18 of Schedule 3 of the Act, and also waives any rights that it has to object to the activities that, but for this clause, would have been the subject of a notice under clauses 17 and 18 of Schedule 3 of the Act.
- (d) The Landlord agrees that, in light of the terms of this Lease, it will not make any claim against NBN Co in relation to clause 42 of Schedule 3 to the Act.
- (e) The operation of this clause and any waiver given under this clause will survive the termination or expiry of this Lease. Any rights obtained by NBN Co under Schedule 3 of the Act will continue in accordance with the Act, notwithstanding the termination or expiry of this Lease.

14.3 Governing law

This Lease is governed by the laws of the Jurisdiction and the Commonwealth of Australia and the Landlord and NBN Co submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction.

14.4 Entire Agreement

This Lease contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

14.5 No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Lease will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

14.6 No Merger

The rights and obligations of the parties will not merge on completion of any transaction under this Lease.

14.7 Counterparts

If this Lease consists of signed counterparts, each is an original and all of the counterparts together constitute the same document.

14.8 Confidentiality

- (a) The parties each agree that the terms of this Lease are confidential. Except to the extent necessary to comply with its terms, a party must not disclose this Lease or the contents of this Lease to any third party without the prior written consent of each other party.
- (b) It is not a breach of clause 14.8(a) for a party to disclose this Lease or the contents of this Lease if that disclosure:
 - (i) is required by law or by any Government Agency or regulatory body (including any relevant stock exchange); or
 - (ii) is of information which is publicly available through no fault of the party making the disclosure; or
 - (iii) is necessary in order to obtain consent to this Lease from a third party (in connection with registration of this Lease or otherwise), provided the recipient is under an obligation to keep the information disclosed confidential;
 - (iv) is to the party's professional advisers, bankers, financial advisers and financiers, provided the recipient is under an obligation to keep the information disclosed confidential; or
 - (v) is to any of its employees, agents and contractors to whom it is necessary to disclose the information, provided the recipient is

NSW Base Lease Document
Version 4

under an obligation to keep the information disclosed
confidential.

NSW Base Lease Document
Version 4

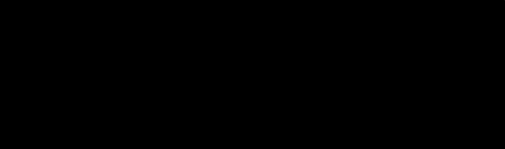
EXECUTED as a Deed

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4689 No: 895 (and I declare that I have no notice of



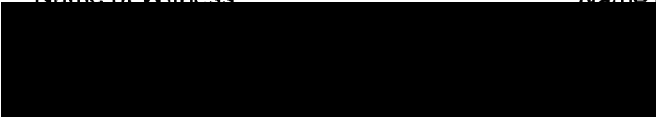
Signature of Witness



Clayton Ford
Regional Manager
Infrastructure Services

Name of Witness

Name of Attorney



Position of Attorney

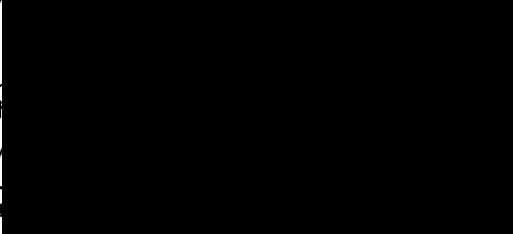
Address of Witness

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4689 No: 895 (and I declare that I have no notice of rev



Signature of Witness



Signature of Attorney

Name of Witness

Name of Attorney



Position of Attorney

Address of Witness

NSW Base Lease Document
Version 4

I certify [redacted] witness and
the lessor is acting in my
presence

Certified correct for the purposes of the
Real Property Act 1900 by the lessor,
F [redacted]

Signature of witness

S [redacted]

Name of witness

Address of witness

PHILIP BOYCE
~ Solicitor ~
PO Box 1596
Bowral NSW 2576
Ph (02) 48 616790
Fax (02) 48 616792

I certify [redacted] s and
the lessor is acting in my
presence

Certified correct for the purposes of the
Real Property Act 1900 by the lessor,
[redacted]

Signature of witness

Name of witness

Address of witness

PHILIP BOYCE
~ Solicitor ~
PO Box 1596
Bowral NSW 2576
Ph (02) 48 616790
Fax (02) 48 616792

NSW Base Lease Document
Version 4

Annexure B

Plan



Ref:parmstrong /Src:P

Form: 9/SL

Licence:

Licensee: Madgwicks Lawyers

SUBLEASE

New South Wales
Real Property Act 1900



1

AM684360W

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the use of this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) HEAD LEASE

AC187224C

(B) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

Part folio identifier Lot 4 DP 211713, being the area shown hatched black on the plan annexed to this Lease and marked 'B'.

(C) LODGED BY

Document Collection Box 582W	Name, Address or DX, Telephone and Customer Account Number if any	CODE SL
	SERVICE FIRST REGISTRATION DX 189 SYDNEY LLPN123426A Telephone 02 9296 9000 FAX 0279 2185 Reference (optional): <u>RJON - PIRATES</u>	

(D) SUBLESSOR

[Redacted Sublessor Information]

The sublessor leases to sublessee the property referred to above.

(E)

Encumbrances (if applicable): 1. _____ 2. _____ 3. _____

(F) SUBLESSEE

VODAFONE NETWORK PTY LTD ACN 081 918 461

TENANCY:

(H) 1. TERM 5 years

2. COMMENCING DATE 30 January 2017

3. TERMINATING DATE 29 January 2022

4. With an ~~OPTION TO RENEW~~ for a period of _____ set out in _____

5. Together with and reserving the ~~RIGHTS~~ set out in _____

6. Incorporates the provisions or additional material set out in ANNEXURE(S) A hereto.

7. Incorporates the provisions set out in ~~MEMORANDUM~~ FILED / LEASE registered at the Land and Property Management Authority as No. _____

8. The RENT is set out in item / clause _____ of advance. \$12,000.00 per annum, payable monthly in

DATE / /
 dd mm yyyy

FOR EXECUTION CLAUSES, SEE ANNEXURE 'A'

- (1) I certify that I am an eligible witness and that the sublessor signed this dealing in my presence. [See note** below].

Certified correct for the purposes of the Real Property Act 1900 by the sublessor.

Signature of witness:

Signature of sublessor:

Name of witness: ~~SEE ANNEXURE FOR EXECUTION~~ ,
 ~~SEE PAGE 25 OF ANNEXURE 'A'~~
 FOR EXECUTION

Address of witness:

Note: where applicable, the sublessor must complete the statutory declaration below.

I certify that I am an eligible witness and that the sublessee signed this dealing in my presence. [See note** below].

Certified correct for the purposes of the Real Property Act 1900 by the sublessee.

Signature of witness:

Signature of sublessee:

Name of witness: ~~SEE ANNEXURE FOR~~
 ~~EXECUTION SEE PAGE 25 OF~~
 ANNEXURE 'A' FOR EXECUTION

Address of witness:

(1) STATUTORY DECLARATION*

I _____
solemnly and sincerely declare that—

1. The time for the exercise of option to renew / option to purchase in expired lease No. _____ has ended;
2. The sublessee under that sublease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at _____ in the State of _____ on _____
in the presence of _____ of _____

- ☐ Justice of the Peace (J.P. Number: _____) ☐ Practising Solicitor
☐ Other qualified witness [specify] _____

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a [Omit ID No.]

Signature of witness: Signature of lessor:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

This is Annexure 'A' referred to in the lease between Pirates Rugby Club Incorporated ABN 94 750 908 350 (as lessor) and Vodafone Network Pty Ltd ACN 081 918 461 (as lessee)

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Information table

Parties

Name [REDACTED]

ABN [REDACTED]

Short form name **Lessor**

Notice details [REDACTED]

[REDACTED]

Email address [REDACTED]

Name **Vodafone Network Pty Ltd ACN 081 918 461**

ABN 31 081 918 461

Short form name **Lessee**

Notice details Vodafone Central, Level 1, 177 Pacific Highway, North Sydney NSW
2060 or such other address as may be the registered office of the Lessee
from time to time

Facsimile: 1300 559 497

Attention General Counsel

Vodafone ID: Site No. 240364 (West Tamworth)

Name **Tamworth Regional Council**

ABN 52 631 074 450

Short form name **Head lessor**

Notice details 437 Peel St, Tamworth, NSW, 2340

Attention Sylvia Elliott

Email address: s.elliott@tamworth.nsw.gov.au

Items

Item 1 Premises (clause 1.1)

The area in Folio Identifier 4/211713 as shown on the plan in Annexure
B being part of the property known as 13-31 Anne Street, South
Tamworth, NSW, 2340

Item 2 The Land (clause 1.1)

The whole of the land comprised in Folio Identifier 4/211713

Item 3 Commencing Date (clause 1.1)

30 January 2017

Item 4 Terminating Date (clause 1.1)

29 January 2022

Item 5 Term (clause 1.1)

5 years

Item 6 Break Date (clause 1.1 & clause 3.2)

29 January 2022

Item 7 Rent (clauses 1.1 and 6.1)

At the Commencing Date the sum of \$12,000.00 per annum and thereafter as reviewed pursuant to the terms of this Lease.

Item 8 Rental Day

The latter of the Commencing Date and the date determined in accordance with clause 6.3 and then on the same day of each month of the Term.

Item 9 Lessor's Bank Account (clause 6.2)

Bank: [REDACTED]
Branch: T [REDACTED]
Account Name: [REDACTED]
BSB: [REDACTED]
Account Number: [REDACTED]

Item 10 Review Factor (clauses 1.1 and 7)

3%

Item 11 Contact person (clause 15.2)

Lessee: Account Manager, Vodafone Account
Colliers International (NSW) Pty Ltd
Telephone: (02) 9957 6611
Facsimile: (02) 9957 2990

Lessor: Stuart Prowse
Telephone: 0429 664 135
Facsimile:

Head lessor: Sylvia Elliott
Telephone: 0428 970 902
Facsimile:

Item 12 Lessee's solicitors (clause 21)

Madgwicks Lawyers

Level 33, 140 William Street
MELBOURNE VIC 3000
Telephone: (03) 9242 4744
Facsimile : (03) 9242 4777

Date 2016
Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Lease, unless the context otherwise requires, the following words and phrases have the meanings attributed to them in this clause:

Break Date means the date stated in Item 6.

Carrier means a carrier as defined in the Telecommunications Act.

Commencing Date means the date specified in Item 3.

Equipment means those items of plant and/or equipment of the Lessee, including without limitation of the generality of such term, all fixtures and fittings of the Lessee, masts, antennas, cables (telephone or any other type), pipes, wires, conduits, fencing, mounts, erections and other buildings constructed by the Lessee, including the Equipment Cabin upon the Premises, and all other appliances, apparatus and things of whatsoever nature brought onto the Land by the Lessee.

Equipment Cabin means that part of the Equipment comprising the cabin constructed by the Lessee on the Premises to house certain parts of its equipment.

GST means goods and services tax as described in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended) and related GST regulations, as amended from time to time.

GST Rate means the prevailing rate of the GST payable in accordance with the GST Law.

Headlease means registered lease AC187224C,

Head lessor means the Lessor in registered lease AC187224C,

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

Item means an item in the Information table.

Land means the land specified in Item 2.

Lessor's Improvements means the building or other structure on the Land and owned by the Lessor upon or within which the Premises are situate.

Payments mean the Rent and other amounts payable by the Lessee to the Lessor under this Lease.

Permitted Use means the use by the Lessee of the Premises, the Lessor's Improvements and the Land as is permitted to the Lessee under this Lease.

Physical Installation means the installation of the Equipment essential to the functioning of the Lessee's telecommunications facility which will remain at the Premises for the duration of the Term to enable the Lessee to conduct its Permitted Use of the Premises and does not include entering the Land to undertake an inspection, or surveying the Land.

Plan means the lease plan which is annexed to this Lease as Annexure B.

Premises means the premises described in Item 1 of the Information table.

Related Body Corporate has the meaning attributed to that term by Section 9 of the *Corporations Act 2001* (Cth).

Rent means the amount specified in Item 7.

Rental Day means the days referred to at Item 8.

Review Date means each anniversary of the first Rental Day.

Review Factor means the percentage set out at Item 10.

Secure Premises means Lessor's Improvements which for operational or security reasons are not generally accessible by the Lessee at all times.

Sequential Lease means a lease of the Premises between the Lessor and the Lessee, other than this Lease, which is granted at the same time as this Lease in respect of periods either prior or subsequent to the Term.

Tax Invoice has the same meaning as given in the *A New Tax System (Goods and Services Tax) Act 1999*.

Taxable Supply has the meaning given in the GST Law.

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

Term means the term specified in Item 5.

Terminating Date means the date specified in Item 4.

1.2 Interpretation

Except where the context otherwise requires a reference in this Lease to:

- (a) statutes regulations ordinances or by-laws will be deemed for all purposes to be extended to include a reference to all statutes regulations ordinances or by-laws amending consolidating or replacing the same from time to time;
- (b) the singular number includes a reference to the plural number and vice versa;
- (c) any gender includes a reference to the other genders and each of them;
- (d) any parties, persons, facts, events or documents alternatively or collectively shall be construed as a reference to all of them and to each and any one or more of them;
- (e) any person (including the Lessor and the Lessee) shall mean and include the legal personal representatives, successors in title or assigns of such person as the context may require;
- (f) a company or a corporation includes a person and vice versa;
- (g) a clause number shall mean a reference to the respective clauses of this Lease;

- (h) any organisations associations societies groups or bodies shall in the event that any of them ceases to exist or is reconstituted renamed or replaced or that any of its powers or functions are transferred to any other entity body or group refer respectively to any such entity body or group established or constituted in lieu thereof or succeeding to similar powers or functions;
- (i) a reference to the Lessee or the Lessor includes reference to each of that party's employees, officers, contractors, agents, service suppliers, licensees, invitees and those persons who are at any material time under the control of and upon the Land with the consent of that party; and
- (j) a period of days is inclusive of public holidays and weekends and a period of months is a reference to calendar months.

1.3 Headings

Marginal notes and headings where used in this Lease are only for the purpose of identification and are not to be considered in the interpretation of the provisions of this Lease.

1.4 All parties bound

Where any party to this Lease is comprised of more than one person all and any covenants agreements conditions and obligations expressed in or implied by this Lease shall bind all of such persons jointly and each of them severally.

1.5 Third parties

Any covenant (whether express or implied) by a party to this Lease not to do or omit any act or thing shall be deemed to extend to an obligation not to permit any third party to do or to omit the same.

1.6 Severance

If any covenant agreement or other provision of this Lease or its application to any party or in any circumstances is or becomes unenforceable or invalid or its operation is or becomes excluded by operation of law or otherwise then and in any such eventuality the remaining covenants agreements and provisions of this Lease will not be affected thereby but shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

2. Statutory provisions

2.1 Exclusions

- (a) To the extent that they may be excluded, any covenants, powers or provisions implied in leases by statute do not apply to this Lease.
- (b) Any present or future legislation which operates to vary obligations between the Lessee and the Lessor, except to the extent that such legislation is expressly accepted to apply to this Lease or that its exclusion is prohibited, is excluded from this Lease.

2.2 Telecommunications Act

- (a) This Lease is without prejudice to any rights of the Lessee pursuant to or arising under the Telecommunications Act, any statute, ordinance or regulation promulgated thereunder or replacement thereof.

- (b) To the extent that the Lessee is authorised under this Lease to undertake any activity in the nature of installation or maintenance, as those terms are used in the Telecommunications Act, the Lessor will not require further notice of that activity to be given under the Telecommunications Act.

3. Lease for the Term

3.1 Term

The Lessor leases the Premises to the Lessee for the Term.

3.2 Termination on a Break Date

If the Lessee gives to the Lessor at any time not later than 6 months prior to a Break Date, a notice to the effect that from the Break Date, it wishes to terminate this Lease upon that Break Date, then this Lease will come to an end on the Break Date so specified.

4. Holding over

- (a) If the Lessee continues to occupy the Premises beyond the Terminating Date the Lessee shall do so as a yearly tenant only, at a Rent payable annually in advance (at the same Rent as during the year preceding the Terminating Date) and otherwise on the same terms and conditions as this Lease.
- (b) The tenancy so created is determinable at any time by either party by 1 year's notice given to the other party to expire on any date.

5. Permitted use

The Lessee may during the Term use the Premises and the Equipment on the Land for the purposes of a telecommunications base station forming part of a telecommunications network.

6. Payment of Rent

6.1 Payment

Subject to clause 6.3 the Lessee must pay the Rent in advance on the Rental Days.

6.2 EFT

The Lessee may pay the Rent by Electronic Funds Transfer (EFT) to the account nominated in Item 9. The Lessor may notify another account in Australia to which payment may be made by EFT to replace the account stated in Item 9 provided that written notice of any such nomination is received by the Lessee not less than 30 days prior to the date upon which the Rent is payable. Payment by EFT by the Lessee's banker to the relevant nominated account by the due date is a full discharge for the payment.

6.3 Rent deferred

- (a) In this clause:

Fit-Out Period means the period of twelve weeks starting on the date the Lessee commences Physical Installation of the Equipment upon the Premises.

- (b) The Lessee's obligation to pay Rent will not commence until the earlier of:

- (i) the day following the expiry of the Fit-Out period;
- (ii) the date the Lessee commences transmission of signals from the Premises; and
- (iii) the Lease Commencing Date.

The Rental Day for the balance of the Term will be the anniversary of the first Rental Day.

- (c) The Lessee may install the Equipment on the Premises during the Fit-Out Period.
- (d) Despite any other provision in this Lease, the Lessee is not obliged to pay Rent from the Commencing Date to the first Rental Day.

7. Rent reviews

On each Review Date the Rent will be increased by the Review Factor.

8. Rates and taxes

The Lessor and the Lessee agree that the Rent includes any rates taxes and outgoings (other than any electricity cost payable by the Lessee under clause 10) which may be payable in relation to the Premises.

9. GST

In this clause 9, words used which have a defined meaning in the GST Law, have the same meaning as in the GST Law unless the context indicates otherwise.

9.1 GST

- (a) Unless expressly indicated, the consideration for any supply under or in connection with this Lease is exclusive of any GST.
- (b) To the extent that any supply made under or in connection with this Lease is a Taxable Supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- (c) Unless expressly indicated in clause 9.2, the supplier must issue a Tax Invoice to the recipient of the supply prior to the time of payment of the GST inclusive consideration or at such other time as the parties agree.
- (d) Unless expressly indicated in clause 9.2, where an adjustment event arises under or in connection with this Lease the supplier must issue to the recipient an adjustment note in accordance with the GST Law within 14 days of becoming aware of the need to make the adjustment.
- (e) To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

9.2 Recipient Created Tax Invoice (RCTI)

- (a) For the purposes of this clause 9.2, "supplier" means the Lessor and "recipient" means the Lessee or the Lessee's agent. This clause 9.2 applies only in relation to the payment of Rent by the Lessee (or its agent) to the Lessor.
- (b) The parties agree that:
 - (i) the Lessee (or its agent) may, and will, issue a RCTI to the Lessor in relation to the Rent payable for the supply by the Lessor to the Lessee; and
 - (ii) the Lessor will not issue a Tax Invoice to the Lessee (or its agent) in relation to the Rent payable for the supply by the Lessor to the Lessee.
- (c) The Lessee (or its agent):
 - (i) will issue the original or a copy of the RCTI to the Lessor within 28 days of the making, or determining the value, of the Taxable Supply;
 - (ii) will issue the original or a copy of an adjustment note to the Lessor within 28 days of the adjustment and will retain the original or a copy;
 - (iii) will not issue a document that would otherwise be an RCTI, on or after the date when the Lessee or the Lessor has failed to comply with any of the requirements of the New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No. 1) 2000.
- (d) The Lessor acknowledges that:
 - (i) it is registered for GST and has been allocated an Australian Business Number; and
 - (ii) it will inform the Lessee if it ceases to be registered for GST.
- (e) The Lessee acknowledges that it is registered for GST when it enters into the Lease and will notify the Lessor if it ceases to be registered for GST.

9.3 Input tax credit entitlement

Any reference in the calculation of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any input tax credit entitlement in relation to the relevant cost, expense or other liability.

10. Electricity

10.1 Supply

If requested by the Lessee, the Lessor must, at the Lessee's cost, permit the Lessee to connect the Equipment to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land and/or the Lessor's Improvements such earthing apparatus as is necessary for the safe and continuous use of the Equipment.

10.2 Metering

- (a) If it is reasonably practicable to do so, the electricity to the Equipment must be separately metered at the cost of the Lessee so that the Lessee is directly

accountable to the relevant authority for payment of electricity consumed by it at the Premises.

- (b) If it is not reasonably practicable for the electricity to the Equipment to be separately metered, the Lessee may, at its cost, connect the Equipment to the Lessor's power supply, in which event the Lessee must pay to the Lessor such proportion of the Lessor's electricity cost as reasonably represents the cost of electricity used by the Equipment.

11. Lessor's covenants

11.1 Quiet enjoyment

Subject to the Lessee complying with its obligations under this Lease, the Lessor covenants that the Lessee may have quiet enjoyment of the Premises during the Term.

11.2 Interference

- (a) The Lessor acknowledges that the Permitted Use relies upon the transmission and reception of radiofrequency signals which may suffer interference from structures or facilities constructed in proximity to the Equipment. The Lessee has satisfied itself that as at the Commencing Date the Premises are satisfactory for the Permitted Use.
- (b) The Lessor must not erect, nor may it permit the erection of, any structure on above or below the Land or upon the Lessor's Improvements and must not do or permit any other thing which may by means of physical or radio interference affect the Permitted Use and quiet enjoyment of the Premises by the Lessee.

12. Insurance

12.1 Cover

The Lessee must maintain and within a reasonable time of a request that it do so (which request must not be made more than once in a twelve month period), produce to the Lessor a certificate of currency in respect of the same, adequate insurance in respect of the Premises for:

- (a) public liability to an amount of not less than \$20,000,000; and
- (b) damage to the Equipment, including the costs of demolition and removal.

12.2 Global policy

Without limitation to clause 12.1 the Lessor acknowledges that the Lessee may effect the insurances referred to in that clause pursuant to an insurance policy which is not specific as to the location of risk.

12.3 Lessor's insurance

The Lessor must maintain insurances of the nature and in amounts which a reasonable and prudent owner of the Land would maintain, having regard to the nature of the Land, the Lessor's Improvements and the nature of activities usually carried on upon the Land.

13. Lessee's indemnity and warranty

13.1 Indemnity and release

The Lessee:

- (a) releases the Lessor to the fullest extent permitted by law from any claim or demand resulting from any accident, damage or injury occurring at the Premises, caused or (to the extent of that contribution) contributed to by the negligent or wrongful acts errors defaults or omissions of the Lessee or the Lessee's employees, agents or contractors or the Lessee's use of the Land; and
- (b) must indemnify and hold harmless the Lessor against all claims resulting from any damage, loss death or injury in connection with:
 - (i) the Premises and the use and the occupation of the Premises by the Lessee;
 - (ii) the Equipment; and
 - (iii) the Land to the extent caused or contributed to by the Lessee's use or occupation of the Land,

except to the extent caused or contributed by the Lessor's act, omission or breach of this Lease or any act or omission of the Lessor's employees, agents or contractors.

13.2 Limitation

- (a) The release and indemnity in clause 13.1 does not apply to the extent that the accident, damage, injury or loss was caused or contributed to by the act, omission, default or negligence of the Lessor or any person under the control of the Lessor.
- (b) Notwithstanding anything in clause 13.1, the Lessee will not be liable in respect of any indirect or consequential loss of the Lessor exceeding \$2 million, however that loss may arise.

13.3 Warranty

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

14. Lessee's rights

14.1 No interruption

Subject to the specified rights of the Lessor, if the Lessee complies with the Lessee's obligations under this Lease, the Lessee may hold and occupy the Premises without interruption by the Lessor or anyone claiming through the Lessor.

14.2 Installation and maintenance of Equipment

Subject to the Lessee first complying with the requirements of any statutory body with authority in respect of the Lessee's use or development of the Premises, the Lessee may at any time during the Term install remove, modify, maintain, use and operate on the Premises such Equipment as is necessary for the Permitted Use now and in the future.

14.3 Equipment between Premises

If the Premises consist of a number of areas that do not connect to each other, the Lessee may install such above or below-ground cabling, wiring, piping, earthing straps, conduit, walkways, cable trays and support and other structures over the Land or within or upon the Lessor's Improvements as are necessary for the safe, continuous or proper use of the Equipment. To the extent that parts of the Equipment are to be installed at locations connecting the Premises in accordance with this clause, the Lessor grants a licence to the Lessee to install the Equipment at or on those locations and the Lessee shall have the same rights and obligations in respect of that Equipment as though the locations connecting the Premises were part of the Premises.

15. Access

15.1 Operational access

The Lessee and its employees, contractors and agents shall have the benefit of the following rights and liberties:

- (a) right to enter the Premises, which may require access over the Land and the Lessor's Improvements with such equipment as is necessary to fulfil the Permitted Use at all times;
- (b) to use in common with the Lessor and its tenants (if any) other parts of the Land and the Lessor's Improvements, all such electric main wires watercourses drains conduits risers installations appliances and such other services necessary for the Permitted Use (as may be applicable) as now are or may in the future run into through along under over or about the Land and the Lessor's Improvements and serve the Premises, or to install such services separately at its cost; and
- (c) all necessary rights of support from the Land and the Lessor's Improvements as may be reasonably required by the Premises and the Equipment.

15.2 Contact person

The Lessor and the Lessee must each nominate a person to contact about matters arising under this Lease. The persons so nominated for the Lessor and the Lessee respectively, are the persons referred to in Item 11 or such other person as a party nominates in writing to the other from time to time to be its contact person.

15.3 Access protocols

If the Lessor's Improvements comprise Secure Premises then the Lessor must nominate a procedure which is acceptable to the Lessee (acting reasonably) by which the Lessee may obtain access to the Secure Premises at any time within 2 hours' notice after a request made in accordance with that procedure. If the Lessor wishes to vary any procedure applying under this clause 15.3, then the Lessor must consult with the Lessee to ensure that such variation of the procedure is acceptable to the Lessee. The Lessee indemnifies the Lessor in respect of any reasonable cost expense or charges incurred by the Lessor in providing such access pursuant to a procedure applying under this clause.

15.4 Access over car park

- (a) The Head lessor acknowledges and agrees that the Lessee is granted a licence to traverse and have access to and through the area of Folio Identifier 1/1079858 also known as the car park so that it may access the Premises and conduct the Permitted Use;
- (b) The Head lessor acknowledges and agrees that in exercising its rights under clause 15.4 (a) the Lessee may access the land at all times and by means of any vehicle and with such equipment as is necessary to fulfil the Permitted Use.

16. Equipment

16.1 Ownership

The Equipment shall be and remain the property of the Lessee notwithstanding that any part or parts thereof may be or become affixed to the Premises or to the Land.

16.2 Removal

Unless the Lessor consents to the Lessee holding over in accordance with clause 4, upon expiry or sooner termination of this Lease, the Lessee must remove the Equipment which is above the surface of the ground upon the Land, and restore so far as reasonably practicable any disturbance to the Premises caused by their installation or removal, to the condition in which the Premises existed at the Commencing Date (fair wear and tear excepted).

17. Costs

17.1 Lessee to pay costs

The Lessee must pay the Lessor's reasonable and proper legal costs and expenses in relation to the Lessor's entry into this Lease to a maximum of \$1,500.00 together with any reasonable costs incurred by the Lessor in obtaining the consent of any mortgagee, title production costs and all out of pocket expenses (excluding any registration or duty costs).

17.2 Tax invoice

- (a) The Lessor must provide the Lessee with an invoice for the costs incurred under clause 17.1.
- (b) The Lessor acknowledges that the invoice required under clause 17.2(a) must be prepared by the Lessor and the Lessee is not required to pay costs in an invoice prepared by the Lessor's solicitors.

17.3 Payment of legal costs

The Lessor acknowledges that any legal costs payable by the Lessee under clause 17.1 will not be paid until the Lessor provides evidence of its compliance with clause 23.

17.4 Registration

The Lessor will arrange for the stamping and registration of this Lease and the Lessee will pay any duty and registration fees.

18. Assignment and subletting

18.1 Prohibition

The Lessee must not assign this Lease or sublet the Premises except under clause 18.2 or with the prior written consent of the Lessor which must not be unreasonably withheld.

18.2 Exception to prohibition

The Lessee may at any time assign this Lease or sublet the Premises:

- (a) to a Carrier (or the holder of a Nominated Carrier Declaration as that term is used in the Telecommunications Act); or
- (b) to a Related Body Corporate of the Lessee; or
- (c) to a party in conjunction with the sale of the whole or part of the Lessee's telecommunications network,

but it must give notice of that assignment or subletting within a reasonable time after it occurs.

18.3 Assignment of Sequential Lease

Any assignment of this Lease is deemed to be an assignment of any Sequential Lease the commencing date of which is after the Terminating Date.

19. Termination

19.1 By the Lessor

In the event of:

- (a) failure by the Lessee to pay Rent for a period of 30 days after receipt by the Lessee of notice from the Lessor requiring payment; or
- (b) breach by the Lessee of any of its other obligations which breach is not remedied by the Lessee within 60 days after receipt by the Lessee of written notice of that breach from the Lessor; or
- (c) a breach by the Lessee which is not capable of remedy, the Lessee does not make reasonable monetary compensation within 30 days after agreement between the Lessee and Lessor (each acting reasonably) as to the amount of that compensation,

then the Lessor may terminate this Lease by giving 30 days' written notice of termination to the Lessee.

19.2 By the Lessee

If at any time:

- (a) the Premises are affected by radio, physical or other interference as a result of which, in the Lessee's reasonably formed opinion, the Permitted Use is adversely affected;
- (b) any application for a permit, licence or other authority permitting the Lessee to lawfully carry on the Permitted Use is rejected or not dealt with within a

reasonable time or approved upon conditions that are unreasonable in the Lessee's opinion;

- (c) any permit, licence or other authority permitting the Lessee to lawfully carry on the Permitted Use lapses, is rendered invalid, void or is cancelled or surrendered or for any reason whatsoever the Lessee is unable lawfully to carry on the Permitted Use in the normal course of its business;
- (d) the network objectives of the Lessee cease or fail to be served by operation of the Equipment at the Premises; or
- (e) the Lessee gives the Lessor 6 months' notice that it no longer requires the Premises,

then the Lessee may terminate this Lease by notice to the Lessor, provided that no further notice is required if the Lessee has already given a notice under clause 19.2(e).

19.3 Surrender of Sequential Leases

- (a) If this Lease is validly terminated (other than by the effluxion of time), then any Sequential Lease will automatically terminate on the same date and the Lessor and Lessee agree to promptly execute a surrender of any Sequential Lease.
- (b) The party that terminates this Lease must at its cost attend to the preparation and (where required) the stamping and registration of the surrender of any Sequential Lease.
- (c) If a surrender of lease is to be registered by the Lessee, the Lessor must within a reasonable time produce the certificate of title to the relevant titles office, if it is required, to enable the surrender of any Sequential Lease to be registered.

19.4 Rent pro-rata

If this Lease is terminated and Rent has been paid in advance, then the Lessor must refund to the Lessee, pro-rata, any Rent paid for the unexpired period following the date of termination.

20. Destruction or damage to Premises

If any part of the Land or the Lessor's Improvements becomes the subject of radio or physical interference or is destroyed or damaged to an extent which upon a reasonably formed view materially inhibits the carrying on of the Permitted Use upon the Premises, then except to the extent that such damage or destruction is caused by the wrongful or negligent act or omission of the Lessee, the Rent will abate in proportion to the extent to which the Lessee is inhibited from carrying on the Permitted Use from the date upon which the destruction or damage occurs until the date upon which it is repaired. If the Lessor and the Lessee cannot agree as to the proportion of Rent to be abated, then that matter must be referred to arbitration under the provisions of the Commercial Arbitration Act applicable to the State in which the Premises are located. If the Lessor does not repair the damage or destruction within 3 months of its occurring, then the Lessee may terminate this Lease upon 1 month's notice.

21. Notice

21.1 Service of notice on Lessee

Any notice served by the Lessor on the Lessee must be in writing and will be sufficiently served if it is:

- (a) either:
 - (i) served personally or left addressed to the Lessee care of its General Counsel, at the registered office from time to time of the Lessee or such other address as the Lessee notifies in writing to the Lessor; or
 - (ii) forwarded by prepaid security mail addressed to the Lessee to the registered office from time to time of the Lessee; and

also be served on the Lessee's solicitors, as stated in Item 12, or such other address or facsimile number as the Lessee's solicitors notify in writing to the Lessor, by any methods identified in paragraph (a) of this clause.

21.2 Service of notice on Lessor

Any notice served by the Lessee on the Lessor must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Lessor at the address stated in the Information table, or such other address as the Lessor notifies in writing to the Lessee; or
- (b) sent by facsimile to the Lessor's facsimile number stated in the Information table, or such other number as the Lessor notifies in writing to the Lessee; or
- (c) forwarded by prepaid security mail addressed to the Lessor at the address stated in the Information table.

21.3 Notices

- (a) Any notice served by the Lessor or the Lessee under this Lease must be in writing and will be effective if signed by a director or secretary or the solicitors for the party giving the notice or any other person or persons authorised in writing from time to time respectively by the Lessor or by the Lessee.
- (b) Any notice sent by prepaid security mail will be deemed to be served at the time when it would be delivered in the ordinary course of that mail.
- (c) Any notice sent by facsimile machine will be deemed to be served at the time and on the day that the whole of the said notice or communication has been transmitted from the sending facsimile machine and the answerback of the receiving machine has been received by the sending machine, except where it is received on a weekend or public holiday or after 5.00pm on any day when it will be deemed to be served at 9.00am on the next day on which business is normally conducted in the place where the notice is being sent.
- (d) Unless the parties specifically agree to the contrary, notice will not be effective if given by email or other electronic form unless a paper copy of such notice is duly issued and served, in which event notice will be taken to have been received when the paper copy is served.

22. Where the Premises comprise a colocated site

22.1 Application of clause

This clause 22 only applies where the Premises comprise a colocated telecommunications facility and the Equipment Cabin serves the equipment of the

Lessee which is or is to be installed upon the Tower Premises by agreement with the Existing Carrier.

22.2 Definitions for clause 22

For the purposes of clause 22:

Existing Carrier means the party which is the lessee of the Tower Lease from time to time.

Tower means a tower pole mast railing support or other structure owned or operated by the Existing Carrier, upon which Equipment is or is to be installed.

Tower Lease means the lease or leases of the Tower Premises between the Existing Carrier and the Lessor.

Tower Premises means the premises demised under the Tower Lease upon or within which the Tower is situated.

Tower Sub-Lease means the sub-lease or sub-leases or other occupation document entered into or to be entered into between the Existing Carrier and the Lessee.

22.3 Consent to Tower Sub-Lease

The Lessor:

- (a) acknowledges that the Lessee and the Existing Carrier propose to enter into the Tower Sub-Lease which will facilitate the colocation of the Lessee's telecommunications facility upon the Tower; and
- (b) agrees that it will not unreasonably withhold its consent to the granting of the Tower Sub-Lease.

22.4 Termination of the Tower Lease

- (a) Without limiting the matters referred to in clause 22.3, the Lessor acknowledges that it may be a condition of the Tower Sub-Lease that the Existing Carrier must not terminate or surrender the Tower Lease or permit it to expire without first notifying the Lessee of such intention, in which event the Lessee may require the Existing Carrier to assign the Tower Lease to the Lessee. The Lessor agrees that if in such event the Lessee does so require the Existing Carrier to assign the Tower Lease to it, the Lessor will not unreasonably withhold its consent to such an assignment.
- (b) If, at any time during the Term, the Tower Lease expires and no further tenure is agreed between the Existing Carrier and the Lessor or the Lessor becomes entitled to terminate the Tower Lease for any reason whatsoever, then prior to such expiry or the Lessor so terminating the Tower Lease (as the case may be), the Lessor must give notice to the Lessee (**Notice of Intended Termination**) of that anticipated expiry or the intention to terminate the Tower Lease (as the case may be). The Lessee may within 30 days after receipt of the Notice of Intended Termination, give notice to the Lessor (**Lessee's Notice**) requiring the Lessor to grant to it a lease of the Tower Premises upon the same terms as the Tower Lease in accordance with clause 22.4(d).
- (c) If, at any time during the Term, the Existing Carrier becomes entitled to terminate the Tower Lease for any reason whatsoever, then prior to accepting the termination of the Tower Lease, the Lessor must give notice to the Lessee

(**Notice of Existing Carrier's Intended Termination**) of the Existing Carrier's proposed termination of the Tower Lease. The Lessee may within 30 days after receipt of the Notice of Existing Carrier's Intended Termination, give a Lessee's Notice to the Lessor requiring the Lessor to grant to it a lease of the Tower Premises upon the same terms as the Tower Lease in accordance with clause 22.4(d).

- (d) If the Lessee gives a Lessee's Notice, the Lessor must as soon as practicable after either the receipt by it of the Lessee's Notice or termination of the Tower Lease (whichever is the last to occur), grant to the Lessee a lease or leases of the Tower Premises upon the same terms as the Tower Lease, but commencing upon the date upon which the Tower Lease is terminated and continuing for the balance of the Term, the commencing dates of which are subsequent to the date of the Lessee's Notice, and substituting the Lessee in place of the Existing Carrier. Upon the grant of any such lease or leases, any default or other right or cause of action between the Lessor and the Existing Carrier will, as between the Lessor and the Lessee, be deemed to have been waived and permanently released.

22.5 Option in Tower Lease

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

- (a) the Lessee will have the right by notice in writing (**Renewal Notice**) served on the Lessor within 30 days of the Non Exercise Notice to require the Lessor to grant to the Lessee a lease of the Tower Premises on the terms contemplated in the Tower Lease as if the option to renew contained were able to be exercised by the Lessee and the Lessee had exercised that option; and
- (b) upon service of the Renewal Notice by the Lessee, the provisions of clause 22.4(d) will apply and the Lessor must grant to the Lessee a lease or leases of the Tower Premises in accordance with that sub-clause.

22.6 Additional right of termination

In the event of the Lessee:

- (a) taking an assignment of the Tower Lease pursuant to clause 22.4(a);
- (b) being granted a lease pursuant to clauses 22.4(d) or 22.5(b),

the Lessee may by notice in writing to the Lessor forthwith terminate this Lease.

22.7 Trilocation

The Lessor's obligations under clauses 22.4 and 22.5 are subject to any prior like rights in relation to the Tower Premises granted to a third party by the Lessor and the Existing Carrier, provided that the third party seeks to occupy the Tower Premises pursuant to those rights.

23. Mortgagee's consent

23.1 Lessor to Obtain

If the Land is at the Commencement Date subject to a mortgage, charge or other encumbrance, then unless this Lease is already binding on the holder of the mortgage, charge or other encumbrance, the Lessor must obtain and give to the Lessee the unconditional written consent to this Lease of the holder of the mortgage, charge or other encumbrance.

23.2 Failure to Obtain

If the Lessor has not complied with 23.1 within 60 days from the date the Lessee gives the Lessor notice of the non-compliance, the Lessee may terminate this Lease at any time by notice to the Lessor, but the Lessee may not give that notice of termination at any time after the Lessor has complied with clause 23.1.

24. Concurrent lease

- (a) If the Lessor wishes to grant a concurrent lease over the Premises, the Lessor must give the Lessee 120 days written notice of its intention to do so.
- (b) If the Lessor serves such a notice or grants a concurrent lease over the Premises, the Lessee may terminate this Lease by written notice to the Lessor.

25. Headlease step-up rights

If the Lessor fails to exercise any option to renew contained in the Headlease within the time provided in the Headlease or terminates the Headlease or the Headlease expires:

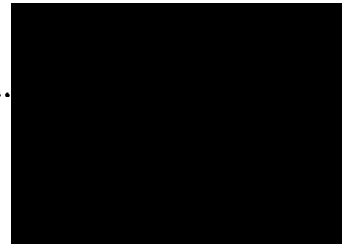
- (a) the Lessor will as soon as practicable after failing to exercise the option to renew or serving notice to terminate or otherwise at the expiry of the Headlease, notify the Lessee of that fact (**Notice to Discontinue**); and
- (b) the Lessee will have the right by notice in writing served on the Head lessor within 30 days of the Notice to Discontinue to request the Head lessor to grant to the Lessee a lease of the Premises on the same terms as this Sub-Lease (including Rent) for the balance of the Term and the term of any Sequential Lease as well as an additional 10 year term to be documented by way of sequential leases. The Head lessor agrees to grant this request upon receipt of the notice from the Lessee.

26. Special Conditions

- (a) The Lessee acknowledges that the Head Lessor is a local Government Authority and in that capacity may be a consent authority in relation to matters that may be relevant to this Lease. Nothing in this lease negates the responsibility of the Head Lessor to consider all such matters in its capacity as consent authority and the Head Lessor will not be liable for any damages should the exercise of such authority result in the non-completion of the Building or the matter requires under this Lease regardless of whether such damages are direct, indirect or consequential.
- (b) The Lessor and Head Lessor may lease other parts of the Land to another Carrier, subject to the terms of this Lease.

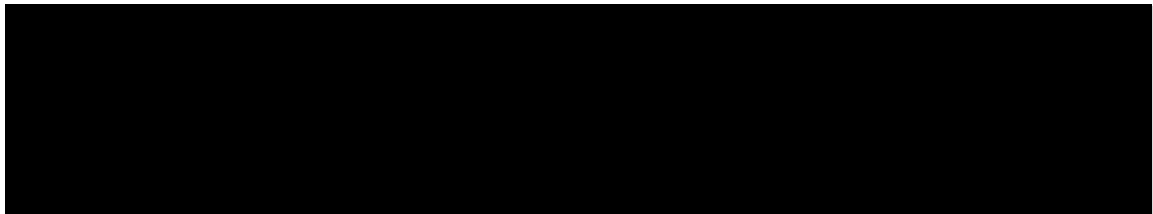
Head Lessor

The Common Seal of Tamworth Regional Council was hereunto affixed pursuant to a resolution of Council in the presence of



Lessor

The common seal of PIRATES RUGBY CLUB INCORPORATED was hereunto affixed in accordance with section 22 of the Associations Incorporation Act (NSW) in the presence of:



Lessee

I certify that the attorney signing opposite, with whom I am personally acquainted or as to whose id
this instru

Certified correct for the purposes of the Real Property Act 1900 by the attorney named below who signed this instrument pursuant to the power of attorney specified

Signature

Signature

KE

Name of

Attorney's name

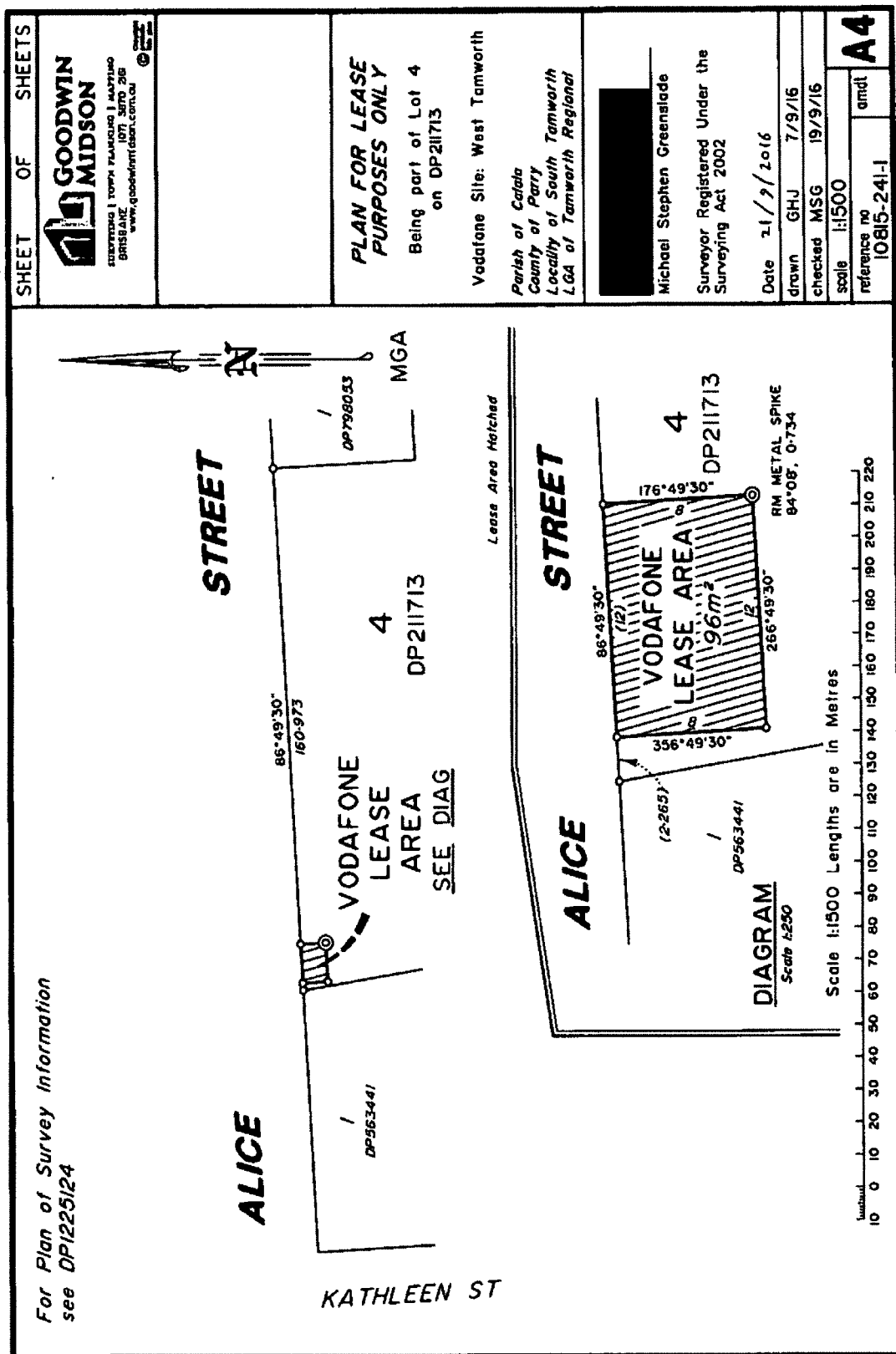
Signing on behalf of
Vodafone Network Pty Ltd
ACN 081 918 461

Address of witness

Power of attorney -Book 4662
-No 196

This is Annexure 'B' referred to in the lease between Pirates Rugby Club Incorporated ABN 94 750 908 350 (as lessor) and Vodafone Network Pty Ltd ACN 081 918 461 (as lessee)

Annexure B: Plan



39

A



Form: 07L
 Release: 1309

LEASE

AJ911100P

New South Wales
 Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only.

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

hatched

Part of the Land at Folio Identifier 21/634476 shown on the Plan in ANNEXURE B

(B) LODGED BY

Document
 Collection
 Box

273L

Name, Address or DX, Telephone, and Customer Account Number if any

InfoTrack Pty Ltd
 GPO Box 4029 Sydney NSW 2001
 Ph: 02 8203 7600
 LLPN: 124725J

Reference (optional):

18174 -1

CODE

L

(C) LESSOR

[Redacted]

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

[Redacted]

(E) LESSEE

NBN Co Limited (ACN 136 533 741)

(F)

TENANCY:

(G)

1. TERM: 5 Years MAY
2. COMMENCING DATE: 15 April 2015
3. TERMINATING DATE: MAY 14 April 2020
4. With an OPTION TO RENEW for a period of N/A set out in clause N/A of N/A.
5. With an OPTION TO PURCHASE set out in clause N/A of N/A.
6. Together with and reserving the RIGHTS set out in ANNEXURE A
7. Incorporates the provisions or additional m
8. Incorporates the provisions set out in MEM
9. The RENT is set out in Item 5 of ANNEX

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

[Redacted]

[Redacted]

DATE

13, 05, 2015
dd mm yyyy

(H) I certify that I am an eligible witness and that the lessor signed this dealing in my presence. [See note* below.]

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness: SEE EXECUTION PAGE 27

Signature of lessor:

Name of witness:

Address of witness:

Note: where applicable, the lessor must complete the statutory declaration below.

I certify that I am an eligible witness and that the lessee signed this dealing in my presence. [See note* below.]

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness: SEE EXECUTION PAGE 26

Signature of lessee:

Name of witness:

Address of witness:

(I) STATUTORY DECLARATION*

- I _____
solemnly and sincerely declare that—
1. The time for the exercise of option to renew / option to purchase in expired lease No. _____ has ended;
 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at _____ in the State of _____ on _____

in the presence of _____ of _____,

☐ Justice of the Peace (J.P. Number _____) ☐ Practising Solicitor

☐ Other qualified witness [specify] _____,

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID no.]

Signature of witness: _____ Signature of lessor: _____

* As the services of qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

Annexure A

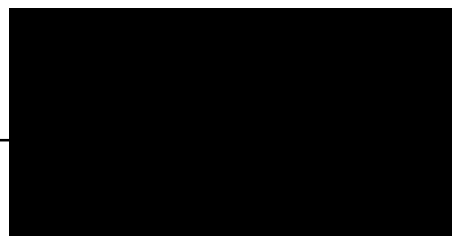
Information Table

Parties Notice Details

Name			
ABN			
Short form name	Landlord		
Notice details	Address:		
	Telephone:		
	Facsimile:		
	Attention:		
Name	NBN Co Limited		
ACN	136 533 741		
Short form name	NBN Co		
Notice details	Address:	Level 11, 100 Arthur Street, North Sydney, New South Wales 2060	
	Facsimile:	02 9926 1901	
	Attention:	Chief Legal Counsel	

Items

Item 1	Premises (clause 1.1) That part of the Land hatched in black on the plan in Annexure B being part of the property known as 334 Kalkite Road, Kalkite, New South Wales 2627 as described by Folio Identifier 21/634476. Site name: Jindabyne North Site number: NBN-9QBZ-2JNB-5102
Item 2	Date of Commencement (clause 1.1) 15 May 2015
Item 3	Date of Expiration (clause 1.1) 14 May 2020
Item 4	Term (clause 1.1) 5 Years



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- Item 5 **Rent** (clause 1.1)
\$6,500.00 per annum payable from the First Payment Date.
- Item 6 **Nominated Account for payment of Rent** (clause 4.5)
As notified by the Landlord in writing to NBN Co from time to time.
- Item 7 **First Payment Date**
The date NBN Co substantially commences construction work to install the Equipment on the Premises (excluding placement of survey pegs or delivery of materials and the Equipment).
- Item 8 **Contact Person** (clause 6.2)
Contact person for all Rent and payment matters:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile:
NBN Co: NBN Co Accounts Payable
Telephone: 02 9927 4151
Address: 100 Arthur Street, North Sydney, New South Wales 2060
Email: accountspayable@nbnco.com.au
Contact person for non-legal matters relating to access and Equipment:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile:
NBN Co: NBN Co Network Operations Support
Telephone: 1800 626 762 (option 5)
Contact person for all other non-legal matters relating to this Lease:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile:
NBN Co: NBN Co Commercial Network Manager
Email: wirelesssservices@nbnco.com.au
Contact person for all legal matters relating to this Lease:
Landlord: Ms Emma Schlachter - Blaxland Mawson and Rose Solicitors

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Telephone: 02 6452 1266
Facsimile:
NBN Co: Chief Legal Counsel
Facsimile: 02 9926 1901

Item 9 **Special Conditions** (clause 1.4)

1. New sub-clauses 4.4(e) and 4.4(f) are inserted as follows:

***4.4 GST**

- (e) Notwithstanding any other provision of this clause 4.4, the Landlord acknowledges and warrants that at the time of entering into this Lease it is not registered, required to be registered, nor liable, for GST and will not make any claim against NBN Co in relation to GST arising under or in connection with this Lease.
- (f) In the event that the Landlord becomes registered for GST, the Landlord must notify NBN Co of this in writing and on and from the date NBN Co receives the notice, NBN Co will pay the relevant additional GST amounts in accordance with clause 4.4."

2. Sub-clause 4.4(b)(iii) is deleted.

3. Clause 5.2 is deleted and replaced with:

***5.2 Adjacent Land**

- (a) The Landlord grants to NBN Co the right to use so much of the Land and Adjoining Land which is adjoining and adjacent to the Premises or any installation of NBN Co as is reasonably required during installation, erection, construction, dismantling, repair, replacement, variation, renewal and maintenance of the telecommunications facility, network and service. After using the Land or Adjoining Land for such use, NBN Co will restore the surface of any part of the Land or Adjoining Land as so used as near as practicably possible to its state prior to such use by NBN Co to the reasonable satisfaction of the Landlord.
- (b) The Landlord grants to NBN Co the right to undertake landscaping and/or plant or remove any vegetation on so much of the Land and Adjoining Land as is required by NBN Co to comply with any requirements, notices or orders of any Government Agency or as is otherwise reasonably required by NBN Co. NBN Co will be responsible for the maintenance and upkeep of any such landscaping or vegetation only to the extent required by the relevant Government Agency.
- (c) NBN Co and its employees and agents will ensure that:
- (i) any gate used to access the Premises is properly closed and secure after use; and
- (ii) any gate or gates used to access the Land are left as found, whether open or shut."

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3. Clause 6.1 is deleted and replaced with:

***6.1 Access**

- (a) The Landlord consents to NBN Co and persons authorised by NBN Co without the need for prior approval and with or without materials, equipment, plant and other apparatus and vehicles entering the Land or Adjoining Land (including any access track referred to in clause 6.1(b)) via the proposed access track shown on the plan in Annexure C for the purpose of using the Premises and installations of NBN Co under this Lease and exercising its rights under the Lease at all times of the day and night during the Term. If the proposed access track is unavailable at any time, the Landlord must permit NBN Co and persons authorised by NBN Co to access the Premises via an alternate route.
- (b) The Landlord consents to NBN Co:
 - (i) upgrading any existing access track over the Land and/or Adjoining Land to the Premises to a standard which is suitable for NBN Co's access to the Premises; or
 - (ii) constructing an all-weather access track over the Land and/or Adjoining Land to provide access to the Premises if there is no suitable existing access track to the Premises.
- (c) Despite any clause in this Lease, at the expiry (or earlier termination) of this Lease, NBN Co will not be required to make good or restore the surface of any access track which is upgraded or constructed by NBN Co under clause 6.1(b).

4. Clause 12.5 is deleted and replaced with:

***12.5 Subletting**

NBN Co may sublet, licence, part with or share its right to possession of the Premises subject to obtaining the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed).

4. Clause 14.1 is deleted and replaced with:

***14.1 NBN Co to pay costs and disbursements**

- (a) NBN Co must pay all registration fees in relation to this Lease. Subject to clause 14.1(b), each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation, completion and registration of the Lease.
- (b) NBN Co will reimburse, subject to clause 14.1(c), to:
 - (i) the Landlord's reasonable legal costs, charges and expenses for the preparation, negotiation, execution and registration of this Lease (including any Consecutive Leases) up to an aggregate maximum of \$1,500 (excluding GST); and
 - (ii) the Landlord's reasonable costs of obtaining its mortgagee's or chargee's consent to this Lease and all Consecutive Leases, up to an aggregate maximum of \$400 (excluding GST).

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- (c) NBN Co's contributions listed in clause 14.1(b) are payable within 21 days after that date on which NBN Co has received all of the following:
- (i) in circumstances where NBN Co will not issue RCTI's in accordance with clause 4.4(b), a valid tax invoice from the Landlord in respect of the contributions listed in clause 14.1(b);
 - (ii) supporting evidence of the costs incurred by the Landlord;
 - (iii) NBN Co's original copy of the registered Lease; and
 - (iv) the mortgagee's and/or chargee's consent to the Lease (as applicable)."

5. Insert new clause 16:

***16 Release and Indemnity**

16.1 Release

Subject to clause 16.3, NBN Co releases the Landlord to the fullest extent permitted by law from any claim or demand resulting from any loss or damage to any property or any personal injury or death occurring at the Premises or on any access track on the Land or the Adjoining Land to the extent used by NBN Co, caused or contributed (to the extent of that contribution) to by NBN Co's act or omission.

16.2 Indemnity

Subject to clause 16.3, NBN Co indemnifies the Landlord against any liability for damage or loss to any person or property caused or contributed (to the extent of that contribution) to by the act, negligence, wilful default or omission of NBN Co arising out of or in connection with this Lease.

16.3 Limitations on Release and Indemnity

- (a) The release in clause 16.1 and the indemnity in clause 16.2 do not apply to the extent that the accident, damage, injury or loss was caused or contributed to by the act, negligence, default or omission of the Landlord or any person under the control of the Landlord.
- (b) NBN Co will not be liable in respect of any indirect or consequential loss or damage, or any other special loss, of the Landlord.

16.4 Indemnity claims

- (a) In defending or settling any claim, action or demand the subject of an indemnity under this clause 16, the Landlord must follow NBN Co's reasonable instructions.
- (b) The Landlord must not settle any claim, action or demand the subject of an indemnity under this clause 16 without obtaining the prior consent of NBN Co, and the Landlord must take reasonable steps to mitigate any liability, loss, damage, costs or expenses including taking reasonable court action to defend any claim, action or demand made against the Landlord."

General Conditions

1 Defined terms & interpretation

1.1 Defined terms

In this Lease:

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

Adjoining Land means any land owned by the Landlord which adjoins the Land.

APRA means Australian Prudential Regulation Authority.

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

Carrier has the meaning given to it in the Act.

Code means the *Telecommunications Code of Practice 1997*.

Consecutive Lease means a lease of the Premises between the Landlord and NBN Co other than this Lease, which is granted at the same time as this Lease in respect of periods either prior or subsequent to the Term.

Date of Commencement means the date stated in Item 2.

Date of Expiration means the date stated in Item 3.

Determination means the *Telecommunications (Low Impact Facilities) Determination 1997*.

Equipment means those items of plant and/or equipment brought onto the Land by NBN Co for the use permitted by this Lease.

First Payment Date means the date stated in Item 7.

General Conditions means the part of this Lease described as General Conditions.

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

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

Information Table means the part of this Lease described as Information Table.

Item means an item in the Information Table.

Jurisdiction means the state or territory of the Commonwealth of Australia in which the Land is situated.

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Land means the land described in the Certificate of Title (or title reference) referred to on the front page of the Lease.

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

Landlord's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by the Landlord.

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

NBN Co means the lessee described on the front page of the Lease and its successors and assigns and where the context permits, its employees, agents, invitees and contractors.

NBN Co's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by NBN Co.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Reputable Insurer means an insurer who is:

- (a) a reputable APRA authorised insurer(s); or
- (b) APRA exempt and maintains a Standard & Poor's rating of A minus or higher (or an equivalent rating agency rating).

Special Conditions means the special conditions in Item 9.

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

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

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

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- (d) an expression importing a natural person includes any company, partnership, joint venture, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit, information table or schedule is a reference to a part and clause of and a party, annexure, exhibit, information table and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (i) month means a calendar month;
- (j) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (k) "includes" in any form is not a word of limitation;
- (l) any parties, persons, facts, events or documents alternatively or collectively shall be construed as a reference to all of them and to each and any one or more of them; and
- (m) any organisations, associations, societies, groups or bodies shall in the event that any of them ceases to exist or is reconstituted renamed or replaced or that any of its powers or functions are transferred to any other entity body or group refer respectively to any such entity body or group established or constituted in lieu thereof or succeeding to similar power or functions.

1.3 Third parties

Any covenant (whether express or implied) by a party to this Lease not to do or omit any act or thing shall be deemed to extend to an obligation not to permit any third party to do or to omit the same.

1.4 Special Conditions

The parties acknowledge and agree that the Special Conditions take precedence over the General Conditions to the extent of any inconsistency between the Special Conditions and the General Conditions.

2 Implied covenants and powers

2.1 Not used

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2.2 Exclusion of implied covenants

The obligations and powers implied in the Lease by sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) are expressly excluded.

2.3 Inclusion of implied covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease and which are applicable to NBN Co.

2.4 Contravention of Statute - severance

If any provision of the Lease or its application to any party or in any circumstances is or becomes void, voidable, unenforceable or invalid because of any Statute or otherwise, such provision must in any such case and to such extent be severed from the Lease, and the Lease must be read as though such provision did not form part of the Lease at that time.

3 Term of Lease and holding over

3.1 Term of the Lease

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

3.2 Yearly tenancy holding over

If NBN Co occupies the Premises after the Date of Expiration (other than pursuant to a Consecutive Lease or the grant of a further lease) NBN Co must do so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy. Either party may terminate the yearly tenancy by giving not less than 12 months' notice to the other party expiring on any day.

4 Payment

4.1 NBN Co's Covenant

NBN Co must pay the Rent to the Landlord during the Term.

4.2 Payment of Rent

- (a) Subject to clauses 4.2(b) and 4.2(c), the Rent will be paid annually in advance to the Landlord or to any other person the Landlord notifies to NBN Co. Any notification must be served at least 30 days prior to the date for payment of Rent.
- (b) The first Rent payment will be:
 - (i) for the part year commencing on the First Payment Date and ending on the day prior to the anniversary of the Date of Commencement following the First Payment Date; and

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- (ii) made within 30 days after the First Payment Date.
- (c) For the avoidance of doubt, no Rent will be payable in respect to the period commencing on the Date of Commencement and ending on the day prior to the First Payment Date.
- (d) The second and each subsequent Rent payment will be made on each anniversary of the Date of Commencement after the First Payment Date.
- (e) If an instalment of Rent is for a period of less than one year, the instalment for that period is apportioned on a daily rate for the relevant lease year.

4.3 Rent Reviews

The Rent will be increased by 2.5% on each anniversary of the Date of Commencement.

4.4 GST

- (a) Unless stated to the contrary, all payments to be made by NBN Co under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by NBN Co to the Landlord under the Lease is consideration for a supply by the Landlord under the Lease on which the Landlord must pay GST, NBN Co must also pay the Landlord an additional amount equal to the GST payable (**GST Amount**) by the Landlord on that supply.
- (b) Subject to clause 4.4(d), NBN Co will issue recipient created tax invoices (**RCTIs**) for the taxable supplies made by the Landlord to NBN Co under this Lease. For the purpose of NBN Co issuing RCTIs the parties agree:
 - (i) NBN Co may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) The Landlord will not issue a tax invoice in respect of any supply it makes to NBN Co under this Lease;
 - (iii) Each party acknowledges and warrants that at the time of entering into this Lease, it is registered for GST; and
 - (iv) Each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs.
- (c) If a payment to a party under this Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.

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- (d) If NBN Co notifies the Landlord in writing that NBN Co will no longer issue RCTIs then:
- (i) clause 4.4(b) will not apply from the date specified in the notification until NBN Co withdraws the notification by a further notice to the Landlord; and
 - (ii) during the period specified in clause 4.4(d)(i), the Landlord must issue a tax invoice to NBN Co for any taxable supply made by the Landlord to NBN Co under this Lease before the consideration payable for that supply is due and NBN Co need not pay the GST Amount for a particular taxable supply until such time as the Landlord has issued a tax invoice to NBN Co for that supply.

4.5 EFT payments

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

4.6 Pro rata refund of Rent

In the event of termination of the Lease pursuant to clause 10.2 or 10.3 the Landlord must forthwith refund to NBN Co prepaid Rent on a pro rata basis.

4.7 Gross Rent

The Landlord acknowledges the Rent is a 'gross' rent and is inclusive of all rates, taxes (excluding GST), statutory and building outgoings.

5 Use

5.1 Permitted use

NBN Co will use the Premises for the purpose of constructing, maintaining and operating a telecommunications facility, network and service and such use includes any use allowed under the Act and may do all such things as may be necessary or convenient for this purpose. NBN Co may at any time during the Term install, remove, modify, vary, maintain, use and operate on the Premises such Equipment as is necessary for the use permitted by this Lease now and in the future.

5.2 Adjacent Land

- (a) The Landlord grants to NBN Co the right to use so much of the Land and Adjoining Land which is adjoining and adjacent to the Premises or any installation of NBN Co as is reasonably required during installation, erection, construction, dismantling, repair, replacement,

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variation, renewal and maintenance of the telecommunications facility, network and service. After using the Land or Adjoining Land for such use, NBN Co will restore the surface of any part of the Land or Adjoining Land as so used as near as practicably possible to its state prior to such use by NBN Co to the reasonable satisfaction of the Landlord.

- (b) The Landlord grants to NBN Co the right to undertake landscaping and/or plant or remove any vegetation on so much of the Land and Adjoining Land as is required by NBN Co to comply with any requirements, notices or orders of any Government Agency or as is otherwise reasonably required by NBN Co. NBN Co will be responsible for the maintenance and upkeep of any such landscaping or vegetation only to the extent required by the relevant Government Agency.

5.3 Requirements of Government Agencies

NBN Co must comply promptly with any applicable Statute in respect of NBN Co's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises. NBN Co is not liable for structural alterations to any of the Landlord's fixtures or facilities unless caused or contributed to by NBN Co's particular use or occupation of the Premises.

5.4 Cabling

- (a) For the purpose of the operation of NBN Co's telecommunications facility, network and service, the Landlord will permit NBN Co to:
 - (i) install, erect, construct, dismantle, maintain, repair, replace, vary, add and use above or below ground cabling to and from the Premises and any other installations of NBN Co and to connect to adjoining roads or services; and
 - (ii) where necessary to construct supports for that cabling, on the Land.
- (b) When exercising its rights under this clause, NBN Co must:
 - (i) not cause any lasting material damage to the Land or material interference with the Landlord; and
 - (ii) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by NBN Co to the reasonable satisfaction of the Landlord.

5.5 Non-contiguous Premises

In the event of parts of the Premises not being contiguous one with the other or the Premises being partly or wholly on the rooftop of a building on the Land NBN Co may run such above or below ground cabling, wiring, conduit, earthing straps, cable trays and support structures over the Land or within or upon the

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building on the Land on which the Premises are situated as are necessary for its safe, continuous and proper use of the Premises but in doing so NBN Co must not cause any material damage to the Land or material interference with the Landlord.

5.6 Consents

- (a) The Landlord hereby irrevocably consents to NBN Co making, at its cost, any application for consent or approval to any Government Agency to use or develop the Premises for the use referred to in clause 5.1 and consents to NBN Co exercising and procuring (at its cost) every right and appeal arising from the determination of any such application or the failure to determine the application.
- (b) The Landlord must sign all documentation and do all such things as NBN Co or any person nominated by NBN Co reasonably requires (at NBN Co's cost) to authorise or assist in obtaining consent or approval from any Government Agency to use or develop the Premises for the use referred to in clause 5.1.

6 Access to the Premises

6.1 Access

- (a) The Landlord consents to NBN Co and persons authorised by NBN Co without the need for prior approval and with or without materials, equipment, plant and other apparatus and vehicles entering the Land or Adjoining Land (including any access track referred to in clause 6.1(b)) for the purpose of using the Premises and installations of NBN Co under this Lease and exercising its rights under the Lease at all times of the day and night during the Term.
- (b) The Landlord consents to NBN Co:
 - (i) upgrading any existing access track over the Land and/or Adjoining Land to the Premises to a standard which is suitable for NBN Co's access to the Premises; or
 - (ii) constructing an all-weather access track over the Land and/or Adjoining Land to provide access to the Premises if there is no suitable existing access track to the Premises.
- (c) Despite any clause in this Lease, at the expiry (or earlier termination) of this Lease, NBN Co will not be required to make good or restore the surface of any access track which is upgraded or constructed by NBN Co under clause 6.1(b).

6.2 Contact person

- (a) The Landlord and NBN Co must each nominate a contact person to contact about non-legal matters relating to access and Equipment and other non-legal matters relating to this Lease. The relevant contact

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persons, as at the Date of Commencement, are stated in Item 8 of the Information Table.

- (b) The Landlord and NBN Co must each nominate a contact person to contact about legal matters relating to this Lease. The relevant contact persons, as at the Date of Commencement, are stated in Item 8 of the Information Table.
- (c) The contact persons in Item 8 of the Information Table may be changed by the relevant party at any time by notice in writing to the other.

7 Insurance

7.1 Obligation to insure

- (a) NBN Co must have in force and maintain with a Reputable Insurer for the Term a valid and enforceable public liability insurance policy to the value of at least \$20,000,000 for any one occurrence.
- (b) The Landlord must have in force and maintain with a Reputable Insurer for the Term a valid and enforceable public liability insurance policy to the value of at least \$10,000,000 for any one occurrence.
- (c) The Landlord must inform its public liability insurer of the Lease and do all things necessary to ensure that the insurance policy covers the Landlord with respect to the activities contemplated within the Lease.

7.2 Evidence of Insurance

On request (and on no more than two occasions per year):

- (a) by the Landlord, NBN Co will produce to the Landlord satisfactory evidence, including certificates of currency, of the insurance policy required under clause 7.1(a); and
- (b) by NBN Co, the Landlord will produce to NBN Co satisfactory evidence, including certificates of currency, of its insurance policy referred to in clause 7.1(b).

7.3 Global Policy

NBN Co may effect its insurance in clause 7.1 pursuant to an insurance policy which is not specific as to the location of risk.

8 Installation

8.1 Construction and alterations

- (a) NBN Co may at NBN Co's discretion and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law, do anything in accordance with the permitted use of the Premises as set

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out in this Lease, including, without limitation, to install, erect, construct, dismantle, repair, replace, renew, add, vary and maintain upon the Premises security fencing and any building or buildings as necessary now or in the future to shelter the Equipment and a free standing monopole, lattice tower, guyed mast, multi-sided antenna support structure or other antenna support structure of sufficient height now or in the future to meet NBN Co's telecommunications requirements and all necessary connecting appurtenances.

- (b) NBN Co shall be entitled to paint any installations referred to in clause 8.1(a) (including, without limitation, any monopole, lattice tower, fencing or buildings) with any colour as may be required by a Government Agency in connection with any planning consent.

8.2 NBN Co property

Despite the extent of any affixation, the Equipment and all other fixtures, fittings, plant and other items brought onto or erected on the Land by or on behalf of NBN Co, at all times remains the absolute property of NBN Co.

9 Electricity supply

9.1 Electricity connection

The Landlord must, at NBN Co's cost, permit NBN Co to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of NBN Co's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter, installed by NBN Co at its own cost, so that NBN Co is directly accountable for payment of electricity consumed by it on the Premises.

9.2 Easement for electricity purposes

- (a) If, pursuant to clause 9.1, NBN Co is required to connect to an electricity supply on or over the Land or on or over Adjoining Land, the Landlord must grant an easement for electricity purposes across that part of the Land or the Adjoining Land to enable NBN Co to connect the Premises to that electricity supply on terms as may be required by the electricity supplier (**Easement**). NBN Co will be responsible for preparing the Easement documentation and must pay the relevant land titles office fees for registration of the Easement, or reimburse the Landlord for such registration fees.
- (b) In anticipation of the grant of Easement, the Landlord hereby consents to NBN Co entering, or permitting the relevant electricity supplier to enter, the Land or the Adjoining Land from the Date of Commencement to construct electricity infrastructure and associated structures required for the purpose of the proposed electricity supply.

10 Termination

10.1 Termination by the Landlord

If:

- (a) NBN Co commits a material breach of any of its obligations including payment of Rent, the Landlord may serve notice on NBN Co requiring remedy of the breach within a reasonable time having regard to the nature of the breach specified in the notice (**Trigger Notice**) such period to be not less than 21 days; and
- (b) NBN Co does not remedy the breach within the time specified in the Trigger Notice, the Landlord may serve notice on NBN Co requiring remedy of the breach within a further reasonable time having regard to the nature of the breach such period to be not less than 60 days (**Default Notice**); and
- (c) NBN Co does not remedy the breach within the period specified in the Default Notice,

the Landlord may terminate this Lease by serving notice to NBN Co at any time before the breach is remedied.

10.2 Termination by NBN Co

In addition to any rights NBN Co may have to terminate this Lease for breach of the Landlord's Covenants:

- (a) if the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of NBN Co or inaccessible by any means of access; or
- (b) if any application for a required consent or permit for the installation and use of the Premises as part of a telecommunications facility, network or service is rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (c) any application to a Government Agency for a required consent, permit or licence for the installation and use of the Premises as part of a telecommunications facility, network or service is granted to NBN Co with conditions unacceptable to it in its absolute and unfettered discretion or is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (d) if the Premises are rendered unfit for NBN Co's use described in clause 5.1 by reason of the emergence of physical, radio or other interference; or
- (e) if the Premises can no longer be used for the use described in clause 5.1, or the Premises are no longer required by NBN Co,

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then NBN Co may terminate the Lease immediately by notice to the Landlord.

10.3 NBN Co's additional rights to terminate

NBN Co may also terminate this Lease by notice to the Landlord:

- (a) at any time before it substantially commences construction work to install the Equipment on the Premises (excluding placement of survey pegs or delivery of materials and the Equipment); or
- (b) at any time by giving not less than 6 months notice expiring on any day.

10.4 Effect on rights or liabilities

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

10.5 NBN Co to yield up

NBN Co must, by no later than 6 months after the Date of Expiration (unless there is in place after this Lease a Consecutive Lease or further lease between the Landlord and NBN Co, and in any event subject to clause 14.2), earlier termination of the Lease or such other date as the Landlord and NBN Co agree in writing, yield up the Premises in good repair and clean condition fair wear and tear excepted having regard to their condition at the Date of Commencement of the Lease.

10.6 Removal of NBN Co's fixtures and chattels

NBN Co must, by no later than 6 months after the Date of Expiration (unless there is in place after this Lease a Consecutive Lease or further lease between the Landlord and NBN Co, and in any event subject to clause 14.2), earlier termination of the Lease or such other date as the Landlord and NBN Co agree in writing, remove from the Premises all above ground cabling and fixtures, fittings, plant, machinery, and other items erected or brought by it onto the Premises or the Land.

10.7 Rent abatement

- (a) If the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of NBN Co or inaccessible by any means of access, then except to the extent that such damage or destruction is caused by the wrongful or negligent act or omission of NBN Co, the Rent will abate in proportion to the extent to which NBN Co is inhibited from carrying on the use permitted by this Lease from the date upon which the destruction or damage occurs until the earlier of the date upon which it is repaired and the date of termination of the Lease pursuant to clause 10.2(a).
- (b) If there is a dispute between the parties as to the proportion of Rent to be abated pursuant to clause 10.7(a) which is not resolved within

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20 days after notice by one party to the other of the nature of the dispute then:

- (i) the dispute may be referred by either party for determination by an expert who is an appropriate practising professional appointed at the request of either party (**Expert**), by:
 - (a) the president of the professional body most appropriate to determine the dispute or, if the parties are unable to agree on the appropriate body, the president for the time being of the Law Society of the Jurisdiction; or
 - (b) if there is no such body in existence at the time of the request, the president for the time being of an equivalent body;
- (ii) each party may make a submission either orally or in writing to the Expert within 20 days after that appointment;
- (iii) in making a determination the Expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) consider any submission made to it by a party; and
 - (c) provide the parties with a written statement of reasons for the determination;
- (iv) in the absence of manifest error the determination of the Expert is conclusive and binding on the parties;
- (v) the costs of the Expert will be shared equally between the parties unless otherwise determined by the Expert; and
- (vi) if the Expert fails to deliver a determination within 20 days after the last day on which the parties are entitled to make submissions, either party may require the appointment of a further Expert under clause 10.7(b)(i) to determine the dispute.

10.8 Termination of consecutive leases

This Lease will terminate automatically if there exists any Consecutive Lease the commencing date of which precedes the Date of Commencement and:

- (a) NBN Co gives notice to the Landlord not later than the date which is 3 months prior to the Date of Commencement that it no longer requires the Premises; or
- (b) that Consecutive Lease is terminated for any reason.

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11 Notices

11.1 Method of service

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

11.2 Time of service

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

11.3 Change of address

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

12 Assignment and subletting

12.1 NBN Co not to assign

NBN Co must not assign the Lease except under clause 12.2 or with the prior written consent of the Landlord under clause 12.3.

12.2 Assignment to a Related Body Corporate or a Carrier

NBN Co may from time to time assign the Lease to a Related Body Corporate of NBN Co or to a Carrier or to the holder of a Nominated Carrier Declaration (as those terms are defined in the Act) or to a party in conjunction with the sale of the whole or part of NBN Co's telecommunications network or to a Government Agency.

12.3 Assignment

Subject to clause 12.2 NBN Co may assign the Lease with the prior written consent of the Landlord, such consent not to be unreasonably withheld.

12.4 Release following assignment

If this Lease is assigned, NBN Co will cease to be liable for any NBN Co's Covenants which arise, or are liable to be performed, on or after the date of assignment. However, NBN Co is not released in respect of breaches of NBN Co's Covenants which arose before the date of assignment.

12.5 Subletting

NBN Co may sublet, licence, part with or share its right to possession of the Premises without requiring the consent of the Landlord.

13 Landlord's covenants

13.1 Quiet enjoyment

The Landlord covenants that NBN Co may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person rightfully claiming through the Landlord. The Landlord must not do anything which derogates from its grant of the Premises to NBN Co under this Lease.

13.2 Restriction on Landlord's use of the Land

The Landlord covenants that the Landlord will not itself nor will it permit any third party to do anything on the Land which is likely to cause physical, radio or other interference which obstructs, interrupts or impedes the use or operation of NBN Co's telecommunications facility, network or service. If NBN Co advises the Landlord of any breach by the Landlord of its covenant the Landlord will, to the extent that it is within its power to do so, use all reasonable endeavours at its expense to forthwith remedy such breach.

13.3 Landlord's covenant

The Landlord covenants that the Landlord will not itself nor will it permit any third party to, store on, dispose of on or transport to or over the Land any hazardous substance which is likely to cause interference with NBN Co's use of the Premises. If NBN Co advises the Landlord of any breach by the Landlord of its covenant the Landlord will, to the extent that it is within its power to do so, use all reasonable endeavours at its expense to forthwith remedy such breach.

13.4 Sale or dealings with the Land by the Landlord

The Landlord must not sell, transfer, subdivide or otherwise deal with its interests in the Land (so far as it relates to the Premises and any areas used by NBN Co for access to or use of the Premises) unless it first procures that the transferee or other relevant person provides a deed poll in favour of NBN Co, in a form required by NBN Co, under which that person agrees to comply with all of the Landlord's Covenants as if that person were the Landlord party originally named in this Lease.

13.5 Consent of Mortgagee or Chargee

If the Land is subject to any mortgage or charge, the Landlord must, at its cost, obtain the mortgagee or chargee's consent to this Lease in a form which is reasonably acceptable to NBN Co and which does not impose additional conditions on NBN Co.

13.6 Registration

The Landlord must attend to registration and do all things reasonably necessary to enable the registration of the Lease at the relevant Land Titles Office in the Jurisdiction.

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13.7 Contamination

- (a) The Landlord warrants that, at the Date of Commencement, the Land does not contain substances hazardous to health or safety.
- (b) If any cleanup of the Land is required by Statute or because substances are present on the Land which are hazardous to health or safety, and is not caused by the activities of NBN Co on the Land, then the Landlord must, upon written request from NBN Co, at the Landlord's cost, carry out such cleanup as may be required to comply with the Statute or deal with the hazard to health or safety.

14 Miscellaneous

14.1 NBN Co to pay costs and disbursements

NBN Co must pay all registration fees in relation to this Lease. Each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation, completion and registration of the Lease.

14.2 Without prejudice – Telecommunications Act

- (a) This Lease is without prejudice to, and nothing in this Lease affects, restricts, limits or derogates from any right, power and immunity of NBN Co under or by virtue of any Statute including, without limitation, NBN Co's rights under Schedule 3 of the Act.
- (b) The parties acknowledge that, in relation to the Premises, the installation of any Equipment deemed to be low impact pursuant to the Determination, or the maintenance of any of the Equipment on the Land, by or for NBN Co is undertaken in exercise of the rights of NBN Co pursuant to Divisions 2, 3 and/or 4 (as the case may be) of Schedule 3 to the Act.
- (c) To the extent that an activity performed by NBN Co in connection with the Premises or anything in, over or under the Premises, is an activity that NBN Co is authorised to do under Schedule 3 of the Act, the Landlord waives its right to be given a notice under clauses 17 and 18 of Schedule 3 of the Act, and also waives any rights that it has to object to the activities that, but for this clause, would have been the subject of a notice under clauses 17 and 18 of Schedule 3 of the Act.
- (d) The Landlord agrees that, in light of the terms of this Lease, it will not make any claim against NBN Co in relation to clause 42 of Schedule 3 to the Act.
- (e) The operation of this clause and any waiver given under this clause will survive the termination or expiry of this Lease. Any rights obtained by NBN Co under Schedule 3 of the Act will continue in accordance with the Act, notwithstanding the termination or expiry of this Lease.

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14.3 Governing law

This Lease is governed by the laws of the Jurisdiction and the Commonwealth of Australia and the Landlord and NBN Co submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction.

14.4 Entire Agreement

This Lease contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

14.5 No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Lease will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

14.6 No Merger

The rights and obligations of the parties will not merge on completion of any transaction under this Lease.

14.7 Counterparts

If this Lease consists of signed counterparts, each is an original and all of the counterparts together constitute the same document.

14.8 Confidentiality

- (a) The parties each agree that the terms of this Lease are confidential. Except to the extent necessary to comply with its terms, a party must not disclose this Lease or the contents of this Lease to any third party without the prior written consent of each other party.
- (b) It is not a breach of clause 14.8(a) for a party to disclose this Lease or the contents of this Lease if that disclosure:
 - (i) is required by law or by any Government Agency or regulatory body (including any relevant stock exchange); or
 - (ii) is of information which is publicly available through no fault of the party making the disclosure; or
 - (iii) is necessary in order to obtain consent to this Lease from a third party (in connection with registration of this Lease or otherwise), provided the recipient is under an obligation to keep the information disclosed confidential;
 - (iv) is to the party's professional advisers, bankers, financial advisers and financiers, provided the recipient is under an obligation to keep the information disclosed confidential; or
 - (v) is to any of its employees, agents and contractors to whom it is necessary to disclose the information, provided the recipient is

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under an obligation to keep the information disclosed
confidential.

15 Preliminary Drawings

The Landlord acknowledges that the preliminary drawing in Annexure C of this Lease is attached only for the purpose of showing the access track and is otherwise indicative only and subject to change at NBN Co's discretion.

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EXECUTED as a Deed

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.



Signature of Witness

Name of Witness
Imogen O'Neill
Level 11, 100 Arthur Street
North Sydney NSW 2060

Address of Witness

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4647 No: 861 (and I declare that I have no notice of revocation of the said power of attorney)



Signature

Thomas Dreger


Name of Attorney Manager,
Commercial Special Services

Position of Attorney

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.



Signature of Witness

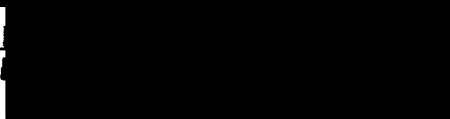
Name of Witness


Address of Witness

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4647 No: 861 (and I declare that I have no notice of revocation of the said power of attorney)



Signature

Name of Attorney 

Position of Attorney

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I certify that I am an eligible witness and
the lessor signed this dealing in my
pr

.....
[Redacted]

Signature of witness

[Redacted]

Certified correct for the purposes of the
Real Property Act 1900 by the lessor,
Alan

.....
[Redacted]
.....
Sign

I certify that I am an eligible witness and
the lessor signed this dealing in my
prese

.....
[Redacted]

Signature of witness

[Redacted]

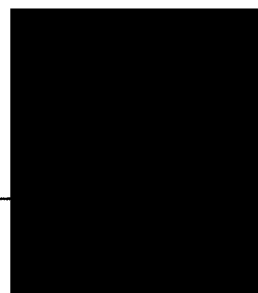
Certified correct for the purposes of the
Real Property Act 1900 by the lessor,
Patricia Bernardine Field.

.....
[Redacted]
.....
Sig

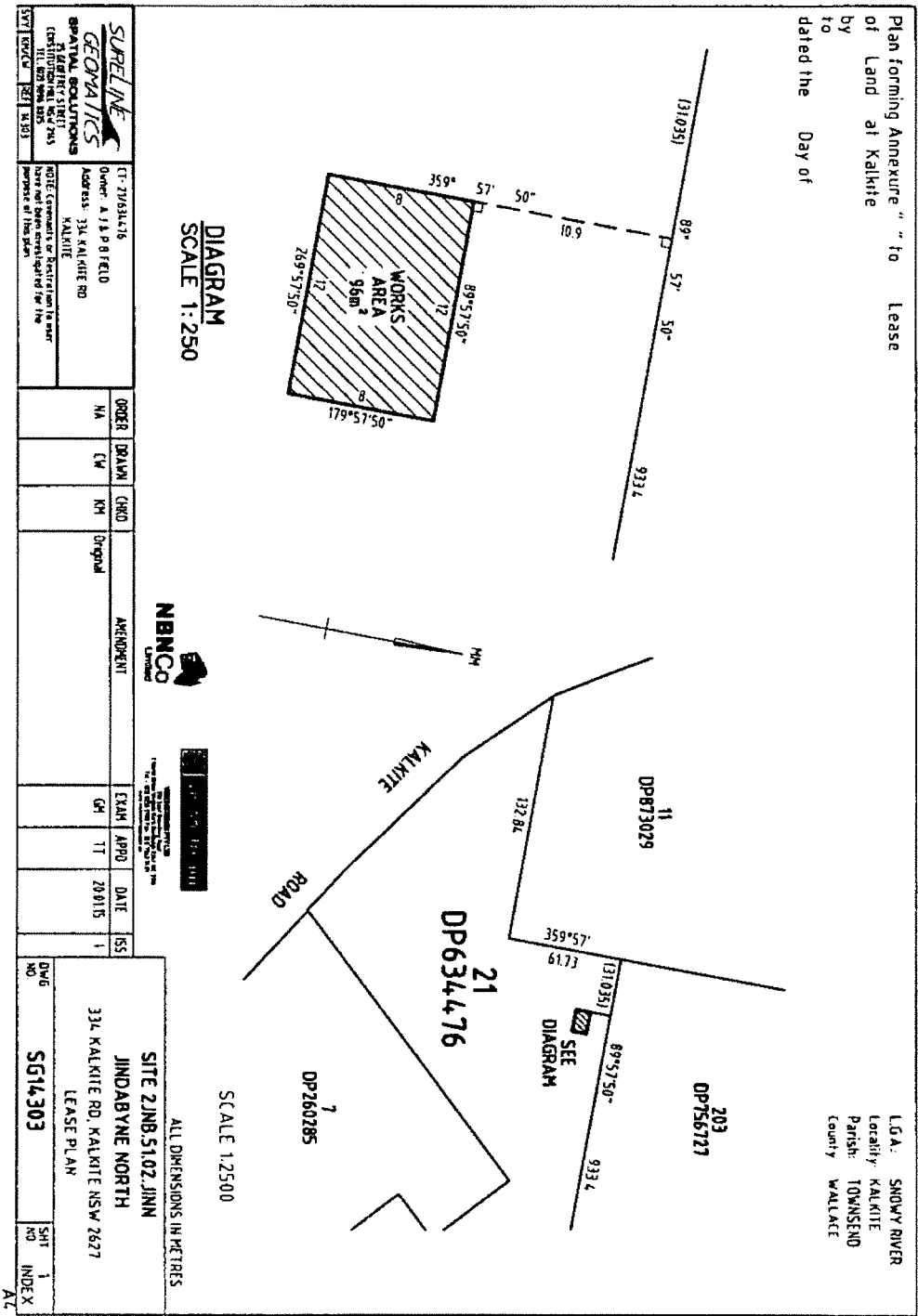
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Annexure B

Plan



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Annexure C

April 2015 - April 2020
film with AJ 911100

CONSENT TO LEASE

R.P.A.

[REDACTED] (hereinafter called "the Bank") being the Mortgagee under Mortgage No S121499 & V782689 of the premises demised by the within Lease hereby consents to such Lease as from the registration thereof and not otherwise and subject to the following conditions and provisions namely:

1. THAT this consent shall be without prejudice to the rights powers and remedies of the Bank and its assigns under the said Mortgage which shall remain in full force and effect as if this consent had not been given except that so long as the covenants and provisions of the said Lease are duly observed and performed the Bank will in the event of the exercise of the power of sale or other power or remedy of the Bank or its assigns on default under the said Mortgage exercise the same subject to the then subsisting rights of the Lessee his executors administrators and assigns under the said Lease.
2. THAT so long as the Bank or its assigns is or are registered as Mortgagee of the said premises the Lessee shall obtain the consent or approval of the Bank or its assigns in addition to the consent or approval of the Lessor in all cases where under the said Lease the consent or approval of the Lessor is required.
3. THAT upon the Bank or its assigns giving notice to the Lessee of demanding to enter into receipt of the rents and profits of the said premises the covenants on the part of the Lessee expressed or implied in the said Lease shall be deemed to have been entered into by the Lessee with the Bank and its assigns and all the rights powers and remedies of the Lessor under the said Lease shall vest in and be exercisable by the Bank and its assigns until such notice be withdrawn or the said Mortgage be discharged.
4. The Bank shall in no way be bound to perform and shall not incur any liability in respect of the covenants and agreements expressed or implied in the said Lease and on the part of the Lessor to be performed and observed.
5. The word "Lessee" where used herein shall mean and include the Lessee his executors administrators or permitted assigns.

DATED this 08 April 2015

I certify that I am an eligible witness and that the person whose signature appears opposite signed this dealing in my presence. [See note* below].

Signature of Witness:...

Name of Witness:

Address of Witness:.....

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I certify that I am an eligible witness and that the Lessor signed this dealing in my presence. [See note * below]

.....
(Signature of Witness)

Name of witness: ...

Address of witness:

Sign
By e
attor
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ALAN

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

I certify that I am an eligible witness and that the Lessor
signed this dealing in my presence. [See note * below]

.....
(Signature of Witness)

P

..... Lessor

Name of witness: ..

Address of witness

~~SIGNED by
NBN Co Limited
by authority of its directors~~

.....
*Secretary/Director

.....
Director

.....
Name in full (BLOCK LETTERS)

.....
Name in full (BLOCK LETTERS)

.....
(Lessee)

*Delete whichever is not applicable

Refer attached.

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4689 No: 895 (and I declare that I have no notice of revocation of the said power of attorney)


Signature of Witness


Signature

Name of Witness

Name of Attorney

**Andrew Brown
Regional Manager**

Position of Attorney

Infrastructure Services

Address of Witness

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4689 No: 895 (and I declare that I have no notice of revocation of the said power of attorney)


Signature of Witness


Signature

Name of Witness

Name of Attorney

Position of Attorney

Address of Witness

Form: 07L
Release: 1309

LEASE

New South Wales
Real Property Act 1900



AJ942070V

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

EXTRA FEE RAISED

STAMP DUTY

Office of State Revenue use only.

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

Part of the Land at Folio Identifier 1/1030517 shown hatched on the Plan in ANNEXURE B

(B) LODGED BY

Document
Collection
Box

273L

Name, Address or DX, Telephone, and Customer Account Number if any

InfoTrack Pty Ltd
GPO Box 4029 Sydney NSW 2001
Ph: 02 8203 7800
LLPN: 124725J

Reference (optional):

14529-1

CODE

L

(C) LESSOR

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable): NIL

(E) LESSEE

NBN Co Limited (ACN 136 533 741)

(F)

TENANCY:

- (G)
1. **TERM:** 5 Years
 2. **COMMENCING DATE:** 17 August 2015
 3. **TERMINATING DATE:** 16 August 2020
 4. With an **OPTION TO RENEW** for a period of N/A set out in clause N/A of N/A.
 5. With an **OPTION TO PURCHASE** set out in clause N/A of N/A.
 6. Together with and reserving the **RIGHTS** set out in ANNEXURE A
 7. Incorporates the provisions or additional material set out in ANNEXURE(S) A to B hereto.
 8. Incorporates the provisions set out in **MEMORANDUM** filed pursuant to section 80A Real Property Act 1900 as / registered LEASE No. N/A
 9. The **RENT** is set out in Item 5 of ANNEXURE A.

DATE

3 / 08 / 2015
dd mm yyyy

(H) I certify that I am an eligible witness and that the lessor signed this dealing in my presence. [See note* below.]

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness: SEE EXECUTION PAGE 27

Signature of lessor:

Name of witness:

Address of witness:

Note: where applicable, the lessor must complete the statutory declaration below.

I certify that I am an eligible witness and that the lessee signed this dealing in my presence. [See note* below.]

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness: SEE EXECUTION PAGE 26

Signature of lessee:

Name of witness:

Address of witness:

(I) STATUTORY DECLARATION*

I _____
solemnly and sincerely declare that—

1. The time for the exercise of option to renew / option to purchase in expired lease No. _____ has ended;
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at _____ in the State of _____ on _____

in the presence of _____ of _____.

☐ Justice of the Peace (J.P. Number _____) ☐ Practising Solicitor

☐ Other qualified witness [specify] _____.

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID no.]

Signature of witness: _____ Signature of lessor: _____

* As the services of qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

Annexure A

Information Table

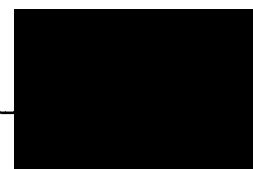
Parties Notice Details

Name	[REDACTED]	
ABN	[REDACTED]	
Short form name	Landlord	
Notice details	Address:	[REDACTED]
	Telephone:	[REDACTED]
	Facsimile:	N/A
	Attention:	[REDACTED]

Name	NBN Co Limited	
ACN	136 533 741	
Short form name	NBN Co	
Notice details	Address:	Level 11, 100 Arthur Street, North Sydney, New South Wales 2060
	Facsimile:	02 9926 1901
	Attention:	Chief Legal Counsel

Items

Item 1	Premises (clause 1.1) That part of the Land hatched in black on the plan in Annexure B being part of the property known as 154 Scotts Road, Binjura, New South Wales 2630 as described by Folio Identifier 1/1030517. Site name: Dairymans Site number: NBN-9QBZ-2COM-5102
Item 2	Date of Commencement (clause 1.1) 17 August 2015
Item 3	Date of Expiration (clause 1.1) 16 August 2020
Item 4	Term (clause 1.1) 5 Years



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- Item 5 **Rent** (clause 1.1)
\$7,000.00 per annum payable from the First Payment Date.
- Item 6 **Nominated Account for payment of Rent** (clause 4.5)
As notified by the Landlord in writing to NBN Co from time to time.
- Item 7 **First Payment Date**
The date NBN Co substantially commences construction work to install the Equipment on the Premises (excluding placement of survey pegs or delivery of materials and the Equipment).
- Item 8 **Contact Person** (clause 6.2)
Contact person for all Rent and payment matters:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile: N/A
NBN Co: NBN Co Accounts Payable
Telephone: 02 9927 4151
Address: 100 Arthur Street, North Sydney, New South Wales 2060
Email: accountspayable@nbnco.com.au
Contact person for non-legal matters relating to access and Equipment:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile: N/A
NBN Co: NBN Co Network Operations Support
Telephone: 1800 626 762 (option 5)
Contact person for all other non-legal matters relating to this Lease:
Landlord: [REDACTED]
Telephone: [REDACTED]
Facsimile: N/A
NBN Co: NBN Co Commercial Network Manager
Email: wirelesssservices@nbnco.com.au
Contact person for all legal matters relating to this Lease:
Landlord: Sarah Perkins - Walker Gibbs and King
Telephone: 02 6452 1488
Facsimile: 02 6452 1725



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NBN Co: Chief Legal Counsel
Facsimile: 02 9926 1901

Item 9 **Special Conditions** (clause 1.4)

1. Clause 4.4 is deleted and replaced with:

"4.4 GST

- (a) Unless stated to the contrary, all payments to be made by NBN Co under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by NBN Co to the Landlord under the Lease is consideration for a supply by the Landlord under the Lease on which the Landlord must pay GST, NBN Co must also pay the Landlord an additional amount equal to the GST payable (**GST Amount**) by the Landlord on that supply.
- (b) Subject to clause 4.4(d), NBN Co will issue recipient created tax invoices (RCTIs) for the taxable supplies made by the Landlord to NBN Co under this Lease. For the purpose of NBN Co issuing RCTIs the parties agree:
 - (i) NBN Co may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) The Landlord will not issue a tax invoice in respect of any supply it makes to NBN Co under this Lease; and
 - (iii) Each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs.
- (c) If a payment to a party under this Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (d) If NBN Co notifies the Landlord in writing that NBN Co will no longer issue RCTIs then:
 - (i) clause 4.4(b) will not apply from the date specified in the notification until NBN Co withdraws the notification by a further notice to the Landlord; and
 - (ii) during the period specified in clause 4.4(d)(i), the Landlord must issue a tax invoice to NBN Co for any taxable supply made by the Landlord to NBN Co under

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this Lease before the consideration payable for that supply is due and NBN Co need not pay the GST Amount for a particular taxable supply until such time as the Landlord has issued a tax invoice to NBN Co for that supply.

- (e) Notwithstanding any other provision of this clause 4.4, the Landlord acknowledges and warrants that at the time of entering into this Lease it is not registered, required to be registered, nor liable, for GST and will not make any claim against NBN Co in relation to GST arising under or in connection with this Lease.
- (f) In the event that the Landlord becomes registered for GST, the Landlord must notify NBN Co of this in writing and on and from the date NBN Co receives the notice, NBN Co will pay the relevant additional GST amounts in accordance with clause 4.4."

2. Clause 13.6 is deleted and replaced with:

"13.6 Registration

- (a) NBN Co will attend to registration and the Landlord will co-operate with NBN Co and do all things reasonably necessary to enable registration of this Lease at the relevant Land Titles Office in the Jurisdiction, including the Landlord must provide the following within 28 days of the date that the Landlord signs this Lease:
 - (i) fully executed consent from Westpac Banking Corporation to this Lease in relation to mortgage no. AH94844 registered over Folio Identifier 1/1030517 (Title); and
 - (ii) production receipt or similar evidence of production of the original Title for viewing at the relevant Land Titles Office in the Jurisdiction for the purposes of enabling registration of this Lease.
- (b) Without detracting from the Landlord's obligations under clauses 13.6(a)(i) and (ii), the Landlord irrevocably consents to NBN Co contacting Westpac Banking Corporation directly on the Landlord's behalf at the notice details set out in the Information Table, should NBN Co require, in order to enable registration of this Lease at the relevant Land Titles Office in the Jurisdiction."

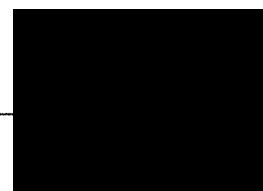


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3. Clause 14.1 is deleted and replaced with:

"14.1 NBN Co to pay costs and disbursements

- (a) NBN Co must pay all registration fees in relation to this Lease. Subject to clause 14.1(b), each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation, completion and registration of the Lease.
- (b) NBN Co will reimburse, subject to clause 14.1(c), to:
 - (i) the Landlord's reasonable legal costs, charges and expenses for the preparation, negotiation, execution and registration of this Lease (including any Consecutive Leases) up to an aggregate maximum of \$1,500.00 (excluding GST);
 - (ii) the Landlord's reasonable costs of obtaining its mortgagee's or chargee's consent to this Lease and all Consecutive Leases, up to an aggregate maximum of \$400.00 (excluding GST); and
 - (iii) the Landlord's reasonable legal costs, charges and expenses incurred in respect of a transfer of this Lease or subletting of the Premises by NBN Co or any proposed transfer or sub-letting (including any Consecutive Leases) up to an aggregate maximum of \$400.00 (excluding GST);
- (c) NBN Co's contributions listed in clause 14.1(b) are payable within 21 days after that date on which NBN Co has received all of the following:
 - (i) in circumstances where NBN Co will not issue RCTI's in accordance with clause 4.4(b), a valid tax invoice from the Landlord in respect of the contributions listed in clause 14.1(b);
 - (ii) supporting evidence of the costs incurred by the Landlord;
 - (iii) evidence that the Lease has been lodged for registration; and
 - (iv) the mortgagee's and/or chargee's consent to the Lease (as applicable)."



General Conditions

1 Defined terms & interpretation

1.1 Defined terms

In this Lease:

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

Adjoining Land means any land owned by the Landlord which adjoins the Land.

APRA means Australian Prudential Regulation Authority.

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

Carrier has the meaning given to it in the Act.

Code means the *Telecommunications Code of Practice 1997*.

Consecutive Lease means a lease of the Premises between the Landlord and NBN Co other than this Lease, which is granted at the same time as this Lease in respect of periods either prior or subsequent to the Term.

Date of Commencement means the date stated in Item 2.

Date of Expiration means the date stated in Item 3.

Determination means the *Telecommunications (Low Impact Facilities) Determination 1997*.

Equipment means those items of plant and/or equipment brought onto the Land by NBN Co for the use permitted by this Lease.

First Payment Date means the date stated in Item 7.

General Conditions means the part of this Lease described as General Conditions.

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

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

Information Table means the part of this Lease described as Information Table.

Item means an item in the Information Table.

Jurisdiction means the state or territory of the Commonwealth of Australia in which the Land is situated.



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Land means the land described in the Certificate of Title (or title reference) referred to on the front page of the Lease.

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

Landlord's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by the Landlord.

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

NBN Co means the lessee described on the front page of the Lease and its successors and assigns and where the context permits, its employees, agents, invitees and contractors.

NBN Co's Covenants means the covenants and agreements contained or implied in the Lease to be observed and performed by NBN Co.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Reputable Insurer means an insurer who is:

- (a) a reputable APRA authorised insurer(s); or
- (b) APRA exempt and maintains a Standard & Poor's rating of A minus or higher (or an equivalent rating agency rating).

Special Conditions means the special conditions in Item 9.

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

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

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

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- (d) an expression importing a natural person includes any company, partnership, joint venture, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit, information table or schedule is a reference to a part and clause of and a party, annexure, exhibit, information table and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (i) month means a calendar month;
- (j) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (k) "includes" in any form is not a word of limitation;
- (l) any parties, persons, facts, events or documents alternatively or collectively shall be construed as a reference to all of them and to each and any one or more of them; and
- (m) any organisations, associations, societies, groups or bodies shall in the event that any of them ceases to exist or is reconstituted renamed or replaced or that any of its powers or functions are transferred to any other entity body or group refer respectively to any such entity body or group established or constituted in lieu thereof or succeeding to similar power or functions.

1.3 Third parties

Any covenant (whether express or implied) by a party to this Lease not to do or omit any act or thing shall be deemed to extend to an obligation not to permit any third party to do or to omit the same.

1.4 Special Conditions

The parties acknowledge and agree that the Special Conditions take precedence over the General Conditions to the extent of any inconsistency between the Special Conditions and the General Conditions.

2 Implied covenants and powers

2.1 Exclusion of implied covenants

The obligations and powers implied in the Lease by sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) are expressly excluded.

2.2 Inclusion of implied covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease and which are applicable to NBN Co.

2.3 Contravention of Statute - severance

If any provision of the Lease or its application to any party or in any circumstances is or becomes void, voidable, unenforceable or invalid because of any Statute or otherwise, such provision must in any such case and to such extent be severed from the Lease, and the Lease must be read as though such provision did not form part of the Lease at that time.

3 Term of Lease and holding over

3.1 Term of the Lease

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

3.2 Yearly tenancy holding over

If NBN Co occupies the Premises after the Date of Expiration (other than pursuant to a Consecutive Lease or the grant of a further lease) NBN Co must do so as a yearly tenant for yearly terms thereafter on the same terms and conditions as the Lease as far as they apply to a yearly tenancy. Either party may terminate the yearly tenancy by giving not less than 12 months' notice to the other party expiring on any day.

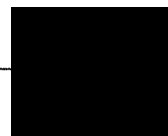
4 Payment

4.1 NBN Co's Covenant

NBN Co must pay the Rent to the Landlord during the Term.

4.2 Payment of Rent

- (a) Subject to clauses 4.2(b) and 4.2(c), the Rent will be paid annually in advance to the Landlord or to any other person the Landlord notifies to NBN Co. Any notification must be served at least 30 days prior to the date for payment of Rent.
- (b) The first Rent payment will be:
 - (i) for the part year commencing on the First Payment Date and ending on the day prior to the anniversary of the Date of Commencement following the First Payment Date; and
 - (ii) made within 30 days after the First Payment Date.



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- (c) For the avoidance of doubt, no Rent will be payable in respect to the period commencing on the Date of Commencement and ending on the day prior to the First Payment Date.
- (d) The second and each subsequent Rent payment will be made on each anniversary of the Date of Commencement after the First Payment Date.
- (e) If an instalment of Rent is for a period of less than one year, the instalment for that period is apportioned on a daily rate for the relevant lease year.

4.3 Rent Reviews

The Rent will be increased by 2.5% on each anniversary of the Date of Commencement.

4.4 GST

- (a) Unless stated to the contrary, all payments to be made by NBN Co under the Lease (including but not limited to Rent) are calculated without regard to GST. If a payment by NBN Co to the Landlord under the Lease is consideration for a supply by the Landlord under the Lease on which the Landlord must pay GST, NBN Co must also pay the Landlord an additional amount equal to the GST payable (**GST Amount**) by the Landlord on that supply.
- (b) Subject to clause 4.4(d), NBN Co will issue recipient created tax invoices (**RCTIs**) for the taxable supplies made by the Landlord to NBN Co under this Lease. For the purpose of NBN Co issuing RCTIs the parties agree:
 - (i) NBN Co may, to the extent it is legally entitled to do so, issue a single RCTI for more than one rental period;
 - (ii) The Landlord will not issue a tax invoice in respect of any supply it makes to NBN Co under this Lease;
 - (iii) Each party acknowledges and warrants that at the time of entering into this Lease, it is registered for GST; and
 - (iv) Each party must notify the other party if, at any time, it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by the Australian Taxation Office relating to the issuing of RCTIs.
- (c) If a payment to a party under this Lease is a reimbursement or indemnification calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which that loss, cost or expense relates.
- (d) If NBN Co notifies the Landlord in writing that NBN Co will no longer issue RCTIs then:

- (i) clause 4.4(b) will not apply from the date specified in the notification until NBN Co withdraws the notification by a further notice to the Landlord; and
- (ii) during the period specified in clause 4.4(d)(i), the Landlord must issue a tax invoice to NBN Co for any taxable supply made by the Landlord to NBN Co under this Lease before the consideration payable for that supply is due and NBN Co need not pay the GST Amount for a particular taxable supply until such time as the Landlord has issued a tax invoice to NBN Co for that supply.

4.5 EFT payments

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

4.6 Pro rata refund of Rent

In the event of termination of the Lease pursuant to clause 10.2 or 10.3 the Landlord must forthwith refund to NBN Co prepaid Rent on a pro rata basis.

4.7 Gross Rent

The Landlord acknowledges the Rent is a 'gross' rent and is inclusive of all rates, taxes (excluding GST), statutory and building outgoings.

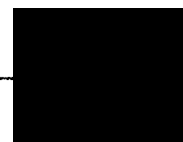
5 Use

5.1 Permitted use

NBN Co will use the Premises for the purpose of constructing, maintaining and operating a telecommunications facility, network and service and such use includes any use allowed under the Act and may do all such things as may be necessary or convenient for this purpose. NBN Co may at any time during the Term install, remove, modify, vary, maintain, use and operate on the Premises such Equipment as is necessary for the use permitted by this Lease now and in the future.

5.2 Adjacent Land

- (a) The Landlord grants to NBN Co the right to use so much of the Land and Adjoining Land which is adjoining and adjacent to the Premises or any installation of NBN Co as is reasonably required during installation, erection, construction, dismantling, repair, replacement, variation, renewal and maintenance of the telecommunications facility, network and service. After using the Land or Adjoining Land for such use, NBN Co will restore the surface of any part of the Land or



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Adjoining Land as so used as near as practicably possible to its state prior to such use by NBN Co to the reasonable satisfaction of the Landlord.

- (b) The Landlord grants to NBN Co the right to undertake landscaping and/or plant or remove any vegetation on so much of the Land and Adjoining Land as is required by NBN Co to comply with any requirements, notices or orders of any Government Agency or as is otherwise reasonably required by NBN Co. NBN Co will be responsible for the maintenance and upkeep of any such landscaping or vegetation only to the extent required by the relevant Government Agency.

5.3 Requirements of Government Agencies

NBN Co must comply promptly with any applicable Statute in respect of NBN Co's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises. NBN Co is not liable for structural alterations to any of the Landlord's fixtures or facilities unless caused or contributed to by NBN Co's particular use or occupation of the Premises.

5.4 Cabling

- (a) For the purpose of the operation of NBN Co's telecommunications facility, network and service, the Landlord will permit NBN Co to:
 - (i) install, erect, construct, dismantle, maintain, repair, replace, vary, add and use above or below ground cabling to and from the Premises and any other installations of NBN Co and to connect to adjoining roads or services; and
 - (ii) where necessary to construct supports for that cabling, on the Land.
- (b) When exercising its rights under this clause, NBN Co must:
 - (i) not cause any lasting material damage to the Land or material interference with the Landlord; and
 - (ii) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by NBN Co to the reasonable satisfaction of the Landlord.

5.5 Non-contiguous Premises

In the event of parts of the Premises not being contiguous one with the other or the Premises being partly or wholly on the rooftop of a building on the Land NBN Co may run such above or below ground cabling, wiring, conduit, earthing straps, cable trays and support structures over the Land or within or upon the building on the Land on which the Premises are situated as are necessary for its safe, continuous and proper use of the Premises but in doing so NBN Co



must not cause any material damage to the Land or material interference with the Landlord.

5.6 Consents

- (a) The Landlord hereby irrevocably consents to NBN Co making, at its cost, any application for consent or approval to any Government Agency to use or develop the Premises for the use referred to in clause 5.1 and consents to NBN Co exercising and procuring (at its cost) every right and appeal arising from the determination of any such application or the failure to determine the application.
- (b) The Landlord must sign all documentation and do all such things as NBN Co or any person nominated by NBN Co reasonably requires (at NBN Co's cost) to authorise or assist in obtaining consent or approval from any Government Agency to use or develop the Premises for the use referred to in clause 5.1.

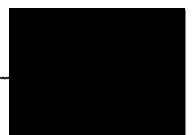
6 Access to the Premises

6.1 Access

- (a) The Landlord consents to NBN Co and persons authorised by NBN Co without the need for prior approval and with or without materials, equipment, plant and other apparatus and vehicles entering the Land or Adjoining Land (including any access track referred to in clause 6.1(b)) for the purpose of using the Premises and installations of NBN Co under this Lease and exercising its rights under the Lease at all times of the day and night during the Term.
- (b) The Landlord consents to NBN Co:
 - (i) upgrading any existing access track over the Land and/or Adjoining Land to the Premises to a standard which is suitable for NBN Co's access to the Premises; or
 - (ii) constructing an all-weather access track over the Land and/or Adjoining Land to provide access to the Premises if there is no suitable existing access track to the Premises.
- (c) Despite any clause in this Lease, at the expiry (or earlier termination) of this Lease, NBN Co will not be required to make good or restore the surface of any access track which is upgraded or constructed by NBN Co under clause 6.1(b).

6.2 Contact person

- (a) The Landlord and NBN Co must each nominate a contact person to contact about non-legal matters relating to access and Equipment and other non-legal matters relating to this Lease. The relevant contact persons, as at the Date of Commencement, are stated in Item 8 of the Information Table.



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- (b) The Landlord and NBN Co must each nominate a contact person to contact about legal matters relating to this Lease. The relevant contact persons, as at the Date of Commencement, are stated in Item 8 of the Information Table.
- (c) The contact persons in Item 8 of the Information Table may be changed by the relevant party at any time by notice in writing to the other.

7 Insurance

7.1 Obligation to insure

- (a) NBN Co must have in force and maintain with a Reputable Insurer for the Term a valid and enforceable public liability insurance policy to the value of at least \$20,000,000 for any one occurrence.
- (b) The Landlord must have in force and maintain with a Reputable Insurer for the Term a valid and enforceable public liability insurance policy to the value of at least \$10,000,000 for any one occurrence.
- (c) The Landlord must inform its public liability insurer of the Lease and do all things necessary to ensure that the insurance policy covers the Landlord with respect to the activities contemplated within the Lease.

7.2 Evidence of Insurance

On request (and on no more than two occasions per year):

- (a) by the Landlord, NBN Co will produce to the Landlord satisfactory evidence, including certificates of currency, of the insurance policy required under clause 7.1(a); and
- (b) by NBN Co, the Landlord will produce to NBN Co satisfactory evidence, including certificates of currency, of its insurance policy referred to in clause 7.1(b).

7.3 Global Policy

NBN Co may effect its insurance in clause 7.1 pursuant to an insurance policy which is not specific as to the location of risk.

8 Installation

8.1 Construction and alterations

- (a) NBN Co may at NBN Co's discretion and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law, do anything in accordance with the permitted use of the Premises as set out in this Lease, including, without limitation, to install, erect, construct, dismantle, repair, replace, renew, add, vary and maintain



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upon the Premises security fencing and any building or buildings as necessary now or in the future to shelter the Equipment and a free standing monopole, lattice tower, guyed mast, multi-sided antenna support structure or other antenna support structure of sufficient height now or in the future to meet NBN Co's telecommunications requirements and all necessary connecting appurtenances.

- (b) NBN Co shall be entitled to paint any installations referred to in clause 8.1(a) (including, without limitation, any monopole, lattice tower, fencing or buildings) with any colour as may be required by a Government Agency in connection with any planning consent.

8.2 NBN Co property

Despite the extent of any affixation, the Equipment and all other fixtures, fittings, plant and other items brought onto or erected on the Land by or on behalf of NBN Co, at all times remains the absolute property of NBN Co.

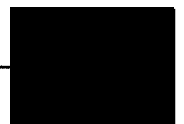
9 Electricity supply

9.1 Electricity connection

The Landlord must, at NBN Co's cost, permit NBN Co to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of NBN Co's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter, installed by NBN Co at its own cost, so that NBN Co is directly accountable for payment of electricity consumed by it on the Premises.

9.2 Easement for electricity purposes

- (a) If, pursuant to clause 9.1, NBN Co is required to connect to an electricity supply on or over the Land or on or over Adjoining Land, the Landlord must grant an easement for electricity purposes across that part of the Land or the Adjoining Land to enable NBN Co to connect the Premises to that electricity supply on terms as may be required by the electricity supplier (**Easement**). NBN Co will be responsible for preparing the Easement documentation and must pay the relevant land titles office fees for registration of the Easement, or reimburse the Landlord for such registration fees.
- (b) In anticipation of the grant of Easement, the Landlord hereby consents to NBN Co entering, or permitting the relevant electricity supplier to enter, the Land or the Adjoining Land from the Date of Commencement to construct electricity infrastructure and associated structures required for the purpose of the proposed electricity supply.



10 Termination

10.1 Termination by the Landlord

If:

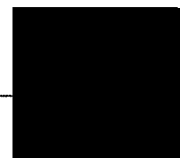
- (a) NBN Co commits a material breach of any of its obligations including payment of Rent, the Landlord may serve notice on NBN Co requiring remedy of the breach within a reasonable time having regard to the nature of the breach specified in the notice (**Trigger Notice**) such period to be not less than 21 days; and
- (b) NBN Co does not remedy the breach within the time specified in the Trigger Notice, the Landlord may serve notice on NBN Co requiring remedy of the breach within a further reasonable time having regard to the nature of the breach such period to be not less than 60 days (**Default Notice**); and
- (c) NBN Co does not remedy the breach within the period specified in the Default Notice,

the Landlord may terminate this Lease by serving notice to NBN Co at any time before the breach is remedied.

10.2 Termination by NBN Co

In addition to any rights NBN Co may have to terminate this Lease for breach of the Landlord's Covenants:

- (a) if the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of NBN Co or inaccessible by any means of access; or
- (b) if any application for a required consent or permit for the installation and use of the Premises as part of a telecommunications facility, network or service is rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (c) any application to a Government Agency for a required consent, permit or licence for the installation and use of the Premises as part of a telecommunications facility, network or service is granted to NBN Co with conditions unacceptable to it in its absolute and unfettered discretion or is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (d) if the Premises are rendered unfit for NBN Co's use described in clause 5.1 by reason of the emergence of physical, radio or other interference; or
- (e) if the Premises can no longer be used for the use described in clause 5.1, or the Premises are no longer required by NBN Co,



then NBN Co may terminate the Lease immediately by notice to the Landlord.

10.3 NBN Co's additional rights to terminate

NBN Co may also terminate this Lease by notice to the Landlord:

- (a) at any time before it substantially commences construction work to install the Equipment on the Premises (excluding placement of survey pegs or delivery of materials and the Equipment); or
- (b) at any time by giving not less than 6 months notice expiring on any day.

10.4 Effect on rights or liabilities

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

10.5 NBN Co to yield up

NBN Co must, by no later than 6 months after the Date of Expiration (unless there is in place after this Lease a Consecutive Lease or further lease between the Landlord and NBN Co, and in any event subject to clause 14.2), earlier termination of the Lease or such other date as the Landlord and NBN Co agree in writing, yield up the Premises in good repair and clean condition fair wear and tear excepted having regard to their condition at the Date of Commencement of the Lease.

10.6 Removal of NBN Co's fixtures and chattels

NBN Co must, by no later than 6 months after the Date of Expiration (unless there is in place after this Lease a Consecutive Lease or further lease between the Landlord and NBN Co, and in any event subject to clause 14.2), earlier termination of the Lease or such other date as the Landlord and NBN Co agree in writing, remove from the Premises all above ground cabling and fixtures, fittings, plant, machinery, and other items erected or brought by it onto the Premises or the Land.

10.7 Rent abatement

- (a) If the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of NBN Co or inaccessible by any means of access, then except to the extent that such damage or destruction is caused by the wrongful or negligent act or omission of NBN Co, the Rent will abate in proportion to the extent to which NBN Co is inhibited from carrying on the use permitted by this Lease from the date upon which the destruction or damage occurs until the earlier of the date upon which it is repaired and the date of termination of the Lease pursuant to clause 10.2(a).
- (b) If there is a dispute between the parties as to the proportion of Rent to be abated pursuant to clause 10.7(a) which is not resolved within

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20 days after notice by one party to the other of the nature of the dispute then:

- (i) the dispute may be referred by either party for determination by an expert who is an appropriate practising professional appointed at the request of either party (**Expert**), by:
 - (a) the president of the professional body most appropriate to determine the dispute or, if the parties are unable to agree on the appropriate body, the president for the time being of the Law Society of the Jurisdiction; or
 - (b) if there is no such body in existence at the time of the request, the president for the time being of an equivalent body;
- (ii) each party may make a submission either orally or in writing to the Expert within 20 days after that appointment;
- (iii) in making a determination the Expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) consider any submission made to it by a party; and
 - (c) provide the parties with a written statement of reasons for the determination;
- (iv) in the absence of manifest error the determination of the Expert is conclusive and binding on the parties;
- (v) the costs of the Expert will be shared equally between the parties unless otherwise determined by the Expert; and
- (vi) if the Expert fails to deliver a determination within 20 days after the last day on which the parties are entitled to make submissions, either party may require the appointment of a further Expert under clause 10.7(b)(i) to determine the dispute.

10.8 Termination of consecutive leases

This Lease will terminate automatically if there exists any Consecutive Lease the commencing date of which precedes the Date of Commencement and:

- (a) NBN Co gives notice to the Landlord not later than the date which is 3 months prior to the Date of Commencement that it no longer requires the Premises; or
- (b) that Consecutive Lease is terminated for any reason.



11 Notices

11.1 Method of service

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

11.2 Time of service

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

11.3 Change of address

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

12 Assignment and subletting

12.1 NBN Co not to assign

NBN Co must not assign the Lease except under clause 12.2 or with the prior written consent of the Landlord under clause 12.3.

12.2 Assignment to a Related Body Corporate or a Carrier

NBN Co may from time to time assign the Lease to a Related Body Corporate of NBN Co or to a Carrier or to the holder of a Nominated Carrier Declaration (as those terms are defined in the Act) or to a party in conjunction with the sale of the whole or part of NBN Co's telecommunications network or to a Government Agency.

12.3 Assignment

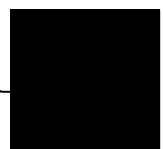
Subject to clause 12.2 NBN Co may assign the Lease with the prior written consent of the Landlord, such consent not to be unreasonably withheld.

12.4 Release following assignment

If this Lease is assigned, NBN Co will cease to be liable for any NBN Co's Covenants which arise, or are liable to be performed, on or after the date of assignment. However, NBN Co is not released in respect of breaches of NBN Co's Covenants which arose before the date of assignment.

12.5 Subletting

NBN Co may sublet, licence, part with or share its right to possession of the Premises without requiring the consent of the Landlord.



13 Landlord's covenants

13.1 Quiet enjoyment

The Landlord covenants that NBN Co may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person rightfully claiming through the Landlord. The Landlord must not do anything which derogates from its grant of the Premises to NBN Co under this Lease.

13.2 Restriction on Landlord's use of the Land

The Landlord covenants that the Landlord will not itself nor will it permit any third party to do anything on the Land which is likely to cause physical, radio or other interference which obstructs, interrupts or impedes the use or operation of NBN Co's telecommunications facility, network or service. If NBN Co advises the Landlord of any breach by the Landlord of its covenant the Landlord will, to the extent that it is within its power to do so, use all reasonable endeavours at its expense to forthwith remedy such breach.

13.3 Landlord's covenant

The Landlord covenants that the Landlord will not itself nor will it permit any third party to, store on, dispose of on or transport to or over the Land any hazardous substance which is likely to cause interference with NBN Co's use of the Premises. If NBN Co advises the Landlord of any breach by the Landlord of its covenant the Landlord will, to the extent that it is within its power to do so, use all reasonable endeavours at its expense to forthwith remedy such breach.

13.4 Sale or dealings with the Land by the Landlord

The Landlord must not sell, transfer, subdivide or otherwise deal with its interests in the Land (so far as it relates to the Premises and any areas used by NBN Co for access to or use of the Premises) unless it first procures that the transferee or other relevant person provides a deed poll in favour of NBN Co, in a form required by NBN Co, under which that person agrees to comply with all of the Landlord's Covenants as if that person were the Landlord party originally named in this Lease.

13.5 Consent of Mortgagee or Chargee

If the Land is subject to any mortgage or charge, the Landlord must, at its cost, obtain the mortgagee or chargee's consent to this Lease in a form which is reasonably acceptable to NBN Co and which does not impose additional conditions on NBN Co.

13.6 Registration

The Landlord must attend to registration and do all things reasonably necessary to enable the registration of the Lease at the relevant Land Titles Office in the Jurisdiction.



13.7 Contamination

- (a) The Landlord warrants that, at the Date of Commencement, the Land does not contain substances hazardous to health or safety.
- (b) If any cleanup of the Land is required by Statute or because substances are present on the Land which are hazardous to health or safety, and is not caused by the activities of NBN Co on the Land, then the Landlord must, upon written request from NBN Co, at the Landlord's cost, carry out such cleanup as may be required to comply with the Statute or deal with the hazard to health or safety.

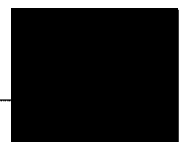
14 Miscellaneous

14.1 NBN Co to pay costs and disbursements

NBN Co must pay all registration fees in relation to this Lease. Each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation, completion and registration of the Lease.

14.2 Without prejudice – Telecommunications Act

- (a) This Lease is without prejudice to, and nothing in this Lease affects, restricts, limits or derogates from any right, power and immunity of NBN Co under or by virtue of any Statute including, without limitation, NBN Co's rights under Schedule 3 of the Act.
- (b) The parties acknowledge that, in relation to the Premises, the installation of any Equipment deemed to be low impact pursuant to the Determination, or the maintenance of any of the Equipment on the Land, by or for NBN Co is undertaken in exercise of the rights of NBN Co pursuant to Divisions 2, 3 and/or 4 (as the case may be) of Schedule 3 to the Act.
- (c) To the extent that an activity performed by NBN Co in connection with the Premises or anything in, over or under the Premises, is an activity that NBN Co is authorised to do under Schedule 3 of the Act, the Landlord waives its right to be given a notice under clauses 17 and 18 of Schedule 3 of the Act, and also waives any rights that it has to object to the activities that, but for this clause, would have been the subject of a notice under clauses 17 and 18 of Schedule 3 of the Act.
- (d) The Landlord agrees that, in light of the terms of this Lease, it will not make any claim against NBN Co in relation to clause 42 of Schedule 3 to the Act.
- (e) The operation of this clause and any waiver given under this clause will survive the termination or expiry of this Lease. Any rights obtained by NBN Co under Schedule 3 of the Act will continue in accordance with the Act, notwithstanding the termination or expiry of this Lease.



14.3 Governing law

This Lease is governed by the laws of the Jurisdiction and the Commonwealth of Australia and the Landlord and NBN Co submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction.

14.4 Entire Agreement

This Lease contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

14.5 No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Lease will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

14.6 No Merger

The rights and obligations of the parties will not merge on completion of any transaction under this Lease.

14.7 Counterparts

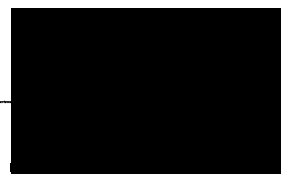
If this Lease consists of signed counterparts, each is an original and all of the counterparts together constitute the same document.

14.8 Confidentiality

- (a) The parties each agree that the terms of this Lease are confidential. Except to the extent necessary to comply with its terms, a party must not disclose this Lease or the contents of this Lease to any third party without the prior written consent of each other party.
- (b) It is not a breach of clause 14.8(a) for a party to disclose this Lease or the contents of this Lease if that disclosure:
 - (i) is required by law or by any Government Agency or regulatory body (including any relevant stock exchange); or
 - (ii) is of information which is publicly available through no fault of the party making the disclosure; or
 - (iii) is necessary in order to obtain consent to this Lease from a third party (in connection with registration of this Lease or otherwise), provided the recipient is under an obligation to keep the information disclosed confidential; or
 - (iv) is to the party's professional advisers, bankers, financial advisers and financiers, provided the recipient is under an obligation to keep the information disclosed confidential; or
 - (v) is to any of its employees, agents and contractors to whom it is necessary to disclose the information, provided the recipient is

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under an obligation to keep the information disclosed
confidential.



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EXECUTED as a Deed

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4689 No: 895 (and I declare that I have no notice of revocation of the said power of attorney)

[Redacted]

Signature
Name
Position

[Redacted]

Address of Witness

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the Lessee, **NBN Co Limited (ACN 136 533 741)**, by its duly authorised attorney who signed this dealing pursuant to the power of attorney Book: 4689 No: 895 (and I declare that I have no notice of revocation of the said power of attorney)

[Redacted]

Signature
Name
Position

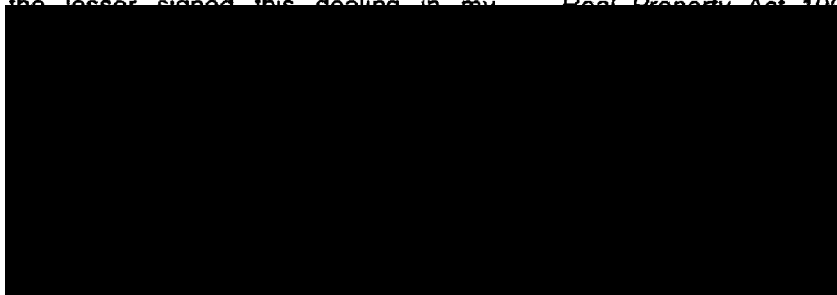
[Redacted]

Address of Witness



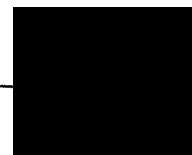
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I certify that I am an eligible witness and the lessor signed this dealing in my
Certified correct for the purposes of the *Real Property Act 1900* by the lessor,



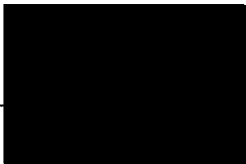
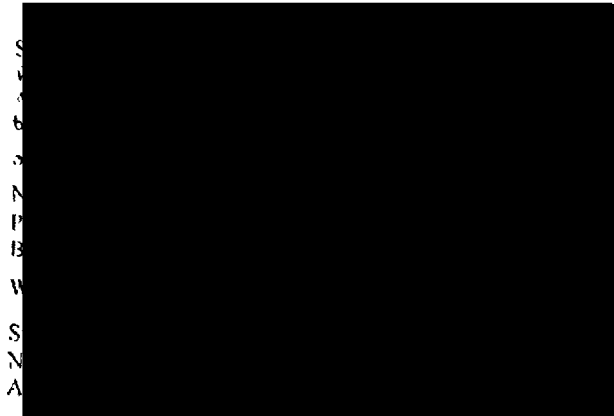
.....
Address of witness

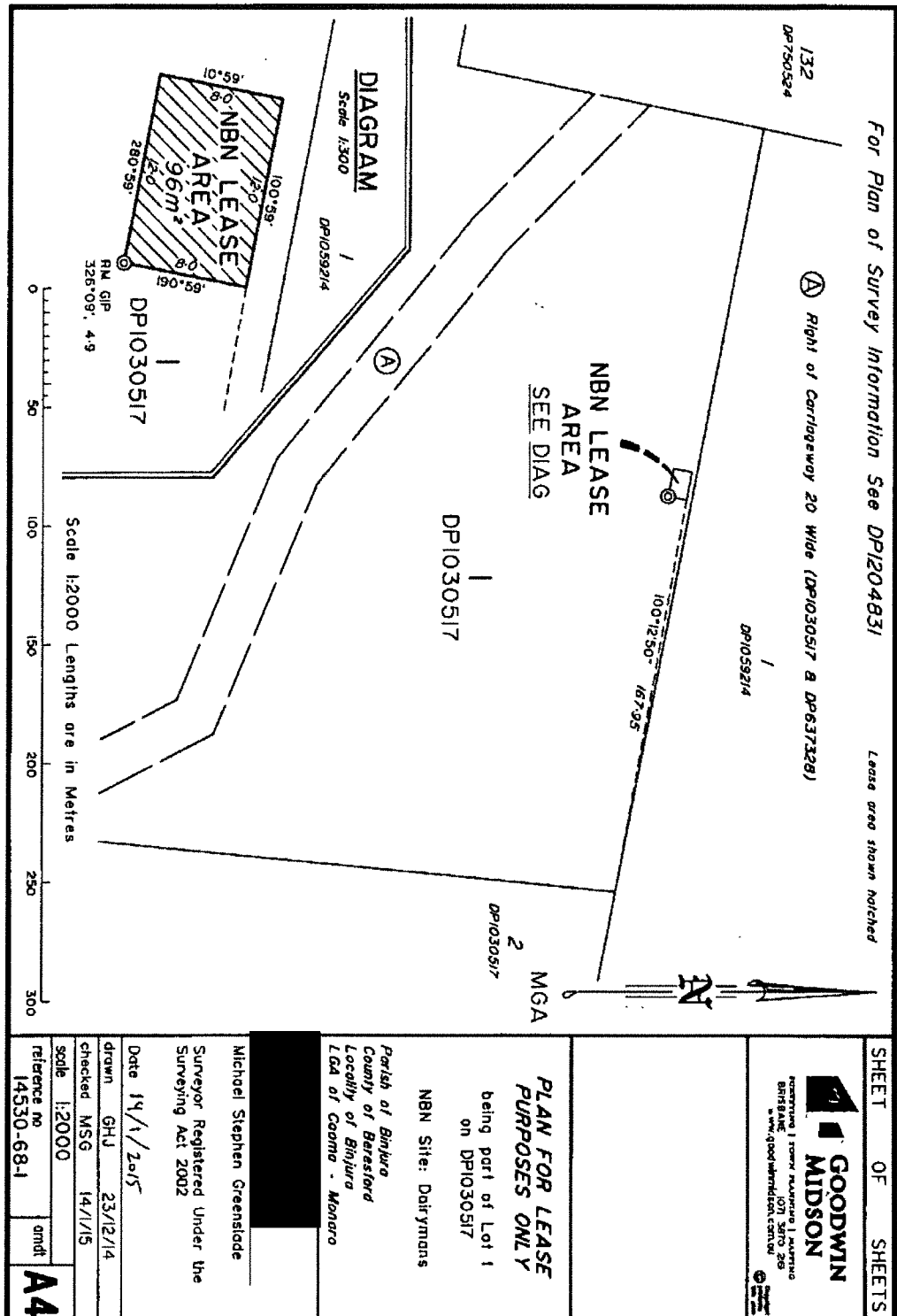
I certify that I am an eligible witness and the lessor signed this dealing in my
Certified correct for the purposes of the *Real Property Act 1900* by the lessor,



Annexure B

Plan





Form: 07L
Release: 4-4

LEASE

New South Wales
Real Property Act 1900



AI698821H

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased

Part folio identifier 7/830582 being that part of the land hatched on the plan annexed to this lease in Schedule 1

(B) LODGED BY

Document
Collection
Box

392 C

Name, Address or DX, Telephone, and Customer Account Number if any

SYDNEY LEGAL AGENTS

LLP : 128005 Y

Reference:

K+C/124200

CODE

L

(C) LESSOR

[Redacted]

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable): 8461734

(E) LESSEE

Crown Castle Australia Pty Ltd ABN 34 090 873 019

(F)

TENANCY:

(G) 1. TERM 5 years

2. COMMENCING DATE 19 May 2014

3. TERMINATING DATE 18 May 2019

4. With an OPTION TO RENEW for a period of N.A.

set out in clause of

5. With an OPTION TO PURCHASE set out in clause of N.A.

6. Together with and reserving the RIGHTS set out in clause of N.A.

7. Incorporates the provisions or additional material set out in ANNEXURE(S) A hereto.

8. Incorporates the provisions set out in N.A.

No.

9. The RENT is set out in item No. 5 of Reference Schedule

DATE

3 June 2014

- (H) I certify I am an eligible witness and that the lessor signed this dealing.
[See note* below]

Signature of witness

Name of witness
Address of witness

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of lessor:

I certify that I am an eligible witness and that the lessee's attorney signed this dealing in my presence.
[See note* below].

Signature of witness

Name of witness:
Address of witness

Certified correct for the purposes of the Real Property Act 1900 by the lessee's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of attorney

Attorney's name:
Signing on behalf of
Power of attorney-Book
-N

(I) **STATUTORY DECLARATION***

I

solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales on _____
in the presence of _____ of _____

☐ Justice of the Peace (J.P. Number: _____) ☐ Practising Solicitor

☐ Other qualified witness [specify] _____

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness: _____ Signature of applicant: _____

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

ANNEXURE A

1 DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In the Lease:

Adjoining Land means that part of the Land adjoining and adjacent to the Premises;

Business Day means any day in the State which is not a Saturday, Sunday or public holiday;

Commencing Date means the date stated in Item 2;

Construction Notice means a notice in the form set out in Annexure C;

Construction Date means the date on which the Lessee first accesses the Premises to commence the Lessee's Works;

Expiry Date means the date stated in Item 3;

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

GST includes any replacement or subsequent similar tax;

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

Item means a numbered item in the Reference Schedule;

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

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

Lessee means the lessee described on the front page of the Lease and its successors and assigns and where appropriate includes the Lessee's subtenants, licensees, users and invitees (as the case may be);

Lessee's Equipment means any fixtures, fittings, additions, plant, machinery and equipment in the Premises whether installed or carried out by, belonging to or brought onto the Premises by the Lessee, its sub-tenants and licensees (as the case may be);

Lessee's Works means the works described in Annexure B;

Lessor means the lessor described on the front page of the Lease and its successors and assigns;

Permitted Use means the use described in clause 5.

Premises means the premises stated in Item 1;

Reference Schedule means the schedule attached to the Lease;

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

Rent means the amount stated in Item 5(a), payable in accordance with clause 15 and as adjusted in accordance with clause 4.1(b);

Rent Increase Date means the later of:

- (a) The date of completion of the Lessee's Works; and
- (b) 3 months after the Construction Date.

Sequential Lease means a lease to the Lessee of the Premises (other than the Lease) which is entered into at the same time as the Lease but which is for a period either before or after the Term;

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

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

Tax invoice includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises; and

Term means the term of the Lease stated in Item 4.

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of and a party, annexure, exhibit and schedule to the Lease;
- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;

- (h) where consent is required to be given under the Lease, unless otherwise expressly stated, such consent must not be unreasonably withheld or delayed;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it; and
- (k) a covenant or agreement on the part of two or more persons binds them jointly and severally.

2 IMPLIED COVENANTS AND POWERS

2.1 Exclusion of Implied Covenants

The covenants, powers and provisions implied in leases by any law do not apply to this Lease.

2.2 Contravention of Statute - Severance

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

3 TERM OF LEASE AND HOLDING OVER

3.1 Term of the Lease

- (a) The Term commences on the Commencing Date and expires on the Expiry Date, subject to the terms of the Lease.
- (b) The Lessor must not grant a lease or any other occupation right over the Land which is concurrent or superior to the Lease.

3.2 Yearly Tenancy - Holding Over

If the Lessee occupies the Premises after the Expiry Date the Lessee must do so as a yearly tenant on the same terms and conditions as the Lease in so far as they apply to a yearly tenancy. Either party may end that tenancy on giving 12 months' notice to the other.

4 PAYMENT

4.1 Lessee to Pay Rent

- (a) The Lessee must pay the Rent to the Lessor during the Term in accordance with clause 15 and 4.2.
- (b) The Rent is to be increased on each anniversary of the Commencing Date during the Term by the percentage set out in Item 5(b).

4.2 Payment of Rent

The Rent must be paid annually in advance to the Lessor or to any other person the Lessor notifies to the Lessee provided such notification is received by the Lessee at least 30 days prior to the date for payment of the Rent.

4.3 GST

- (a) Terms defined in the GST Act have the same meaning in this clause unless provided otherwise.
- (b) If GST is or will be imposed on a supply made under or in connection with the Lease, the supplier may, to the extent that the consideration otherwise provided for that supply under the Lease is not stated to include an amount in respect of GST:
 - (1) increase the consideration otherwise provided for that supply under the Lease by the amount of that GST; or
 - (2) otherwise recover from the recipient the amount of that GST.
- (c) The right of the supplier to recover any amount in respect of GST under the Lease on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
- (d) The parties agree that:
 - (1) the Lessee can issue tax invoices in respect of the supplies made by the Lessor under or in connection with this Lease; and
 - (2) the Lessor will not issue tax invoices in respect of these supplies.

4.4 EFT Payments

The Lessee may pay Rent by Electronic Funds Transfer (EFT) to the account **Item 8** or such other account in Australia nominated by the Lessor provided notice of account details is received by the Lessee at least 30 days prior to the date for payment of Rent. Payment by EFT by the Lessee's banker to the nominated account by the due date is a full discharge of the payment.

4.5 Pro Rata Refund of Rent

If the Lease is terminated by either party for any reason (whether under clause 10.1, or otherwise), the Lessor must within 30 days of receiving a written demand, reimburse the Lessee for Rent and any other amounts payable under the Lease for the period from the date of termination to the Expiry Date calculated on a pro rata basis.

4.6 Interest on Overdue Amounts

- (a) Either party must pay the other on demand interest on any amount due and payable by that party under the Lease at the rate of interest charged by the Lessor's bankers in respect of overdrafts not exceeding \$100,000.
- (b) Interest payable under this clause will be calculated from and including the due date for payment under the Lease up to and including the date on which payment is received in full by the other party.

5 USE OF PREMISES

5.1 Permitted Use

The Lessee must use the Premises for the purpose of constructing, maintaining and operating a communications facility and incidental uses.

5.2 Adjoining Land

- (a) The Lessor grants to the Lessee, its sub-tenants and licensees the right to use so much of the Adjoining Land or any installation of the Lessee as is reasonably required during the installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the Premises for the Permitted Use.
- (b) After using the Adjoining Land the Lessee must restore the surface to that part of the Adjoining Land used to as near as practicably possible its state prior to use by the Lessee, its sub-tenants and licensees to the Lessor's reasonable satisfaction.
- (c) **Clause 7.3** applies to the exercise by the Lessee of its rights under this clause.

5.3 Cabling

The Lessor grants to the Lessee, its sub-tenants and licensees the right to install, maintain, repair, replace and use on the Land above or below ground cabling to and from the Premises and where necessary to construct supports for such cabling. In exercising its rights under this clause the Lessee must:

- (a) not cause any lasting material damage to the Land or material interference to the Lessor; and
- (b) restore the surface of the Land as used as nearly as practicably possible to its state prior to use by the Lessee, its sub-tenants and licensees to the Lessor's reasonable satisfaction.

Clause 7.3 applies to the exercise by the Lessee of its rights under this clause.

5.4 Non-contiguous Premises

If any part of the Premises is not contiguous with another part of the Premises (whether on the rooftop of a building or otherwise), the Lessee, its sub-tenants and licensees may at its own cost install and run such above or below ground cabling, wiring, piping, earthing straps, conduit and support structures over the Land as is necessary for the safe, continuous and proper use of the Premises for the Permitted Use. In exercising its rights under this clause, the Lessee must not cause any lasting material damage to the Land or material interference to the Lessor.

5.5 Consents

- (a) The Lessor irrevocably authorises the Lessee at its own cost to:
 - (1) submit any application for consent or approval to any Government Agency to use or develop the Premises for the Permitted Use; and
 - (2) exercise and procure every right of appeal arising from or in connection with any such application or the failure to determine the application.
- (b) The Lessor must sign all documents and do all things reasonably necessary (at the Lessee's cost) to authorise or assist the Lessee or any person nominated by the

Lessee in obtaining consent or approval from any Government Agency to use or develop the Premises for the Permitted Use.

6 ACCESS TO THE PREMISES

The Lessor grants to the Lessee, its sub-tenants, licensees and authorised persons the right to enter onto and access the Land at any time during the day and night with or without materials, plant, vehicles and other apparatus for the purpose of accessing the Premises and exercising its rights under the Lease.

7 INSURANCE, INDEMNITIES AND RELEASE

7.1 Obligation to Insure

The Lessee must:

- (a) at its own cost, effect and maintain during the Term and any overholding, public risk insurance in respect of the Premises for at least \$20 million with a reputable insurer against liability for bodily injury, property damage and any other risk which is commonly covered by public risk insurance;
- (b) punctually pay all premiums payable in respect of the insurance; and
- (c) promptly give to the Lessor on request a certificate of currency in respect of the insurance noting the interest of the Lessor as owner of the Premises.

7.2 Lessee's Release

The Lessee:

- (a) occupies and uses the Premises at its own risk; and
- (b) releases to the full extent permitted by law the Lessor and its agents, contractors employees from all claims and demands of every kind resulting from any accident, damage, death or injury occurring in the Premises except to the extent that the accident, damage, death or injury is caused or contributed to by the neglect, act, omission or default of the Lessor, its agents, contractors or employees.

7.3 Lessee's Indemnity

Subject to **clause 7.4** the Lessee indemnifies the Lessor against all costs, liability, claims, loss or damage incurred or suffered in respect of any loss, damage or injury to persons in or on any part of the Premises to the extent caused or contributed to by the Lessee or its agents, contractors or employees.

7.4 Negligence or Default of Lessor

The indemnities in **clause 7.3** do not apply to any cost, liability, claim, loss or damage to the extent caused or contributed to by the neglect, act, default or omission of the Lessor or its agents, contractors or employees in which case, the Lessor remains responsible to the extent of the contribution.

8 INSTALLATION AND MAINTENANCE

8.1 Repair and Maintenance

The Lessee must during the Term maintain the Premises in a good order and repair having regard to the condition they were in as at the Commencing Date, except for:

- (a) fair wear and tear; and
- (b) damage by fire, explosion, storm, tempest, lightning, earthquake, floods, riots, civil commotion, aircraft accident, objects falling from aircraft, acts of God and any other risk against which the Lessor or a prudent lessor would insure or has insured or is obliged to insure under the Lease.

8.2 Construction and Alterations

- (a) Subject to paragraph (b), the Lessee may at its own cost during the Term install, erect, construct, dismantle, repair, replace, renew and maintain on the Premises any security fencing, building or buildings necessary now or in the future to shelter communications equipment, a free standing monopole, guy tower, multi-sided antenna structure or other antenna support structure of sufficient height now or in the future to accommodate communications equipment and all necessary connecting appurtenances.
- (b) In exercising its rights under paragraph (a), the Lessee must comply with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law.

9 ELECTRICITY SUPPLY

- (a) To enable the Lessee to use the Premises for the Permitted Use, the Lessee must at the Lessee's cost:
 - (1) connect the Premises to an electricity supply; and
 - (2) install on the Premises such earthing apparatus as is necessary for the safe continuous use of the Lessee's Equipment for the Permitted Use.
- (b) The Lessor must provide the Lessee with all consents, approvals, rights and easements necessary to enable the Premises to be connected to an electricity supply.

10 TERMINATION

10.1 Events of Termination

If:

- (a) the Premises are damaged or destroyed or access is interrupted so as to render the Premises or any part wholly or substantially unfit for the Lessee's use and occupation under the Lease or the Premises are rendered inaccessible by any means; or
- (b) the Lessee commits a material breach of any of its obligations under the Lease (of which the Lessee has first been given written notice specifying the breach and which breach is not waived by the Lessor or remedied by the Lessee within a reasonable time (having regard to the nature of the breach)); or
- (c) any application to a Government Agency for a required consent or permit to enable the Lessee, its sub-tenants or licensees to use the Premises for the Permitted Use is

rejected, cancelled, lapses or is otherwise terminated or is granted to the Lessee, its sub-tenants or licensees on terms unacceptable to that party (in its absolute discretion) and no further or replacement consent or permit can reasonably be obtained.

- (d) the Premises are rendered unfit for use by the Lessee, its sub-tenants or licensees by reason of the emergence of significant physical or radio interference,

then the Lease may be terminated effective immediately on notice by the Lessee in the case of paragraphs (a), (c) and (d) by the Lessor in the case of paragraph (b).

10.2 Lessee to Yield Up

The Lessee must at the end of the Lease give back the Premises in accordance with the Lessee obligations under the Lease.

10.3 Removal of Lessee's Equipment

- (a) Subject to the Lessee, its sub-tenants and licensee's rights and obligations under the *Telecommunications Act (Cth) 1997*, the Lessee must at or prior to the end of the Lease or on such other date agreed between the parties remove from the Premises all above ground Lessee's Equipment. The Lessee must make good any damage caused during such removal.
- (b) The Lessor acknowledges that the Lessee's Equipment remains the property of the Lessee, its sub-tenants or licensees (as the case may be).

10.4 Effect on Rights or Liabilities

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

11 NOTICES

11.1 Method of Service

Any notice given under the Lease by either party to the other must be in writing and is given for all purposes by delivery in person, by post or by facsimile addressed to the receiving party at the address set out in Item 6 in the case of the Lessor and in Item 7 in the case of the Lessee.

11.2 Time of Service

A notice given in under the Lease is deemed to be duly served in the case of posting 2 Business Days after the date of posting and in the case of facsimile, on the first Business Day after the date of transmission (providing the sending party receives a facsimile machine verification report indicating that the notice has been transmitted).

11.3 Change of Address

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

12 ASSIGNMENT / SUBLETTING

- (a) The Lessee may assign this Lease on notice to the Lessor.
- (b) Upon an assignment of this Lease by the Lessee, the Lessee is released from all obligations and liabilities under this Lease from the date of such assignment, however the Lessee will not be released in respect of breaches by the Lessee which arose before the date of assignment.
- (c) The Lessee may sublet or licence the Premises (or any part) on notice to the Lessor.
- (d) Nothing in this Lease prevents the Lessee from mortgaging, charging or offering as security this Lease or the Lessee's interest in the Premises, and the Lessor will execute any document reasonably required by the Lessee to give effect to that mortgage, charge or security.

13 LESSOR'S COVENANTS

13.1 Quiet Enjoyment

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

13.2 Restriction on Lessor's Use of the Land

- (a) The Lessor must not itself knowingly nor must it knowingly permit any third party to do anything on the Land which is likely to cause physical or radio interference which obstructs, interrupts or impedes the use of the Premises for the Permitted Use.
- (b) If the Lessee advises the Lessor of any breach of this clause, the Lessor must, in good faith, use its every best endeavours to promptly remove any such interference, to the extent that it is within its power to do so.

13.3 Lessor's Covenant

- (a) The Lessor must not knowingly, nor knowingly permit any third party to store on, dispose of on or transport to or over the Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises under the Lease.
- (b) If the Lessee notifies the Lessor of any breach under this clause, the Lessor must, to the extent that it is within its power to do so, use its every best endeavours at its own cost to promptly remedy such breach.

13.4 Exclusivity

Following entry into this Lease, the Lessor:

- (a) must not sell, lease, licence or use the Land (or any land adjacent, adjoining or in close proximity to the Land which is owned or controlled by the Lessor) for the placement or operation of communications networks or communications services or both other than in accordance with the Lease; and
- (b) must refer to the Lessee any third party that expresses an interest in installing, locating, managing or operating communications facilities on or near the Land.

14 MISCELLANEOUS

14.1 Lessee to Pay Costs and Disbursements

- (a) The Lessee will contribute a maximum of \$250 (plus GST) towards the Lessor's reasonable and proper legal costs of and incidental to the negotiation, preparation and finalisation of the Lease (together with any costs of obtaining any consents).
- (b) The Lessee must pay all stamp duty together with cost for registration of the Lease.

14.2 Governing Law

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

15 LESSEE WORKS, RENT INCREASE DATE AND TERMINATION

15.1 Lessee's Works

- (a) Subject to clauses 15.1(c), the Lessee may carry out the Lessee's Works on the Premises and the Adjoining Land (as necessary).
- (b) In carrying out the Lessee's Works clauses 5.2 to 7 apply.
- (c) At least 2 weeks prior to commencement of the Lessee's Works the Lessee must serve on the Lessor a Construction Notice nominating the Construction Date.

15.2 Rent

- (a) The Rent from the Commencing Date to the day prior to the Rent Increase Date is ten per centum (10%) of the amount specified in Item 5(a) (as adjusted pursuant to clause 4.1(b)).
- (b) The Rent from the Rent Increase Date will be the full amount specified in Item 5(a) (as adjusted pursuant to clause 4.1(b)) and is payable in accordance with clause 4.2.
- (c) The Lessee must pay the Rent from the Commencing Date to the day prior to the Rent Increase Date annually in advance to the Lessor or to any other person the Lessor notifies to the Lessee provided that such notification is received by the Lessee at least 30 days prior to the date for payment of the Rent
- (d) Despite payment of the Rent in advance the Lessee must pay to the Lessor the balance of the Rent payable from the Rent Increase Date until the date the next annual payment is due following the Rent Increase Date.

15.3 Early Termination

- (a) The Lessee may terminate this Lease at any time prior to the Construction Date effective immediately on notice by the Lessee.
- (b) If the Lessee elects to terminate the Lease pursuant to clause 15.3(a) then despite any other provision of this Lease, clauses 4.5 and 10.4 apply.
- (c) If the Lessee terminates this Lease under this clause 15.3, the Lessee will provide the Lessor with a surrender of lease form for the Lease and the Lessor must execute the

surrender and return them to the Lessee within 10 Business Days of receipt. The Lessee must lodge the surrenders for registration within 10 Business Days of receipt.

16 REGISTRATION

- (a) The Lessor must ensure that the title deed to the Land is produced at the Titles Office for the purposes of enabling registration of the Lease within a reasonable time of execution of the Lease, not being more than 2 weeks after the Commencing Date.
- (b) Any breach of this clause by the Lessor will entitle the Lessee to terminate the Lease immediately and the provisions of clause 4.5 and 10.4 will apply.

17 RIGHT TO LODGE CAVEAT

The Lessor consents to the Lessee lodging a caveat on the title to the Land at any time giving notice of the Lessee's rights under this Lease pending registration of the Lease.

18 SEQUENTIAL LEASES

18.1 Application of clause 18

This clause 18 applies:

- (a) despite any other provision of the Lease; and
- (b) where one or more Sequential Leases are entered into in respect of the Premises.

18.2 Sequential Lease

- (a) Where a Sequential Lease commences on the day after the Expiry Date, any provisions of the Lease in relation to:
 - (1) the lessee's right to hold over after the expiration of the Lease;
 - (2) the lessee's obligation to remove any items from the Premises;
 - (3) the lessee's obligation to make good the Premises,which would normally apply on the expiration of the Lease, do not apply until the expiration of the final Sequential Lease.
- (b) If the Lease is transferred, then (despite any other provision of any Sequential Lease), the Sequential Leases which are expressed to commence after the date of the transfer are deemed to be assigned to the same transferee and with effect from the same date.
- (c) If a Sequential Lease which commenced prior to the Commencing Date is or has been transferred, then the Lease is deemed to be transferred to the same transferee with effect from the same date.
- (d) If a Sequential Lease which commenced prior to the Commencing Date terminates other than by expiration, then the Lease is terminated with effect from the same date.

- (e) If the Lessee gives to the Lessor notice no later than 6 months prior to the Commencing Date that the Lessee no longer requires to occupy the Premises, then the Lease terminates with effect from the date of service of the notice.

REFERENCE SCHEDULE

Item 1 Premises (clause 1.1)

That part of the Land hatched on the plan in **Schedule 1** being part of the property known as 115 Wonga Road, Narooma, NSW 2546.

Item 2 Commencing Date (clause 1.1)

19 May 2014

Item 3 Expiry Date (clause 1.1)

18 May 2019

Item 4 Term (clause 1.1)

5 years

Item 5 Rent (clause 15.2)

(a) Subject to clause 15.2, \$5,500 plus GST per annum during the first year of the Term and adjusted thereafter for the balance of the Term in accordance with clause 4.1(b).

(b) 2.5%.

Item 6 Contact at Lessor (clause 11.1)

Name:

Address:

Telephone Number:

Email:

Item 7 Contact at Lessee (clause 11.1)

Name:

Director, Corporate & Legal Affairs

Crown Castle Australia Pty Ltd

Address:

Level 1, 754 Pacific Highway

CHATSWOOD NSW 2067

Telephone Number:

(02) 9495 9000

Facsimile Number:

(02) 9495 9100

Item 8 Nominated Account (clause 4.4)

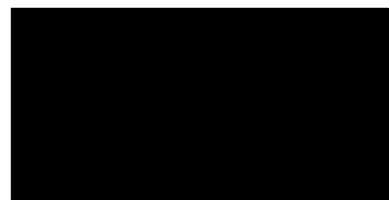
Bank & Branch:

BSB:

Account Number:

Account Name:

SCHEDULE 1 – PREMISES PLAN



ANNEXURE B

Lessee's Works

All of the Lessee's works to install on the Premises an operational communications facility, including but not limited to the following works:

1. the installation on the Land of above or below ground cabling to and from the Premises and where necessary the construction of supports for such cabling;
2. the installation, erection, construction and dismantling on the Premises of any security fencing, building or buildings necessary now or prior to the Commencing Date to shelter communications equipment, a free standing monopole, guy tower, multi-sided antenna structure or other antenna support structure of sufficient height necessary now or prior to the Commencing Date to accommodate communications equipment and all necessary connecting appurtenances;
3. the connection of the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power); and
4. the installation on the Land of such earthing apparatus as is necessary for the safe continuous use of the Lessee's Equipment for the Permitted Use.

ANNEXURE C

CONSTRUCTION NOTICE

To:

Attention:

Crown Castle Australia Pty Ltd (Lessee) lease from [REDACTED]

Property: Part 115 Wonga Road, Narooma, NSW 2546

The Lessee gives you notice that the date it intends to commence construction of the Lessee's Works pursuant to the Lease between the Lessor and the Lessee dated _____ is _____.

Words defined in the Lease have the same meaning in this notice.

Date:

SIGNED SEALED AND DELIVERED for and on behalf of)
Crown Castle Australia Pty Ltd ACN 090 873 019 by its)
duly appointed attorney)
under power of attorney registered Book 4643 No 46 in the)
presence of:

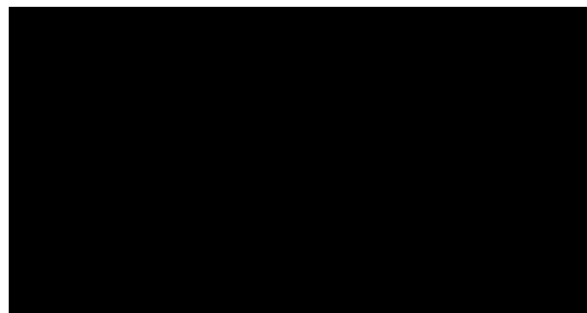
Crown Castle Australia Pty Ltd ACN 090 873
019 by its attorney

.....
Signature of witness

.....
Signature of attorney

By executing this deed the attorney states that
the attorney has received no notice that its
authority to do so has been revoked.

.....
Name of witness
(please print)





WONGA
155° 34' 20"
16.11

(VAR. WIDTH)

ROAD

7
DP 830582

170° 13'

13'

(10.1)

13.6

13'

170°

13'

10.1

8.1

350°

13'

260°

8.1

AREA TO BE
LEASED BY
CROWN CASTLE 81.81m²

DIAGRAM
SCALE 1:400

59.41

WONGA
60.655

HIGHWAY

155° 34' 20"
16.11

(VAR. WIDTH)

ROAD

SEE
DIAG.

170° 13'

43

14.775

13'

7

DP 830582

86

DP 873809

OLD

59

122

83

859150

SURVEYOR: RLS

DATE OF SURVEY: 10/03/14

'C' - EASEMENT FOR CABLING PURPOSES 2 WIDE & VARIABLE. DP830582

'E' - EASEMENT FOR ELECTRICITY PURPOSES 10 WIDE. DP830582



NBN Limited



ERICSSON



NATIONAL BROADBAND
NETWORK
SITE No: 2BMG-51-11-NANG
NANGUDGA
115 WONGA ROAD
NAROOMA
NSW, 2546

1. 8/14/14. ORIGINAL SCALE
Rev. Date Revision Details

aurecon
Aurecon Australia Pty Ltd ABN 54 005 135 870

CAD: CLP

CHECKED: RLS

APPROVED: RWP

Drawing Title:

PLAN OF PROPOSED LEASE

FOR TELECOMMUNICATION

PURPOSES WITHIN LOT 7 DP 830582

Drawing No:

2BMG-51-11-NANG-11

Revision:

01

ALL RIGHTS RESERVED. VERSION 10 - SEP7.2011

Form: 07L
Licence: 04-03-333
Licensee: King & Wood Mallesons

LEASE

New South Wales
Real Property Act 1900



AM808036W

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises .
required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires
that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

Folio identifier 12702-29 now being 181754540 in Auto Consol 12702-29

Part, shown hatched black on the plan in Annexure B and more particularly described in Item 1 of the
Information table to Annexure A

(B) LODGED BY

Document
Collection
Box

41J

Name, Address or DX, Telephone, and Customer Account Number if any
King & Wood Mallesons DX 113 Sydney T +61 2 9296 2000

LLPN: 123003 4

Reference (optional): S2815

CODE

L

(C) LESSOR

RELODGED

29 NOV 2017

TIME: 1:30
(E) LESSEE

The lessor leases to the lessee the property referred to above.

Encumbrances (if applicable) 1. 2. 3.

Optus Mobile Pty Limited ACN 054 365 696

(F)

TENANCY:

(G) 1. TERM

Five years

2. COMMENCING DATE 01/01/2017

3. TERMINATING DATE 31/12/2021

4. With an OPTION TO RENEW for a period of N.A. set out in N.A.

5. With an OPTION TO PURCHASE set out in N.A.

6. Together with and reserving the RIGHTS set out in N.A.

7. Incorporates the provisions or additional material set out in ANNEXURE(S) A & B hereto.

8. Incorporates the provisions set out in MEMORANDUM filed pursuant to section 80A Real Property Act 1900 as / registered
LEASE No. N.A.

9. The RENT is set out in item 5 of the Information table to Annexure A

Extra Fee Raised

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

CT Prod By 390G
Date: 28-9-2017
for: L (4x)

DATE 02, 06, 2017
dd mm yyyy

Certified correct for the purposes of the Real Property Act 1900. [Attesting witness - see note** below].

(H)

I certify that I am an eligible witness and that

Warwick Hunter Anderson

in my presence

Signature of witness.....

Name of witness:

Address of witness:

on:

I certify that I am an eligible witness and that

Jillian May Andersen

presence

Signature of witness.....

Name of witness:

Address of witness:

Note: where applicable, the lessor must complete the statutory declaration below.

I certify that I am an eligible witness and that
presence as attorney for **OPTUS MOBILE PTY LIMITED (ACN 054 365 611)**
book 4210 No. 62.

Signature of witness

Name of witness:

Address of witness:

Signature of Attorney

Attorney's name

Signing on behalf of

OPTUS MOBILE PTY LIMITED

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

(I) **STATUTORY DECLARATION***

I
solemnly and sincerely declare that—

1. The time for the exercise of option to renew in expired lease No. _____ has ended;
2. The Tenant (Lessee) under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at _____ in the State of _____ on _____
in the presence of _____ of _____

☐ Justice of the Peace (J.P. Number: _____)

☐ Practising Solicitor

☐ Other qualified witness [specify]

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness: _____ Signature of lessor: _____

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Annexure A Lease

This is the Annexure A referred to in the lease between:

 and Optus Mobile Pty Limited

dated

of the premises known as 34 Wareena Road Sandigo NSW 2700

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Information table

Parties		
Lessor	Name	[REDACTED]
	ABN	[REDACTED]
	Address	[REDACTED]
	Telephone	[REDACTED]
	Email	[REDACTED]
	Attention	[REDACTED]
Lessee	Name	Optus Mobile Pty Limited
	ACN	054 365 696
	Address	1 Lyonpark Road, Macquarie Park, NSW 2113 Postal Address: PO Box 888, North Ryde, NSW 1670
	Telephone	(02) 8113 5128
	Email	mdsspropertyissues@optus.com.au
	Attention	National Site Acquisition Co-ordinator
Site Code	S2815	
Items		
Item 1 Premises (clause 1.1)	That part of the Land hatched in black on the plan in Annexure B being part of the property known as 34 Wareena Road Sandigo NSW 2700.	
Item 2 Commencement Date (clause 1.1)	01/01/2017	
Item 3 Expiry Date (clause 1.1)	31/12/2021	
Item 4 Term (clause 1.1)	Five years	

Item 5
Rent (clause 1.1) \$7,000.00 during the first year of the Term, and increased by 2% on each anniversary of the Commencement Date throughout the Term.

Item 6
Nominated
Account
(clause 4.3)

Bank: [REDACTED]
Branch: [REDACTED]
Account Name: [REDACTED]
BSB No: [REDACTED]
Account No: [REDACTED]



General terms

1 Defined terms and interpretation

1.1 Defined terms

In the Lease:

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

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

Carrier means a carrier as defined in the Act.

Commencement Date means the date stated in Item 2.

Expiry Date means the date stated in Item 3.

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

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

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

Item means an item appearing in the Information table.

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

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

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

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

Month means calendar month.

Premises means the premises described in Item 1.

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

Rent means the amount stated in Item 5.

Rent Commencement Date means the Commencement Date.

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

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

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

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

1.2 Interpretation

In the Lease, unless the context otherwise requires:

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

2 Implied covenants and powers

2.1 Exclusion of implied covenants

The obligations and powers implied in the Lease by sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) are expressly excluded.

2.2 Inclusion of implied covenants

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease.

2.3 Contravention of Statute - severance

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

3 Term of Lease and holding over

3.1 Term of the Lease

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

3.2 Yearly tenancy - holding over

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

4 Payment

4.1 Lessee's Covenant

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

4.2 Payment of Rent

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

4.3 EFT payments

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

4.4 Not used

4.5 Rates, taxes and outgoings

The parties acknowledge and agree that:

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

4.6 Definitions

In this clause 4.6 and clauses 4.7 to 4.9:

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

4.7 ABN

- (a) The Lessor warrants that the Lessor:
 - (i) has an ABN; or
 - (ii) does not have an ABN, on the basis it is not entitled to have one under the *A New Tax System (Australian Business Number) Act 1999*; and
 - (iii) if it appoints a third party to manage the leasing of the Premises on its behalf and the third party's ABN is quoted in any tax invoice, invoice or other document relating to the Lease, the third party does so as agent for the Lessor in accordance with Australian Taxation Office's public ruling GSTR 2000/37: agency relationships and the application of the law.
- (b) If the Lessor does not have an ABN or the Lessor's ABN is cancelled, the Lessor must immediately notify the Lessee and unless the Lessor provides evidence that the Lessor is not entitled to have an ABN under the *A New Tax System (Australian Business Number) Act 1999*, the Lessor acknowledges that the Lessee will be required to deduct from each payment to the Lessor, PAYG withholding tax pursuant to section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*.
- (c) If the Lessor does not comply with its obligations or breaches any warranty under this clause 4.7, the Lessor indemnifies the Lessee for any tax, charge, fine, penalty or other impost which the Lessee incurs or becomes liable to pay as a result of the Lessor's default or breach of warranty.

4.8 Lessor registered for GST

The following provisions apply in relation to GST:

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

parties agree that all taxable supplies made by the Lessor to the Lessee under the Lease are excluded taxable supplies to which clause 4.8(b) applies.

4.9 Lessor not registered for GST

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

5 Use of Premises

5.1 Permitted use

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

5.2 Adjoining Land

- (a) The Lessor grants to the Lessee the right to temporarily use so much of the Land adjoining and adjacent to the Premises or any installation of the Lessee as is reasonably required during installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the telecommunications network and the telecommunications service.
- (b) When exercising its rights pursuant to this clause 5.2 the Lessee must use its reasonable endeavours to cause minimal disruption and inconvenience to the Lessor as far as is practicable.
- (c) After temporarily using the Land adjoining and adjacent to the Premises or any installation of the Lessee, the Lessee will restore the surface of the Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor.
- (d) The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.2.

5.3 Requirements of Government Agencies

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

5.4 Cabling

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

5.5 Non contiguous Premises

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

5.6 Consents

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

5.7 Not used

6 Access to the Premises

- (a) The Lessor consents to the Lessee and persons authorised by the Lessee with or without materials, plant and other apparatus and vehicles entering the Land for the purpose of using the Premises and exercising

its rights under the Lease at all times of the day and night during the Term.

The Lessee will agree, except in the case of an emergency, to obtain the Lessor's consent to access the premises however the consent must not be unreasonably withheld or delayed and must be provided immediately.

- (b) The Lessor agrees that where the Lessee installs, upgrades or maintains at its cost any access track or electricity connection to the Premises then:
 - (i) any other person (except the Lessor) who wishes to utilise the Lessee's track or connection must contribute to the cost of installation, upgrading and maintenance as apportioned by the Lessee; and
 - (ii) the Lessor must not grant or allow to be granted to any third party an interest or a right to use the Lessee's track or connection until that party first reaches an agreement with the Lessee as to the terms and amount of the contribution.

7 Insurance, indemnities and release

7.1 Obligation to insure

The Lessee will insure against any loss or damage which is commonly covered by public risk or liability insurance in respect of the Premises.

7.2 Lessee's assumption of responsibilities

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

7.3 Negligence or default of Lessor

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

8 Installation and maintenance

8.1 Repair and maintenance

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

8.2 Construction and alterations

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

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

9 Electricity supply

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

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

10 Termination

10.1 Events of termination

If:

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

- (e) as a result of network changes, the Premises cease to operate as or are not required to be a part of the Lessee's telecommunications network;
- (f) the Lessor commits a breach of a material obligation and has not remedied that breach within a reasonable period of notice from the Lessee having regard to the nature of the breach; or
- (g) the Lessor breaches an obligation under clause 13.4,

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

10.2 Effect on rights or liabilities

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

10.3 Lessee to yield up

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

10.4 Removal of Lessee's fixtures and chattels

The Lessee must:

- (a) within 6 months of the Expiry Date (unless there is in place after the Lease a further lease between the Lessor and the Lessee);
- (b) within a reasonable period of earlier termination of the Lease; or
- (c) by such other date as the Lessor and the Lessee agree in writing,

remove (subject to clause 14.2) from the Premises all above ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises.

In accordance with this clause 10.4 the Lessee will agree to pay the Rent at the rate payable in the last year of the term. The Lessee is only required to pay a pro-rata Rent from the Expiry Date until completion of the removal of Lessee's fixtures and chattels. For the avoidance of doubt, the Lessee's pro-rata Rent payment obligation in this Clause 10.4 will not apply where the Lease has ended as a result of circumstances outside of the Lessee's control, for example where the Lease is terminated by the Lessor.

10.5 Termination of holding over

Either the Lessor or the Lessee may terminate the yearly tenancy under clause 3.2 by giving the other six months' prior written notice.

10.6 Termination of prior leases

If any lease in favour of the Lessee whether registered on the title to the Land or not in relation to a period prior to the Term is validly terminated for any reason (other than by effluxion of time), the Lease, without the necessity for any further action on the part of the Lessor or the Lessee, will be automatically terminated.

10.7 Additional Right of Termination

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

10.8 Refund of Rent on termination

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

11 Notices

11.1 Method of service

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

11.2 Time of service

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

11.3 Change of address

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

12 Assignment and subletting

12.1 Lessee not to assign

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

12.2 Assignment to a Related Body Corporate or a Carrier

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

12.3 Assignment

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

12.4 Subletting

The Lessee may, without consent of or notice to the Lessor, sublet, part with or share its right to possession of the Premises with any Related Body Corporate of

the Lessee but in all other cases with prior written consent of the Lessor, such consent not to be unreasonably withheld or delayed.

13 Lessor's covenants

13.1 Quiet enjoyment

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

13.2 Restriction on Lessor's use of the Land

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

13.3 Lessor's covenant

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

13.4 No concurrent or superior lease or other dealing

The Lessor must not:

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

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

14 Miscellaneous

14.1 Lessee to pay costs and disbursements

The Lessee must:

- (a) pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) on the Lease; and
- (b) following registration of the Lease, pay the Lessor's reasonable legal costs of preparation and completion of the Lease to a maximum of \$1,500 for the Lease (and any subsequent lease completed at the same time as the Lease).

14.2 Without prejudice

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

14.3 Governing law

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

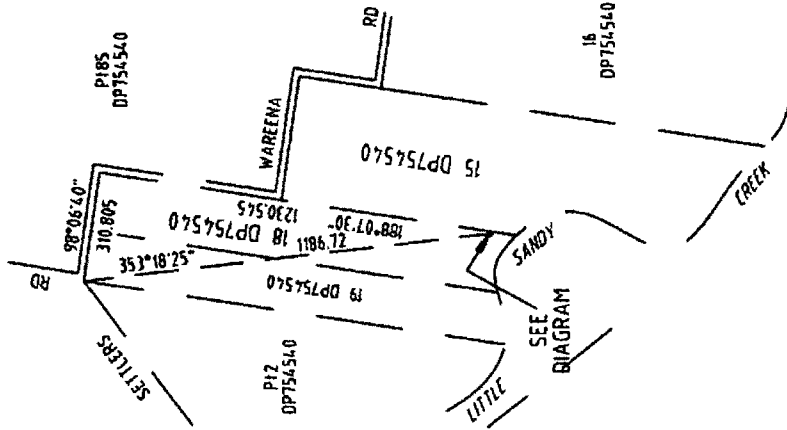
Annexure B Plan referred to in Item 1

Annexure to Lease of premises known as 34 Wareena Road Sandigo NSW 2700.

L.G.A.: NARRANDERA
 Locality: SANDIGO
 Parish: BUCKINBONG
 County: MITCHELL

FOR SURVEY INFORMATION SEE DP 1225445

Plan forming Annexure " " to Lease
 of Land at Sandigo
 by
 to
 dated the Day of



SCALE 1:20,000

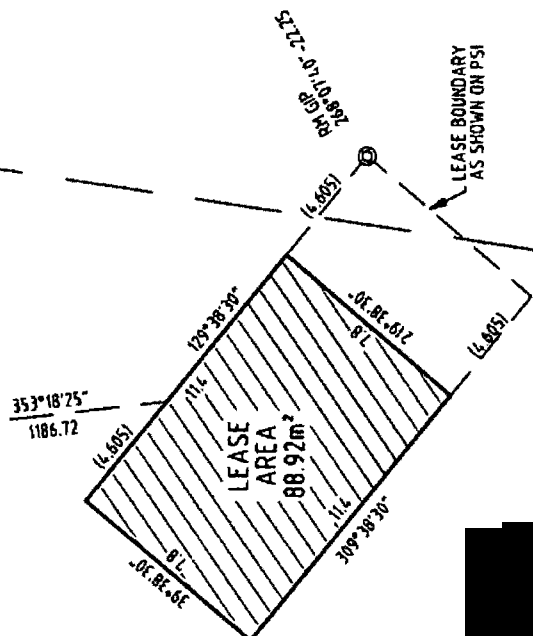


DIAGRAM
 SCALE 1:250



ALL DIMENSIONS IN METRES

SITE S2815-P1				SANDIGO STURT HWY				34 WAREENA RD SANDIGO				LEASE PLAN				SG16256				SHT NO. INDEX			
SWY	KH/CW	REF	16756	EXAM	APPD	DATE	ISS	EXAM	APPD	DATE	ISS	EXAM	APPD	DATE	ISS	EXAM	APPD	DATE	ISS	EXAM	APPD	DATE	ISS
GM	PI	26/9/16	1	GM	PI	26/9/16	1	GM	PI	26/9/16	1	GM	PI	26/9/16	1	GM	PI	26/9/16	1	GM	PI	26/9/16	1
GM	PI	7/10/16	2	GM	PI	7/10/16	2	GM	PI	7/10/16	2	GM	PI	7/10/16	2	GM	PI	7/10/16	2	GM	PI	7/10/16	2
GM	PI	17/10/16	3	GM	PI	17/10/16	3	GM	PI	17/10/16	3	GM	PI	17/10/16	3	GM	PI	17/10/16	3	GM	PI	17/10/16	3

SURELINE
GEOMATICS
 SPATIAL SOLUTIONS
 25 GERRARD STREET
 CONSTITUTION HILL NSW 2115
 TEL (02) 9896 8075

CI: AC 12702-29
 Owner: W H & J M ANDERSON
 Address: 34 WAREENA RD
 SANDIGO
 NOTE: Covenants or Restriction to user
 have not been investigated for the
 purpose of this plan



FILM WITH

Rabobank

CONSENT TO LEASE

(To be annexed to Lease commencing 1 January 2017 between [REDACTED] and Optus Mobile Pty Limited ACN 054 365 696 (as Lessee) in respect of premises comprised in [REDACTED] Part, shown hatched black on the plan in Annexure B and more particularly described in Item 1 of the Information table to Annexure A.

RABOBANK AUSTRALIA LIMITED A.C.N. 001 621 129 ("Rabobank" [REDACTED]) of the premises the subject of this Lease, consents to this Lease subject to the following conditions and provisions:

1. This consent is without prejudice to the rights powers and remedies of Rabobank under the Mortgage which will remain in full force and effect as if this consent had not been given except that so long as the covenants and provision of this Lease are duly observed and performed Rabobank if it exercises its power of sale or other power or remedy on default under the Mortgage, will exercise its rights under the Mortgage subject to the subsisting rights of the Lessee under this Lease.
2. So long as Rabobank is registered as mortgagee of the premises the subject of this Lease the Lessee will obtain the consent or approval of Rabobank in addition to the consent or approval of the Lessor in all cases where the consent or approval of the Lessor is required under this Lease.
3. Rabobank will not be bound to perform and will not incur any liability in respect of the covenants and agreements expressed or implied in this Lease and on the part of the Lessor to be performed and observed.
4. If Rabobank gives a notice to the Lessee entering into receipt of the rents and profits of the premises the subject of this Lease the covenants on the part of the Lessee expressed or implied in this Lease will be deemed to have been entered into by the Lessee with Rabobank and all the rights powers and remedies of the Lessor under this Lease will vest in and be exercisable by Rabobank until such notice is withdrawn or the Mortgage is discharged.
5. A reference to Rabobank includes a reference to Rabobank its representatives, successors in title and assigns.

DATED this 22nd December 2016.

Signed by Rabobank Australia Limited by its attorneys
Harland Andrew Lisle (Senior Manager)
and
Denevan Ralph Ellis (Manager)
who respectively state that at the time of executing this
instrument they have received no notice of the revocation
of the Power of Attorney registered Number Book 4303 No 312
under the authority of which they have executed this instrument.

