

FORM APPROVAL NO. LAA 2017

TENURE CODE

WESTERN AUSTRALIA
LAND ADMINISTRATION ACT 1997
TRANSFER OF LAND ACT 1893 as amended
LEASE OF CROWN LAND (L)
DESCRIPTION OF LAND (NOTE 1)

| DESCRIPTION OF LAND (NOTE 1) | EXTENT | VOLUME | FOLIO |
|--|--------|--------|-------|
| As to portion only of Lot 2135 on Diagram 84299 being that part of the land identified on the plan annexed to Annexure "A" annexed to this lease | Part | LR3104 | 361 |

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS (NOTE 2)
F935724 Reserve 43434 for purpose of Water Supply, F935724 Management Order

LESSOR/LESSORS (NOTE 3)
Shire of Jerramungup of 8 Vasey Street, Jerramungup, Western Australia

LESSEE/LESSEES (NOTE 4)
Telstra Corporation Limited (ACN 051 775 556)
of Level 41, 242 Exhibition Street, Melbourne, Victoria

TERM OF LEASE (NOTE 5)
Ten (10) years with two (2) options to renew the lease each for a further five (5) years.
Commencing from the 1st day of March in the year 2015

THE LESSOR HEREBY LEASES TO THE LESSEE the land above described subject to the encumbrances as shown hereon (Note 6)

for the above term for the clear yearly rental of (Note 7) \$2,500.00
payable (Note 8) see within

SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE LAND ADMINISTRATION ACT 1997 AND THE TRANSFER OF LAND ACT 1893 AS AMENDED (UNLESS HEREBY NEGATED OR MODIFIED) AND ALSO TO THE COVENANTS AND CONDITIONS CONTAINED HEREIN.



CMTS LEASE OF LAND

(Western Australia)

**Property: Lot 2135, Tooreburrup Road,
Bremer Bay, Western Australia**

Shire of Jerramungup

Telstra Corporation Limited

ABN 33 051 775 556

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REFERENCE SCHEDULE

| | | |
|--------------------------------|---------------------------|--|
| Item 1 | Lessor: | Name: Shire of Jerramungup Address: 8 Vasey Street Jerramungup, Western Australia 6337 Tel: 08 9835 1022 Email: ceo@jerramungup.wa.gov.au |
| 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: | That part of the Land hatched on the plan annexed to this Lease in Annexure "A" and situated at Lot 2135 Tooreburrup Road, Bremer Bay, Western Australia. |
| Item 4 (Clause 1.1) | Land: | Lot 2135 on Diagram 84299 being the whole of the land contained in Certificate of Title Volume LR3104 Folio 361 |
| Item 5 (Clause 1.1) | Term: | Ten (10) years |
| Item 6 (Clause 1.1) | Commencement Date: | 1 March 2015 |
| Item 7 (Clause 1.1) | Terminating Date: | 28 February 2025 |
| Item 8 (Clause 1.1) | Rent: | \$2,500.00 per annum, subject to clause 3.1(b). |
| Item 9 (Clause 3.1) | Payment of Rent: | Yearly in advance on 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 (Clause 5.4) | Further Terms: | Two (2) further terms of five (5) years each. |

| | | |
|--------------------------------------|---|---|
| Item 12 (Clause 3.1) | Review of Rent: | The Rent is to be increased on each Review Date by 3% per annum during the Term and any Further Term. |
| Item 13 (Clauses 9 and 10) | Existing Carrier: | Not applicable. |
| Item 14 (Clause 1.2) | Statutory provisions not applying: | Sections 92 and 93 of the <i>Transfer of Land Act 1893</i> (WA) do not apply to this Lease. |

DATE

PARTIES

The Lessor.

The Lessee.

RECITALS

- A. The State of Western Australia is the owner of the Land
- B. The Lessor has the care, control and management of the Land pursuant to the terms and conditions of the Management Order.
- C. Subject to the prior written approval of the Minister, 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 RCSMB.

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.

Authority means any governmental or other public body, local authority or other authority of any kind.

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 from time to time.

Further Term means a further term of this Lease, if any, as specified in Item 11.

Item means an item in the Reference Schedule.

Land means the land described in Item 4.

Law includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

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.

Management Order means Management Order F935724.

Minister means the Minister for Lands or such other minister as is responsible for administering the *Land Administration Act 1997*.

Permitted Use means the use specified in Item 10.

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

RCSMB means the radio communications site management book (as updated from time to time), access to a copy of which has been or will be provided to the Lessor by the Lessee.

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.

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

Subject always to clause 16, 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

Subject to clause 15, 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 such access to and from the Premises and the Facility as is reasonably necessary to undertake the Permitted Use, 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 "B", 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) temporarily 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 use its best endeavours 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 as an Authorised Representative of the Lessor as contemplated by clause 7.1.
- (c) In an Emergency, the Lessor must use its best endeavours to 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 or by telephone.
- (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) Subject to clause 3.5, 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 or relates to the Facility or other structure erected by 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 that part of the facility located beneath the surface of the Land of which it is aware to a depth of 600mm 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.
- (c) Upon expiry of the period of 3 months referred to in clause 3.3(a) and provided the Lessor has given to the Lessee a further one month's written notice to remove the Facility the Lessor will have the right to remove from the Premises any property of the Lessee (including but not limited to the Facility) and to store the same for a period of 6 months and to recover the costs of such removal from the Lessee as a debt due in a court of competent jurisdiction.

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 prior written consent of the Lessor and the Minister.
- (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 provided that the Lessee obtains the prior written consent of the Minister.

- (c) The Lessee must notify the Lessor of any dealing referred to in clause 3.4(b) and must procure at its cost the execution by the proposed assignee Lessee of a deed of assignment worded to the reasonable satisfaction of the Lessor and to which the Lessor is a party within 3 months of its occurrence.
- (d) With effect from the date of assignment of this Lease by the Lessee and provided that the assignee Lessee is legally bound to observe and perform all obligations and liabilities of the Lessee under this Lease, 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.
- (e) 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.

3.6 Use of Premises

The Lessee:

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

3.7 Lessee's acknowledgement

The Lessee acknowledges that it accepts the Premises in its condition at the Commencement Date as being suitable for the Lessee's proposed use.

3.8 Lessee's Obligations

The Lessee covenants and agrees that it must:

- (a) so long as the Facility remains operative, maintain the Facility located at the Premises in good and safe working order;
- (b) notwithstanding any provision of this Lease to the contrary, install and maintain its equipment and infrastructure at its own cost and in accordance with the manufacturer's specifications and, if applicable, with Australian Communications Authority guidelines and regulations;
- (c) ensure all fixtures, fittings and equipment that comprise the Facility are appropriately affixed;
- (d) comply with all applicable statutes and other laws relating to the use or occupation of the Premises; and
- (e) use its best endeavours to ensure its employees, agents and contractors have the necessary qualifications and certifications to install and maintain the Lessee's equipment and infrastructure on or within the Premises.

3.9 Restrictions on Use

(a) No offensive or illegal acts

Except for acts, matters or things required for the Permitted Use the Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

(b) No Nuisance

Except for acts, matters or things required for the Permitted Use the Lessee must not and must not suffer or permit a person to do or carry out on the Premises anything which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties.

(c) **No dangerous substances**

Except for acts, matters or things required for the Permitted Use the Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:

- (i) any such storage must comply with all relevant statutory provisions;
- (ii) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
- (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (iv) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

(d) **No harm or stress**

Intentionally Deleted.

(e) **No signs**

Subject to clause 4.1(d) the Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(f) **Removal of rubbish**

The Lessee must keep the Premises free from dirt and rubbish and to store and keep all trade waste and garbage in proper receptacles.

3.10 **Alterations**

(a) **Restriction**

Subject to clause 2.1 and except for like for like changes to the Facility and for changes to any parts of the Facility within the equipment housing, the Lessee must not without prior written consent from the Lessor or any other person from whom consent is required under this Lease or required under any applicable statute in force from time to time, including if applicable but not limited to, the planning approval of the Lessor under a local planning scheme of the Lessor;

- (i) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
- (ii) remove any flora, or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

(b) **Consent**

- (i) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in clause 3.8(a) the Lessor may:
 - (A) give such consent subject to reasonable conditions;
 - (B) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (C) require that any works be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (ii) If the Lessor consents to any matter referred to in clause 3.8(a):
 - (A) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (B) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

(b) **Cost of Works**

All works undertaken under this clause 3.8 will be carried out at the Lessee's expense.

(c) **Conditions**

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

- (i) carry out those other works at the Lessee's expense; or
- (ii) permit the Lessor to carry out those other works at the Lessee's expense, in accordance with the Lessor's requirements

provided that in carrying out the works the Lessor will observe the provisions of clause 4.1.

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 Land, the 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, such consent not to be unreasonably withheld.
- (b) In considering a request for consent under clause 4.3(a) the Lessee will determine if its Permitted Use will be Affected and if requested by the Lessor shall provide reasonable particulars and written reasons for its determination. If the Lessor disputes the reasons for the Lessee's determination, the dispute resolution in clause 4.3(e) shall apply.
- (c) If the Lessee determines 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, to the extent it is within its power to do so, must use reasonable endeavours to:
 - (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 these essential terms 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, but not including the Facility or other fixtures or fittings of the Lessee) 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) subject always to clause 16, must sign all documentation and provide all assistance reasonably 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 Consent of Strata Company

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 acting reasonably. 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, provided notice of any installation, upgrade or maintenance costs have been provided to the Lessor.

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 to the best of its knowledge 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 on 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 is no longer the management body of the Land;
- (b) the Lessor receives a notice, or would reasonably be aware, of a proposal for development occurring on adjoining land; or
- (c) the Lessor changes its address for notices,

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) 40 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 or terminate the Lease by written notice to the Lessee.

- (b) This Lease determines on the Lessor's re-entry or upon the Lessee's receipt of written notice from the Lessor as the case may be 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 40 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 pay 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 six monthly 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(b), and otherwise on the same terms as this Lease, so far as they can be applied to a six monthly tenancy.
- (c) Either party may terminate the six monthly tenancy by giving no less than six months' notice to the other (which notice may expire at any time).

5.4 Option to Renew

- (a) Unless the Lessee gives to the Lessor either:
 - (i) at least 3 months' notice before the Terminating Date that the Lessee does not want a new lease of the Premises for a Further Term; or

- (ii) notice before the Terminating Date that the Lessee does not want a new lease of the Premises for a Further Term but that it wishes to remain in possession of the Premises pursuant to clause 5.3,

then provided the Lessee is not then in breach of an essential term of this Lease of which it has been notified by the Lessor, the Lessor must grant to the Lessee a new lease of the Premises for that Further Term.

- (b) The new lease must be on the same terms and conditions as this Lease except that:
 - (i) **(Reference Schedule)** any necessary changes are made to Items 5, 6, 7 and 11 in the new lease;
 - (ii) **(cover page)** if applicable any necessary changes are made to the term details on the cover page of the new lease;
 - (iii) **(Rent)** the rent to be inserted in Item 8 is the Rent payable on the Terminating Date of this Lease increased by the percentage referred to in Item 12; and

(clause 5.2) clause 5.2 is to be deleted and replaced with the following clause:

"5.2 Costs of Lease

- (a) The Lessor will contribute to the Lessor's legal fees and disbursements for the preparation, negotiation and execution of this Lease an amount not exceeding \$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 them
 - (iii) the Lessee will pay the applicable stamp duty or registration fees."

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, 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 and shall maintain 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 and the Minister against any liability, loss, damage, costs or expenses incurred or suffered by the Lessor or the Minister to the extent caused 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 or the Minister under this clause 6.5 must be reduced proportionately to the extent that any act or omission of the Lessor or the Minister 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 or the Minister must follow the Lessee's reasonable instructions.
- (e) The Lessor or the Minister 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 or the Minister 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 or the Minister.

7. NOTICES

7.1 Authorised Representative

In this clause 7.1 Authorised Representative:

- (a) *in the case of the Lessor* - means the Lessor, an authorised officer of the Lessor 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 any provision in this Lease to the contrary 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 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 - 3 Business Days after posting; or
 - (ii) to or from a place outside Australia - 7 Business Days after posting; and

7.4 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 8.1 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. **RIGHT OF FIRST REFUSAL**

Intentionally deleted.

10. **LICENCE TO AFFIX EQUIPMENT ON TOWER LEASE PREMISES**

Intentionally deleted.

11. **DEFINITIONS FOR CLAUSE 12 AND CLAUSE 13**

Intentionally deleted.

12. **PLANNING CONSENT**

Intentionally deleted.

13. **OPTION FOR SUBSTITUTE LEASE**

Intentionally deleted.

14. **REGISTRATION**

On request by the Lessee, the Lessor, at the cost of the Lessee as set out below, must do what is required to enable the Lessee to register the Lease. The Lessee must bear the costs of registering the Lease and any extension of lease, including any registration fees payable hereon/thereon.

15. **MINISTER'S CONSENT**

This Lease is subject to and conditional upon the prior written approval of the Minister under the Land Administration Act 1997.

16. **NO FETTER**

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

17. **RESERVATION OF LESSOR'S RIGHTS**

Subject to clause 4.1, the Lessor reserves its rights to:

- (a) all gas pipes, cables, water pipes, electrical and other pipes, mains, wires, flues and drains (other than and except pipes, wires, flues and drains used exclusively in connection with the Premises) now or hereafter to be laid or constructed by the Lessor in through and under the Premises and the free and uninterrupted use of the same; and
- (b) enter upon the Premises with or without vehicles, tools and equipment, workmen and others at all reasonable times (making good any damage thereby done to the Premises) after reasonable prior notice to the Lessee for the purpose of inspecting, repairing, altering or renewing any such pipes, mains, wires, flues and drains reserved to the Lessor as aforesaid or of adding any others thereto.

EXECUTED AS A DEED this day of 2015

EXECUTED BY LESSEE

SIGNED, SEALED AND DELIVERED)
by)
)
)
of **TELSTRA CORPORATION LIMITED**)
as attorney for **TELSTRA**)
CORPORATION LIMITED under power)
of attorney registered no. **J289811** in)
the presence of:)

.....
Signature of witness

.....
Full Name of witness (block letters)

.....
Occupation of witness

.....
Address of witness

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

EXECUTED BY LESSOR

The **COMMON SEAL** of the **SHIRE OF**)
JERRAMUNGUP was hereunto affixed by)
authority of a resolution of the Council in)
the presence of:)

President

(Print Full Name)

Chief Executive Officer

(Print Full Name)

CONSENT OF THE MINISTER FOR LANDS:

ANNEXURE A - PREMISES PLAN

This is Annexure "A" referred to in the CMTS Lease of Land between Shire of Jerramungup as Lessor and Telstra Corporation Limited as Lessee.

ANNEXURE B - ANTENNA PLAN

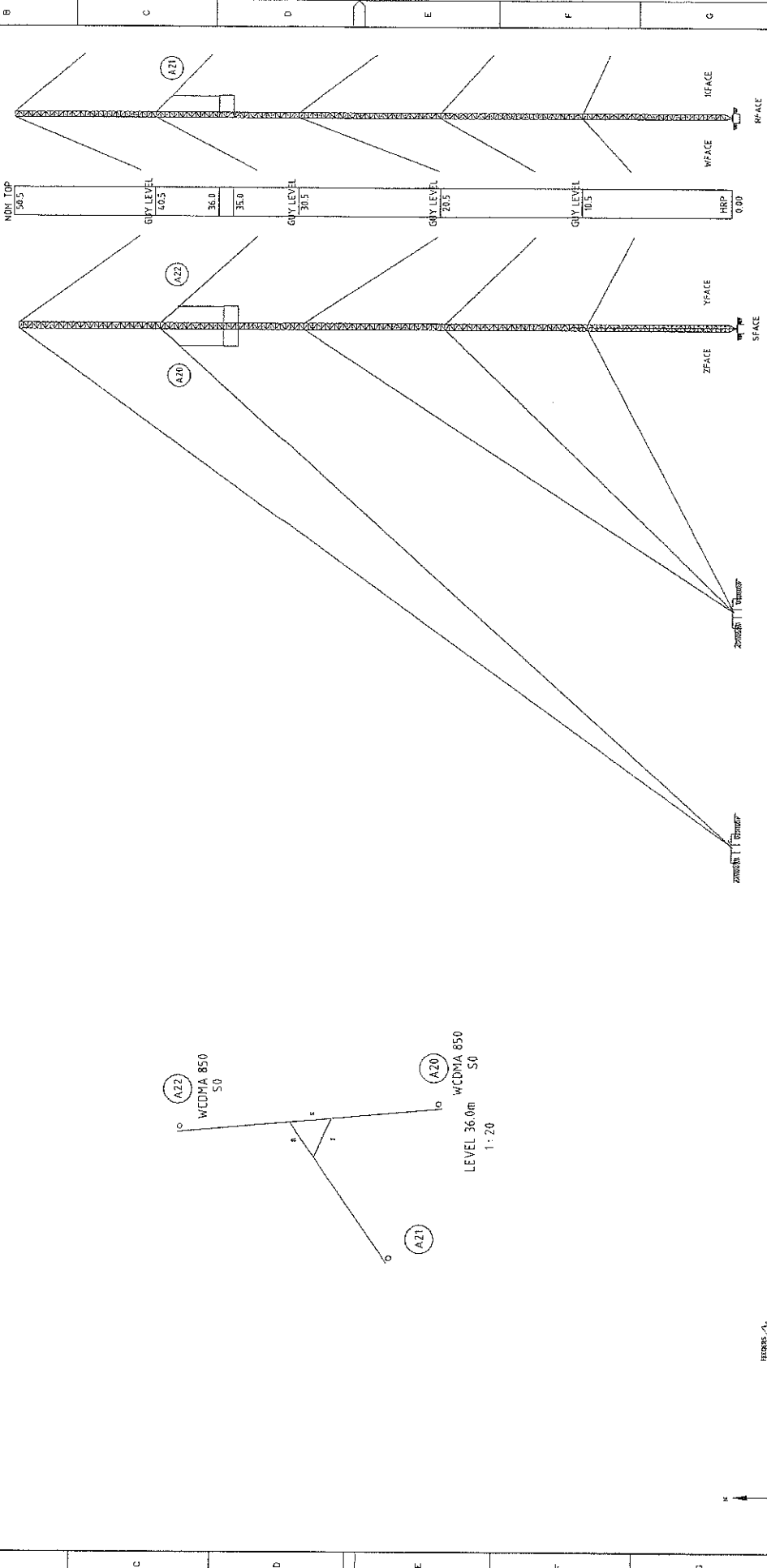
This is Annexure "B" referred to in the CMTS Lease of Land between Shire of Jerramungup as Lessor and Telstra Corporation Limited as Lessee.

STRUCTURE DETAILS TYPE: NOM. 50m H/DUTY FLIGHT BROS. MAST (T1320) - POLICE OWNED

ANTENNA AND FEEDER SUMMARY

| IDENTIFICATION | | ANTENNA | | | | FEEDER | | | | ANTENNA MOUNTING | REMARKS | | |
|----------------|------|------------------|-------------|-----------|---------|------------------|-----|------------|--------------------|------------------|------------|-------------------|--------------------------------|
| ANTENNA NO. | FACE | SERVICE FACILITY | DESTINATION | TYPE | BEARING | POW. R. FACILITY | ILT | FEEDER NO. | CONNECTED FUNCTION | TYPE | LENGTH (M) | | |
| A21 | 36.4 | 5/R | SECTOR 8 | WCDMA 850 | 090 | V | | F21 | TX / RX | WCDMA 850 | 50.0 | WCDMA 850 Tower 1 | INSTALLED WITH LMA ON L1 (HUB) |
| A22 | 36.4 | 5/R | SECTOR 8 | WCDMA 850 | 090 | V | | F22 | RX | WCDMA 850 | 50.0 | WCDMA 850 Tower 1 | INSTALLED ON HUB |
| A20 | 36.4 | 5/R | SECTOR 8 | WCDMA 850 | 090 | V | | F20 | RX | WCDMA 850 | 50.0 | WCDMA 850 Tower 1 | INSTALLED WITH LMA ON L1 (HUB) |

NOTE: PRIVATELY OWNED STRUCTURE. ONLY TELSTRA ANTENNAS SHOULD FOLLOW STANDARD SAFE WORKING PROCEDURES.



AS BUILT

| | | | |
|----------|-------------------------------|----|---------|
| DATE | 11/02/2011 | BY | WIO2379 |
| PROJECT | BREMER BAY (COOREBRIIP - HLL) | | |
| CLIENT | TELSTRA | | |
| LOCATION | ANTENNA LAYOUT | | |
| SCALE | 1:100 | | |
| REVISION | AS BUILT | | |

FOR DESIGN & CONSTRUCTION OF THIS EQUIPMENT REFER TO DRAWING FOR 'AS-INSTALLED' EQUIPMENT

**ANNEXURE C- STRATA COMPANY
(Clause 4.7)**

Intentionally Deleted.

ATTESTATION SHEET

Executed by the parties as a Deed on the _____ day of _____ in the year ^year^

LESSOR/LESSORS SIGN HERE (NOTE 9)

The **COMMON SEAL** of the **SHIRE OF** _____)
JERRAMUNGUP was hereunto affixed by _____)
 authority of a resolution of the Council in _____)
 the presence of: _____)

President _____ (Print Full Name)

Chief Executive Officer _____ (Print Full Name)

LESSEE/LESSEES SIGN HERE (NOTE 9)

SIGNED by: _____)
 _____)
 _____)
 of **TELSTRA CORPORATION LIMITED** as attorney for _____)
TELSTRA CORPORATION LIMITED under power of _____)
 attorney registered no. **J289811** in the presence of: _____)
 _____)
 _____)
 Signature of witness _____)
 _____)
 Full Name of witness (block letters) _____)
 _____)
 Occupation of witness _____)
 _____)
 Address of witness _____)
 _____)

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

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet Form B1 should be used with appropriate headings. The boxed sections should only contain the words "See Annexure".
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the person signing this document and their witnesses.
4. Duplicates are not issued for Crown Land Titles.

NOTES

1. DESCRIPTION OF LAND

Lot and Diagram/Plan number or Location name and number to be stated. Extent – Whole, part or balance of the land comprised in the Certificate of Crown Land Title to be stated. The Certificate of Crown Land Title Volume and Folio number to be stated.

2. LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS

In this panel show (subject to the next paragraph) those limitations, interests, encumbrances and notifications affecting the land being leased that are recorded on the crown land title:

- a) In the Second Schedule;
- b) If no Second Schedule, that are encumbrances. (Unless to be removed by action or document before registration hereof)

Do not show any:

- (a) Easement Benefits or Restrictive/Covenant Benefits; or
- (b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg, if a mortgage is shown, do not show any partial discharges or any document affecting either).

The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and relevant plan/diagram.

If none show "nil".

3. LESSOR

State full name and address of Lessor/Lessors and the address/addresses to which future notices can be sent.

4. LESSEE

State full name of Lessee/Lessees and the address/ addresses to which future notices can be sent. If two or more state tenancy eg. Joint Tenants, Tenants in Common. If Tenants in Common specify shares.

5. TERM OF LEASE

Term to be stated in years, months and days. Commencement date to be stated. Options to renew to be shown.

6. RECITE ANY EASEMENTS TO BE CREATED

Here set forth Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".

7. State amount of yearly rental in words.

8. State term of payment. \

9. EXECUTION

A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of witnesses must be stated.

EXAMINED

Office Use Only

LEASE OF CROWN LAND (L)

LODGED BY Australian Government Solicitor

ADDRESS GPO Box U1994
PERTH WA 6845

PHONE No. (08) 9268 1199

FAX No. (08) 9268 1771

REFERENCE No. 15035564
Contact: Scott Slater

ISSUING BOX No. 51F

PREPARED BY Australian Government Solicitor

ADDRESS GPO Box U1994
PERTH WA 6845

PHONE No. (08) 9268 1199

FAX No. (08) 9268 1771

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

TITLES, LEASES, DECLARATIONS ETC. LODGED HEREWITH

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

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