

Your reference:
Our reference: MES: 1053618

5 November 2020

EXPRESS POST

Gillian Pratt, Maroondah City Council
Realm, 179 Maroondah Highway
RINGWOOD VIC 3134

Dear Gillian

**TELSTRA CORPORATION LIMITED - LEASE FROM MAROONDAH CITY COUNCIL
SITE NAME: CROYDON CMTS, VIC**

We act for Telstra.

We are instructed to write to you in regards to Telstra's telecommunications facility located at the above Property, for which tenure is secured by way of lease.

We are advised that the Lease has expired and are instructed that you agree to enter into a further Lease.

Any enquiries relating to payment of rent or legal fees should be directed to our client at F1108159@team.telstra.com and kindly ask that your tax invoice is addressed solely to our client as follows:

Telstra Corporation Limited
Level 34, 242 Exhibition Street
Melbourne, Vic 3000

(Please also ensure the invoice should include site identification, banking details and ABN).

We enclose the lease for execution by you in duplicate.

Please arrange for all copies of the lease to be signed where indicated in the presence of an independent adult witness and returned to us at your earliest convenience.

Yours faithfully



CORNWALLS

Contact
Melanie Shaw
Associate
m.shaw@cornwalls.com.au
+61 3 9608 2150
+61 431 058 204

Partner: Carolyn Falcone



A L10 114 William St, Melbourne Vic 3000 P GPO Box 1466, Melbourne Vic 3001 • DX 636 Melbourne
T +61 3 9608 2000 W cornwalls.com.au

Cornwalls is a group of independently owned and operated law firms comprising of Cornwallis ABN 19 738 311 557 (a limited partnership), Cornwallis (QLD) ABN 18 604 548 601 (individual liability limited by a scheme approved under professional standards legislation) and Cornwallis (NSW) ABN 68 626 837 223 (liability limited by a scheme approved under professional standards legislation).

MES: 1053618



6533459_1

Date / /

Council Telecommunications Lease – Telstra
Premises: 24-45 Surrey Road W, Croydon VIC 3136

Maroondah City Council
and

Telstra Corporation Limited
ACN 051 775 556
ABN 33 051 775 556

Contents

Table of Contents

1.	Definitions	1
2.	Lease.....	3
3.	Payments by the Tenant	3
3.1	Payment of Rent	3
3.2	Services.....	3
3.3	Rates and taxes	3
3.4	Costs and duty	3
3.5	No deduction or right of set-off	3
4.	CPI adjustment of Rent	4
5.	Fixed percentage Rent increase	4
6.	GST.....	4
6.1	Definitions	4
6.2	GST Exclusive	4
6.3	Increase in Consideration	5
6.4	Payment of GST	5
6.5	Tax Invoice	5
6.6	Reimbursements and Indemnities	5
6.7	Adjustment events	5
6.8	Change in the GST law	5
6.9	Time limit on payment of the GST amount	5
7.	Repairs, alterations and damage	6
7.1	Repairs and maintenance	6
7.2	Failure to repair and maintain	6
7.3	Notice of damage	6
7.4	Alterations and works	6
8.	Insurance.....	7
8.1	Property insurance - Tenant to self-insure	7
8.2	Tenant to insure if self-insurance ceases	7
8.3	Workers' compensation insurance	7
8.4	Public liability insurance	7
8.5	Not invalidate policies	7
9.	Use of Premises.....	8
9.1	Permitted use.....	8
9.2	No warranty	8
9.3	Compliance with laws	8
9.4	Nuisance	8
9.5	Licences and permits.....	8
9.6	Signs.....	8
9.7	Heavy equipment and inflammable substances	8
10.	Access to Premises and the Land	9
10.1	Access to the Premises	9

10.2	Licensed Area	9
11.	Installation of Tenant's Equipment.....	9
11.1	Requirements of installation	9
11.2	Limitation on Tenant's obligations	10
11.3	Tenant's Equipment not a fixture	10
11.4	Equipment installed	11
12.	Release and indemnity	11
12.1	Release	11
13.	Assignment and sub-letting	12
13.1	Conditions of assignment and sub-letting	12
13.2	Assignment	12
13.3	Change in shareholding	12
13.4	Assignment to Related Body Corporate and subletting	13
13.5	Appurtenant licence rights	13
14.	Tenant's obligations at the end of this Lease.....	13
14.1	Tenant's obligations	13
14.2	Tenant's property left in premises.....	13
15.3	Payment for property left in Premises	13
15.	Landlord's rights and obligations	14
15.1	Quiet enjoyment	14
15.2	Dealing with the Premises	14
15.3	Entry by Landlord.....	14
15.4	Landlord's consent	15
16.	Determination of Lease by the Landlord.....	15
16.1	Re-entry	15
16.2	Damages following determination	15
16.3	Essential terms	15
17.	Determination of Lease by the Tenant	15
17.1	Tenant's right to terminate	15
17.2	Neither Party Liable.....	15
17.3	No refund of rent	16
18.	Destruction or damage of Premises	16
18.1	Reduction in Rent.....	16
18.2	Reinstatement of Premises	16
18.3	No reduction or termination	16
18.4	No reinstatement	16
19.	Non-interference with Tenant's use of the Premises.....	17
19.1	Not to cause interference	17
19.2	Removal of interference	17
19.3	Clause not apply to certain persons	17
19.4	Landlord not liable	17
20.	Overholding.....	18
20.1	Not applicable	18
20.2	Not applicable	18
20.3	Overholding	18
21.	Electromagnetic Interference	18
22.	EMR audits	19

23.	Sale of Land	19
24.	Carrier's powers under legislation	19
25.	General	19
25.1	Authorised Representatives	19
25.2	How Notices can be served	20
25.3	When a notice is given	20
25.4	Entire understanding	20
25.5	Waiver	20
25.6	Additional Clauses	20
26.	Interpretation.....	21
26.1	Governing law and jurisdiction	21
26.2	Persons	21
26.3	Joint and Several	21
26.4	Legislation	21
26.5	Clauses and headings	21
26.6	Severance	21
26.7	Number and gender	21
26.8	Exclusions	21

Schedule

1. **Date of this Lease:** The day of 2020
2. **Landlord:** Maroondah City Council of 179 Maroondah Highway, Ringwood, VIC 3134
3. **Tenant:** Telstra Corporation Limited ACN 051 775 556, ABN 33 051 775 556of

Address: c/- JLL
Level 10, 242 Exhibition Street
MELBOURNE VIC 3000
Attention: Property Management Director
Email: Telstra.Notices@ap.jll.com and
F0901953@team.telstra.com
4. **Premises:** That part of the Land shown hatched on the plan attached as Annexure B together with a right of access shown on the plan (if applicable) and situated at 24-45 Surrey Road W, Croydon VIC 3136
5. **Land:** The land contained in certificate of title volume 08591folio 949
6. **Term:** 9 years
7. **Commencement Date:** The 1st day of October 2020
8. **Rent during the Term:** \$22,000.00 per annum plus GST

Each of Years 2 to 9 – percentage increase 3%
9. **How the Rent is to be paid:** Annually in advance commencing on the Commencement Date and then on each anniversary of the Commencement Date
10. **Use of the Premises:** Installation, inspection, maintenance, construction, excavation (if necessary), replacement, repair, renewal alteration, upgrade, cleaning, operation and removal of the Tenant's Equipment for the purpose of communications operations including cellular mobile telephone service station, antennae and associated services
11. **Further Term(s):** Not applicable
12. **Rent during Further Term:** Not applicable

Council Telecommunications Lease - Telstra

Dated / /

This Lease is made on the date specified in Item 1.

Parties

The Landlord

The Tenant

The Parties Agree

1. Definitions

In this Lease, unless expressed or implied to the contrary:

ACMA means the Australian Communications and Media Authority and any body that succeeds ACMA or takes over its functions.

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.

Additional Clauses means the clauses (if any) specified in Annexure A.

ARPANSA EME Report means the Australian Radiation Protection and Nuclear Safety Agency electromagnetic energy report which provides calculations of the maximum levels of radiofrequency (RF) electromagnetic energy (EME) around an existing and/or proposed wireless base station that may include mobile telephony, broadband and data services. The ARPANSA EME Report is available on the RFNSA.

Building means the building of which the Premises forms part.

Carrier has the meaning given to that term in the Act and includes a party acting in reliance upon a nominated carrier declaration made under Part 3 of the Act.

Commencement Date means the date specified in Item 7.

CPI means the Consumer Price Index - All Groups Melbourne or if this Index is abolished, such other index as the Australian Statistician substitutes for it;

Current CPI means the CPI number for the quarter ending immediately prior to the relevant Year.

Interference means radio frequency, electrical, interference which adversely affects the operation of electronic equipment within the Building or the Land and includes interference, which in the opinion of the Landlord (acting reasonably) is likely to place the Landlord in breach of any obligation owed to any other person suffering the interference.

Item means an item in the Schedule.

Land means the land specified in Item 5.

Landlord means the Landlord specified in Item 2 and includes the Landlord's successors and assigns and where it is consistent with the context includes the Landlord's employees and agents.

Landlord's Fixtures includes all those fittings, fixtures, and chattels contained in the Premises at the Commencement Date (if any) or installed by the Landlord during the Term.

Licensed Area means the areas (if any) shown on the plan attached as Annexure A.

Premises means the land specified in Item 4 including any buildings on the land and the Landlord's Fixtures.

Previous CPI means the CPI number for the quarter ending immediately before the latest of the Commencement Date or the last date when the Rent was reviewed or adjusted.

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

Rent means the amount specified in Item 8 and, if applicable, Item 12, as adjusted under this Lease.

Schedule means the Schedule at the front of this Lease.

SSD means the Site Safety Documentation comprising the EME guide (formerly known as the radio communications site management book) and the Site Compliance Certificate (as updated from time to time), access to a copy of which must be provided to the Landlord by the Tenant upon request.

Tenant means the Tenant specified in Item 3 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, agents invitees and persons the Tenant allows on the Premises.

Tenant's Equipment means the equipment shown on this plan attached to this Lease as Annexure A and installed by the Tenant on the Premises and any equipment installed in accordance with clauses 10 or 11 as replaced or added to from time to time in accordance with the requirements of this Lease (if any).

Term means the term specified in Item 6 and includes any extension or overholding.

Working Days means every day other than Saturdays, Sundays and public holidays in Victoria.

Year means each year of this Lease specified in Items 8 and 12 (the first Year commencing on the Commencement Date).

2. Lease

The Landlord leases the Premises to the Tenant for the Term starting on the Commencement Date subject to the Landlord giving notice of its intention to grant this Lease pursuant to s 190 of the *Local Government Act 1989* (Vic) and resolving to enter into this Lease pursuant to s 223 of that Act.

3. Payments by the Tenant

3.1 Payment of Rent

The Tenant must pay the Rent to the Landlord in the manner specified in Item 9.

3.2 Services

The Tenant must:

- 3.2.1 pay the relevant authority all charges for any services connected to the Premises (including electricity services); and
- 3.2.2 at its own cost and if requested by the Landlord, install a separate electricity meter to measure electricity consumed at the Premises if it is reasonably able and permitted by any relevant authority to do so.

The Landlord must allow Tenant to connect the Premises to an electricity supply where the Tenant complies with the Landlord's reasonable directions.

3.3 Rates and taxes

The Tenant must pay to the Landlord within 30 days of demand the amount of any rates, taxes, levies or other amounts of a like nature (including land tax assessed on a single holding basis and fire service levies) which are assessed against the Premises or the Tenant's use or occupation of the Premises (**Rates and Taxes**). If any Rates and Taxes are not separately assessed against the Premises, the Tenant must pay to the Landlord within 14 days of demand the proportion of the Rates and Taxes that the area of the Premises bears to the total area assessed.

3.4 Costs and duty

The Tenant must pay to the Landlord within 30 days of demand:

- 3.4.1 not applicable;
- 3.4.2 the Landlord's reasonable costs of preparing any valuation, survey or other plans in connection with this Lease up to a maximum amount of \$440.00 plus GST;
- 3.4.3 the Landlord's reasonable costs in giving any consent or approval under this Lease; and
- 3.4.4 the Landlord's costs (including charges on a solicitor own client basis) incurred as a result of a breach of this lease by the Tenant.

3.5 No deduction or right of set-off

Except in respect of 18 the Tenant must pay all amounts due under this Lease to the Landlord without deduction or right of set-off.

4. CPI adjustment of Rent

4.1 Calculation of adjustment

If 'CPI' is specified in Item 8 or 12 for any Year, the Rent from the commencement of the relevant Year will be adjusted to an amount equal to the Rent immediately prior to the relevant Year multiplied by the Current CPI and divided by the Previous CPI.

4.2 Payment of adjusted Rent

On the next due date for the payment of the Rent after the Tenant receives notice of the adjusted Rent from the Landlord, the parties must make any necessary adjustments as from the commencement of the relevant Year.

5. Fixed percentage Rent increase

If 'percentage increase' is specified in Item 8 or 12 then:

- 5.1 the Rent from the commencement of the relevant Year is increased by the percentage specified in Item 8 or 12 as the case may be; and
- 5.2 the Tenant must pay to the Landlord the increased Rent from the commencement of the relevant Year regardless of whether the Landlord has given a notice specifying the increased Rent or not.

6. GST

6.1 Definitions

In this clause:

- 6.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 6.1.2 **GST** means GST within the meaning of the GST Law (and includes penalties and interest resulting from the Tenant's breach of this Lease). If under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic) or a direction given under section 6 of that Act, the supplier makes voluntary or notional payments, the definition of GST includes those voluntary or notional payments and expressions containing the term 'GST' have a corresponding expanded meaning;
- 6.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- 6.1.4 consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably.

6.2 GST Exclusive

Except as otherwise provided by this clause, all consideration payable under this Lease in relation to any supply is exclusive of GST.

6.3 Increase in Consideration

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

6.4 Payment of GST

Subject to clause 6.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

6.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 6.4.

6.6 Reimbursements and Indemnities

If this Lease requires a party to indemnify or reimburse for any loss, expense or outgoing of the other party (or an entity that is in the same GST group as that other party), the amount to be paid or reimbursed by the first party will be the sum of:

6.6.1 the amount of the loss, expense or outgoing less any input tax credits in respect of the loss, expense or outgoing to which the other party is entitled or would have been entitled to claim as an input tax credit had the other party registered for GST in the event that it was required or entitled to do so; and

6.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

6.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Lease:

6.7.1 the GST amount payable by the recipient of the taxable supply will be recalculated to reflect the adjustment event and a payment will be made in accordance with clause 6.7.3

6.7.2 the supplier must provide an adjustment note in accordance with clause 6.7.1 to the recipient within 7 days of becoming aware of the adjustment; and

6.7.3 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

6.8 Change in the GST law

If the GST law changes (including without limitation as a result of a change in the GST rate) after the date of this Lease, any consideration that expressly includes GST must be adjusted to reflect the change in the GST law.

6.9 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 6.3 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:

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

7. Repairs, alterations and damage

7.1 Repairs and maintenance

The Tenant must repair and maintain the Premises and keep the Premises in good and substantial repair, working order and condition, including:

- 7.1.1 maintaining and repairing the Tenant's Equipment, including the external walls and structure of the Tenant's Equipment;
 - 7.1.2 removing any graffiti and repairing any vandalism or damage to the Tenant's Equipment or the Premises; and
 - 7.1.3 repairing or replacing anything in the Premises which is damaged or destroyed,
- except that the Tenant is not liable for:
- 7.1.4 fair wear and tear; or
 - 7.1.5 repairing any damage to the extent it is caused or contributed to by the act or omission of the Landlord, its contractors, agents, employees and invitees; or
 - 7.1.6 repair of a structural nature in respect of improvements owned by the Landlord, unless caused by the Tenant's particular use of the Premises or the negligent act or negligent omission of the Tenant, its contractors, agents, employees and invitees.

7.2 Failure to repair and maintain

If the Tenant does not carry out any repairs, maintenance or other works required to be undertaken by the Tenant under this Lease within a reasonable time (but not exceeding 30 days) of receiving written notice from the Landlord, the Landlord may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice of its intention to do so. The cost of all such repairs, maintenance and works must be paid by the Tenant to the Landlord on demand.

7.3 Notice of damage

The Tenant must give the Landlord prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person in the Premises upon the Tenant becoming aware of any such damage or risk.

7.4 Alterations and works

The Tenant must obtain the prior written consent of the Landlord before carrying out any alterations or works to buildings on the Land owned by the Landlord on the Premises.

8. Insurance

8.1 Property insurance - Tenant to self-insure

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

8.2 Tenant to insure if self-insurance ceases

8.2.1 If the Tenant:

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

the self-insurance referred to in clause 8.1, the Tenant must provide written notice to the Landlord of the discontinuation of the self-insurance within 30 days and effect such insurance with an insurer reasonably approved by the Landlord against the insurable risks required under this Lease.

8.2.2 If requested in writing by the Landlord, the Tenant will provide the Landlord with a letter from the Tenant's insurer confirming that the Tenant is maintaining the insurance as specified under clause 8.1, and in the case of insurance taken out pursuant to clause 8.2.1, evidence of that insurance, provided that such a request is not to be made more than once a year during the Term.

8.3 Workers' compensation insurance

For so long as Telstra Corporation Limited (or its corporate successor) is the Tenant, the Landlord acknowledges that the Tenant holds a licence pursuant to the *Safety, Rehabilitation and Compensation Act 1998* (Cth).

8.4 Public liability insurance

8.4.1 For so long as Telstra Corporation Limited (or its corporate successor) is the Tenant, the Landlord acknowledges that the Tenant has a global insurance policy which includes public liability insurance in excess of \$20 million and which includes the interest of the Tenant's landlords to the extent required under this Lease.

8.4.2 If requested in writing by the Landlord, the Tenant will provide the Landlord with a letter confirming the Tenant's insurance as specified under this clause, such request not to be made more than once a year during the Term.

8.5 Not invalidate policies

The Tenant must not do anything which the Landlord notifies may make any insurance effected by the Tenant or the Landlord invalid or which may increase the insurance premiums. If the insurance premium increases as a result of the Tenant's activities referred to in the Landlord's notice referred to in this clause, the Tenant must pay that increase.

9. Use of Premises

9.1 Permitted use

The Tenant must use the Premises for the use specified in Item 10 and not use the Premises for any other purpose.

9.2 No warranty

The Landlord does not warrant that the Premises are suitable for the Permitted Use or any of the purposes or uses of the Tenant.

9.3 Compliance with laws

The Tenant must comply with all laws and any requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises.

9.4 Nuisance

The Tenant must not do anything in connection with the Premises which may cause a nuisance.

9.5 Licences and permits

9.5.1 The Tenant must maintain all licences and permits required for the Tenant's use of the Premises, subject to clause 9.5.2.

9.5.2 For the avoidance of doubt, if:

- (a) the Tenant (in its capacity as a Carrier) properly exercises a power conferred on the Tenant under the Act in order to engage in an activity at the Premises; and
- (b) under the Act, the Tenant (in its capacity as a Carrier) may engage in that activity despite a law of Victoria about town planning,

then nothing in this Lease requires the Tenant to obtain a planning permit under the *Planning and Environment Act 1987* (Vic) in respect of that activity.

9.6 Signs

The Tenant must seek the prior written consent of the Landlord before displaying or affixing any signs, advertisements or notices to any part of the Premises except signs which are required by law or for the purpose of complying with the Australian Safety Standards.

9.7 Heavy equipment and inflammable substances

The Tenant must obtain the Landlord's prior written consent before bringing any heavy equipment or inflammable substances into the Premises except to the extent to which it is consistent with the use of the Premises. If permitted on the Premises, such substances (including gas bottles) must be securely stored at all times.

10. Access to Premises and the Land

10.1 Access to the Premises

The Tenant may have access to so much of the Land adjoining and adjacent to the Premises as is agreed to by the Landlord during the initial installation, construction, repair, replacement, renewal, maintenance of the Tenant's Equipment subject to the Tenant:

- 10.1.1 giving written notice to the Landlord specifying that part of the Land which the Tenant proposes to access for the purpose of the same;
- 10.1.2 not interfering with any occupant or user of the Land;
- 10.1.3 complying with the Landlord's reasonable directions in relation to the access and use of the Land; and
- 10.1.4 making good any damage caused to the Land or anything on the Land by the Tenant.

The Tenant's rights of access under this clause 10.1 is coupled with and runs with the leasehold interest of the Tenant under this Lease.

10.2 Licensed Area

Subject to clause 11 the Tenant is entitled to install electrical and other cables forming part of the Tenant's Equipment on any Licensed Area (which licence is coupled with and runs with the leasehold interest) and the Tenant acknowledges that:

- 10.2.1 where the Premises comprise a part of Land (and not part of a Building) then all cables must be located underground;
- 10.2.2 it must comply with the Landlord's reasonable directions in installing any electrical or other cables on the Licensed Area;
- 10.2.3 it is entitled to occupy the Licensed Area as a licensee only and is not entitled to exclusive possession of the Licensed Area;
- 10.2.4 the obligations of the Tenant in respect of the Premises equally apply to the Licensed Area to the extent to which they can be applied to the Licensed Area; and
- 10.2.5 it must observe and comply with its obligations in respect of the Licensed Area as if a reference to the 'Premises' in this Lease was a reference to the 'Licensed Area'.

11. Installation of Tenant's Equipment

11.1 Requirements of installation

The Tenant must:

- 11.1.1 obtain the Landlord's prior written consent (which consent must not be unreasonably withheld) before installing any of the Tenant's Equipment on the Premises or the Licensed Area;
- 11.1.2 subject to clause 11.2, provide plans and specifications for the installation of the Tenant's Equipment in a form required by the Landlord for the Landlord's approval

(which approval must not be unreasonably withheld) prior to carrying out any installation;

- 11.1.3 comply with the Landlord's reasonable requirements as to the style, design, colour and measures to disguise any of the Tenant's Equipment which is visible from outside the Premises or the Licensed Area;
- 11.1.4 comply with the Landlord's requirements in installing the Tenant's Equipment on the Premises or the Licensed Area;
- 11.1.5 carry out all installation of the Tenant's Equipment in a proper and workmanlike manner and in accordance with all laws and requirements of any authority;
- 11.1.6 carry out the installation of the Tenant's Equipment at times and in a manner approved by the Landlord;
- 11.1.7 not substantially deviate from any plans and specifications approved by the Landlord in respect of the installation of the Tenant's Equipment without the Landlord's consent;
- 11.1.8 promptly repair any damage to the Land, Licensed Area or the Building which is caused or contributed to by the installation of the Tenant's Equipment;
- 11.1.9 subject to clause 11.2, provide copies of structural engineering reports and certification in respect of the Tenant's Works if requested by the Landlord; and
- 11.1.10 where the Tenant's Equipment is situated in or on a Building or a Landlord owned pole, pay to the Landlord the cost of any engineer or similar type of consultants engaged by the Landlord (acting reasonably) in connection with the installation of the Tenant's Equipment on the Landlord's Building or the Landlord's owned pole.

Despite the above, the Landlord acknowledges that the Tenant may have access to the Premises for carrying out any emergency works or routine repairs and maintenance to the Tenant's Equipment without obtaining the Landlord's prior written consent. However, if the Tenant's Equipment is located within a Landlord-owned Building, or on the roof of such a building, such that access is not readily available, the Tenant acknowledges and agrees that the Tenant will not be able to access the Tenant's Equipment without the Landlord providing the access.

11.2 Limitation on Tenant's obligations

Clauses 11.1.2 and 11.1.9 do not apply to works comprising the replacement of Tenant's Equipment with replacement items of equipment that will be used for the Permitted Use and are either:

- 11.2.1 the same as, and is to be installed in the same manner and location as, applied in the case of the original items of the Tenant's Equipment; or
- 11.2.2 not the same, but which performs the same function, occupies the same or less physical space, and does not have any increased effect on the loading of any building or other infrastructure on which the equipment is to be mounted, as confirmed by a certificate from a practising structural engineer supplied by the Tenant.

11.3 Tenant's Equipment not a fixture

The parties acknowledge that the Tenant's Equipment does not constitute a fixture and at all times during the Term remains the property of the Tenant.

11.4 Equipment installed

The Landlord acknowledges that the Tenant's Equipment installed on the Premises as at the date of this Lease complies with the requirements specified in clause 11.1.

12. Release and indemnity

12.1 Release

12.1.1 The Tenant uses and occupies the Premises and the Land at its own risk and releases the Landlord from all claims resulting from:

- (a) any interference to the Tenant's Equipment caused or contributed to by any other occupant on the Land (other than the Landlord) subject to clause 19; and
- (b) subject to clause 12.1.2, any other damage, loss, death or injury in connection with the Premises and the Land, except to the extent that the claims arise out of the Landlord's negligent or unlawful conduct or breach of the Lease.

12.1.2 Clause 12.1.1(b) does not apply to claims resulting from interference to the Tenant's Equipment caused or contributed to by any person.

12.2 Indemnity

The Tenant must indemnify and hold harmless the Landlord against all claims resulting from any damage, loss death or injury in connection with:

- 12.2.1 the Premises and the use and occupation of the Premises by the Tenant;
- 12.2.2 the Tenant's Equipment;
- 12.2.3 the Land to the extent caused or contributed to by the Tenant's use or occupation of the Land; and
- 12.2.4 the Tenant's unlawful act or unlawful omission on the Land or the Building,

except to the extent that such claims arise out of the Landlord's negligent or unlawful conduct or breach of this Lease. The indemnity provided by the Tenant in this clause 12.2 will not exceed \$30 million per event, except in respect of any claim, loss or damage relating to:

- 12.2.5 property damage, death or personal injury; or
- 12.2.6 economic loss suffered by a person other than the Landlord,

where no such cap will apply.

12.3 Settlement of claims

The Landlord must not pay any amount to a third party, where the Landlord intends to seek indemnity from the Tenant pursuant to clause 12.2, unless:

- 12.3.1 lawfully required to do so; or

- 12.3.2 the Tenant does not object in writing to any such payment within 28 days of receipt of written notice from the Landlord providing details of the proposed payment.

The Tenant must act reasonably in objecting to any such proposed payment and must give the Landlord, with the objection, written reasons setting out the basis for the Tenant's objection. If the Tenant objects to any such proposed payment by the Landlord to a third party, the Tenant indemnifies the Landlord against all costs and expenses (including solicitor-own client costs) properly incurred by the Landlord, should the third party initiate any proceedings against the Landlord in any court, tribunal or other such forum.

13. Assignment and sub-letting

13.1 Conditions of assignment and sub-letting

The Tenant must not deal with its interest in the Premises including assigning this Lease to a new tenant or sub-letting or licensing any part of the Premises to a new tenant (including, without limitation, assigning, sub-letting or licensing to another Carrier) without obtaining the prior written consent of the Landlord. Subject to clause 13.2, the Landlord may grant or withhold its consent under this clause 13.1 in the Landlord's absolute discretion.

13.2 Assignment

The Landlord will not unreasonably withhold its consent to an assignment of this Lease if the Tenant:

- 13.2.1 requests the Landlord in writing to consent to the assignment of the Lease to a new tenant;
- 13.2.2 has remedied any breach of this Lease of which the Tenant has received with notice from the Landlord;
- 13.2.3 provides to the Landlord the name and address of the new tenant and proves to the Landlord's reasonable satisfaction that the new tenant is solvent and has the experience to conduct the business permitted by the Lease by providing at least 2 references as to the financial circumstances of the new tenant and at least 2 references as to the business experience of the new tenant;
- 13.2.4 executes and procures the new tenant to execute an assignment of lease which must include a condition by which the Tenant releases the Landlord from any claims arising under or in connection with the Lease and otherwise in a form approved by the Landlord;
- 13.2.5 where the new tenant is a corporation, incorporated association or other legal entity, procures such directors, shareholders or members of the new tenant, as may be reasonably required by the Landlord, to execute a guarantee and indemnity in a form approved by the Landlord and provides whatever other form and amount of security the Landlord may reasonably require; and
- 13.2.6 pays the Landlord's reasonable costs in connection with approving the new tenant and the preparation, negotiation and stamping of any document required under this clause (regardless of whether the dealing proceeds or not).

13.3 Change in shareholding

If the Tenant is a corporation (other than a corporation listed on any stock exchange in Australia), a change in the control of the corporation as existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers),

or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be an assignment of this Lease and the Tenant must seek the Landlord's prior written consent.

13.4 Assignment to Related Body Corporate and subletting

Despite clause 13.1, the Tenant may without the consent of the Landlord and without having to comply with the requirements of clause 13.1:

- 13.4.1 assign this Lease to a Related Body Corporate or a Government Department for the balance of the Term so long as the Tenant remains liable to observe and perform its obligations under this Lease until the end of the Term specified in Item 6; and
- 13.4.2 sublet the Premises to a Related Body Corporate or Government Department so long as the Tenant remains liable to observe and perform its obligations under this Lease.

13.5 Appurtenant licence rights

For the avoidance of doubt, and for the purposes of this clause 13 a reference to the 'Lease' includes any licence rights granted to the Tenant 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 Tenant holds licence, appurtenant or ancillary rights.

13.6 Notification of proposed collocation

If another Carrier (**Collocating Carrier**) advises the Tenant that it wishes to exercise a power under the Act to access:

- 13.6.1 the Premises; or
- 13.6.2 any tower at the Premises,

then the Tenant must promptly notify Council of the advice received from the Collocating Carrier.

14. Tenant's obligations at the end of this Lease

14.1 Tenant's obligations

At the end of this Lease, the Tenant must:

- 14.1.1 vacate the Premises and give them back to the Landlord in a condition consistent with the Tenant having complied with its obligations under this Lease; and
- 14.1.2 remove the Tenant's Equipment and make good any damage caused by its removal.

14.2 Tenant's property left in premises

Anything left in the Premises on the date being two months after the end of this Lease will become the property of the Landlord and may be removed by the Landlord at the Tenant's cost and at the Tenant's risk.

15.3 Payment for property left in Premises

The Tenant:

- 14.2.1 acknowledges that the Landlord is not obliged to remove the Tenant's Equipment if the Tenant has not done so at the end of this Lease; and
- 14.2.2 must pay to the Landlord mesne profits equal to the Rent payable immediately before the expiration of this Lease for so long as any of the Tenant's Equipment remains on the Premises. This clause continues to apply in the event that the Lease is terminated (regardless of the reason for termination).

15. Landlord's rights and obligations

15.1 Quiet enjoyment

So long as the Tenant pays the Rent and performs its obligations under this Lease, then subject to any rights of the Landlord 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 Landlord or any person lawfully claiming through the Landlord.

15.2 Dealing with the Premises

The Landlord may subdivide the Premises or grant easements or other rights over the Premises except where it will unreasonably interfere with the Tenant's use and occupation of the Premises.

15.3 Entry by Landlord

The Landlord may subject to the Landlord complying with this clause 15.3, enter the Premises at any reasonable time after giving the Tenant reasonable notice to:

- 15.3.1 inspect the condition of the Premises;
- 15.3.2 carry out any repairs or works required by any authority or law to be carried out to the Premises;
- 15.3.3 carry out repair and maintenance works to any of the Landlord's Fixtures; and
- 15.3.4 carry out any repairs or works which the Landlord requires to carry out to the Premises, any services to or running through the Premises, the Land or the Building,

In exercising the rights in this clause 15.3 the Landlord must:

- 15.3.5 notify the Tenant in accordance with the contact details in Item 2 of the Schedule of any proposed access by the Landlord which requires entry to the Premises so that the Tenant can ensure that the Landlord is aware of the Tenant's safety and security procedures;
- 15.3.6 comply with the Tenant's reasonable safety and security procedures; and
- 15.3.7 use reasonable endeavours to not interfere with the Premises or the Tenant's Equipment.

In an emergency, the Landlord may enter the Premises without giving notice to the Tenant.

15.4 Landlord's consent

Where the Landlord is required to give its consent under this Lease (unless specified to the contrary), the Landlord must not unreasonably withhold its consent but may give its consent subject to conditions as the Landlord may reasonably determine.

16. Determination of Lease by the Landlord

16.1 Re-entry

The Landlord may re-enter the Premises and determine this Lease if:

- 16.1.1 any part of the Rent is in arrears for 30 days after a receipt of a written notice from the Landlord (no common law demand for rent is required); or
- 16.1.2 the Tenant breaches this Lease and does not remedy the breach within 30 days of receipt of written notice from the Landlord.

16.2 Damages following determination

If this Lease is determined by the Landlord, the Tenant agrees to compensate the Landlord for any loss or damage the Landlord suffers arising in connection with the Tenant's breach of this Lease including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiration of the Term. The Landlord must use reasonable endeavours to mitigate its loss.

16.3 Essential terms

The essential terms of this Lease are clauses 3.1, 3.2, 3.4, 7.1, 8, 9.1, 13.1 and 14.1 and the Tenant's obligations under the Additional Clauses. The breach of an essential term is a repudiation of this Lease.

17. Determination of Lease by the Tenant

17.1 Tenant's right to terminate

The Tenant may by 3 months' written notice to the Landlord terminate this Lease if:

- 17.1.1 the Tenant's Carrier's licence under the Act is terminated not due to the act or default of the Tenant and for reasons beyond the Tenant's control;
- 17.1.2 the Tenant is unable to obtain or renew its Carrier's licence except on terms which are onerous (when compared to other Carriers) but such onerous conditions are not due to any act or default of the Tenant; or
- 17.1.3 the Tenant's ability to use the Premises is adversely affected by radio, physical or other interference as reasonably determined by the Tenant;

17.2 Neither Party Liable

On and from the date of the termination of this Lease by the Tenant under clause 17.1, neither party has any further obligations under this Lease. Nothing in this clause releases either party from any obligations that have arisen under this Lease prior to the date of the termination of this Lease. The Tenant must at its cost reinstate the Premises in accordance with clause 14.1.

17.3 No refund of rent

The Tenant acknowledges that if it terminates this Lease pursuant to clause 17, it is not entitled to a refund of any Rent paid in advance to the Landlord.

18. Destruction or damage of Premises

18.1 Reduction in Rent

If the Premises or the Building, or any part of the Premises or the Building are destroyed or damaged to the extent that in the Tenant's reasonable opinion the Premises is wholly or substantially unfit for undertaking the Permitted Use or the Tenant cannot access the Premises, then subject to clause 18.3:

18.1.1 the Landlord will reduce the Rent and all other monies payable under this Lease by a reasonable amount depending upon the nature and extent of destruction or damage or in the case of complete damage or destruction of the Premises or the Building, the Tenant's obligations to pay the Rent and all other monies under this Lease will cease (this does not affect the Tenant's obligation to pay arrears or other debt owing before the damage and destruction), until such time as the Premises or the Building have been reinstated or repaired so as to be fit for the Permitted Use by the Tenant or the Tenant can access the Premises and a further period has elapsed which is reasonable in all the circumstances to allow the Tenant to carry out any necessary refitting of the Premises or re-installation of the Tenant's Equipment; and

18.1.2 the Tenant's covenant to repair and keep the Premises in good repair and condition will be suspended for so long as the Premises or part of them are unfit for use by the Tenant or are inaccessible.

18.2 Reinstatement of Premises

If the Premises, or any part of the Premises are destroyed or damaged so as to render the Premises wholly or substantially unfit for the undertaking of the Permitted Use then, subject to clause 18.3, either the Landlord or the Tenant may terminate this Lease by giving 30 days' notice to the other and no compensation is payable for that termination.

18.3 No reduction or termination

The Rent and other amounts payable by the Tenant will not be reduced, the Tenant's repair covenant will not be suspended and the Tenant is not entitled to terminate this Lease if:

18.3.1 the Tenant has caused or contributed to the destruction or damage to the Premises; or

18.3.2 the Landlord is not entitled to receipt of insurance money under any policy of insurance for the Premises due to any act or omission of the Tenant or because the Tenant caused or contributed to the destruction or damage of the Premises.

18.4 No reinstatement

The Landlord is not liable to reinstate the Premises despite anything to the contrary in this Lease.

19. Non-interference with Tenant's use of the Premises

19.1 Not to cause interference

The Landlord must use reasonable endeavours not to knowingly do anything on the Land or grant a right for any third party to occupy the Land in a manner which is likely cause material adverse physical or radio interference with the Tenant's Equipment.

19.2 Removal of interference

The Landlord must, to the extent that it is within its power to do so, use reasonable endeavours to:

19.2.1 remove the interference (where the Landlord has caused the interference); or

19.2.2 demand a third party to remove the interference,

to the Tenant's Equipment, where the Tenant proves to the Landlord's satisfaction that the interference is caused by the Landlord or a third party, who has been granted a right by the Landlord to occupy the Land.

19.3 Clause not apply to certain persons

Clauses 19.1 and 19.2 do not apply to any interference to the Tenant's Equipment caused by:

19.3.1 any existing occupant of the Land or its successors or assigns;

19.3.2 any person who enters the Land after the date that the Tenant entered occupation of the Premises but uses the Land in the same or substantially the same manner as an occupant of the Land at the date the Tenant entered occupation of the Premises;

19.3.3 any licensed Carrier under the Act;

19.3.4 the Landlord acting in its capacity as the responsible authority under the relevant planning scheme or any relevant statute; or

19.3.5 any person or authority permitted or entitled to use or occupy any part of the Land including but not limited to:

(a) pursuant to any statute, law, regulation or the order of any court, tribunal or other body exercising lawful authority;

(b) pursuant to any easement or right of way; or

(c) by way of long user or adverse possession.

19.4 Landlord not liable

The Tenant acknowledges that:

19.4.1 if the Landlord breaches clause 19.1, the Tenant's only remedy against the Landlord is to require the Landlord to comply with clause 19.2 or to exercise the Tenant's rights under clause 17.1.3; and

- 19.4.2 the Landlord is not liable for any loss, damage, costs, expenses, loss of profits or loss of business of the Tenant due to any breach of clause 19.1 and releases the Landlord from all such claims.

20. Overholding

20.1 Not applicable

20.2 Not applicable

20.3 Overholding

If the Tenant continues in occupation of the Premises after the end of the Term (other than pursuant to a renewal of this Lease under clause 20.1), without objection by the Landlord, then:

- 20.3.1 the Tenant occupies the Premises subject to the same terms and conditions as contained in this Lease; and
- 20.3.2 the Landlord or the Tenant may end this Lease during any period of overholding by giving 6 months' written notice to the other party expiring at any time; and
- 20.3.3 the Landlord may increase the monthly rent by giving the Tenant 6 months' written notice.

21. Electromagnetic Interference

If the Landlord or any other person who operates radio transmitting equipment in the Building or the Land experiences Interference the following provisions will apply:

- 21.1 the Landlord, must as soon as it is aware of any Interference, give written notice to the Tenant providing details of the Interference (**Interference Notice**);
- 21.2 the Tenant must, within 7 days of receipt of the Interference Notice, determine whether the operation of the Tenant's Equipment is the cause of the Interference and notify the Landlord of its determination giving reasons and supporting material;
- 21.3 if the Tenant reasonably determines that such interference is caused by the operation of the Tenant's Equipment it must immediately cease operation of the Tenant's Equipment and rectify the fault and the Tenant must indemnify the Landlord for any loss, cost, expense, damage or claim arising from the Interference;
- 21.4 if the Tenant reasonably determines that the Interference is not caused by the operation of the Tenant's Equipment, it must notify the Landlord of such determination within 5 Working Days of receipt of the Interference Notice; and
- 21.5 if the Landlord disagrees with the Tenant's determination under clause 21.4, the dispute will be settled in accordance with part 4.3 (Settlement of interference disputes) of the *Radiocommunications Act 1992* (Cth).

22. EMR audits

The Tenant must:

- 22.1 comply at all times with the Electro Magnetic Radiation Safety Standards as set by the Australian Radiation Protection and Nuclear Safety Agency (**ARPANSA**) and regulated by the Australian Communications and Media Authority (**ACMA**), the independent regulator of the Australian telecommunications industry (**ARPANSA Standards**), as updated from time to time,
- 22.2 provide the Landlord with access to the Radio Frequency National Site Archive (**RFNSA**) which will contain an up-to-date ARPANSA report which sets out the predicted radio frequency EME levels around the Tenant's Equipment; and
- 22.3 provide the Landlord with access to the RFNSA as soon as reasonably practicable prior to the date that the Tenant's Equipment is commissioned and commences operating at full capacity, and will update all relevant SSD reports as required within a reasonable time.

23. Sale of Land

If the Landlord sells, transfers or disposes of any part of the Land (which includes the Premises) on and from the date that the relevant part of the Land is transferred or vested in another person, the Tenant releases the Landlord from all obligations arising under or in connection with this Lease but without prejudice to any rights of the Tenant arising prior to that date and subject to the Landlord ensuring that the Landlord's successor as owner of the Premises is bound in favour of the Tenant to comply with each and every obligation of the Landlord under this Lease.

24. Carrier's powers under legislation

Nothing in this Lease affects, restricts, limits or derogates from the rights, powers or immunity of the Tenant under and by virtue of the Act, or any other legislation of the Commonwealth and any regulations of the Commonwealth (as amended from time to time).

25. General

25.1 Authorised Representatives

In this clause 25 **Authorised Representative**:

- 25.1.1 in the case of the Landlord - means the person specified in Item 2 of the Schedule or any other person (including an agent or lawyer) notified by the Landlord to the Tenant as its Authorised Representative; and
- 25.1.2 in the case of the Tenant - means the Property Management Director set out at Item 3, or any other person (including an authorised employee or officer of the Tenant, an agent or lawyer) notified by the Tenant to the Landlord as its Authorised Representative.

25.2 How Notices can be served

Any notice, consent or other communication required to be served under this Lease must be in writing, signed by or on behalf of the person giving it and must be served by pre-paid post, email or hand delivered to:

25.2.1 the Tenant and addressed to the Authorised Representative; and

25.2.2 the Landlord at its address set out in Item 2 of this Lease and addressed to its Authorised Representative by the Landlord.

Where a notice, consent or communications is notified by email and more than one email address is specified in the Schedule, the notice consent or other communications must be sent to all specified email addresses.

25.3 When a notice is given

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

25.3.1 where it is given by email:

- (a) 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
- (b) 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;

25.3.2 where it is sent by mail:

- (a) within Australia - 7 Working Days after posting; or
- (b) to or from a place outside Australia - 10 Working Days after posting.

25.4 Entire understanding

This Lease contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

25.5 Waiver

If the Landlord accepts Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of the Landlord's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of the Landlord's rights under this Lease.

25.6 Additional Clauses

The Lease is subject to the Additional Clauses. The Additional Clauses override any inconsistent provisions in this Lease.

26. Interpretation

26.1 Governing law and jurisdiction

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

26.2 Persons

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

26.3 Joint and Several

If a party consists of more than one person, this Lease binds them jointly and each of them severally.

26.4 Legislation

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

26.5 Clauses and headings

In this Lease:

26.5.1 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Lease; and

26.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

26.6 Severance

In this Lease:

26.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

26.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

26.7 Number and gender

In this Lease, a reference to:

26.7.1 the singular includes the plural and vice versa; and

26.7.2 a gender includes the other genders.

26.8 Exclusions

Section 144 of the *Property Law Act 1958* (Vic) is expressly excluded from the operation of this Lease.



Signing Page

Executed as a deed by the parties on the date specified in Item 1.

THE COMMON SEAL of MAROONDAH CITY
COUNCIL was affixed in the presence of:

.....
Councillor

.....
Chief Executive Officer

.....
[PRINT FULL NAME BLOCK LETTERS]

.....
[PRINT FULL NAME BLOCK LETTERS]

Signed sealed and delivered by

ANTHONY SEPTIMUS O'DONNELL
PROPERTY SERVICES MANAGER

as Attorney for Telstra Corporation Limited
under power of attorney copy of which is filed in
Permanent Order Book No. 277 at page 022 item
24 in the presence of:

[Signature]
.....
Signature of witness

SIMONNA MALKI
.....
Name of witness (block letters)

[Signature]
.....
By executing this deed the attorney states that
the attorney has received no notice or
revocation of the power of attorney

Annexure A

Additional Clauses

1. Access

- 1.1 The Tenant is entitled to have access to the Licensed Area with or without all necessary vehicles, equipment, and workmen for the Permitted Use subject to the following:
- 1.1.1 access must be arranged through the Landlord's Properties Department; and
 - 1.1.2 access to the Licensed Area is available 24 hours a day, 7 days a week, however the Tenant acknowledges and agrees that additional wait times may be incurred for the Landlord to arrange access and the Tenant may be liable for additional costs at the Landlord's discretion.

2. Licensed Area

Without limiting clause 10.2:

- 2.1 the Tenant acknowledges and agrees that the Landlord has granted, or may grant in the future, rights to other Carriers with respect to the Licensed Area; and
- 2.2 the Tenant must seek the Landlord's prior written consent regarding the location and installation of any electrical or other cables on the Licensed Area.

Annexure B

Plan of Premises