

# Deed of Amendment

**Sydney Trains** (ABN 38 284 779 682), of Level 20, 477 Pitt St Sydney NSW (Principal)

**Telstra Corporation Limited** (ABN 33 051 775 556), of Level 41, 242 Exhibition Street, Melbourne, Victoria 3000 (Contractor)

## Deed of Amendment

Dated ..... 1 March 2019

**Parties** Sydney Trains (ABN 38 284 779 682), of Level 20, 477 Pitt St Sydney NSW  
(Principal) (**Principal**)

**Telstra Corporation Limited** (ABN 33 051 775 556) of Level 41, 242 Exhibition  
Street, Melbourne, Victoria 3000 (**Contractor**)

### Recitals

- A The parties are parties to the Central Coast Mobile Coverage and Station Wi-Fi Project Funding Agreement dated 21 December 2018 (**Contract**).
- B Clause 2A of the Contract sets out a procedure for the parties to negotiate and agree the Negotiable Terms. This process has been completed and this Agreement implements agreed amendments to the Relevant Documents (including the Negotiable Terms).

### Operative provisions

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## 1. Definitions and interpretations

Except where otherwise defined in this deed, in this deed terms which are defined in the Contract have the meaning given to them in the Contract and:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes it delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it;

- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency; and
- (m) the word "Subcontractor" will include suppliers and consultants.

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## 2. Ratification of Contract

As from the date of execution of this deed, the Contract will be read and construed subject to the terms and conditions of this deed. If there is any conflict, apparent conflict, discrepancy, ambiguity or inconsistency (**Inconsistency**) between the terms and conditions of the Contract and those of this deed then this deed will, to the extent of the Inconsistency, prevail.

This deed is supplemental to the Contract and, except as otherwise expressly provided to the contrary, the Contract is expressly ratified and confirmed.

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## 3. Binding effect of this deed

- (a) Each party acknowledges that this deed may be relied on and enforced by each other party.
- (b) This deed binds the parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of either party and any third party to whom either parties' rights and obligations under the Contract are novated either in whole or in part.

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## 4. Amendments to the Contract

With effect on and from 28 February 2019, (the **Effective Date**), the Contract is amended as follows:

- (a) Schedule 4 (**Template form of agreement for the provision of electricity to Designated Locations**) is deleted and replaced with the document set out in Schedule 1 to this Agreement;
- (b) Schedule 5 (**Tunnel and Duct Licences**) is deleted and replaced with the document set out in Schedule 2 to this Agreement;
- (c) Schedule 6 (**Template form of Lease—Mobile Base Stations**) is deleted and replaced with the document set out in Schedule 3 to this Agreement;
- (d) Schedule 7 (**Template for of property Licence—Wi-Fi Equipment Licence**) is deleted and replaced with the document set out in Schedule 4 to this Agreement; and
- (e) Schedule 12 (**Wi-Fi Schedule**) is deleted and replaced with the document set out in Schedule 5 to this Agreement;

(f) clause 21.5(a) is delete and replaced with the following:

(a)

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

(g) clause 26.7 is deleted and replaced with the following:

"The covenants, conditions and provisions of this Contract which are intended or capable of having effect after the expiration or termination of this Contract (including clauses 21.1, 22.2, 22.3, 25, and 26.19) must remain in full force and effect following any expiration or termination of this Contract."

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## **5. Acknowledgement**

The parties acknowledge that the Negotiable Terms have been agreed prior to the SDR Date and, as a consequence, the rights set out at clause 2A(d) of the Contract do not arise in respect of either party.

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## **6. Miscellaneous**

### **6.1 Governing law**

This deed is governed by and must be construed according to the law governing the Contract.

### **6.2 Further acts**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

### **6.3 Expenses**

Except as otherwise provided in this deed each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed.

### **6.4 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

### **6.5 Remaining Provisions Unaffected**

Except as specifically amended by this Agreement, the provisions of the Contract remain in full force and effect.

### **6.6 Entire agreement**

To the extent permitted by law and subject to clause (a), in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

**6.7 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

**6.8 Variations**

A Provision of this deed may not be varied except in writing signed by the parties.

**Executed as a deed**

**Executed** for and on behalf of **Sydney Trains**  
**ABN 38 284 779 682** by its authorised delegate  
in the presence of:

[Redacted signature]

Signature of witness

[Redacted name]

Full name of witness

[Redacted signature]

Signature of authorised delegate

[Redacted name]

Full name of authorised delegate

1 March 2019

Date

**Signed** for and on behalf of **Telstra Corporation**  
**Limited ABN 33 051 775 556** by its duly  
authorised representative:

[Redacted signature]

Signature of witness

[Redacted name]

Full name of witness

[Redacted signature]

Signature of authorised delegate

[Redacted name]

Full name of authorised delegate

1.3.19

Date

**Schedule 1 - Template form of agreement for the provision of electricity to Designated Locations**



## Customer Contract for Electricity Supply: Key Terms

**Note: Please retain this document in your records for future reference.**

Customer's  
Obligations

- 1 The Customer must do all of the following:
  - .1 **Provide a security deposit** for the amount stated in item 4 of the Contract Details section of the Schedule. The security deposit must be in the form of a cheque crossed and made payable to Sydney Trains.
  - .2 **Not, at any time, exceed the Maximum Permitted Loading** set out in item 3 of the Contract Details section of the Schedule.
  - .3 **Allow reasonable access to its Premises** for persons authorised by Sydney Trains for any purpose connected with this Contract, including for the purposes of reading and maintaining any meters. In circumstances considered by Sydney Trains to be an emergency, the Customer must allow immediate access. This clause does not limit Sydney Trains' rights of access under applicable law.
  - .4 **Pay Sydney Trains the amount invoiced (including GST) within 30 business days of the invoice date** and, if required by Sydney Trains, pay interest at the rate of [REDACTED] per annum on any unpaid invoice from the date the invoice becomes overdue to the date it is actually paid (both dates inclusive).
  - .5 **Ensure that all electrical installation and maintenance is undertaken by a qualified licensed electrician** and that all such work is carried out to acceptable industry standards and so as to meet specific requirements notified by Sydney Trains. The Customer must ensure that its electrical contractor is made aware of this Contract and any applicable requirements of Sydney Trains.
  - .6 **Use electricity safely** and comply with all applicable laws and standards including any directions given by Sydney Trains.
  - .7 **Notify Sydney Trains of all proposed electrical work (including installation of new equipment) on the Premises** in writing, not less than 30 days prior to the scheduled start of the works. The Customer must not commence any works until Sydney Trains has given its consent in writing.
  - .8 **Write to Sydney Trains and ask for an increase in the permitted loading** before installing any new equipment or making any changes which may increase the Customer's loading requirements. The Customer must not increase its loading requirements until Sydney Trains has given its consent in writing.
  - .9 **Not tamper with or in any way bypass any metering devices.**
  - .10 (If this Contract is for connection only) **Install service equipment (including meters, service lines, sealing devices, transformers or switchgear) at its own cost.** The Customer must pay the costs of installing and, subject to the foregoing, maintaining any service equipment Sydney Trains considers necessary to safely and efficiently connect the Premises to its distribution system or for the purpose of metering the Customer's electricity usage. The Customer is not liable for the costs of maintaining those assets which are to be handed over to Sydney Trains provided that, at the time of handover, those assets comply with Sydney Trains' standards (including any ASA standard) and the Customer follows Sydney Trains' asset handover procedure.
  - .11 **Provide Sydney Trains with any information** Sydney Trains reasonably require for the purposes of this Contract. The Customer must promptly notify Sydney Trains in writing if any information it has provided Sydney Trains changes.
  - .12 **Notify Sydney Trains in writing if a person living at the Premises requires life support**

# Sydney Trains

ABN 38 284 779 682

## Customer Contract for Electricity Supply: Key Terms

		<p><b>equipment</b>, supported by confirmation from a registered medical practitioner. The Customer must also notify Sydney Trains in writing if the life support equipment is no longer required at the Premises.</p>
Sydney Trains Supply and Service Obligations	2	<p>As long as the Customer complies with its obligations under this Contract, Sydney Trains must connect and/or supply electricity to the Premises from its distribution system as stated in item 1 of the Contract Details section of the Schedule for the duration of this Contract. This obligation is subject to interruptions in availability, and fluctuations and other disturbances that may affect the quality, quantity and reliability of supply, irrespective of their cause.</p> <p>So far as the law allows, Sydney Trains is not liable for any loss or damage the Customer or any other person suffers or incurs in relation to anything done or not done or supplied or not supplied by Sydney Trains under this Contract. In particular, but without limitation, Sydney Trains is not liable for loss or damage caused by any interruption to supply or as a result of any characteristic of the electricity supplied (such as voltage, frequency or level of harmonic voltage). In this regard, the Customer should be aware that the distribution system to which it is connected was designed to service rail operations and may have higher harmonic voltages than is ordinarily found in retailed electricity. Some equipment may be sensitive to harmonic voltages.</p> <p>Except to the extent required by law, Sydney Trains makes no representations and gives no undertakings or warranties about the condition, suitability, quality, fitness for purpose, safety of or title to, the services or electricity supplied by Sydney Trains under this Contract.</p> <p>In addition to complying with its obligations under this Contract, Sydney Trains will also comply with applicable energy laws.</p>
Security	3	<p>Sydney Trains may use some or all of the security deposit (and any interest earned on the security deposit) at any time to offset any amount the Customer owes at that time under this Contract.</p> <p>If Sydney Trains uses the security deposit or any accrued interest to offset amounts owed to it, it may advise the Customer within 10 business days.</p> <p>Sydney Trains must return the balance of the security deposit to the Customer after the Customer ceases to have connection or supply services under this Contract as long as everything the Customer owes under this Contract has been paid.</p> <p>Sydney Trains is not liable to pay interest on any security.</p> <p>If the Customer has entered into a tenancy agreement with Rail Corporation New South Wales or any other New South Wales government rail service provider, the Customer acknowledges that Rail Corporation New South Wales, another New South Wales government rail service provider and/or Sydney Trains is entitled to call upon any security provided by the Customer under that agreement to offset any amount the Customer owes under this Contract, in accordance with the terms of that agreement with respect to the security.</p>
Pricing	4	<p>The Customer will be charged the applicable tariffs in Sydney Trains' price list for electricity supply, as set out in the Schedule of this Contract and as notified to the Customer from time to time.</p> <p>If the Customer is a small customer (i.e. it is a residential customer or a commercial or retail customer that consumes less than 100MWh per year), Sydney Trains:</p> <ol style="list-style-type: none"><li>must not at any time for the Premises charge a rate higher than the standing offer price that would be charged by the relevant local area retailer for new connections in accordance with the applicable tariff or rate (e.g. EnergyAustralia and Origin Energy); and</li><li>must not impose any charge on the Customer that cannot be charged by the relevant local retailer for new connections under a standard retail contract.</li></ol> <p>Sydney Trains will notify the Customer of any change in the tariffs as soon as practicable, and no later than the date of the Customer's next invoice.</p>

## Customer Contract for Electricity Supply: Key Terms

		<p>Where the law allows it, Sydney Trains can pass through to the Customer any tax in relation to the sale or purchase of electricity that is imposed on Sydney Trains or that Sydney Trains has to pay.</p> <p>The prices stated in the price list are exclusive of GST. GST on each supply will be determined by multiplying the total invoiced cost based on the price list prices by the applicable GST rate. This total amount will be invoiced to the Customer.</p>
Invoicing	5	<p>At the end of an initial invoice period determined by Sydney Trains and thereafter at the end of each invoice period nominated in item 6 of the Contract Details section of the Schedule, Sydney Trains will issue the Customer with an invoice for its metered usage of electricity during that preceding invoice period.</p> <p>Sydney Trains will use its best endeavours to ensure that the Customer's meter is read and used as the basis, or apportioned, for any invoice issued. If Sydney Trains is not able to reasonably or reliably base the invoice on an actual meter reading, it may make a reasonable estimate of the electricity consumption at the Premises and invoice the Customer for the estimated amount (provided the estimation is based on historical metering data for the Customer or, if this is not available, the average electricity usage by a comparable customer). However, Sydney Trains cannot rely on an estimation of the meter value at the start of this Contract, or for the purposes of issuing a final bill.</p>
Undercharging and Overcharging for Small Customers	6	<p>This clause applies if the Customer is a small customer.</p> <p>Where the Customer has been undercharged, Sydney Trains can recover the amount undercharged subject to the following:</p> <ol style="list-style-type: none"> <li>Where the undercharging was not the result of the Customer's fault or unlawful act or omission, Sydney Trains is limited to recovering the amount undercharged in the 9 months before the date on which the Customer is notified of the undercharging.</li> <li>Sydney Trains cannot charge interest on the undercharged amount.</li> <li>Sydney Trains must offer the Customer time to pay the undercharged amount by instalments, over a period nominated by the Customer (up to 12 months, but no longer than the period of undercharging).</li> </ol> <p>Where the Customer has been overcharged, Sydney Trains must inform the Customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:</p> <ol style="list-style-type: none"> <li>Where the amount overcharged is <b>████</b> or more, Sydney Trains must refund the amount to the Customer if requested, or if no such request is made, credit the amount to the Customer's next bill. Where the Customer no longer purchases electricity from Sydney Trains, Sydney Trains must use its best endeavours to refund the amount within 10 business days.</li> <li>Where the amount overcharged is less than <b>████</b>, Sydney Trains must credit that amount to the Customer's next bill.</li> <li>Sydney Trains is not required to pay interest on the overcharged amount.</li> <li>Where the overcharging was the result of the Customer's fault or unlawful act or omission, Sydney Trains is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.</li> </ol>
Disconnection	7	<p>If the Customer is a small customer, Sydney Trains will be entitled to disconnect or cease electricity</p>

## Customer Contract for Electricity Supply: Key Terms

supply to the Premises only where:

- a) the Customer has requested disconnection;
- b) the continuity of supply to the Premises would be unsafe;
- c) the Customer's tenancy agreement has ended and the Customer is vacating the Premises; or
- d) the Customer has not paid an invoice by the pay-by date or if the Customer is a residential customer, the Customer has not adhered to the terms of a payment plan and Sydney Trains has followed the applicable disconnection procedure.

Where the Customer is disconnected in accordance with paragraph b), Sydney Trains must use its best endeavours to notify the Customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the Premises as soon as practicable.

If the Customer is a small customer, Sydney Trains must not disconnect or cease electricity supply to the Premises where:

- a) if the Customer is a residential customer, a person residing at the Customer's Premises requires life support equipment that depends on energy for its operation;
- b) if the Customer is a residential customer, an application has been made by or on behalf of the Customer for assistance under a rebate, concession or relief scheme and a decision has not been made;
- c) the Customer has made a complaint directly related to the proposed reason for disconnection or cessation of supply and the complaint remains unresolved; or
- d) the disconnection or cessation of supply would occur on:
  - i. a business day before 8 am or after 3 pm;
  - ii. a Friday or the day before a public holiday;
  - iii. a weekend or a public holiday; or
  - iv. the days between 20 December and 31 December (inclusive) in any year,

unless:

- e) the Customer has requested disconnection; or
- f) this Contract has been terminated.

If the Customer is not a small customer, Sydney Trains will be entitled to disconnect or cease electricity supply to the Premises if:

- a) the Customer has requested disconnection;
- b) the continuity of supply to the Premises would be unsafe;
- c) the Customer does not pay an invoice by the pay-by date; or
- d) the Customer does not provide the required security deposit,

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## Customer Contract for Electricity Supply: Key Terms

		provided that in the case of paragraphs c) and d) Sydney Trains has given notice to the Customer specifying the alleged default and given the Customer 5 business days to rectify its default.
Reconnection	8	<p>Sydney Trains must reconnect the Premises as soon as practicable where it has disconnected the Premises and the Customer has within 10 business days of the disconnection:</p> <ul style="list-style-type: none"><li>a) if relevant, rectified the matter that led to the disconnection,</li><li>b) made a request for reconnection, and</li><li>c) paid any charge for reconnection.</li></ul>
Payment Difficulties	9	<p>If the Customer is a residential customer and has identified themselves as being in financial difficulty, Sydney Trains will:</p> <ul style="list-style-type: none"><li>a) offer the Customer flexible payment options (which may include arrangements for payment by periodic instalments);</li><li>b) not charge the Customer a late payment fee; and</li><li>c) not charge the Customer a security deposit.</li></ul>
Disputes	10	<p>Sydney Trains is committed to the speedy resolution of disputes arising under this Contract. If a dispute arises and cannot be resolved by negotiation in good faith within 3 months, Sydney Trains must establish an independent expert determination process for the resolution of the dispute and must notify the Customer of the rules and procedures for the conduct of the expert determination process. The Customer is entitled to request and be provided with written details of all charges applicable to it.</p> <p>The dispute resolution procedure will operate without cost to the Customer (unless the independent expert decides that the Customer should bear some or all of the costs on the ground that the dispute is vexatious or an abuse of process).</p>
Amendments	11	<p>This Contract may be amended by Sydney Trains by notice in writing to the Customer.</p>
Term	12	<p>This Contract starts on the date on which the Customer starts to take supply of electricity at the Premises.</p> <p>This Contract ends:</p> <ul style="list-style-type: none"><li>a) 5 business days (or a different time that is mutually agreed) from the date when the Customer gives the Sydney Trains a written termination notice;</li><li>b) at the conclusion of the Customer's lease for, or occupancy of, the Premises;</li><li>c) when the Customer starts to buy electricity for the Premises from another retailer or supplier;</li><li>d) when a different customer starts to buy electricity for the Premises;</li><li>e) at the end of a period of 10 business days commencing on the day the Customer's Premises are disconnected, where the conditions for reconnection have not been met; or</li><li>f) any other mutually agreed date.</li></ul> <p>Rights and obligations accrued before the end of this Contract continue despite the end of this Contract, including any obligations to pay amounts to Sydney Trains.</p>

# Sydney Trains

ABN 38 284 779 682



## Customer Contract for Electricity Supply: Key Terms

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Schedules	13	This Customer Contract for Electricity Supply (i.e. this Contract) comprises these Key Terms and the Schedule.
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# Customer Contract for Electricity Supply: Schedule

## Customer Details

Customer ID:		Contract Number:	
Customer's Name:		Customer's ABN:	
Customer's Billing Address:			
Alternate Billing Address: (to be provided when the billing address is the premise receiving electricity supply or a PO Box)			
Customer's Trading Name (if different from the above):			
Premise ID:		Meter Number:	
Customer Premise Address:			
Customer Contact Person:		Email:	
Contact Phone Numbers:	Daytime:	After Hours:	Mobile:
Will there be any altered or increased electricity loading at the premise? Note: Sydney Trains may not be able to supply any increase in premise electricity loading. Application for any alteration or increase to the existing electricity loading must be made to and approved by Sydney Trains prior to installing any new equipment.			Yes / No (circle)

## Contract Details

1	This Contract is for: Connection: <input checked="" type="checkbox"/> Supply: <input checked="" type="checkbox"/> From Sydney Trains' electricity distribution system.
2	Commencement date:
3	Maximum permitted loading: [*] amps
4	\$0
5	Tariff: The Customer must pay the applicable tariffs set out from time to time in Sydney Trains current price list for electricity supply (as notified by Sydney Trains). As at the date of execution, the applicable tariff is as follows:  [REDACTED] (rates are GST exclusive)
6	Invoicing period: Quarterly (Monthly for large electricity customers, i.e. customers which consume more than [*] MWh per year.)
7	Detailed terms of the Contract are as set out in Sydney Trains attached Key Terms.

## Contact Details

1	For assistance with this form, the Customer should contact Electric Power Consulting on (02) 8922 1161 (between 9am to 4pm on business days) or <a href="mailto:jpike@epc.com.au">jpike@epc.com.au</a> .
2	In the event of an electricity fault or emergency, the Customer should contact the Sydney Trains Electrical Operating Centre on (02) 9379 4911 (24 hours a day, every day).



3 If the Customer has an account inquiry or complaint, the Customer should contact Electric Power Consulting on (02) 8922 1161 (between 9am to 4pm on business days) or [jpjike@epc.com.au](mailto:jpjike@epc.com.au).

## Price List

Item	Price (excluding GST)

## Customer's signature

The Customer agrees to enter into the Contract on the terms set out or referred to in this document. This Contract comes into effect when signed by the Customer in the form issued by Sydney Trains.

\_\_\_\_\_  
Signature of Customer or Authorised Signatory

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Customer or Authorised Signatory



## **Schedule 2 – Tunnel and Duct Licences**

Rail Corporation New South Wales ABN 59 325 778 353

Telstra Corporation Limited ABN 33 051 775 556

## Telecommunications Licence

[Insert descriptions of the tunnels], NSW

Allens  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

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This agreement is made on

2019

## Parties

- 1 **Rail Corporation New South Wales** (ABN 59 325 778 353) of Level 20, 477 Pitt Street, Sydney NSW 2000 (*Licensor*); and
- 2 **Telstra Corporation Limited** (ABN 33 051 775 556) of Level 41, 242 Exhibition Street, Melbourne VIC 3000 (*Licensee*).

It is agreed as follows.

## 1 Definitions

1.1 In this Licence, unless the context otherwise requires:

**Authorisations** means any approvals, consent, exemption, filing, licence, notarisation, registration or waiver, however described, which are required by law or an Authority and any renewal or variation of any of them.

**Authority** includes the Commonwealth, the State, or any Federal, State or local Government Agency or administrative body or anybody exercising regulatory powers or other powers under Laws in respect of the Premises, services, heritage, environment, aviation or other activities, uses or transactions contemplated by this Licence which has jurisdiction or enforceable powers in the context of the relevant clause of this Licence.

**Base CPI** means the Consumer Price Index (All Groups) for Sydney last published immediately prior to the date being 12 months prior to the relevant Review Date.

**Business Day** means any day which is not a Saturday, Sunday or Public Holiday in New South Wales.

**Carrier** has the same meaning as given to it in the *Telecommunications Act 1997* (Cth) and includes a person entitled to operate a telecommunications base station or network under that Act pursuant to a nominated carrier declaration.

**Commencing Date** means the date specified in **Item 2** of the Reference Schedule.

**Construction Project** has the same meaning as given to it in the WH&S Regulations and is a project that involves Construction Work where the cost of the Construction Work is \$250,000 or more.

**Construction Work** has the same meaning as given to it in the WH&S Regulations and means any work carried out in connection with the construction, conversion, fitting-out, renovation, refurbishment, demolition, decommissioning or dismantling of a structure but does not include any of the following:

- (a) the manufacture of plant;
- (b) the prefabrication of elements, other than at a place specifically established for the Construction Work, for use in Construction Work;
- (c) the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place;
- (d) testing, maintenance, replacement or repair work of a minor nature carried out in connection with a structure;
- (e) mining or the exploration for or extraction of minerals.

**Contamination** has the same meaning as given to it in the *Contaminated Land Management Act*

1997 (NSW).

**Costs and Claims** means any:

- (a) duty, liability or obligation to any person;
- (b) cost or expense;
- (c) loss or damage; and
- (d) claim, proceeding, legal demand, legal notice, legal order or other legal requirement.

**Current CPI** means the Consumer Price Index (All Groups) for Sydney last published immediately prior to the relevant Review Date.

**Current Market Licence Fee** means:

- (a) the current market licence value for the Premises as at the commencement date of each holding over period referred to in clause 16;
- (b) on the basis that the Premises are vacant and available for licensing by a willing but not anxious licensor to a willing but not anxious licensee for a term equal to the Term;
- (c) on the terms and conditions contained in this Licence;
- (d) on the basis that the Licensee's covenants and obligations have been fully performed;
- (e) without taking into account any improvements or fixtures erected or installed at the Licensee's expense which the Licensee is permitted or required to remove at the termination of the Licence;
- (f) having regard to the rental values of comparable premises; and
- (g) taking into account the Permitted Use, but disregarding the value to the Licensee of that use, or its continuation.

**Dangerous Good** has the same meaning as in the *Dangerous Goods Act 1975* (NSW).

**Emergency Event** means an actual or likely event or circumstance which arises and which may interfere with or threaten the use of the Premises or the Railway Premises by the Licensor for Railway Purposes and/or the continued and safe operation of the railway and Rail Infrastructure Facilities.

**Equipment Cabin** means the enclosed structure erected by the Licensee on the Premises to house part of its equipment generally as identified in the plan in **Annexure B**.

**Funding Agreement** means the funding agreement in respect of the Central Coast mobile coverage and station Wi-Fi project entered between Sydney Trains ABN 38 284 779 682 (as principal) and Telstra Corporation Limited ABN 33 051 775 556 (as contractor).

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**GST** has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hazardous Material** means material which, because it is toxic, corrosive, flammable, explosive or infectious or because it possesses some other dangerous characteristic, is potentially dangerous to the environment when stored or handled or any part of the environment is exposed to it.

**High Risk Construction Work** has the same meaning given to in the WH&S Regulations and is Construction Work that:

- (a) involves a risk of a person falling more than 2 metres;
- (b) is carried out on a telecommunications tower;
- (c) involves demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure;
- (d) involves, or is likely to involve, the disturbance of asbestos;
- (e) involves structural alterations or repairs that require temporary support to prevent collapse;
- (f) is carried out in or near a confined space;
- (g) is carried out in or near:
  - (i) a shaft or trench with an excavated depth greater than 1.5 metres; or
  - (ii) a tunnel;
- (h) involves the use of explosives;
- (i) is carried out on or near pressurised gas distribution mains or piping;
- (j) is carried out on or near chemical, fuel or refrigerant lines;
- (k) is carried out on or near energised electrical installations or services;
- (l) is carried out in an area that may have a contaminated or flammable atmosphere;
- (m) involves tilt-up or precast concrete;
- (n) is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians;
- (o) is carried out in an area at a workplace in which there is any movement of powered mobile plant;
- (p) is carried out in an area in which there are artificial extremes of temperature;
- (q) is carried out in or near water or other liquid that involves a risk of drowning;
- (r) involves diving work; or
- (s) involves demolition work or asbestos removal work for which a licence is required under the WH&S Regulations.

Despite the above, **High Risk Construction Work** excludes any Transmission Configuration Works within the Premises.

**Independent Valuer** means the valuer appointed by the President or principal officer for the time being of the New South Wales Division of the Australian Property Institute, or their nominee.

**Initial Licensee's Fixtures** means the first items of plant and/or equipment of the Licensee that will be installed at the Premises which are identified in the plan in **Annexure E**.

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the

*Corporations Act 2001* (Cth)), entering into a compromise or arrangement with, or assignment for the benefit of any of its members or creditors, or any analogous event.

**Laws** means any present or future statutes, rules, regulations, proclamations, ordinances or by-laws present or future, or amendment, consolidation or replacement of them, whether federal, state or local.

**Licence** means this licence, the Reference Schedule and any annexure.

**Licence Fee** means the amount specified in **Item 5A** of the Reference Schedule.

**Licensee's Fixtures** means those items of plant and/or equipment of the Licensee, including the Initial Licensee's Fixtures (unless otherwise specified), all fixtures and fittings of the Licensee, equipment housing, masts, antennas, cables (telephone, fibre or any other type), pipes, wires, conduits, fencing, erections and other buildings and facilities constructed or to be constructed (in accordance with the terms and conditions of this Licence) by the Licensee upon the Premises and all other appliances, apparatus and things of whatsoever nature brought onto the land of which the Premises forms part by the Licensee.

**Licensor's Improvements** means the building or other structures on the land upon or within which the Premises is situated.

**Permitted Use** means the provision of a telecommunications network and telecommunications services as is permitted by the Licensor under this Licence.

**Premises** means the locations described in **Item 1** of the Reference Schedule.

**Rail Corridor** means all land, leased, owned or occupied by the Licensor used in relation to the operation of the railway, and includes any easements or licences or any other legal or beneficial interest in land.

**Rail Infrastructure Facilities** has the same meaning as in the *Transport Administration Act 1988* (NSW) and includes rail infrastructure as that term is defined in the *Rail Safety Act 2008* (NSW).

**Railway Legislation** means the *Transport Administration Act 1988* (NSW), *Rail Safety Act 2008* (NSW) and any other legislation or regulation governing the Licensor's operations, including but not limited to the operation of railway passenger or freight services.

**Railway Premises** means all or any part of the land owned or used by the Licensor for Railway Purposes together with all improvements from time to time on the land or for any other purpose and includes but is not limited to:

- (a) the Rail Corridor;
- (b) any Rail Infrastructure Facilities;
- (c) all underground and overhead passages which join improvements on the land owned or used by the Licensor for Railway Purposes to any other land; and
- (d) all plant, machinery, fittings, equipment, conveniences and amenities owned, leased or controlled by the Licensor, including but not limited to all railway track, railway stations, tunnels, civil works, associated track structures, over track structures, signalling systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other plant, equipment, buildings or facilities owned, leased or used by the Licensor.

**Railway Purposes** means any action or activity undertaken or required to be undertaken by the Licensor, in its absolute discretion, under the Railway Legislation for the use, control, safe operation, management, maintenance or repair of any railway infrastructure, facility or service, the Licensor's Property and the Rail Infrastructure Facilities.

**Reference Schedule** means the schedule which is annexed to this Licence.

**Related Body Corporate** means a related body corporate or an associated entity as each of those terms is used under the *Corporations Act 2001* (Cth).

**Review Date** means each anniversary of the Commencing Date.

**Review Factor** means [REDACTED].

**Services** means any services provided to the Premises or the Railway Premises by a Government Agency, service provider or the Licensor (for example drainage, power, fire and emergency services, garbage, sewerage, trade waste and water) and the pipes, wires and other means of providing those services to the Premises or the Railway Premises.

**SWMS** means a safe work method statement that has the same meaning given to it in the WH&S Regulations which:

- (a) describes how High Risk Construction Works associated with the Permitted Use is to be carried out;
- (b) identifies the work that is High Risk Construction Work;
- (c) specifies hazards relating to the High Risk Construction Work and risks to health and safety associated with those hazards;
- (d) describes the measures to be implemented to control the risks;
- (e) describes how the control measures are to be implemented, monitored and reviewed;
- (f) is prepared taking into account all relevant matters, including:
  - (i) circumstances at the workplace that may affect the way in which the High Risk Construction Work is carried out; and
  - (ii) if the High Risk Construction Work is carried out in connection with a Construction Project – the WH&S management plan that has been prepared for the workplace; and
- (g) be set out and expressed in a way that is readily accessible and understandable to persons who use it.

**Term** means the term specified in **Item 4** of the Reference Schedule.

**Terminating Date** means the date specified in **Item 3** of the Reference Schedule.

**Third Party Operator** means an entity which has entered into a commercial agreement with the Licensor to operate trains in the Rail Corridor.

**Track Possession** means authority granted by the Licensor to the Licensee which closes, alters the operation of, or occupy a defined portion of the Railway Corridor for a specified period of time.

**Transmission Configuration Works** means the repair, replacement, modification or augmentation of the Licensee's transmission components on any poles, towers or structure that it owns or occupies.

**WH&S** means work health and safety.

**WH&S Act** means the *Work Health and Safety Act 2011* (Cth).

**WH&S Regulation** means the *Work Health and Safety Regulations 2011* (Cth).

**WH&S Management Plan** has the same meaning given to it in the WH&S Regulations and means a plan which must include:



- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the project;
- (b) the arrangements in place, between any persons conducting a business or undertaking at the workplace where the Construction Project is being undertaken, for consultation, co-operation and the co-ordination of activities in relation to compliance with their duties under the WH&S Act and Regulations;
- (c) the arrangements in place for managing any work health and safety incidents that occur;
- (d) any site specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules; and
- (e) the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the workplace.

1.2 Except where the context otherwise requires a reference in this Licence to:

- (a) statutes, regulations, ordinances or by-laws will be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending consolidating or replacing the same from time to time;
- (b) the singular number includes a reference to the plural number and vice versa;
- (c) a reference to *includes* or *including* means includes, without limitation or including, without limitation, respectively;
- (d) any gender includes a reference to the other genders and each of them;
- (e) any parties, persons, facts, events or documents alternatively or collectively must be construed as a reference to all of them and to each and any one or more of them;
- (f) any person (including the Licensor and the Licensee) includes the legal personal representatives, successors in title or assigns of such person as the context may require;
- (g) a company or a corporation includes a person and vice versa;
- (h) a clause number means a reference to the respective clauses of this Licence;
- (i) any organisations, associations, societies, groups or bodies will, in the event that any of them ceases to exist or is reconstituted, renamed or replaced or that any of its powers or functions are transferred to any other entity body or group refer respectively to any such entity body or group established or constituted in lieu thereof or succeeding to similar powers or functions;
- (j) a reference to the Licensee or the Licensor includes reference to each of that party's employees, officers, contractors, agents, service suppliers, licensees, invitees and those persons who are at any material time under the control of and upon the land of which the Premises forms part with the consent of that party; and
- (k) a period of days is inclusive of public holidays and weekends and a period of months is a reference to calendar months.

1.3 Marginal notes and headings where used in this Licence are only for the purpose of identification and are not to be considered in the interpretation of the provisions of this Licence.

1.4 Unless the context requires otherwise, words and phrases used in this Licence that have a specific meaning in the GST Law will have the same meaning in this Licence.

- 1.5 Where any party to this Licence is comprised of more than one person all and any covenants agreements conditions and obligations expressed in or implied by this Licence binds all of such persons jointly and each of them severally.
- 1.6 Any covenant (whether express or implied) by a party to this Licence not to do or omit any act or thing to extend to an obligation not to permit any third party to do or to omit the same.
- 1.7 If any covenant agreement or other provision of this Licence or its application to any party or in any circumstances is or becomes unenforceable or invalid or its operation is or becomes excluded by operation of law or otherwise then and in any such eventuality the remaining covenants agreements and provisions of this Licence will not be affected thereby but remains in full force and effect and is valid and enforceable to the fullest extent permitted by Law.
- 1.8 This Licence is without prejudice to any right power or (except as provided in clause 1.9) obligation of the Licensee pursuant to or arising under the *Telecommunications Act 1997* (Cth), any statute, ordinance or regulation promulgated thereunder or replacement thereof.
- 1.9 To the extent that an activity is permitted to be undertaken pursuant to this Licence, provided that the Licensee duly complies with its obligations under this Licence in relation to the carrying out of that activity, the Licensor will not require to receive notice of that activity as may otherwise have been required under Schedule 3 of the *Telecommunications Act 1997* (Cth) (unless the installation of the Licensee's Fixtures requires a development application in which case this clause 1.9 does not apply).

## 2 Permitted Use

- 2.1 The Licensor licenses the Premises to the Licensee for the Term for the Permitted Use only.
- 2.2 The Licensee acknowledges and agrees:
- (a) to accept the Premises in its current condition and subject to any possible existing Contamination except that the Licensee will not be required to remedy any Contamination existing at the Premises as at the Commencing Date except to the extent that the Licensee has caused or contributed to any Contamination (including by disturbance to, or exacerbating, any existing Contamination) at the Premises; and
  - (b) that the Licensee has made its own investigations and enquiries in relation to the Premises as to its suitability for the Permitted Use.

## 3 Payment of Licence Fee

- 3.1 The Licensee must pay the Licence Fee yearly in advance on or before the Commencing Date and each anniversary of the Commencing Date.
- 3.2 The Licence Fee must be paid by electronic funds transfer from the bank account of the Licensee to an account directed by the Licensor from time to time or such other manner as the Licensor may nominate provided that written notice of any such nomination is received by the Licensee not less than 20 Business Days prior to the date upon which the Licence Fee is payable.

## 4 GST

- 4.1 **(Recovery of GST)** If GST is payable, or notionally payable, on a Supply made under or in connection with this Licence, the party providing the consideration for that Supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that Supply (**GST Amount**). Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other consideration for the Supply is provided. If a Tax Invoice

is not received prior to the provision of that other consideration, the GST Amount is payable within 30 days of the receipt of a Tax Invoice. This clause 4 does not apply to the extent that the consideration for the Supply is expressly stated to be GST inclusive or the Supply is subject to reverse charge.

- 4.2 **(Liability net of GST)** Where any indemnity, reimbursement or similar payment under this Licence is based on any cost, expense or other liability, it shall be reduced by any Input Tax Credit entitlement, or notional Input Tax Credit entitlement, in relation to the relevant cost, expense or other liability.
- 4.3 **(Adjustment events)** If an adjustment event occurs in relation to a Supply made under or in connection with this Licence, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- 4.4 **(Survival)** This clause 4 will not merge upon completion and will continue to apply after expiration or termination of this Licence.

## 5 Licence Fee Reviews

[REDACTED]

## 6 Rates, Taxes and Electricity Costs

- 6.1 The parties acknowledge and agree that the Licensee's electricity costs for the Premises and the Licensee's Fixtures are in addition to the Licence Fee (unless otherwise agreed between the parties).
- 6.2 The Licensee must install separate metering for the electricity to the Premises and the Licensee's Fixtures if the Licensee is reasonably able and permitted by any relevant Authority to do so. The Licensee will bear the cost of separate metering and must pay to the suppliers all charges for the separately metered electricity that is consumed or used by the Licensee.
- 6.3 In the event that:
- (a) the Licensee acting reasonably, is unable to install separate metering under clause 6.2; or
  - (b) the Licensor provides electricity services to the Licensee for the Premises and the Licensee's Fixtures,

then the Licensor must allow the Licensee to install (at its own cost) a private check meter. The Licensee must reimburse the Licensor for the electricity that is consumed or used by the Licensee on presentation of a tax invoice from the Licensor.

## 7 Licensor's Rights

- 7.1 Subject to clauses 7.2 and 7.3, the Licensor reserves its rights to access the Premises together with all necessary workmen and equipment at all reasonable times, if it gives the Licensee reasonable notice, to:
- (a) determine the condition of the Premises or whether the Licensee is complying with this Licence;
  - (b) exercise its rights under any provision of this Licence;
  - (c) carry out any work to the Premises, the Services or any adjacent property, including work for:
    - (i) the purpose of installing any new Services for Railway Purposes;

- (ii) the purpose of repairing, maintaining or replacing any Services which are used for Railway Purposes; or
    - (iii) any other reason;
  - (d) enable it to comply with any Law or any notice from any Authority affecting the Premises; and
  - (e) do anything for Railway Purposes or to avoid or rectify an Emergency Event.
- 7.2 When exercising its rights under clause 7.1, the Licensor:
- (a) must take all necessary steps to minimise any disruption to the Licensee or the Licensee's Fixtures; and
  - (b) is not required to give reasonable notice or enter at a reasonable time in the case of an Emergency Event.
- 7.3 In addition to the Licensor's rights under clause 7.1, the Licensor may enter upon the Premises (other than the Equipment Cabin) with or without workmen at all reasonable times (making good any damage thereby done to the Premises) and after reasonable prior notice to the Licensee and always accompanied by a representative of the Licensee (except where a representative is not required by the Licensee or in the case of an Emergency Event in which the safety of persons or property is at risk) for the purpose of inspecting repairing altering or renewing any such pipes, mains, wires, flues and drains reserved to the Licensor as aforesaid or of adding any others thereto or to undertake any activity required under the Railway Legislation, provided that the Licensor must not enter or break into the Equipment Cabin.
- 7.4 In the case of an Emergency Event the Licensor may call upon appropriate emergency services for assistance and the Licensee will not hold the Licensor responsible if such emergency services force entry into the Premises. The Premises must have clearly marked signage with the name of the Licensee and the current phone number (24 hours) to be called in the case of an Emergency Event. The Licensee may place additional signage notifying contractors and other parties of the presence of the Licensee's Fixtures and the Licensee's contact details.
- 8 No Interference**
- 8.1 The Licensor acknowledges that the Permitted Use relies upon the transmission and reception of radiofrequency emissions which may suffer interference from structures or facilities constructed in proximity to the Premises. The Licensee has satisfied itself that as at the Commencing Date the Premises are satisfactory for the Permitted Use.
- 8.2 The Licensor must not knowingly permit the erection of any structure on, above, below or immediately adjacent to the Premises or the Licensor's Improvements which may cause physical or radio interference with the Permitted Use of the Premises by the Licensee.
- 8.3 Despite clause 8.2, if in the normal conduct of the Licensor's railway operations the Licensor proposes to erect any structure on, above, below or immediately adjacent to the Premises or the Licensor's Improvements which is likely to cause physical or radio interference with the Permitted Use, then the Licensor must give at least 180 days' notice in writing to the Licensee of its proposal.
- 8.4 The Licensee acknowledges:
- (a) the existence of electrical direct currents within the Rail Corridor;
  - (b) the existence of noise and vibration emanating from the Rail Corridor; and

- (c) the possibility of increases in electrical currents within, and noise and vibration emanating from, the Rail Corridor due to additional railway facilities or Rail Infrastructure Facilities being installed in the Rail Corridor at any time.

The Licensee agrees that it must take adequate precautions to protect the Licensee and the Licensee's Fixtures from the effects referred to in this clause 8.4.

## 9 Insurance

9.1 The Licensee will at all times during the Term maintain with an independent and reputable insurer the following insurances in connection with the Premises for the duration of the Terms (including any extension or renewal of the Term or any holding over):

- (a) public liability insurance for at least [REDACTED] per occurrence which includes the Licensor as an insured;
- (b) workers' compensation insurance policy or registrations as required by law to fully insure liability of the Licensee under statute to all workers who work in or around the Premises for the Licensee; and
- (c) unless the Licensee self insures in respect to its property, property insurance which covers loss of or damage to any property installed on the Premises owned by or in the care, custody or control of the Licensee as a result of all insurable risks which a prudent insured with a risk profile similar to that of the Licensee would maintain acting on the advice of a reputable broker, for the full replacement value.

9.2 If requested in writing by the Licensor (but no more than once per year during the Term), the Licensee must, within a reasonable time, provide the Licensor with a copy of the certificates of currency (for all insurances) evidencing the insurances effected and maintained, or caused to be effected or maintained, in compliance with clause 9.1.

9.3 For so long as Telstra Corporation Limited (ACN 051 775 556) is the Licensee, the Licensor acknowledges that the Licensee:

- (a) [REDACTED]; and
- (b) holds (and must at all relevant times continue to hold) a licence pursuant to the *Safety, Rehabilitation and Compensation Act 1998* (Cth).

9.4 The Licensee must not do anything (as notified by the Licensor) which may:

- (a) affect the Licensor's rights under any insurance policy; or
- (b) increase an insurance premium payable taken out by the Licensor.

The Licensee must pay any increase in the premium payable on any insurance taken out by the Licensor on account of extra risk caused by the Licensee's use or occupation of the Premises provided the Licensor's insurer provides evidence that the increased premium payable is as a direct result of the Licensee's use or occupation of the Premises.

## 10 Licensee's Indemnity and Warranty

### 10.1 Indemnity

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

**10.2 Proportionate liability**

Any liability that the Licensee may have to the Licensor, its officers, employees, contractors, representatives or agents pursuant to clause 10.1 will be reduced proportionately to the extent that such liability was attributable to the negligent act or omission of the Licensor or its officers, employees, contractors, representatives or agents.

**10.3 EMF Indemnity**

- [REDACTED]
- [REDACTED]

**10.4 Continuing indemnity**

Each warranty and indemnity of the Licensee contained in this Licence is a:

- (a) continuing obligation of the Licensee and remains in full force and effect after the termination of this Licence; and
- (b) separate and independent obligation of the Licensee.

**11 Licensee's Rights and Obligations**

- 11.1 Subject to the specified rights of the Licensor and if the Licensee complies with the Licensee's obligations under this Licence, then the Licensee may hold and occupy the Premises without interruption by the Licensor or anyone claiming through the Licensor.
- 11.2 The Licensee is granted a licence in respect of the areas indicated on the drawing forming **Annexure C** to lay and use cables over, under and within the Premises and repair, replace, renew, alter, maintain and upgrade these cables for the Permitted Use.

- 11.3 The Licensee must do the following during the Term and when installing, repairing, maintaining, upgrading or removing the Licensee's Fixtures or when it is otherwise in or around the Railway Premises, as applicable:
- (a) **(as-built drawings)** when the Licensee has installed the Initial Licensee's Fixtures, must provide the Licensor with a copy of the as-built drawings, final occupation certificate and any other documentation the Licensor reasonably requires in respect of the completed installation;
  - (b) **(Permitted Use)** use the Licensee's Fixtures for the Permitted Use and must not carry out or permit the carrying out of any activity which causes or may cause any interference or damage or which may impact on the continued safe operation of the Railway Premises;
  - (c) **(access)** if the Licensee requires access to the Railway Premises, the Premises or the tunnel in which the Premises is located to install, repair, maintain, upgrade or remove the Licensee's Fixtures, the Licensee must comply with clause 11.5;
  - (d) **(safe manner)** operate the Licensee's Fixtures:
    - (i) in a safe manner in accordance with Australian Radiation Protection Standard Maximum Exposure Levels to Radiofrequency Fields 3kHz to 300 GHz: Radiation Protection Series No. 3 or such other standard as may from time to time be compiled in replacement of that standard; and
    - (ii) within the Licensee's specified licensed radio frequency spectrum (as approved by the Australian Communications and Media Authority), so as to not cause any interference, disturbance, damage or loss to the Licensor or any other occupant who has an interest in the land of which the Premises forms part or to their equipment including their transmission rights or transmission capabilities;
  - (e) **(consents)** at its cost, obtain and comply with the terms of all consents required from any Authority that are necessary to lawfully install the Licensee's Fixtures and carry on the Permitted Use in the Premises and/or to carry out any additions or alterations approved by the Licensor in accordance with this Licence. If requested by the Licensor, the Licensee must promptly provide a copy of any such consents;
  - (f) **(compliance with all Laws and the requirements of all Authorities)** at its cost, comply with all applicable Laws and the enforceable requirements of all Government Agencies in connection with the Premises, the Permitted Use, the Licensee's Fixtures and any work carried out by the Licensee under this Licence (including installation of the Licensee's Fixtures), including but not limited to Laws in relation to WH&S and telecommunications;
  - (g) **(comply with Authorisations)** obtain, maintain and comply with all applicable Authorisations;
  - (h) **(comply with policies and procedures)** comply at all times with any policies and procedures of the Licensor notified by the Licensor to the Licensee from time to time, in relation to rail safety, access to and occupation of the Railway Premises and WH&S;
  - (i) **(security)** comply with the Licensor's directions regarding security of the Premises and the Licensee's Fixtures. The Licensee has the sole responsibility for security of the Premises and the Licensee's Fixtures and the Licensee must not rely on the Licensor in keeping any part of the Railway Premises secure;
  - (j) **(rail industry safety induction)** ensure that all employees, contractors and agents of the Licensee entering onto the Premises have completed a Rail Industry Safety Induction (RISI), being the minimum certification that the Licensor requires an individual to hold in

order to gain physical access to the railway tracks within the Railway Infrastructure Facilities;

- (k) **(notification)** immediately give the Licensor notice of:
  - (i) any damage to or defect in the Railway Premises or any Service provided by the Licensor, any infectious diseases or pests on the Railway Premises;
  - (ii) any notice from an Authority having enforceable jurisdiction in relation to any relevant activity of the Licensee; and
  - (iii) any circumstances likely to cause any such damage or defect in the Railway Premises or any Services provided by the Licensor of which the Licensee is aware;
- (l) **(induction)** if the Licensor requires, attend from time to time, any induction course or training session relating to the Railway Premises, the safe operation of the Railway by the Licensor or any matter relating to the Railway Legislation;
- (m) **(separate rates)** pay on time any rates, taxes or other charges payable to an Authority exclusively in respect of the Premises (or the Licensee's occupancy or use of the Premises); and
- (n) **(list of Licensee's agents)** promptly, when requested by the Licensor, give the Licensor a list of any agent, employee, licensee, contractor and invitee of the Licensee who have been provided with a key or other access authority in respect of the Premises.

#### 11.4 Licensee's obligations regarding the Licensee's Fixtures

The Licensee must, in relation to the Licensee's Fixtures:

- (a) **(use)** use the Licensee's Fixtures for legal purposes only;
- (b) **(frequency approval)** obtain the written consent of the Licensor (which must not be unreasonably withheld) and any appropriate Authority to all frequencies and other requirements related to radiocommunication transmission or the provision of telecommunication services used on the Premises;
- (c) **(maintain the Licensee's Fixtures)** maintain the Licensee's Fixtures and the Premises in a good and safe state of repair;
- (d) **(competency)** install, use, repair, maintain, upgrade and remove the Licensee's Fixtures in a workmanlike and competent manner;
- (e) **(contractors)** engage and use only professional and expert contractors approved by the Licensor, who must not unreasonably refuse its approval;
- (f) **(repair damage)** immediately repair to the Licensor's satisfaction any damage directly or indirectly caused to the Railway Premises by the repair, maintenance, upgrade or removal of the Licensee's Fixtures or by the Licensee's Fixtures' presence on the Premises;
- (g) **(Licensee's Fixtures affixed)** ensure that the Licensee's Fixtures are always securely affixed to the Premises with no risk of any part of the Licensee's Fixtures falling on to the Railway Premises;
- (h) **(no danger)** ensure that no person or property (of the Licensor or any other person) is endangered by the Licensee's Fixtures;
- (i) **(removal of rubbish)** remove from the Premises all rubbish and debris resulting from the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures; and



- (j) **(monitoring)** ensure that electromagnetic radiation emanating from the Licensee's Fixtures remains at or below appropriate and safe standards.

**11.5 Access to the Premises to install, repair, maintain, upgrade or remove the Licensee's Fixtures**

- (a) Subject to clause 13.2, if the Licensee requires access to the Premises or the tunnel in which the Premises is located to carry out any Transmission Configuration Works comprising the installation of additional antenna on the pole, tower or structure, then before doing so the Licensee must satisfy the Licensor that the work will not affect the structural integrity of that pole, tower or structure.
- (b) The Licensee has access to and from the Premises and the Licensee's Fixtures at all times with or without all necessary vehicles, equipment and workman if such access is required to the Premises and the Licensee's Fixtures to carry out work that does not constitute High Risk Construction Work or work within the Rail Corridor.
- (c) For the installation of the Initial Licensee's Fixtures and if access is required to the Premises and the Licensee's Fixtures to carry out work that does constitute High Risk Construction Work or work within the Rail Corridor, then the Licensee must:
  - (i) **(approval)** submit an access application to the Licensor's Engineering Maintenance Interface (or if that body ceases to exist, the entity replacing that body) for approval and obtain all necessary consents in accordance with 11.3(e);
  - (ii) **(plans and specifications)** give the Licensor detailed plans and specifications showing the location, design and lay-out of the Licensee's Fixtures and the proposed materials to be used, and any other information reasonably required by the Licensor, in respect of the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures;
  - (iii) **(Licensor's consent)** obtain the Licensor's written consent (which must not be unreasonably withheld) to:
    - (A) the plans and specifications given to it under clause 11.5(c)(ii);
    - (B) the contractors that the Licensee intends to use to install, repair, maintain, upgrade or remove the Licensee's Fixtures; and
  - (iv) **(explosive power tools)** ensure that explosive power tools are not used for the purpose of securing any material to any prestressed concrete components of any building, structure, fixture or improvement erected, placed or made upon the Premises and the Licensee must, if reasonably required by the Licensor, erect prohibiting notices to that effect;
  - (v) **(timing)** start and complete the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures as soon as practicable after the Licensor approves the plans and specifications given to it under clause 11.5(c)(ii);
  - (vi) **(completion)** ensure that completion of the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures is in accordance with the plans and specifications approved by the Licensor;
  - (vii) **(notice of completion)** notify the Licensor immediately on completion of the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures; and

(viii) **(insurance):**

- (A) ensure that it keeps in effect a public liability policy of insurance with a limit of not less than [REDACTED] which includes the Licensor as an insured and otherwise complies with clause 9.1; and
- (B) if requested in writing by the Licensor, provide the Licensor with a certificate of currency confirming the insurance required under this clause 11.5(c)(viii), such request not to be made more than once a year during the Term.

- (d) The Licensor's Engineering Maintenance Interface must respond to the application made under clause 11.5(c)(i), notifying when access may be taken and for what duration, as soon as practicable (and in any event not more than 10 Business Days) after receipt of that application. The Licensor must ensure that access is granted to the Licensee in the same manner and with the same priority as it grants access to its own employees and contractors for maintenance or repair of the Railway Premises for Railway Purposes. The Licensee must reimburse the Licensor for the reasonable costs incurred by the Licensor in considering and reviewing the application and any plans and specifications and if applicable for any other costs incurred to enable the Licensee's work to be carried out.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.6 **General prohibitions on Licensee**

The Licensee must not, except as permitted under this Licence:

- (a) **(no damage)** put anything which is likely to cause obstruction or damage down any drain;
- (b) **(no advertising)** conduct any advertising in or in the vicinity of the Premises so that it can be seen from outside the Premises without the consent of the Licensor;
- (c) **(dangerous substances)** store or use flammable, toxic, explosive or dangerous substances, whether solid, liquid or gaseous, on the Railway Premises, including but not limited to Hazardous Materials and Dangerous Goods;
- (d) **(overloading)** bring onto the Railway Premises any equipment or article which does or could, in the Licensor's reasonably formed opinion, overload or damage the Railway Premises or disturb the efficient operation of any Service;
- (e) **(Services)** overload, modify or obstruct the Services provided to the Premises or the Railway Premises, or use them for other than their intended purpose;
- (f) **(alteration of Licensor's property)** other than in accordance with the consent of the Licensor (which may be given or withheld in the Licensor's absolute discretion), alter the Licensor's property or use the Licensor's property for anything other than its intended use;
- (g) **(alteration of the Premises)** subject to clause 11.5, make any alterations or additions to the Premises (except within the equipment shelter or room) without the Licensor's consent (which must not be unreasonably withheld);
- (h) **(no interference)** in relation to the Permitted Use or the Licensee's Fixtures:
  - (i) disrupt, obstruct or interfere with the use of the Premises, the Rail Infrastructure Facilities or the Railway Premises by the Licensor, Third Party Operators or other occupiers of the tunnel in which the Premises is located; or

- (ii) annoy, disturb or offend the owner or occupier of neighbouring land;
- (i) **(no obstruction)** obstruct any air or light from entering any part of the Railway Premises through any shaft or opening, and must not obstruct any air vent, duct or skylight in the Railway Premises or any emergency exit;
- (j) **(smoking)** smoke in any part of the Premises;
- (k) **(no Contamination)** cause to the Premises or the adjacent land any Contamination or further Contamination;
- (l) **(Licensor's interest)** do anything which could prejudice the Licensor's interest in the Premises or the Railway Premises;
- (m) **(access to railway tracks)** enter, access or place any item on or near any railway tracks situated in the Railway Premises; and
- (n) **(no activity to cause signal failure)** carry out or allow the carrying out of any activity which may give rise to or cause a failure of any railway signalling instruments or which may cause any Rail Infrastructure Facility to fail to operate or to malfunction for any period of time.

#### 11.7 Cost and risk of Licensee's obligations

- (a) If the Licensee is obliged to do anything under this Licence, it must do so at its cost and at its risk.
- (b) Where the Licensee requires access to, or needs to carry out work within the Rail Corridor, the Licensee must pay any cost incurred by the Licensor in connection with that access or work including any reasonable costs of the Licensor in respect of the supervision of work, the provision of engineers, watchmen, flagmen and other technical or safe working staff and provision of advice in relation to the Licensee's use of the Premises or the tunnel in which the Premises is located.
- (c) If the Licensee changes the Licensee's Fixtures or their operation after the Commencing Date and as a result of that change the Licensor is reasonably required to undertake works to restore the operation of electricity or other services to the Railway Premises to their manner of operation before that change, then the Licensee must pay all costs of those works (including but not limited to associated costs such as investigation and engineering costs).

#### 11.8 Emergency Events

- (a) If the Licensee becomes aware of an Emergency Event occurring at any time, the Licensee must:
  - (i) immediately inform the Licensor of the Emergency Event;
  - (ii) to the extent that the Licensee is responsible for the rectification of the Emergency Event, keep the Licensor informed in respect of the Emergency Event; and
  - (iii) provide the Licensor with sufficient information to enable the Licensor to assess the nature of the Emergency Event and the likely effect of the Emergency Event.
- (b) The Licensee must co-operate with the Licensor and assist the Licensor to take such action as the Licensor directs is necessary to avert any danger or minimise or remove the risk or adverse impact of the Emergency Event, including ceasing or suspending the Permitted Use for a specified period of time (as notified by the Licensor), and the Licensee must immediately comply with such direction.

- (c) If an Emergency Event is caused by a default by the Licensee of its obligations under this Licence, upon notification by the Licensor specifying the default, the Licensee must immediately cease the operation of the Licensee's Fixtures until such time as the default causing the Emergency Event is rectified to the Licensor's satisfaction. The Licensee acknowledges that the Licensor may terminate this Licence in accordance with clause 19.2 as a result of the Licensee's default.

## 12 Track Possession

### 12.1 Requirement for Track Possession

The Licensee acknowledges and agrees that a Track Possession may be required each time the Licensee requires access to the Premises to undertake the works required to install and maintain the Licensee's Fixtures and other necessary works as required under this Licence, comply with an obligation under this Licence or exercise any right in connection with this Licence.

### 12.2 Track Possession timetable

If one or more Track Possession is required:

- (a) the Licensor will provide to the Licensee an indicative Track Possession timetable for the relevant period;
- (b) the Licensor and the Licensee will meet and agree an available date or dates from that timetable; and
- (c) the Licensor may require any party (including the Licensee and its employees, contractors and agents) which requires access to the Railway Corridor to enter into an access arrangement (determined by the Licensor in its absolute discretion).

### 12.3 Acknowledgement

The Licensee acknowledges and agrees that:

- (a) its access to the Railway Corridor during a Track Possession is subject to the other terms of this Licence;
- (b) the Licensor will not guarantee any date agreed for a Track Possession as fixed;
- (c) the Licensor may change the date for a Track Possession on short notice;
- (d) the Licensor may provide Third Party Operations and other persons with access to the Railway Corridor during the Track Possession (including for the performance of works in the Premises);
- (e) during any Track Possession the Licensor's protocol, rules and procedures for safety management when working in the Railway Corridor (as amended from time to time) will apply; and
- (f) the Licensee must reimburse the Licensor for the Licensor's Cost incurred by the Licensor in relation to providing the Licensee with a Track Possession which is not scheduled in the Licensor's major closedowns and weekend possession program.

### 12.4 Release and indemnity

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



### **13 Work Health and Safety**

#### **13.1 Compliance with WH&S Act and WH&S Regulation**

Despite any other provision in this Licence, to the extent that it is required at law to do so, the Licensee must at all times comply with the WH&S Act and WH&S Regulation and must provide to the Licensor upon request evidence that the Licensee is complying with the WH&S Act and WH&S Regulation, when required by the Licensor.

#### **13.2 High Risk Construction Works and installation of Initial Licensee's Fixtures**

- (a) In addition to any other obligation under this Licence, when installing the Initial Licensee's Fixtures, if at any time the Licensee intends to carry out works on the Premises which impacts on the Rail Corridor and which constitutes a Construction Project comprising High Risk Construction Work, the Licensee must ensure that:
- (i) before any such work commences, the principal contractor it appoints to carry out the works prepares a site specific WH&S Management Plan which complies with the WH&S Act and WH&S Regulation;
  - (ii) the Licensor is provided with a copy of the WH&S Management Plan prior to the works commencing;
  - (iii) the WH&S Management Plan is maintained and kept current during the course of the work;
  - (iv) the principal contractor is directed to maintain, review and comply with:
    - (A) any relevant SWMS attached to the WH&S Management Plan;
    - (B) the requirements of the WH&S Act and the WH&S Regulation including any requirements associated with sub-contractors;
  - (v) the activities of the principal contractor are monitored to the extent necessary to determine whether the principal contractor is complying with the matters set out in clause 13.3(a)(iv);
  - (vi) if the principal contractor is not complying with the matters set out in clause 13.3(a)(iv), the principal contractor is directed to take action immediately to comply with those requirements; and
  - (vii) if a risk to health or safety of a person arises because of any non-compliance by the principal contractor, the principal contractor is directed to stop work immediately and not to resume work until the SWMS or those requirements, or both, are complied with (unless an immediate cessation of work is likely to increase the risk, in which event the principal contractor must be directed to stop work as soon as it is safe to do so).
- (b) In this clause 'principal contractor' has the meaning attributed to those words by the WH&S Regulation.

**13.3 Licensee carrying out relevant work**

- (a) If the Licensee is conducting any work referred to in clause 13.2, the Licensee must:
- (i) prior to the works commencing, undertake an assessment of the risks associated with the works to determine whether the works constitute High Risk Construction Work and, if so prepare a SWMS;
  - (ii) maintain and keep current the SWMS;
  - (iii) ensure that the work is carried out in accordance with the SWMS; and
  - (iv) if a risk to the health and safety of a person arises because of non-compliance with the SWMS, ensure that work is stopped immediately and not resumed until the SWMS is complied with (unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the work must be stopped as soon as it is safe to do so).
- (b) The Licensee must ensure that a copy of the WH&S Management Plan is available for inspection during the period in which the Construction Project is carried out by the following people:
- (i) the Licensor;
  - (ii) any person working at the Premises or about to commence work at the Premises;
  - (iii) any employee member of an WH&S committee;
  - (iv) any WH&S representative; and
  - (v) any person elected by the persons employed at the Premises to represent a group of employees on health and safety matters.

**14 Licensee's Fixtures and Make Good**

- 14.1 The Licensee's Fixtures are and remain the property of the Licensee even if that any part or parts thereof may be or become affixed to the Premises or to the tunnel in which the Premises is located.
- 14.2 Upon expiry or any sooner termination of this Licence (whether under clause 19 or otherwise), the Licensee must, unless otherwise agreed with the Licensor, remove the Licensee's Fixtures and restore any disturbance to the Premises caused by their installation or removal, and restore the Premises to the condition in which the Premises existed at the Commencing Date (fair wear and tear excepted), all at its cost. This includes an obligation to:
- (a) disconnect the Licensee's Fixtures from any connection to any Services provided to the Premises (for example, drainage, power, fire and emergency services, garbage, sewerage, trade waste and water) and terminate and make safe those connections;
  - (b) remove the Licensee's Fixtures from the Premises;
  - (c) restore the surface of the Premises to the condition it was in immediately before the installation of the Licensee's Fixtures, fair wear and tear excluded unless otherwise agreed by the Licensor;
  - (d) promptly vacate the Premises in a condition consistent with the Licensee's performance of its obligations under this Licence to maintain and repair the Premises (including but not limited to removal of all rubbish from the Premises);
  - (e) remove any cabling (if requested by the Licensor), signs, advertisements, notices or hoardings erected or painted by it on the Premises;

- (f) hand over all keys and opening devices provided by the Licensor to the Premises, including security access devices; and
  - (g) make good to the reasonable satisfaction of the Licensor, at the Licensee's cost and expense, any damage caused to the Premises in the course of complying with this clause.
- 14.3 Where necessary to remove the Licensee's Fixtures and/or perform any remedial works under clause 14.2, the Licensor will (notwithstanding the termination or expiry of the Licence) permit the Licensee to access the Premises on terms which are reasonably similar to those in this Licence and during such period, the Licensee must continue to pay the Licence Fee.
- 14.4 Without limiting its other rights under this Licence, if the Licensee fails to carry out any of the obligations set out in clause 14.2 within a reasonable period of time or within the period specified by the Licensor, having regard to the access granted by the Licensor under clause 14.3 the Licensor may, at the Licensee's cost after providing reasonable notice of its intention to do so, do any one or more of the following:
- (a) **(dismantle)** dismantle and remove the Licensee's Fixtures from the Premises;
  - (b) **(repair)** repair any damage to the Premises resulting from the dismantling and removal of the Licensee's Fixtures;
  - (c) **(storage)** store the Licensee's Fixtures at the Licensee's risk; and
  - (d) **(disposal)** if the Licensee does not claim the Licensee's Fixtures within one (1) month of the expiry termination of this Licence, the Licensee's Fixtures are regarded as abandoned by the Licensee and become the property of the Licensor, and the Licensor may sell or otherwise dispose of the Licensee's Fixtures, and keep the proceeds of the disposal.

## 15 Costs

15.1

[REDACTED]

15.2

[REDACTED]

## 16 Holding Over

- 16.1 If the Licensor permits the Licensee to continue to occupy the Premises beyond the Terminating Date, the Licensee does so as a yearly licensee only, at a licence fee payable annually in advance (determined yearly in accordance with clause 17) and otherwise on the same terms and conditions as this Licence.
- 16.2 The licence so created is determinable at any time by either party by 1 month's prior written notice (unless a shorter notice period is agreed by the Licensor and Licensee in writing) given to the other party to expire on any date.

## 17 Market Review of Licence Fee

- (a) If either party, at a date not more than 9 months and not less than 6 months before the Terminating Date, notifies the other party in writing of its assessment of the Current Market Licence Fee in respect of the Premises to apply from the commencing date of any holding over period (**Assessment**):

- (i) the notified party may accept the Assessment and in that event the Assessment of the Current Market Licence Fee will be the Licence Fee from the commencing date of the holding over period; or
  - (ii) if the notified party fails or refuses to accept the Assessment within 15 Business Days after receiving notice of the Assessment or if the parties are unable to agree on some other amount as the Current Market Licence Fee, the Current Market Licence Fee will be determined before the commencement of the holding over period in accordance with paragraphs (b) to (h) of this clause 17.
- (b) Either party may apply to the Independent Valuer to determine the Current Market Licence Fee to apply from the commencement of the holding over period.
- (c) The Independent Valuer must act as an expert and not as an arbitrator. Each party may submit to the Independent Valuer written valuations and submissions within 10 Business Days after the Independent Valuer has accepted the nomination to act. The Independent Valuer must take into consideration any written submissions received within those periods, but is not fettered by them and (subject to the matters referred to in the definition of such term as set out in this Licence) must determine the Current Market Licence Fee in accordance with its own judgment and the opinion which it formed. The Independent Valuer's determination is final and is binding on the Licensor and Licensee.
- (d) The Independent Valuer must be instructed to conclude its determination and must inform the Licensor and Licensee of it within 15 Business Days after having accepted the nomination to act.
- (e) The Licensor and Licensee must bear equally the total costs incurred by the Independent Valuer in determining the Current Market Licence Fee. Each party must bear its own costs of legal representation and the fees of any experts for giving evidence and for making valuations for the purpose of written submissions.
- (f) In the event that the Independent Valuer's determination of the Current Market Licence Fee has not been completed by the relevant commencement of the holding over period then the Licensee must on the commencement of the holding over period pay, on account of the licence fee payable for the first year of the holding over period, the same Licence Fee as is payable as at the Terminating Date [REDACTED]
- (g) If, upon completion of the Independent Valuer's determination, the Current Market Licence Fee is determined at an amount which is greater than the amount paid by the Licensee in accordance with clause 17(f) then the Licensee must within 20 Business Days of being notified of the determination pay to the Licensor the outstanding balance.
- (h) If neither party notifies the other party of its assessment of the Current Market Licence Fee in accordance with clause 17(a), then the licence fee on commencement of the holding over period will be the Licence Fee as at the Terminating Date [REDACTED]  
[REDACTED].
- (i) [REDACTED]  
[REDACTED]
- (j) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]







- (ii) right under an insurance policy in connection with the Railway Premises is prejudiced or a policy is cancelled or payment of a premium or a claim is refused by an insurer because of,
  - any act, negligence or default of the Licensee or the Licensee's agents.
- (c) The Licensee is not entitled to any relief from paying the Licence Fee or other charges to the extent the damage was caused or contributed to by the act, negligence or default of the Licensee or the Licensee's employees, contractors or agents.
- (d) Nothing in this clause obliges the Licensor to restore or reinstate the Railway Premises or the Premises.

### 21.3 Resumption

This Licence terminates if the Premises is resumed by any Authority. The Licensor is not liable to the Licensee in respect of the termination.

## 22 Notice

A notice, consent or other communication under this Licence:

- (a) must be in writing;
- (b) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
- (c) must be delivered or posted by prepaid express post to the address, or sent by email to the email address, of the Licensor or the Licensee (as applicable) set out in this Licence or such other address or email address as may be notified in writing from time to time; and
- (d) are taken to be received by the addressee:
  - (i) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
  - (ii) (in the case of express post sent to an address in another country) on the fourth Business Day after the date of posting;
  - (iii) (in the case of delivery by hand) on delivery at the address of the addressee; and
  - (iv) (in the case of email) at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

## 23 Rail Legislation

23.1 The Licensor draws to the attention of the Licensee that:

- (a) clauses 8(1) and (3) of Schedule 6A; and
- (b) clause 3 of Schedule 6B,

of the *Transport Administration Act 1988* (NSW) impose obligations on the Licensor and on the Licensee, including provisions that the Licensee must not damage, interfere with or obstruct any Rail Infrastructure Facilities and provisions for the payment of compensation where underground rail facilities are damaged.

**23.2 The Licensee:**

- (a) acknowledges its obligations under clause 8(3) of Schedule 6A and clause 3 of Schedule 6B of the *Transport Administration Act 1988* (NSW); and
- (b) indemnifies the Licensor against all claims for which the Licensor becomes liable arising from the Licensee's breach of its obligations under clause 8(3) of Schedule 6A of the *Transport Administration Act 1988* (NSW).

**24 Disputes****24.1 Dispute resolution**

If any dispute arises, the Licensor and Licensee must continue to comply with their respective obligations under this Licence (despite the existence of such dispute) and adhere to the following procedures to resolve the dispute:

- (a) a representative of the Licensor and the Licensee must meet at the request of either party;
- (b) if the dispute remains unresolved after the procedure in clause 24.1(a) has been followed, the general manager of property (or their nominee or successor) of the Licensee and the general manager of property (or their nominee) of the Licensor must meet at the request of either party;
- (c) if after the procedures in clauses 24.1(a) and 24.1(b) have been followed, the dispute has not been resolved, the Licensor and Licensee will jointly appoint a person within five Business Days who is of good repute and is an expert in the area relevant to the dispute;
- (d) if the Licensor and the Licensee cannot agree on the appointment of the expert within the five Business Day period, either the Licensor or the Licensee may request the Secretary General of the *Australian Commercial Disputes Centre Limited* to appoint an independent expert (other than an arbitrator) within 5 Business Days;
- (e) an expert determination conducted under this clause is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her knowledge and expertise;
- (f) subject to this clause, the expert will proceed in any manner he or she thinks fit and make such directions for the conduct and determination as he or she considers necessary;
- (g) the costs of the independent expert will be paid by the Licensor and the Licensee equally;
- (h) the Licensor and the Licensee will comply with any directions of the expert in respect of the determination of the expert;
- (i) the expert will be engaged on the basis that they must:
  - (i) disclose to the Licensor and the Licensee any interest he or she has in the outcome of the determination;
  - (ii) accept submissions from either party and provide copies of such submissions to the other party for comment; and
  - (iii) not communicate with one party without the knowledge of the other party;
- (j) unless otherwise agreed between the Licensor and the Licensee, which agreement must not be unreasonably withheld, the expert must notify the Licensor and the Licensee of his or her determination within 20 Business Days from the date on which the expert accepted his or her appointment under this clause;





[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

26.3 [Redacted]

[Redacted]

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26.4 [Redacted]

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26.5 [Redacted]

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**Reference Schedule**

<p><b>Item 1</b></p>	<p><b>Premises (Clause 1.1)</b></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>																									
<p><b>Item 2</b></p>	<p><b>Commencing Date (Clause 1.1)</b></p> <p>[REDACTED]</p>																									
<p><b>Item 3</b></p>	<p><b>Terminating Date (Clause 1.1)</b></p> <p>[REDACTED]</p>																									
<p><b>Item 4</b></p>	<p><b>Term (Clause 1.1)</b></p> <p>A period of twenty (20) years commencing on the Commencing Date and expiring on the Terminating Date.</p>																									
<p><b>Item 5A</b></p>	<p><b>Licence Fee (Clauses 1.1, 3 and 5)</b></p> <table border="1" data-bbox="405 927 1393 1245"> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> </table>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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<p><b>Item 5B</b></p>	<p><b>Review Factor (Clauses 1.1 and 5)</b></p> <p>[REDACTED]</p>																									
<p><b>Item 6</b></p>	<p><b>Notice (Clause 22)</b></p> <p><b>If to the Licensor:</b></p> <p>Property &amp; Revenue          Sydney Trains          36-46 George Street          Burwood NSW 2134          Attention: Associate Director Property &amp; Revenue          Email:</p> <p><b>If to the Licensee:</b></p> <p>c/- JLL          242 Exhibition Street          Melbourne VIC 3000          Attention: Property Management Director          Email: [REDACTED]</p>																									



[REDACTED]

**Executed** as a deed in New South Wales.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

**Executed** for and on behalf of **Rail Corporation New South Wales** (ABN 59 325 778 353) by its authorised delegate in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

**Signed Sealed and Delivered** for **Telstra Corporation Limited** (ABN 33 051 775 556) by its attorney under power of attorney registered book [REDACTED] in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Address

Rail Corporation New South Wales ABN 59 325 778 353

Telstra Corporation Limited ABN 33 051 775 556

## Fibre Duct Licence

Allens  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

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This agreement is made on

#### Parties

- 1 **Rail Corporation New South Wales** (ABN 59 325 778 353) of Level 20, 477 Pitt Street, Sydney NSW 2000 (*Licensor*); and
- 2 **Telstra Corporation Limited** (ABN 33 051 775 556) of Level 41, 242 Exhibition Street, Melbourne VIC 3000 (*Licensee*).

It is agreed as follows.

### 1 Definitions

1.1 In this Licence, unless the context otherwise requires:

**Authorisations** means any approvals, consent, exemption, filing, licence, notarisation, registration or waiver, however described, which are required by law or an Authority and any renewal or variation of any of them.

**Authority** includes the Commonwealth, the State, or any Federal, State or local Government Agency or administrative body or anybody exercising regulatory powers or other powers under Laws in respect of the Premises, services, heritage, environment, aviation or other activities, uses or transactions contemplated by this Licence which has jurisdiction or enforceable powers in the context of the relevant clause of this Licence.

**Base CPI** means the Consumer Price Index (All Groups) for Sydney last published immediately prior to the date being 12 months prior to the relevant anniversary of the Commencing Date.

**Business Day** means any day which is not a Saturday, Sunday or Public Holiday in New South Wales.

**Carrier** has the same meaning as given to it in the *Telecommunications Act 1997* (Cth) and includes a person entitled to operate a telecommunications base station or network under that Act pursuant to a nominated carrier declaration.

**Commencing Date** means the date specified in **Item 2** of the Reference Schedule.

**Construction Project** has the same meaning as given to it in the WH&S Regulations and is a project that involves Construction Work where the cost of the Construction Work is \$250,000 or more.

**Construction Work** has the same meaning as given to it in the WH&S Regulations and means any work carried out in connection with the construction, conversion, fitting-out, renovation, refurbishment, demolition, decommissioning or dismantling of a structure but does not include any of the following:

- (a) the manufacture of plant;
- (b) the prefabrication of elements, other than at a place specifically established for the Construction Work, for use in Construction Work;
- (c) the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place;
- (d) testing, maintenance, replacement or repair work of a minor nature carried out in connection with a structure;
- (e) mining or the exploration for or extraction of minerals.

**Contamination** has the same meaning as given to it in the *Contaminated Land Management Act*

1997 (NSW).

**Costs and Claims** means any:

- (a) duty, liability or obligation to any person;
- (b) cost or expense;
- (c) loss or damage; and
- (d) claim, proceeding, legal demand, legal notice, legal order or other legal requirement.

**Current CPI** means the Consumer Price Index (All Groups) for Sydney last published immediately prior to the next anniversary of the Commencing Date.

**Dangerous Good** has the same meaning as in the *Dangerous Goods Act 1975* (NSW).

**Emergency Event** means an actual or likely event or circumstance which arises and which may interfere with or threaten the use of the Premises or the Railway Premises by the Licensor for Railway Purposes and/or the continued and safe operation of the railway and Rail Infrastructure Facilities.

**Funding Agreement** means the funding agreement in respect of the Central Coast mobile coverage and station Wi-Fi project entered between Sydney Trains ABN 38 284 779 682 (as principal) and Telstra Corporation Limited ABN 33 051 775 556 (as contractor).

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**GST** has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hazardous Material** means material which, because it is toxic, corrosive, flammable, explosive or infectious or because it possesses some other dangerous characteristic, is potentially dangerous to the environment when stored or handled or any part of the environment is exposed to it.

**High Risk Construction Work** has the same meaning given to in the WH&S Regulations and is Construction Work that:

- (a) involves a risk of a person falling more than 2 metres;
- (b) is carried out on a telecommunications tower;
- (c) involves demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure;
- (d) involves, or is likely to involve, the disturbance of asbestos;
- (e) involves structural alterations or repairs that require temporary support to prevent collapse;
- (f) is carried out in or near a confined space;
- (g) is carried out in or near:
  - (i) a shaft or trench with an excavated depth greater than 1.5 metres; or
  - (ii) a tunnel;
- (h) involves the use of explosives;

- (i) is carried out on or near pressurised gas distribution mains or piping;
- (j) is carried out on or near chemical, fuel or refrigerant lines;
- (k) is carried out on or near energised electrical installations or services;
- (l) is carried out in an area that may have a contaminated or flammable atmosphere;
- (m) involves tilt-up or precast concrete;
- (n) is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians;
- (o) is carried out in an area at a workplace in which there is any movement of powered mobile plant;
- (p) is carried out in an area in which there are artificial extremes of temperature;
- (q) is carried out in or near water or other liquid that involves a risk of drowning;
- (r) involves diving work; or
- (s) involves demolition work or asbestos removal work for which a licence is required under the WH&S Regulations.

Despite the above, **High Risk Construction Work** excludes any Transmission Configuration Works within the Premises.

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)), entering into a compromise or arrangement with, or assignment for the benefit of any of its members or creditors, or any analogous event.

**Laws** means any present or future statutes, rules, regulations, proclamations, ordinances or by-laws present or future, or amendment, consolidation or replacement of them, whether federal, state or local.

**Licence** means this licence, the Reference Schedule and any annexure.

**Licence Fee** means the amount specified in **Item 5** of the Reference Schedule.

**Licensee's Fixtures** means the optical fibre cable of approximately [REDACTED] diameter.

**Licensor's Improvements** means the building or other structures on the Land upon or within which the Premises is situated.

**Permitted Use** means the installation, repair, maintenance, operation, replacement and removal of the Licensee's Fixtures including for the purpose of the Central Coast mobile coverage project, as is permitted by the Licensor under this Licence.

**Premises** means the locations described in **Item 1** of the Reference Schedule.

**Rail Corridor** means all land, leased, owned or occupied by the Licensor used in relation to the operation of the railway, and includes any easements or licences or any other legal or beneficial interest in land.

**Rail Infrastructure Facilities** has the same meaning as in the *Transport Administration Act 1988* (NSW) and includes rail infrastructure as that term is defined in the *Rail Safety Act 2008* (NSW).

**Railway Legislation** means the *Transport Administration Act 1988* (NSW), *Rail Safety Act 2008* (NSW) and any other legislation or regulation governing the Licensor's operations, including but not limited to the operation of railway passenger or freight services.

**Railway Premises** means all or any part of the land upon or within which the Premises is situated, together with all improvements from time to time on the land owned or used by the Licensor for Railway Purposes or for any other purpose and includes but is not limited to:

- (a) the Rail Corridor;
- (b) any Rail Infrastructure Facilities;
- (c) all underground and overhead passages which join improvements on the land to any other land; and
- (d) all plant, machinery, fittings, equipment, conveniences and amenities owned, leased or controlled by the Licensor, including but not limited to all railway track, railway stations, tunnels, civil works, associated track structures, over track structures, signalling systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other plant, equipment, buildings or facilities owned, leased or used by the Licensor.

**Railway Purposes** means any action or activity undertaken or required to be undertaken by the Licensor, in its absolute discretion, under the Railway Legislation for the use, control, safe operation, management, maintenance or repair of any railway infrastructure, facility or service, the Licensor's Property and the Rail Infrastructure Facilities.

**Reference Schedule** means the schedule which is annexed to this Licence.

**Related Body Corporate** means a related body corporate or an associated entity as each of those terms is used under the *Corporations Act 2001* (Cth).

**Services** means any services provided to the Premises or the Railway Premises by a Government Agency, service provider or the Licensor (for example drainage, power, fire and emergency services, garbage, sewerage, trade waste and water) and the pipes, wires and other means of providing those services to the Premises or the Railway Premises.

**SWMS** means a safe work method statement that has the same meaning given to it in the WH&S Regulations which:

- (a) describes how High Risk Construction Works associated with the Permitted Use is to be carried out;
- (b) identifies the work that is High Risk Construction Work;
- (c) specifies hazards relating to the High Risk Construction Work and risks to health and safety associated with those hazards;
- (d) describes the measures to be implemented to control the risks;
- (e) describes how the control measures are to be implemented, monitored and reviewed;
- (f) is prepared taking into account all relevant matters, including:
  - (i) circumstances at the workplace that may affect the way in which the High Risk Construction Work is carried out; and
  - (ii) if the High Risk Construction Work is carried out in connection with a Construction Project – the WH&S management plan that has been prepared for the workplace; and
- (g) be set out and expressed in a way that is readily accessible and understandable to persons who use it.



**Term** means the term specified in **Item 4** of the Reference Schedule.

**Terminating Date** means the date specified in **Item 3** of the Reference Schedule.

**Third Party Operator** means an entity which has entered into a commercial agreement with the Licensor to operate trains in the Rail Corridor.

**Track Possession** means authority granted by the Licensor to the Licensee which closes, alters the operation of, or occupy a defined portion of the Railway Corridor for a specified period of time.

**Transmission Configuration Works** means the repair, replacement, modification or augmentation of the Licensee's transmission components on any poles, towers or structure that it owns or occupies.

**WH&S** means work health and safety.

**WH&S Act** means the *Work Health and Safety Act 2011* (Cth).

**WH&S Regulation** means the *Work Health and Safety Regulations 2011* (Cth).

**WH&S Management Plan** has the same meaning given to it in the WH&S Regulations and means a plan which must include:

- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the project;
- (b) the arrangements in place, between any persons conducting a business or undertaking at the workplace where the Construction Project is being undertaken, for consultation, co-operation and the co-ordination of activities in relation to compliance with their duties under the WH&S Act and Regulations;
- (c) the arrangements in place for managing any work health and safety incidents that occur;
- (d) any site specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules; and
- (e) the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the workplace.

1.2 Except where the context otherwise requires a reference in this Licence to:

- (a) statutes, regulations, ordinances or by-laws will be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending consolidating or replacing the same from time to time;
- (b) the singular number includes a reference to the plural number and vice versa;
- (c) a reference to *includes* or *including* means includes, without limitation or including, without limitation, respectively;
- (d) any gender includes a reference to the other genders and each of them;
- (e) any parties, persons, facts, events or documents alternatively or collectively must be construed as a reference to all of them and to each and any one or more of them;
- (f) any person (including the Licensor and the Licensee) includes the legal personal representatives, successors in title or assigns of such person as the context may require;
- (g) a company or a corporation includes a person and vice versa;
- (h) a clause number means a reference to the respective clauses of this Licence;
- (i) any organisations, associations, societies, groups or bodies will, in the event that any of them ceases to exist or is reconstituted, renamed or replaced or that any of its powers or

functions are transferred to any other entity body or group refer respectively to any such entity body or group established or constituted in lieu thereof or succeeding to similar powers or functions;

- (j) a reference to the Licensee or the Licensor includes reference to each of that party's employees, officers, contractors, agents, service suppliers, licensees, invitees and those persons who are at any material time under the control of and upon the land upon or within which the Premises is situated with the consent of that party; and
  - (k) a period of days is inclusive of public holidays and weekends and a period of months is a reference to calendar months.
- 1.3 Marginal notes and headings where used in this Licence are only for the purpose of identification and are not to be considered in the interpretation of the provisions of this Licence.
- 1.4 Unless the context requires otherwise, words and phrases used in this Licence that have a specific meaning in the GST Law will have the same meaning in this Licence.
- 1.5 Where any party to this Licence is comprised of more than one person all and any covenants agreements conditions and obligations expressed in or implied by this Licence binds all of such persons jointly and each of them severally.
- 1.6 Any covenant (whether express or implied) by a party to this Licence not to do or omit any act or thing to extend to an obligation not to permit any third party to do or to omit the same.
- 1.7 If any covenant agreement or other provision of this Licence or its application to any party or in any circumstances is or becomes unenforceable or invalid or its operation is or becomes excluded by operation of law or otherwise then and in any such eventuality the remaining covenants agreements and provisions of this Licence will not be affected thereby but remains in full force and effect and is valid and enforceable to the fullest extent permitted by Law.
- 1.8 This Licence is without prejudice to any right power or (except as provided in clause 1.9) obligation of the Licensee pursuant to or arising under the *Telecommunications Act 1997* (Cth), any statute, ordinance or regulation promulgated thereunder or replacement thereof.
- 1.9 To the extent that an activity is permitted to be undertaken pursuant to this Licence, provided that the Licensee duly complies with its obligations under this Licence in relation to the carrying out of that activity, the Licensor will not require to receive notice of that activity as may otherwise have been required under Schedule 3 of the *Telecommunications Act 1997* (Cth) (unless the installation of the Licensee's Fixtures requires a development application in which case this clause 1.9 does not apply).

## **2 Permitted Use**

- 2.1 The Licensor licenses the Premises to the Licensee for the Term for the Permitted Use only.
- 2.2 The Licensee acknowledges and agrees:
- (a) to accept the Premises in its current condition and subject to any possible existing Contamination except that the Licensee will not be required to remedy any Contamination existing at the Premises as at the Commencing Date except to the extent that the Licensee has caused or contributed to any Contamination (including by disturbance to, or exacerbating, any existing Contamination) at the Premises; and
  - (b) that the Licensee has made its own investigations and enquiries in relation to the Premises as to its suitability for the Permitted Use.

### 3 Payment of Licence Fee

- 3.1 The Licensee must pay the Licence Fee yearly in advance on or before the Commencing Date and each anniversary of the Commencing Date, if demanded.
- 3.2 The Licence Fee must be paid by electronic funds transfer from the bank account of the Licensee to an account directed by the Licensor from time to time or such other manner as the Licensor may nominate provided that written notice of any such nomination is received by the Licensee not less than 20 Business Days prior to the date upon which the Licence Fee is payable.

### 4 GST

- 4.1 **(Recovery of GST)** If GST is payable, or notionally payable, on a Supply made under or in connection with this Licence, the party providing the consideration for that Supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that Supply (**GST Amount**). Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other consideration for the Supply is provided. If a Tax Invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 30 days of the receipt of a Tax Invoice. This clause 4 does not apply to the extent that the consideration for the Supply is expressly stated to be GST inclusive or the Supply is subject to reverse charge.
- 4.2 **(Liability net of GST)** Where any indemnity, reimbursement or similar payment under this Licence is based on any cost, expense or other liability, it shall be reduced by any Input Tax Credit entitlement, or notional Input Tax Credit entitlement, in relation to the relevant cost, expense or other liability.
- 4.3 **(Adjustment events)** If an adjustment event occurs in relation to a Supply made under or in connection with this Licence, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- 4.4 **(Survival)** This clause 4 will not merge upon completion and will continue to apply after expiration or termination of this Licence.

### 5 Licensor's Rights

- 5.1 Subject to clauses 5.2 and 5.3, the Licensor reserves its rights to access the Premises together with all necessary workmen and equipment at all reasonable times, if it gives the Licensee reasonable notice, to:
- (a) determine the condition of the Premises or whether the Licensee is complying with this Licence;
  - (b) exercise its rights under any provision of this Licence;
  - (c) carry out any work to the Premises, the Services or any adjacent property, including work for:
    - (i) the purpose of installing any new Services for Railway Purposes;
    - (ii) the purpose of repairing, maintaining or replacing any Services which are used for Railway Purposes; or
    - (iii) any other reason;
  - (d) enable it to comply with any Law or any notice from any Authority affecting the Premises; and
  - (e) do anything for Railway Purposes or to avoid or rectify an Emergency Event.

- 5.2 When exercising its rights under clause 5.1, the Licensor:
- (a) must take all necessary steps to minimise any disruption to the Licensee or the Licensee's Fixtures; and
  - (b) is not required to give reasonable notice or enter at a reasonable time in the case of an Emergency Event.
- 5.3 In addition to the Licensor's rights under clause 5.1, the Licensor may enter upon the Premises with or without workmen at all reasonable times (making good any damage thereby done to the Premises) and after reasonable prior notice to the Licensee and always accompanied by a representative of the Licensee (except where a representative is not required by the Licensee or in the case of an Emergency Event in which the safety of persons or property is at risk) for the purpose of inspecting repairing altering or renewing any such pipes, mains, wires, flues and drains reserved to the Licensor as aforesaid or of adding any others thereto or to undertake any activity required under the Railway Legislation.
- 5.4 In the case of an Emergency Event the Licensor may call upon appropriate emergency services for assistance and the Licensee will not hold the Licensor responsible if such emergency services force entry into the Premises. The Premises must have clearly marked signage with the name of the Licensee and the current phone number (24 hours) to be called in the case of an Emergency Event. The Licensee may place additional signage notifying contractors and other parties of the presence of the Licensee's Fixtures and the Licensee's contact details.

## 6 No Interference

- 6.1 The Licensor acknowledges that the Permitted Use relies upon the transmission and reception of radiofrequency emissions which may suffer interference from structures or facilities constructed in proximity to the Premises. The Licensee has satisfied itself that as at the Commencing Date the Premises are satisfactory for the Permitted Use.
- 6.2 The Licensee acknowledges:
- (a) the existence of electrical direct currents within the Rail Corridor;
  - (b) the existence of noise and vibration emanating from the Rail Corridor; and
  - (c) the possibility of increases in electrical currents within, and noise and vibration emanating from, the Rail Corridor due to additional railway facilities or Rail Infrastructure Facilities being installed in the Rail Corridor at any time.

The Licensee agrees that it must take adequate precautions to protect the Licensee and the Licensee's Fixtures from the effects referred to in this clause 6.2.

## 7 Insurance

- 7.1 The Licensee will at all times during the Term maintain with an independent and reputable insurer the following insurances in connection with the Premises for the duration of the Terms (including any extension or renewal of the Term or any holding over):
- (a) public liability insurance for at least [REDACTED] which includes the Licensor as an insured;
  - (b) workers' compensation insurance policy or registrations as required by law to fully insure liability of the Licensee under statute to all workers who work in or around the Premises for the Licensee; and
  - (c) unless the Licensee self insures in respect to its property, property insurance which covers loss of or damage to any property installed on the Premises owned by or in the



**8.2 Proportionate liability**

Any liability that the Licensee may have to the Licensor, its officers, employees, contractors, representatives or agents pursuant to clause 8.1 will be reduced proportionately to the extent that such liability was attributable to the negligent act or omission of the Licensor or its officers, employees, contractors, representatives or agents.

**8.3 EMF Indemnity**

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

**8.4 Continuing indemnity**

Each indemnity of the Licensee contained in this Licence is a:

- (a) continuing obligation of the Licensee and remains in full force and effect after the termination of this Licence; and
- (b) separate and independent obligation of the Licensee.

**9 Licensee's Rights and Obligations**

9.1 Subject to the specified rights of the Licensor and if the Licensee complies with the Licensee's obligations under this Licence, then the Licensee may hold and occupy the Premises without interruption by the Licensor or anyone claiming through the Licensor.

9.2 The Licensee is granted a licence within the Rail Corridor between [REDACTED] to lay and use cables over, under and within the Premises and repair, replace, renew, alter, maintain and upgrade these cables for the Permitted Use.

9.3 The Licensee must do the following during the Term and when installing, repairing, maintaining, upgrading or removing the Licensee's Fixtures or when it is otherwise in or around the Railway Premises, as applicable:

- (a) **(as-built drawings)** when the Licensee has installed the Licensee's Fixtures, must provide the Licensor with a copy of the as-built drawings of the cables installed within the duct and the Railway Corridor, including slack loops, joint locations and new interfaces to existing pits and any other documentation the Licensor reasonably requires in respect of the completed installation;
- (b) **(Permitted Use)** use the Licensee's Fixtures for the Permitted Use and must not carry out or permit the carrying out of any activity which causes or may cause any interference or damage or which may impact on the continued safe operation of the Railway Premises;
- (c) **(access)** if the Licensee requires access to the Railway Premises, the Premises or the land upon or within which the Premises is situated to install, repair, maintain, upgrade or remove the Licensee's Fixtures, the Licensee must comply with clause 9.5;
- (d) **(safe manner)** operate the Licensee's Fixtures:

- (i) in a safe manner in accordance with Australian Radiation Protection Standard Maximum Exposure Levels to Radiofrequency Fields 3kHz to 300 GHz: Radiation Protection Series No. 3 or such other standard as may from time to time be compiled in replacement of that standard; and
  - (ii) within the Licensee's specified licensed radio frequency spectrum (as approved by the Australian Communications and Media Authority), so as to not cause any interference, disturbance, damage or loss to the Licensor or any other occupant who has an interest in the land upon or within which the Premises is situated or to their equipment including their transmission rights or transmission capabilities;
- (e) **(consents)** at its cost, obtain and comply with the terms of all consents required from any Authority that are necessary to lawfully install the Licensee's Fixtures and carry on the Permitted Use in the Premises and/or to carry out any additions or alterations approved by the Licensor in accordance with this Licence. If requested by the Licensor, the Licensee must promptly provide a copy of any such consents;
- (f) **(compliance with all Laws and the requirements of all Authorities)** at its cost, comply with all applicable Laws and the enforceable requirements of all Government Agencies in connection with the Premises, the Permitted Use, the Licensee's Fixtures and any work carried out by the Licensee under this Licence (including installation of the Licensee's Fixtures), including but not limited to Laws in relation to WH&S and telecommunications;
- (g) **(comply with Authorisations)** obtain, maintain and comply with all applicable Authorisations;
- (h) **(comply with policies and procedures)** comply at all times with any policies and procedures of the Licensor notified by the Licensor to the Licensee from time to time, in relation to rail safety, access to and occupation of the Railway Premises and WH&S;
- (i) **(security)** comply with the Licensor's directions regarding security of the Premises and the Licensee's Fixtures. The Licensee has the sole responsibility for security of the Premises and the Licensee's Fixtures and the Licensee must not rely on the Licensor in keeping any part of the Railway Premises secure;
- (j) **(rail industry safety induction)** ensure that all employees, contractors and agents of the Licensee entering onto the Premises have completed a Rail Industry Safety Induction (RISI), being the minimum certification that the Licensor requires an individual to hold in order to gain physical access to the railway tracks within the Railway Infrastructure Facilities;
- (k) **(notification)** immediately give the Licensor notice of:
  - (i) any damage to or defect in the Railway Premises or any Service provided by the Licensor, any infectious diseases or pests on the Railway Premises;
  - (ii) any notice from an Authority having enforceable jurisdiction in relation to any relevant activity of the Licensee; and
  - (iii) any circumstances likely to cause any such damage or defect in the Railway Premises or any Services provided by the Licensor of which the Licensee is aware;
- (l) **(induction)** if the Licensor requires, attend from time to time, any induction course or training session relating to the Railway Premises, the safe operation of the Railway by the Licensor or any matter relating to the Railway Legislation;

- (m) (**separate rates**) pay on time any rates, taxes or other charges payable to an Authority exclusively in respect of the Premises (or the Licensee's occupancy or use of the Premises); and
- (n) (**list of Licensee's agents**) promptly, when requested by the Licensor, give the Licensor a list of any agent, employee, licensee, contractor and invitee of the Licensee who have been provided with a key or other access authority in respect of the Premises.

#### 9.4 Licensee's obligations regarding the Licensee's Fixtures

The Licensee must, in relation to the Licensee's Fixtures:

- (a) (**use**) use the Licensee's Fixtures for legal purposes only;
- (b) (**frequency approval**) obtain the written consent of the Licensor (which must not be unreasonably withheld) and any appropriate Authority to all frequencies and other requirements related to radiocommunication transmission or the provision of telecommunication services used on the Premises;
- (c) (**maintain the Licensee's Fixtures**) maintain the Licensee's Fixtures and the Premises in a good and safe state of repair;
- (d) (**competency**) install, use, repair, maintain, upgrade and remove the Licensee's Fixtures in a workmanlike and competent manner;
- (e) (**contractors**) engage and use only professional and expert contractors approved by the Licensor, who must not unreasonably refuse its approval;
- (f) (**repair damage**) immediately repair to the Licensor's satisfaction any damage directly or indirectly caused to the Railway Premises by the repair, maintenance, upgrade or removal of the Licensee's Fixtures or by the Licensee's Fixtures' presence on the Premises;
- (g) (**Licensee's Fixtures affixed**) ensure that the Licensee's Fixtures are always securely affixed to the Premises with no risk of any part of the Licensee's Fixtures falling on to the Railway Premises;
- (h) (**no danger**) ensure that no person or property (of the Licensor or any other person) is endangered by the Licensee's Fixtures;
- (i) (**removal of rubbish**) remove from the Premises all rubbish and debris resulting from the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures; and
- (j) (**monitoring**) ensure that electromagnetic radiation emanating from the Licensee's Fixtures remains at or below appropriate and safe standards.

#### 9.5 Access to the Premises to install, repair, maintain, upgrade or remove the Licensee's Fixtures

- (a) Subject to clause 11.2, if the Licensee requires access to the Premises or the land upon or within which the Premises is situated to carry out any Transmission Configuration Works comprising the installation of additional antenna on the pole, tower or structure, then before doing so the Licensee must satisfy the Licensor that the work will not affect the structural integrity of that pole, tower or structure.
- (b) The Licensee has access to and from the Premises and the Licensee's Fixtures at all times with or without all necessary vehicles, equipment and workman if such access is required to the Premises and the Licensee's Fixtures to carry out work that does not constitute High Risk Construction Work or work within the Rail Corridor.



- (c) For the installation of the Licensee's Fixtures and if access is required to the Premises and the Licensee's Fixtures to carry out work that does constitute High Risk Construction Work or work within the Rail Corridor, then the Licensee must:
- (i) **(approval)** submit an access application to the Licensor's Engineering Maintenance Interface (or if that body ceases to exist, the entity replacing that body) for approval and obtain all necessary consents in accordance with 9.3(e);
  - (ii) **(plans and specifications)** give the Licensor detailed plans and specifications showing the location, design and lay-out of the Licensee's Fixtures and the proposed materials to be used, and any other information reasonably required by the Licensor, in respect of the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures;
  - (iii) **(Licensor's consent)** obtain the Licensor's written consent (which must not be unreasonably withheld) to:
    - (A) the plans and specifications given to it under clause 9.5(c)(ii);
    - (B) the contractors that the Licensee intends to use to install, repair, maintain, upgrade or remove the Licensee's Fixtures; and
  - (iv) **(explosive power tools)** ensure that explosive power tools are not used for the purpose of securing any material to any prestressed concrete components of any building, structure, fixture or improvement erected, placed or made upon the Premises and the Licensee must, if reasonably required by the Licensor, erect prohibiting notices to that effect;
  - (v) **(timing)** start and complete the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures as soon as practicable after the Licensor approves the plans and specifications given to it under clause 9.5(c)(ii);
  - (vi) **(completion)** ensure that completion of the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures is in accordance with the plans and specifications approved by the Licensor;
  - (vii) **(notice of completion)** notify the Licensor immediately on completion of the installation, repair, maintenance, upgrade or removal of the Licensee's Fixtures; and
  - (viii) **(insurance):**
    - (A) ensure that it keeps in effect a public liability policy of insurance with a limit of not less than [REDACTED] which includes the Licensor as an insured and otherwise complies with clause 7.1; and
    - (B) if requested in writing by the Licensor, provide the Licensor with a certificate of currency confirming the insurance required under this clause 9.5(c)(viii), such request not to be made more than once a year during the Term.
- (d) The Licensor's Engineering Maintenance Interface must respond to the application made under clause 9.5(c)(i), notifying when access may be taken and for what duration, as soon as practicable (and in any event not more than 10 Business Days) after receipt of that application. The Licensor must ensure that access is granted to the Licensee in the same manner and with the same priority as it grants access to its own employees and contractors for maintenance or repair of the Railway Premises for Railway Purposes. The Licensee must reimburse the Licensor for the reasonable costs incurred by the Licensor in considering and reviewing the application and any plans and specifications and if

applicable for any other costs incurred to enable the Licensee's work to be carried out.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### 9.6 General prohibitions on Licensee

The Licensee must not, except as permitted under this Licence:

- (a) **(no additional cable)** install any additional cables or equipment within the Premises for any purpose;
- (b) **(no damage)** put anything which is likely to cause obstruction or damage down any drain;
- (c) **(no advertising)** conduct any advertising in or in the vicinity of the Premises so that it can be seen from outside the Premises without the consent of the Licensor;
- (d) **(dangerous substances)** store or use flammable, toxic, explosive or dangerous substances, whether solid, liquid or gaseous, on the Railway Premises, including but not limited to Hazardous Materials and Dangerous Goods;
- (e) **(overloading)** bring onto the Railway Premises any equipment or article which does or could, in the Licensor's reasonably formed opinion, overload or damage the Railway Premises or disturb the efficient operation of any Service;
- (f) **(Services)** overload, modify or obstruct the Services provided to the Premises or the Railway Premises, or use them for other than their intended purpose;
- (g) **(alteration of Licensor's property)** other than in accordance with the consent of the Licensor (which may be given or withheld in the Licensor's absolute discretion), alter the Licensor's property or use the Licensor's property for anything other than its intended use;
- (h) **(alteration of the Premises)** subject to clause 9.5, make any alterations or additions to the Premises (except within the equipment shelter or room) without the Licensor's consent (which must not be unreasonably withheld);
- (i) **(no interference)** in relation to the Permitted Use or the Licensee's Fixtures:
  - (i) disrupt, obstruct or interfere with the use of the Premises, the Rail Infrastructure Facilities or the Railway Premises by the Licensor, Third Party Operators or other occupiers of the land upon or within which the Premises is situated; or
  - (ii) annoy, disturb or offend the owner or occupier of neighbouring land;
- (j) **(no obstruction)** obstruct any air or light from entering any part of the Railway Premises through any shaft or opening, and must not obstruct any air vent, duct or skylight in the Railway Premises or any emergency exit;
- (k) **(smoking)** smoke in any part of the Premises;
- (l) **(no Contamination)** cause to the land upon or within which the Premises is situated or the adjacent land any Contamination or further Contamination;
- (m) **(Licensor's interest)** do anything which could prejudice the Licensor's interest in the land upon or within which the Premises is situated, the Premises or the Railway Premises;
- (n) **(access to railway tracks)** enter, access or place any item on or near any railway tracks situated in the Railway Premises; and
- (o) **(no activity to cause signal failure)** carry out or allow the carrying out of any activity which may give rise to or cause a failure of any railway signalling instruments or which

may cause any Rail Infrastructure Facility to fail to operate or to malfunction for any period of time.

#### **9.7 Cost and risk of Licensee's obligations**

- (a) If the Licensee is obliged to do anything under this Licence, it must do so at its cost and at its risk.
- (b) Where the Licensee requires access to, or needs to carry out work within the Rail Corridor, the Licensee must pay any cost incurred by the Licensor in connection with that access or work including any reasonable costs of the Licensor in respect of the supervision of work, the provision of engineers, watchmen, flagmen and other technical or safe working staff and provision of advice in relation to the Licensee's use of the Premises or the land upon or within which the Premises is situated.
- (c) If the Licensee changes the Licensee's Fixtures or their operation after the Commencing Date and as a result of that change the Licensor is reasonably required to undertake works to restore the operation of electricity or other services to the Railway Premises to their manner of operation before that change, then the Licensee must pay all costs of those works (including but not limited to associated costs such as investigation and engineering costs).

#### **9.8 Emergency Events**

- (a) If the Licensee becomes aware of an Emergency Event occurring at any time, the Licensee must:
  - (i) immediately inform the Licensor of the Emergency Event;
  - (ii) to the extent that the Licensee is responsible for the rectification of the Emergency Event, keep the Licensor informed in respect of the Emergency Event; and
  - (iii) provide the Licensor with sufficient information to enable the Licensor to assess the nature of the Emergency Event and the likely effect of the Emergency Event.
- (b) The Licensee must co-operate with the Licensor and assist the Licensor to take such action as the Licensor directs is necessary to avert any danger or minimise or remove the risk or adverse impact of the Emergency Event, including ceasing or suspending the Permitted Use for a specified period of time (as notified by the Licensor), and the Licensee must immediately comply with such direction.
- (c) If an Emergency Event is caused by a default by the Licensee of its obligations under this Licence, upon notification by the Licensor specifying the default, the Licensee must immediately cease the operation of the Licensee's Fixtures until such time as the default causing the Emergency Event is rectified to the Licensor's satisfaction. The Licensee acknowledges that the Licensor may terminate this Licence in accordance with clause 16.2 as a result of the Licensee's default.

### **10 Track Possession**

#### **10.1 Requirement for Track Possession**

The Licensee acknowledges and agrees that a Track Possession may be required each time the Licensee requires access to the Premises to undertake the works required to install and maintain the Licensee's Fixtures and other necessary works as required under this Licence, comply with an obligation under this Licence or exercise any right in connection with this Licence.

#### **10.2 Track Possession timetable**

If one or more Track Possession is required:

- (a) the Licensor will provide to the Licensee an indicative Track Possession timetable for the relevant period;
- (b) the Licensor and the Licensee will meet and agree an available date or dates from that timetable; and
- (c) the Licensor may require any party (including the Licensee and its employees, contractors and agents) which requires access to the Railway Corridor to enter into an access arrangement (determined by the Licensor in its absolute discretion).

**10.3 Acknowledgement**

The Licensee acknowledges and agrees that:

- (a) its access to the Railway Corridor during a Track Possession is subject to the other terms of this Licence;
- (b) the Licensor will not guarantee any date agreed for a Track Possession as fixed;
- (c) the Licensor may change the date for a Track Possession on short notice;
- (d) the Licensor may provide Third Party Operations and other persons with access to the Railway Corridor during the Track Possession (including for the performance of works in the Premises);
- (e) during any Track Possession the Licensor's protocol, rules and procedures for safety management when working in the Railway Corridor (as amended from time to time) will apply; and
- (f) the Licensee must reimburse the Licensor for the Licensor's Cost incurred by the Licensor in relation to providing the Licensee with a Track Possession which is not scheduled in the Licensor's major closedowns and weekend possession program.

**10.4 Release and indemnity**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**11 Work Health and Safety**

**11.1 Compliance with WH&S Act and WH&S Regulation**

Despite any other provision in this Licence, to the extent that it is required at law to do so, the Licensee must at all times comply with the WH&S Act and WH&S Regulation and must provide to the Licensor upon request evidence that the Licensee is complying with the WH&S Act and WH&S Regulation, when required by the Licensor.

**11.2 High Risk Construction Works and installation of Licensee's Fixtures**

- (a) In addition to any other obligation under this Licence, when installing the Licensee's Fixtures, if at any time the Licensee intends to carry out works on the Premises which

impacts on the Rail Corridor and which constitutes a Construction Project comprising High Risk Construction Work, the Licensee must ensure that:

- (i) before any such work commences, the principal contractor it appoints to carry out the works prepares a site specific WH&S Management Plan which complies with the WH&S Act and WH&S Regulation;
  - (ii) the Licensor is provided with a copy of the WH&S Management Plan prior to the works commencing;
  - (iii) the WH&S Management Plan is maintained and kept current during the course of the work;
  - (iv) the principal contractor is directed to maintain, review and comply with:
    - (A) any relevant SWMS attached to the WH&S Management Plan;
    - (B) the requirements of the WH&S Act and the WH&S Regulation including any requirements associated with sub-contractors;
  - (v) the activities of the principal contractor are monitored to the extent necessary to determine whether the principal contractor is complying with the matters set out in clause 11.3(a)(iv);
  - (vi) if the principal contractor is not complying with the matters set out in clause 11.3(a)(iv), the principal contractor is directed to take action immediately to comply with those requirements; and
  - (vii) if a risk to health or safety of a person arises because of any non-compliance by the principal contractor, the principal contractor is directed to stop work immediately and not to resume work until the SWMS or those requirements, or both, are complied with (unless an immediate cessation of work is likely to increase the risk, in which event the principal contractor must be directed to stop work as soon as it is safe to do so).
- (b) In this clause 'principal contractor' has the meaning attributed to those words by the WH&S Regulation.

### 11.3 Licensee carrying out relevant work

- (a) If the Licensee is conducting any work referred to in clause 11.2, the Licensee must:
  - (i) prior to the works commencing, undertake an assessment of the risks associated with the works to determine whether the works constitute High Risk Construction Work and, if so prepare a SWMS;
  - (ii) maintain and keep current the SWMS;
  - (iii) ensure that the work is carried out in accordance with the SWMS; and
  - (iv) if a risk to the health and safety of a person arises because of non-compliance with the SWMS, ensure that work is stopped immediately and not resumed until the SWMS is complied with (unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the work must be stopped as soon as it is safe to do so).
- (b) The Licensee must ensure that a copy of the WH&S Management Plan is available for inspection during the period in which the Construction Project is carried out by the following people:
  - (i) the Licensor;

- (ii) any person working at the Premises or about to commence work at the Premises;
- (iii) any employee member of an WH&S committee;
- (iv) any WH&S representative; and
- (v) any person elected by the persons employed at the Premises to represent a group of employees on health and safety matters.

**12 Licensee's Fixtures and Make Good**

12.1 The Licensee's Fixtures are and remain the property of the Licensee even if that any part or parts thereof may be or become affixed to the Premises or to the land upon or within which the Premises is situated.

12.2 At least 24 months prior to the Terminating Date, either party may offer to (if the Licensor) have transferred to it or (if the Licensee) transfer, the Licensee's Fixtures and specify the proposed commercial terms of that transfer, having regard to the market value of the Licensee's Fixtures at the time of the offer, including terms as to purchase price, the Licensee's obligations at the Terminating Date with respect to the Licensee's Fixtures and make good. If a party gives a notice under this clause 12.2:

- (a) the notified party may accept the offer by written notice delivered to the notifying party within 20 Business Days after receipt of the offer (time being of the essence);
- (b) if the notified party accepts the offer in accordance with clause 12.2(a), the acceptance will be binding on the Licensor and the Licensee on and from the date of acceptance; and
- (c) if the notified party does not accept the offer in accordance with clause 12.2(a), within 20 Business Days after receipt of the offer, the parties must meet and negotiate in good faith to seek to agree a mutually acceptable commercial basis on which the Licensee will transfer title of the Licensee's Fixtures to the Licensor.

12.3 If no notice is given in accordance with clause 12.2 or if the parties cannot reach an agreement in accordance with clause 12.2(c), the market value of the Licensee's Fixtures will be calculated as follows:

(L P) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12.4 On or before the Terminating Date or any sooner termination of this Licence, the Licensor must pay the amount agreed under clause 12.2 or calculated under clause 12.3 by electronic funds transfer to the bank account directed by the Licensee.

- 12.5 Once the payment is made in accordance with clause 12.4, title to the Licensee's Fixtures is transferred to and vests in the Licensor free from any encumbrances. The Licensee represents and warrants to the Licensor that as of the date of transfer:
- (a) the Licensee is not aware of any unregistered dealings, encumbrances or other rights that affect the Licensee's Fixtures; and
  - (b) there is no subsisting or threatened proceedings or claims against the Licensee with respect to the Licensee's Fixtures.
- 12.6 On or before the Terminating Date or any sooner termination of this Licence, the Licensee must:
- (a) remove any signs or notices erected or painted by it on the Premises; and
  - (b) make good to the reasonable satisfaction of the Licensor, at the Licensee's cost and expense, any damage caused to the Premises in the removal of the signs or notices.

If the Licensee fails to carry out its obligations set out in this clause 12.6 within a reasonable time or within the period specified by the Licensor, the Licensor may, at the Licensee's cost after providing reasonable notice of its intention to do so, carry out those works.

### 13 Costs

13.1

[REDACTED]

13.2

[REDACTED]

### 14 Holding Over

- 14.1 If the Licensor permits the Licensee to continue to occupy the Premises beyond the Terminating Date, the Licensee does so as a yearly licensee only and otherwise on the same terms and conditions as this Licence.
- 14.2 The licence so created is determinable at any time by either party by 12 months' prior written notice (unless a shorter notice period is agreed by the Licensor and Licensee in writing) given to the other party to expire on any date.

### 15 Assignment and Sub-Letting

- 15.1 Subject to clause 15.2 the Licensee must not:
- (a) assign this Licence;
  - (b) sub-license the Premises (or any part thereof); and/or
  - (c) grant rights of access to the Premises,
- without the prior written consent of the Licensor, such consent will not be unreasonably withheld.
- 15.2 The Licensee may, without giving prior notice to the Licensor, sub-license the Premises (or any part thereof) or grant rights of access to the Premises to a Related Body Corporate, provided that as soon as practicable after doing so the Licensee notifies the Licensor of the grant of sub-licence or, as the case may be, rights of access under this clause and the name of the entity to which the sub-licence or, as the case may be, rights of access have been granted.
- 15.3 The Licensor may assign or transfer any rights or obligations under this Licence, or may novate this Licence, without the prior written consent of the Licensee.

15.4 Despite clause 15.1, the Licensor may withhold its consent if the Licensor (acting reasonably) is not satisfied that:

- (a) the Licensee has obtained sufficient coverage for the purpose of the Central Coast mobile coverage project under the Funding Agreement; and
- (b) the level of service provided by the Licensee for the purpose of the Central Coast mobile coverage project under the Funding Agreement will not be compromised.

**16 Termination**

**16.1 Events of default**

- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]
- █ [REDACTED]

**16.2 Licensor's termination after default**

- █ [REDACTED]
- █ [REDACTED]

**17 Damage and Destruction**

**17.1 Termination**

If the Premises, the Licensor's Improvements or the Railway Premises are damaged (other than to the extent that such damage is caused or contributed to by the act, negligence or default of the Licensee or the Licensee's employees, contractors or agents) the following apply:

- (a) if the Licensor gives the Licensee written notice that the Licensor considers that it is impracticable or undesirable to repair the damage, then either the Licensor or the Licensee may terminate this Licence by giving at least 5 Business Days' notice to the other and no compensation is payable in respect of that termination; and
- (b) if the Licensor does not repair the damage within a reasonable time after the Licensee requests the Licensor in writing to do so, the Licensee may terminate this Licence by giving at least 5 Business Days' written notice to the Licensor.



**17.2 Licensor's rights not affected**

- (a) Clause 17.1 does not affect any right of the Licensor to recover damages from the Licensee in respect of any damage or destruction to which it applies.
- (b) Nothing in this clause 17 affects any rights the Licensor may have if any:
  - (i) damage or destruction is caused or contributed to by; or
  - (ii) right under an insurance policy in connection with the Railway Premises is prejudiced or a policy is cancelled or payment of a premium or a claim is refused by an insurer because of,  
any act, negligence or default of the Licensee or the Licensee's agents.
- (c) Nothing in this clause obliges the Licensor to restore or reinstate the Railway Premises or the Premises.

**17.3 Resumption**

This Licence terminates if the Premises is resumed by any Authority. The Licensor is not liable to the Licensee in respect of the termination.

**18 Notice**

A notice, consent or other communication under this Licence:

- (a) must be in writing;
- (b) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
- (c) must be delivered or posted by prepaid express post to the address, or sent by email to the email address, of the Licensor or the Licensee (as applicable) set out in this Licence or such other address or email address as may be notified in writing from time to time; and
- (d) are taken to be received by the addressee:
  - (i) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
  - (ii) (in the case of express post sent to an address in another country) on the fourth Business Day after the date of posting;
  - (iii) (in the case of delivery by hand) on delivery at the address of the addressee; and
  - (iv) (in the case of email) at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

**19 Rail Legislation**

19.1 The Licensor draws to the attention of the Licensee that:

- (a) clauses 8(1) and (3) of Schedule 6A; and
- (b) clause 3 of Schedule 6B,

of the *Transport Administration Act 1988* (NSW) impose obligations on the Licensor and on the Licensee, including provisions that the Licensee must not damage, interfere with or obstruct any Rail Infrastructure Facilities and provisions for the payment of compensation where underground rail facilities are damaged.

19.2 The Licensee:

- (a) acknowledges its obligations under clause 8(3) of Schedule 6A and clause 3 of Schedule 6B of the *Transport Administration Act 1988* (NSW); and
- (b) indemnifies the Licensor against all claims for which the Licensor becomes liable arising from the Licensee's breach of its obligations under clause 8(3) of Schedule 6A of the *Transport Administration Act 1988* (NSW).

## 20 Disputes

### 20.1 Dispute resolution

If any dispute arises, the Licensor and Licensee must continue to comply with their respective obligations under this Licence (despite the existence of such dispute) and adhere to the following procedures to resolve the dispute:

- (a) a representative of the Licensor and the Licensee must meet at the request of either party;
- (b) if the dispute remains unresolved after the procedure in clause 20.1(a) has been followed, the general manager of property (or their nominee or successor) of the Licensee and the general manager of property (or their nominee) of the Licensor must meet at the request of either party;
- (c) if after the procedures in clauses 20.1(a) and 20.1(b) have been followed, the dispute has not been resolved, the Licensor and Licensee will jointly appoint a person within five Business Days who is of good repute and is an expert in the area relevant to the dispute;
- (d) if the Licensor and the Licensee cannot agree on the appointment of the expert within the five Business Day period, either the Licensor or the Licensee may request the Secretary General of the *Australian Commercial Disputes Centre Limited* to appoint an independent expert (other than an arbitrator) within 5 Business Days;
- (e) an expert determination conducted under this clause is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her knowledge and expertise;
- (f) subject to this clause, the expert will proceed in any manner he or she thinks fit and make such directions for the conduct and determination as he or she considers necessary;
- (g) the costs of the independent expert will be paid by the Licensor and the Licensee equally;
- (h) the Licensor and the Licensee will comply with any directions of the expert in respect of the determination of the expert;
- (i) the expert will be engaged on the basis that they must:
  - (i) disclose to the Licensor and the Licensee any interest he or she has in the outcome of the determination;
  - (ii) accept submissions from either party and provide copies of such submissions to the other party for comment; and
  - (iii) not communicate with one party without the knowledge of the other party;



- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

**Reference Schedule**

<p><b>Item 1</b></p>	<p><b>Premises</b>                  [REDACTED]                  [REDACTED]</p>
<p><b>Item 2</b></p>	<p><b>Commencing Date</b>                  [REDACTED]</p>
<p><b>Item 3</b></p>	<p><b>Terminating Date</b>                  [REDACTED]</p>
<p><b>Item 4</b></p>	<p><b>Term</b>                  A period of twenty (20) years commencing on the Commencing Date and expiring on the Terminating Date.</p>
<p><b>Item 5</b></p>	<p><b>Licence Fee</b>                  [REDACTED]</p>
<p><b>Item 6</b></p>	<p><b>Notice</b></p> <p><b>If to the Licensor:</b></p> <p style="padding-left: 40px;">Property &amp; Revenue                  Sydney Trains                  36-46 George Street                  Burwood NSW 2134                  Attention: Associate Director Property &amp; Revenue                  Email:</p> <p><b>If to the Licensee:</b></p> <p style="padding-left: 40px;">c/- JLL                  242 Exhibition Street                  Melbourne VIC 3000                  Attention: Property Management Director                  Email: [REDACTED]</p>

**Executed** as a deed in New South Wales.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

**Executed** for and on behalf of **Rail Corporation New South Wales** (ABN 59 325 778 353) by its authorised delegate in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

**Signed Sealed and Delivered** for **Telstra Corporation Limited** (ABN 33 051 775 556) by its attorney under power of attorney registered book [REDACTED] in the presence of:

[REDACTED]  
\_\_\_\_\_  
Witness Signature

[REDACTED]  
\_\_\_\_\_  
Attorney Signature

[REDACTED]  
\_\_\_\_\_  
Print Name

[REDACTED]  
\_\_\_\_\_  
Print Name

[REDACTED]