

# LOAN COPY

I hereby certify that the within is a true and correct copy of Lease No. 2281/100.

*K. McNamara*

Mr Keiran McNamara

Director General - Department of Environment and Conservation

1721.

2281/100

WESTERN AUSTRALIA  
CONSERVATION AND LAND MANAGEMENT ACT 1984  
TRANSFER OF LAND ACT 1893 AS AMENDED

## LEASE OF STATE FOREST (L)

### DESCRIPTION OF LAND (NOTE 1)

RESERVE 49174

### EXTENT

Portion

### VOLUME

### FOLIO

### ENCUMBRANCES (NOTE 2)

Nil

### LESSOR/S (NOTE 3)

The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of 17 Dick Perry Avenue,  
Kensington, Western Australia 6152

### LESSEE/S (NOTE 4)

Telstra Corporation Limited (ACN 051 775 556) of Level 41, 242 Exhibition Street,  
Melbourne, Victoria 3000

### TERM OF LEASE (NOTE 5)

Ten (10) years commencing 1 January 2009 and, unless determined earlier in accordance with this Agreement, expiring on 31 December 2018.

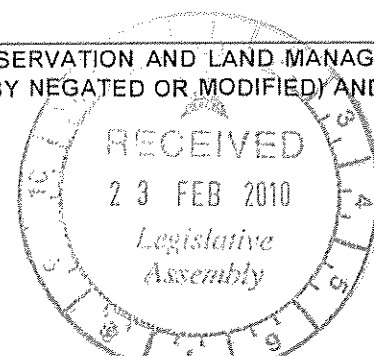
THE LESSOR HEREBY LEASES TO THE LESSEE the land above and herein described subject to the encumbrances (if any) shown hereon for the Term and at the Rent as described in the Schedule herein and otherwise in accordance with the provisions of this Lease.

SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE CONSERVATION AND LAND MANAGEMENT ACT 1984 & TRANSFER OF LAND ACT 1893 AS AMENDED (UNLESS HEREBY NEGATED OR MODIFIED) AND ALSO TO THE COVENANTS AND CONDITIONS CONTAINED HEREIN

Laid on the Table of the  
Legislative Assembly

23 FEB 2010

This paper should not be  
removed from the Chamber



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**CONSERVATION AND LAND MANAGEMENT  
EXECUTIVE BODY**

**and**

**TELSTRA CORPORATION LTD**

**LEASE NO. 2281/100**

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LEASE dated this 6th day of November 2009

BETWEEN the Conservation and Land Management Executive Body having its office at Hackett Drive Crawley in the State of Western Australia (hereinafter the 'Lessor' which expression where the context so admits includes the person for the time being entitled to the reversion immediately expectant upon the termination of the term hereby created) of the one part and

Telstra Corporation of care of Level 13, 215 Adelaide Street Brisbane QLD 4000 and Level 41, 242 Exhibition Street Melbourne VIC 3000 (hereunder the 'Lessee' which expression includes its successors and permitted assigns) of the other part.

In consideration, among other things, of the mutual promises contained in the Lease, the Lessor and the Lessee agree as follows:

## 1.0 DEFINITION AND INTERPRETATION

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### 1.1 *Defined Terms*

In the Lease:

**Adjoining 'Land'** means that portion of the Land which is within a 100 metre radius of the centre of the Premises.

**'Australian Communication Authority'** means the Commonwealth agency, for the time being, responsible for the licensing of parties to operate communication facilities from a specified location on a specified transmission frequency, and includes its successor or any future statutory authority having the same authority.

**'Break Date'** means the date stated in **Item 3A** of the Reference Schedule;

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

**'Date of Commencement'** means the date stated in **Item 2** of the Reference Schedule;

**'Date of Expiration'** means the date stated in **Item 3** of the Reference Schedule;

**'Fixed Review Date'** means each anniversary of the Commencement Date during the Term which is not a Market Review Date.

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

**'Land'** means the portion of Reserve No 49174

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

**'Lessee'** means the Lessee described on page one of the Lease and its successors and assigns or, if the Lessee is a natural person, its executors, administrators and assigns and in either case its employees, agents and contractors;

**'Lessee's Covenants'** means the covenants and agreements contained or implied in the lease to be observed and performed by the Lessee;

**'Lessor'** means the Lessor described on page one of the Lease and its successors and assigns and its employees, agents and contractors;

**Lessee's Licence** means the licence between the Lessee and the Shire of Gingin to use and occupy a mast on the Shire of Gingin's premises.

**'Market Rent'** means the rent that a tenant would be prepared to pay and an owner of the Premises would be prepared to accept taking into account:

- (1) the use of the Premises for the Permitted Use;
- (2) the provisions of this Lease;
- (3) the period which will elapse between the current review date and the next rent review date or, if there is not one, the termination of this Lease;
- (4) the full length of the Term and the benefit of any option to renew;
- (5) any improvement to the Premises by the Lessor;
- (6) the rent and any other amounts paid or payable by tenants in respect of other premises of a quality, nature, size and location similar to the Premises;
- (7) the use of the Premises and the provisions of this Lease;
- (8) the assumption that the Lessee has observed and performed all the provisions of this Lease; and
- (9) otherwise the proper and usual principles adopted by Valuers in Western Australia;

but disregarding:

- (10) the consequences of any default by the Lessee of this Lease which may have adversely affected the condition, rental value or market rent of the Premises;
- (11) any part of the Term which has expired;

(12) the value of the Lessee's Property and any goodwill created by the Lessee's business or activities on the Premises.

**'Market Review Date'** means the anniversary of the Commencement Date that occurs every 5 years during the term, which shall be counted consecutively across the Term.

**'Month'** means calendar month;

**'Premises'** means the Premises described in **Item 1** of the Reference Schedule;

**'Rates and Taxes'** means any separately assessed rate, tax, levy or any other charge imposed at any time during the Term of the Lease by any State, local or Federal governmental body, authority, department or instrumentality or any other authority of any kind, in relation to the Premises or any thing under or in connection with the Lease;

**'Reference Schedule'** means the schedule so described which is included in this document;

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

**'Rent'** means the amount stated in **Item 5** of the Reference Schedule;

**'Rent Payment Date'** means the Commencement date and thereafter the anniversary of the Commencement Date of every year during the Term.

**'Rent Review Date'** means each Fixed Review Date and Market Review Date.

**'State'** means the State of Western Australia in which the Premises and adjoining land are situated;

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

**'Term'** means the term of the Lease set out in **Item 4** of the Reference Schedule.

## **1.2 Interpretation**

In the Lease, unless the context otherwise requires:

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

- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) where an association, body or authority, statutory or not, ceases to exist or is reconstituted, renamed, or replaced or its powers and functions are transferred to any other association, body or authority, a reference to that association, body or authority means the association, body or authority (as the case may be) established or constituted in its place or assuming its powers and functions;
- (f) a reference to any thing includes a part of that thing;
- (g) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of and a party, annexure, exhibit and schedule to the Lease;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (j) a covenant or agreement on the part of two or more persons binds them jointly and severally.
- (k) where pursuant to this Lease but subject to any express provision to the contrary:
  - (i) one party is required to pay to the other any fees, costs, charges or similar expenses, such fees, costs, charges or similar expenses are to be limited to reasonable fees, costs charges or similar expenses likely to be incurred in the particular circumstances;
  - (ii) one party is given a discretion, then such discretion is to be acted upon in good faith and as is reasonable in the circumstances;
  - (iii) the opinion of a party or someone engaged or contracted by that party is relevant in determining any fact or obligation of either the Lessor or the Lessee then the opinion is to be formed in good faith and reasonable in the circumstances. In the event of a dispute, then such opinion is to be prima facie evidence of that fact only;

- (iv) one party's discretion, or opinion, or consent or specification is required, such discretion, or opinion, or consent or specification is to be given within a reasonable time after the other party's request.

## **2.0 EXCLUSION OF IMPLIED COVENANTS AND CONTRAVENTION OF STATUTE**

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### **2.1 *Inclusion of Implied Covenants***

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease and not excluded by law.

### **2.2 *Contravention of Statute – Severance***

Any provision of the Lease which is void, voidable, unenforceable or invalid because of any Statute must in any such case and to such extent be severed from the Lease, and the Lease must be read as though such provision did not form part of the Lease at that time. The clause has no effect if in the opinion of the Lessor severance alters the basic nature or any element of this Lease or is contrary to public policy.

## **3.0 GRANT TERM OF LEASE AND HOLDING OVER**

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### **3.1 *Grant of Lease***

The Lessor leases the Premises to the Lessee for the Term and subject to the terms and conditions of this Lease.

### **3.2 *Term of Lease***

The Term commences on the Date of Commencement as detailed in **Item 2** of the Reference Schedule and expires on the Date of Expiration as detailed in **Item 3** of the Reference Schedule subject to the provisions of the Lease.

### **3.3 *Termination on a Break Date***

If the Lessee gives the Lessor at least 6 months notice that it intends to end the Term on a Break Date stated in the notice, that Break Date becomes the Date of Expiration.

### **3.4 *Holding Over***

If the Lessee occupies the Premises after the Date of Expiration (other than pursuant to the grant of a further lease) the Lessee must do so as a twelve-monthly tenant for twelve-monthly terms thereafter on the same terms and conditions as the Lease as far as they apply to a twelve-monthly tenancy.



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## 4.0 RENT

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### 4.1 *Amount of the Rent*

The annual rent payable under this Lease from the Commencement Date is the amount specified in **Item 5** of the Schedule.

### 4.2 *Manner of Payment*

- (a) The Lessee must pay the rent by equal annual instalments in advance. Instalments are to be paid on each relevant Rent Payment Date. Rent payable for part of a year is to be proportionately adjusted on a daily basis.
- (b) The Lessee may pay the Rent by Electronic Funds Transfer ('EFT') to the account nominated in **Item 6** of the Reference Schedule. The Lessor may notify another account in Australia to which payment may be made by EFT to replace the account stated in **Item 6**. The notification must be at least 30 days prior to the date for payment of Rent. Payment by EFT by the Lessee's bank to the relevant nominated account by the due date is a full discharge for the payment.
- (c) The Lessee must provide the Lessor with formal notification when the payment has been made.

### 4.3 *Rent Review*

#### 4.3.1 *Fixed Rent Review*

On and from each Fixed Review Date (irrespective of when the review is actually carried out or determined), the Rent will be varied in accordance with the following formula (to the nearest whole dollar).

$$NR = PR \times \frac{105}{100}$$

where:

NR is the new Rent payable as a result of variation under this clause.

PR is the Rent payable immediately before variation under this clause.

#### 4.3.2 *Market Rent Review:*

- (a) On and from each Market Review Date the Rent will be varied to the greater of:

- (i) the amount determined under **clause 4.3.1** and
  - (ii) the market rent of the Leased Premises obtainable at the Market Review Date, as determined by the Valuer General as referred to in the Valuation of Land Act 1978 (WA).
- (b) For the purpose of that determination, the market rent shall be taken to be the Rent obtainable at the Market Review Date in a free and open market as if all the relevant factors, matters or variables used in proper land valuation practice having been taken into account, the Leased Premises were vacant and to let on similar terms to those contained in this Lease. Regard shall be had to comparable rents charged to other carriers providing public mobile telecommunication services which form part of a Telecommunications Network.
- (c) The costs of the determination shall be borne by the Lessor and the Lessee in equal shares.
- (d) Until the Lessee is notified of the Rent as varied, the Lessee must pay the Rent in effect prior to the variation on the Rent Payment Date. When so notified, the Lessee must pay the amount of any consequential adjustment within 30 days of receiving such notification.

#### *4.3.3 Delay*

No delay by the Lessor in enforcing any review of the rent prevents the Lessor from requiring at any time that the rent must be reviewed with effect from the dates for review of the rent specified in this clause 4 provided that the Lessor must have completed the review of the rent prior to the next Rent Review Date otherwise the Rent shall be the amount determined under clause 4.3.2(a)(i).

### **4.4 Goods and Services Tax**

#### *4.4.1 Definition*

**GST** means a goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Act or otherwise on a supply.

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

**Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

Taxable Supply has the same meaning as in the GST Act.

#### *4.4.2 Adjustment for GST*

- (a) Unless expressly included, the consideration for any Taxable Supply made by the Lessor under or in connection with this Lease does not include GST.
- (b) Subject to **clause 4.4.3** the Lessee must pay to the Lessor the amount of any GST that the Lessor pays or is liable to pay on a Taxable Supply made under this Lease in addition to and at the same time and in the same manner as the Lessee pays for that Taxable Supply.

#### *4.4.3 Tax Invoices*

The Lessor must issue a Tax Invoice to the Lessee in respect of any Taxable Supply under this Lease before the Lessee is required to pay the GST on the supply of the goods and services.

#### *4.4.4 Reimbursements*

If the Lessor is entitled under the Lease to be reimbursed or indemnified by the Lessee for a cost or expense incurred in connection with the Lease, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Lessor.

### **5.0 USE OF PREMISES**

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#### *5.1 Permitted Use*

The Lessee will use the Premises for the purpose of constructing, maintaining and operating a telecommunications network and telecommunications service and uses incidental thereto (non-residential). In doing so the Lessee will satisfy all technical requirements of the Lessor having regard to the Lessee's use of the Premises (28 days notice of which must be given to the Lessee from time to time) and hold a current certificate or licence issued by the Australian Communication Authority to operate at the Premises. In the event of any inconsistency between the Lessor's technical requirements and any licensing requirements the latter shall prevail.

#### *5.2 Adjoining Land*

##### *5.2.1 Installation, Maintenance etc.*

The Lessor grants to the Lessee the right to use the Adjoining Land in accordance with any reasonable stipulations by the Lessor during the installation, erection, construction, dismantling, repair, replacement, renewal,

maintenance and operation of the Lessee's telecommunications network and the telecommunications service. After using the Adjoining Land on any specific occasion, the Lessee will restore the surface of the Adjoining Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor. The provisions of **clause 7.2** will apply to the exercise by the Lessee of its rights pursuant to this **clause 5.2.1**.

### **5.3     *Requirements of Government Agencies***

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

### **5.4     *Fire Prevention***

- (a) The Lessee will duly and faithfully observe perform and comply with the provisions of the Bush Fires Act, 1954 and amendments thereof and the regulations thereunder and any proclamations and orders made under the provisions thereof so far as the same apply to the Premises. Any breach of the said Act and/or Regulations shall be regarded as a breach of the conditions of this lease.
- (b) The Lessee will not light or cause to be lit or permit any person to light any fire on the Premises except to the extent necessary for the purpose referred to in **clause 5.4(a)** hereof and then only with the written approval of the Lessor or any other person duly authorised by it to give such approval.
- (c) If the Lessee or its agents or workmen causes a fire to be lit on or at the Premises other than with permission granted in accordance with the provisions of this Lease, the Lessee shall, immediately upon becoming aware of the fire, take all reasonable measures at the Lessee's own expense to extinguish such fire and the Lessee shall be liable to reimburse to the Lessor any expenses incurred by the Lessor in taking measures to extinguish the fire in the event of the Lessee failing to do so.
- (d) The Lessee will clear firebreaks around the Premises as reasonably directed by the Lessor and to the reasonable satisfaction of the Lessor.

### **5.5     *Interference***

- (a) The Lessee covenants and agrees with the Lessor that it will take all necessary steps to ensure that the operation of its equipment on the Premises does not result in radio communications interference to any installation or use of radio or telecommunications equipment by the Lessor or other users of the Adjoining Land in existence at the date of the Lease and that subject to clause

7.2. it will indemnify the Lessor against any loss or liability suffered or incurred by it as a direct result of the Lessee's equipment causing any such interference.

- (b) The Lessee covenants and agrees with the Lessor that it will carry out a radio frequency test within 28 days of commencing its use of its equipment on the Premises to assess whether the operation of its equipment causes radio communications interference to any installation or use of radio or telecommunications equipment by the Lessor or other users of the Adjoining Land in existence at the date of the Lease and, subject to the test confirming that the Lessee's equipment is not causing such interference, the Lessor shall provide that Lessee with a written acknowledgment signed on behalf of the Lessor and the other users of the Adjoining Land to that effect.
- (c) The Lessor covenants and agrees with the Lessee that it will take all necessary action to ensure that its installation or use of radio or telecommunication equipment does not result in radio communications interference to the facility of the Lessee and to ensure that any structure or installation which it erects or installs within or upon the Adjoining Land does not interfere with the Lessee's use or enjoyment of the Premises.
- (d) The Lessor covenants and agrees with the Lessee that after receiving due and proper notification it will take all reasonable measures to ensure that all radio and telecommunications equipment on the Adjoining Land ('other equipment') will be turned off during servicing of the Lessee's equipment if the radio frequency level of the other equipment exceeds recommended occupational health and safety standards as published from time to time.

## **5.6 Other**

The Lessee will not :-

- (a) do anything in or about the Premises (notwithstanding any other consent given by the Lessor under this Lease) which in the reasonable opinion of the Lessor is noxious, offensive or audibly or visually a nuisance;
- (b) behave in a riotous, disorderly, offensive or improper manner or to perform any illegal act in or on the Premises;
- (c) subject to clause 8.3(b)(ii) fix or place signs, notices or advertisements either inside or outside the Premises unless it is consistent with the purpose of this Lease and acceptable to the Lessor; or
- (d) plant in or otherwise introduce to the Premises or the Forest any plant not indigenous to the Forest.

## 6.0 ACCESS TO THE PREMISES

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### 6.1 *Access*

The Lessor consents to the Lessee and persons authorised by the Lessee with or without materials, plant and other apparatus and vehicles entering the Land for the purpose of using the Premises and exercising its rights under the Lease at all times of the day and night during the Term.

6.2 Notwithstanding **clause 6.1** the Lessee shall observe all written instructions issued by the Lessor or its nominee regarding the prevention or spread of plant disease, in particular *Phytophthora* species. This shall include the washing down of vehicles and equipment and such other measures as may be required from time to time. Any cost involved in the carrying out of such measures shall be borne by the Lessee.

6.3 The Lessee shall permit the Lessor and its agents at all reasonable times (subject to giving the Lessee not less than 48 hours prior written notice) to enter upon the Premises to view the condition of any buildings erected on them, but in doing so the Lessee may insist on its representative accompanying, and the Lessor must comply with the Lessee's directions concerning health and safety.

6.4 The Lessee shall permit the Lessor and its agents and workman at all times to enter upon and carry out such duties and exercise such powers upon the Premises as it may be necessary or expedient to carry out or exercise in the administration or for the purposes of the Conservation and Land Management Act, 1984 or any other enactment or any regulation made thereunder and the Lessee shall not be entitled to any compensation by reason of any inconvenience or disturbance or loss occasioned by such action on the part of the Lessor, but in doing so the Lessee may insist on its representative accompanying, and the Lessor must comply with the Lessee's directions concerning health and safety.

6.5 Nothing in Clauses 6.3 or 6.4 will entitle the Lessor to enter any equipment shelter of the Lessee on the Premises or to interfere or tamper in any way with any equipment of the Lessee on the Premises.

## 7.0 INSURANCE, INDEMNITIES AND RELEASE

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### 7.1 *Obligation to Insure*

The Lessee will self-insure against any loss or damage which could be covered by public risk or liability insurance in respect to the Premises.

or

The Lessee will insure against any loss or damage which could be covered by public risk or liability insurance of at least \$10,000,000 for each accident or event in respect of the Premises and whenever so requested in writing produce to the Lessor or its agents a certificate of currency for such insurance provided that the request is not made more than once annually.

## **7.2 Indemnity**

- (a) Except to the extent that any damage, liability, loss costs, charges or expenses are caused by or contributed to by the act negligence or default of the Lessor, its servants or agents the Lessee indemnifies the Lessor and its employees and agents and the Government of the State of Western Australia from and against:
  - (i) any liability or loss arising from and any costs charges and expenses incurred which is caused solely and directly by in connection with:
    - (A) a breach of this Lease by the Lessee; or
    - (B) the negligence of the Lessee or an employee or agent of the Lessee acting within the scope of their authority.
  - (ii) any damage to the Premises or any loss or damage to anything in the Premises; and
  - (iii) any injury to any person in or near the Premises caused or contributed to by:
    - (A) any act, common negligence or default of the Lessee; or
    - (B) some danger created by the Lessee whether or not the existence of that danger was or ought to have been known to the Lessee.
- (b) The indemnity provided by the Lessee under this clause 7.2 and clause 5.5 will not exceed \$20 million per event and in the aggregate.
- (c) Despite any other provision of this Lease, any indemnity by the Lessee under this Lease will not apply to the extent that any liability, loss, damage, cost or expense, the subject of an indemnity, is recoverable by the Lessor under any insurance policy.
- (d) In defending or settling any claim, action or demand the subject of an indemnity under this clause 7.2 and clause 5.5, the Lessor must follow the Lessee's reasonable instructions.
- (e) The Lessor must not settle any claim, action or demand the subject of an indemnity under this clause 7.2 and clause 5.5 without obtaining the prior written consent of the Lessee, such consent is not to be unreasonably withheld, and the Lessor must take reasonable steps to mitigate any liability, loss, damage, costs or expenses including taking reasonable court action to defend any claim, action or demand made against the Lessor.

### **7.3     *Lessee's Assumption of Responsibilities***

The Lessee having regard to the fact that it has a leasehold interest in the Premises and only in so far as it can exercise rights equivalent to those of a person with a freehold interest in the Premises agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it was the owner or occupier of the freehold of the Premises.

### **7.4     *Theft or Damage of Equipment***

The Lessee will take adequate precautions to ensure that equipment installed on the Premises is protected against theft or damage and the Lessor shall not be held responsible for any removal or damage which may occur to such equipment during the term other than removal or damage caused by any unlawful act or omission of the Lessor.

## **8.0     INSTALLATION AND MAINTENANCE**

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### **8.1     *Repair and Maintenance***

The Lessee must maintain the Premises in a reasonable and reasonably safe repair, order and condition during the Term fair wear and tear excepted.

### **8.2     *Construction and Alterations***

8.2.1     The Lessee may at the Lessee's option and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law with the prior consent of the Lessor which consent shall not be unreasonably withheld install, erect, construct, dismantle, repair, replace, renew and maintain upon the Premises any building or buildings as necessary now or in the future to shelter telecommunications equipment and a free standing monopole, guy tower or three-sided antenna structure or other antenna support structure of sufficient height now or in the future to meet the Lessee's telecommunications requirements and all necessary connecting appurtenances provided that any such building to be erected or constructed shall be of a similar quality to and not incompatible with other buildings on the Land.

8.2.2     The Lessee will not without obtaining the prior written consent of the Lessor which consent must not be unreasonably withheld on each occasion and then only in accordance with such conditions as the Lessor shall reasonably impose:-

- (i) bulldoze, clear or remove any trees, shrubs or other vegetation growing on the Premises; or



- (ii) remove rocks, earth or soil from the Premises; or
- (iii) alter the contour of the surface of the Premises; or
- (iv) deposit any earth, fill or material on the Premises; or
- (v) construct outlets for surface drainage on the Premises; or
- (vi) erect or install any improvements on the Premises.

This clause shall not apply to the initial erection of the Lessee's prior approved telecommunications facility on the Premises where these matters will have already been taken into account

### 8.3 *Fences*

- (a) In the event that the Premises is not currently fenced or secured, the Lessee must as soon as reasonably practicable after the Commencement Date, but having regard to its reasonable requirements during the construction or erection of any telecommunications facility as described in **clause 8.2**, fence off the area of the Premises with good quality materials to the Lessor's reasonable satisfaction, and in any case in accordance with any statutory requirement applicable to the fencing of a telecommunication facility.
- (b) During the Term the Lessee must:
  - (i) maintain the fences referred to in subclause (a) in good and safe repair and condition ; and
  - (ii) erect and maintain such warning signs, barricades and other devices necessary to render and keep the Premises safe and free from hazard or danger to any person on, using or occupying any land adjacent to the Premises.

### 8.4 *Cabling*

For the purpose of the operation of the Lessee's telecommunications network and telecommunications service the Lessee may, subject to any reasonable conditions set by the Lessor, install, maintain and use above or below ground cabling to and from the Premises and where necessary construct support for that cabling. In exercising its rights under the clause the Lessee must:

- (a) not cause any lasting material damage to the Land or material interference with the Lessor; and
- (b) within a reasonable time period after the works are completed restore the surface of the Land as so used as nearly as practically possible to its state prior to use by the Lessee to the reasonable satisfaction of the Lessor.

## **9.0 ELECTRICITY SUPPLY**

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### **9.1 *Electricity Connection***

For the purposes of carrying out the Lessee's use of the Premises the Lessee must arrange at its cost a connection for the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and may install on the Land such earthing apparatus as is necessary for the safe continuous use of the Lessee's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter so that the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it on the Premises. If an electricity supply is available to the Land and the installation of cabling associated with the electricity connection has received prior approval of the Lessor the Lessor will not unreasonably restrict the Lessee's ability to connect to that electricity supply on the same terms as are contained in this Lease.

## **10.0 TERMINATION**

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### **10.1 *Events of Termination***

If:

- (a) the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Lessee or inaccessible by any means of access;
- (b) the Lessee commits a material breach of any of the Lessee's Covenants and has not remedied that breach within a reasonable period (having regard to the nature of the breach being in any event not less than 28 days) after the Lessor has given the Lessee notice of the breach;
- (c) any application for a required consent to a permit for the installation and use of the Premises as part of a telecommunications network and telecommunications service is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (d) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant radio-communications interference;
- (e) the Lessee no longer requires to use the Premises for the permitted use.

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

### **10.2 *Effect on Rights or Liabilities***

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

### **10.3 *Lessee to Yield Up***

The Lessee must at the expiration or sooner termination of the Term yield up the Premises in good repair and clean condition, having regard to their condition at the Commencement Date.

### **10.4 *Removal of Lessee's Fixtures and Chattels***

The Lessee must within 6 months after the Date of Expiration (unless there is in place after this Lease a further lease between the Lessor and the Lessee, and in any event subject to **clause 14.3**), or earlier termination of the Lease or such other date as the Lessor and the Lessee agree in writing, remove from the Premises and the Adjoining Land all above-ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises and the Adjoining Land and rehabilitate the Premises and the Adjoining Land as near as reasonably practicable to their condition as at the Date of Commencement, such activity to rehabilitate to be completed within 90 days of the Date of Expiration or earlier termination as the case may be but if the weather conditions at the Date of Expiration or earlier termination of the term are not favourable for rehabilitation, within such other period as the parties agree.

### **10.5 *Termination of Holding Over***

Either the Lessor or the Lessee may terminate the twelve monthly tenancy under **clause 3.4** by giving the other 12 months prior written notice.

## **11.0 LESSEE'S RIGHTS TO TERMINATION**

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- (a) The Lessee may terminate this Lease on giving the Lessor 28 days written notice at any time if the Lessee's Licence is determined or otherwise terminates.
- (b) Upon receipt of such notice by the Lessee, this Lease is at an end, but without prejudice to any prior claim or remedy which either party may have against the other.

## **12.0 NOTICES**

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### ***12.1 Method of Service***

Any notice to be given under this Lease by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by facsimile addressed to the receiving party at the address set out in Item 7 of the Reference Schedule in the case of the Lessor and in Item 8 of the Reference Schedule in the case of the Lessee.

### ***12.2 Time of Service***

Any notice given in accordance with this Lease will be deemed to have been duly served in the case of posting at the expiration of 2 business days after the date of posting and in the case of facsimile, on the first business day after the date of transmission (providing the sending party received a facsimile machine verification report indicating that the notice has been transmitted).

### ***12.3 Change of Address***

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

## **13.0 ASSIGNMENT AND SUBLEASING**

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### ***13.1 Consent Required***

Subject to **clause 12.2**, the Lessee may not assign this Lease or sublet the Premises without the Lessor's consent which consent must not be unreasonably withheld or delayed.

### ***13.2 Assignment and Subletting to a Related Body Corporate***

The Lessee may without the consent of the Lessor from time to time assign the Lease or sublet the whole or part of the Premises to a Related Body Corporate of the Lessee and in the case of an assignment will not be released from its obligations under the Lease. The Lessee will notify the Lessor the details of the Related Body Corporate.

### ***13.3 Obligations on Assignment or Sublease Other Than to a Related Body Corporate***

If the Lessee assigns this Lease or sublets the Premises to a party other than a Related Body Corporate, the Lessee must:

- (1) deliver to the Lessor, at least 60 days before the date that the proposed assignment or sublease is to take effect, a completed agreement in the form of a deed prepared or approved by the Lessor's solicitors, by which the

proposed assignee or subtenant agrees with the Lessor to be bound by this Lease as from the date the assignment or sublease take effect; and

- (2) pay to the Lessor on request the Lessor's reasonable expenses, including legal costs:
  - (a) incurred in making reasonable enquiries about the proposed assignee or subtenant; and
  - (b) in connection with the preparation, completion and stamping of the assignment or sublease documents and any other related documents, (including the stamp duty on those documents).

#### ***13.4 Lessee Remains Liable***

The Lessee remains fully liable under this Lease even if the Lessee assigns this Lease or sublets the Premises or gives any right in relation to this Lease or the Premises to any other person, except that in respect to any assignment of this Lease, the Lessee is from the date of assignment released from all future obligations under the Lease except in respect of any prior breach or default (*delete if not applicable*).

#### ***13.5 Change in Control if the Lessee is not Vodafone/Optus/Hutchison or a Related Body Corporate***

If the Lessee is a company, and there is a change in control of the Lessee the Lessor may require the Lessee to obtain from the persons who have acquired control, as reasonably nominated by the Lessor, a guarantee of the Lessee's obligations under this Lease in a form prepared or approved by the Lessor's solicitors. If the Lessee is a subsidiary company a change in control includes a change in control of its holding company.

In this clause:

- (1) **company** does not include a company which is listed on the Australian Stock Exchange or is wholly owned by such a company; and
- (2) **control** means control of the composition of the board of directors or control of more than 20% of the shares with the right to vote at general meetings; and
- (3) words defined in the Corporations Act have the meanings given to them by that Act.

#### ***13.6 Exclusion of Statutory Provisions***

The provisions of Sections 80 and 82 of the Property Law Act do not apply to this Lease.

### **13.7 Fees**

The Lessee must reimburse the Lessor on request for all fees paid by the Lessor to any agent or consultant engaged by the Lessor in connection with a proposed assignment or sub-letting by the Lessee.

## **14.0 LESSOR'S COVENANTS**

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### **14.1 Quiet Enjoyment**

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

### **14.2 Restriction on Lessor's Use of the Adjoining Land**

The Lessor must not itself knowingly nor will it knowingly permit any third party to do anything on the Adjoining Land which is likely to cause radio frequency interference which obstructs, interrupts or impedes the use or operation of the Lessee's telecommunications network and telecommunications service and in the event of the Lessee advising the Lessor of any breach of this clause, the Lessor will, in good faith, use its reasonable endeavours to cause removal of such interference, to the extent that it is within its power to do so.

### **14.3 Lessor's Covenant**

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

## **15.0 MISCELLANEOUS**

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### **15.1 Registration of Lease**

The Lessee must register this Lease in accordance with the Land Administration Act 1997 or other relevant legislation at the Lessee's cost and the Lessor will provide to the best of its ability such assistance as is required by the Lessee to perform this covenant.

### **15.2 Lessee to Pay Costs and Disbursements**

The Lessee must pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) and all the Lessor's reasonable legal and other costs charges and expenses which the Lessor may reasonably suffer or incur in consequence of and incidental to the preparation, completion, stamping and registration of the Lease, and costs of surveying and pegging the Premises up to a maximum of \$1,000.00.

### **15.3 Costs on Default**

The Lessee will pay all reasonable costs, charges and expenses (including solicitor's costs and surveyors' and valuers' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice or notices under section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach of any of the Lessee's Covenants notwithstanding that forfeiture for any such breach is waived by the Lessor or is avoided otherwise than by relief granted by the courts or from which the Lessee shall be relieved under the provisions of the *Property Law Act 1969* and all reasonable costs, charges and expenses (including fees for architects and clerks of works) incurred by the Lessor for supervising, inspecting and approving any works or repairs carried out to the Premises by or on behalf of or in consequence of the default of the Lessee under any of the Lessee's Covenants.

### **15.4 Without Prejudice**

This Lease is without prejudice to the Lessee's rights under Schedule 3 of the Telecommunications Act, 1997. (Cth).

### **15.5 Governing Law**

This Lease is governed by the law in force in Western Australia.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under **clause 11.1**

### **15.6 Rates and Taxes**

The Lessee must pay all rates, taxes and assessments charged upon the Premises and/or the Land attributable to the Lessee's occupation of the Premises and/or Land by the due date for payment however the Lessee will only be responsible for that

proportion of the account that the leased area bears in relation to the entire area being assessed.

### **15.7 Arbitration**

If at any time any dispute or difference arises between the parties in respect of any matters arising under or pursuant to the Lease or the meaning or construction of any of the provisions contained in it, such dispute or difference shall be referred to a single arbitrator to be appointed in accordance with the provisions of the *Commercial Arbitration Act 1985 (as amended)*. On any such arbitration, a party may, if it chooses, be represented by a duly qualified legal practitioner. The costs of the arbitration are to be borne equally by the parties regardless of the outcome but each party shall bear their own legal costs.

## **16.0 CONDITION**

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The Lessor and the Lessee acknowledge and agree that:

- (a) this Lease is subject to and conditional upon the Lessee and the Shire of Gingin executing a licence of land in Reserve No. 49174 upon terms which are wholly acceptable to the Lessee and that licence becoming unconditional;
- (b) if the condition in clause 16(a) is, in the Lessee's sole and absolute opinion, not satisfied, then:
  - (i) the Lessee may terminate this Lease immediately upon written notice to the Lessor;
  - (ii) upon the serving of the notice and subject to the obligation to repay Rent set out in clause 16(b)(iii) the Lessee and the Lessor will be released from any and all obligations and liabilities under this Lease, including any prior claim or remedy which either party may have against the other; and
  - (iii) if the Lessee has paid any Rent to the Lessor pursuant to the Lease, then the Lessor must refund the whole of that Rent to the Lessee.



## REFERENCE SCHEDULE

- Item 1**      **Premises** (clause 1.1).  
The area delineated and shown hatched on the attached plan comprising an area of 35.75 square meters and being a portion of Reserve No 49174.
- Item 2**      **Date of Commencement** (clause 1.1)  
1 January 2009
- Item 3**      **Date of Expiration** (clause 1.1)  
31 December 2018.
- Item 3A**     **Break Date** (clause 3.3)  
31 December 2013
- Item 4**      **Term** (clause 1.1)  
10 Years
- Item 5**      **Rent** (clause 1.1)  
\$4072.53 during the first year of the Term.
- Item 6**      **Nominated Account**  
Bank                      Commonwealth Bank  
Branch                     150 St Georges Terrace, Perth WA 6000  
Account Name             Department of Conservation and Land Management  
BSB No.                    066-040  
Account No.                11300006
- Item 7**      **Contact at Lessor** (clause 11.1)  
Name:                      Department of Conservation and Land Management  
Address:                   17 Dick Perry Avenue, Kensington, WA 6151  
Telephone number:       9334 0333  
Facsimile number:       9334 0253

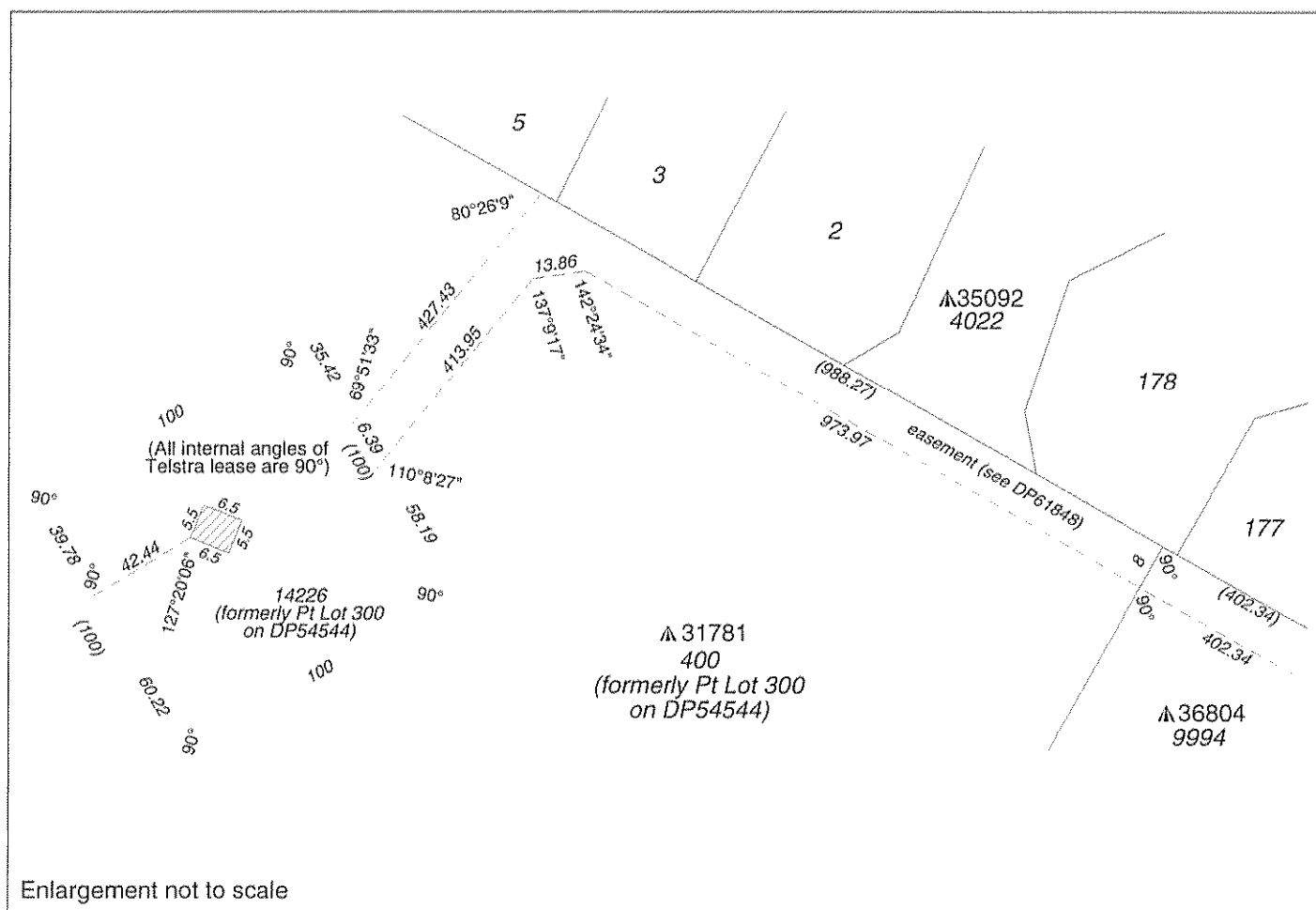
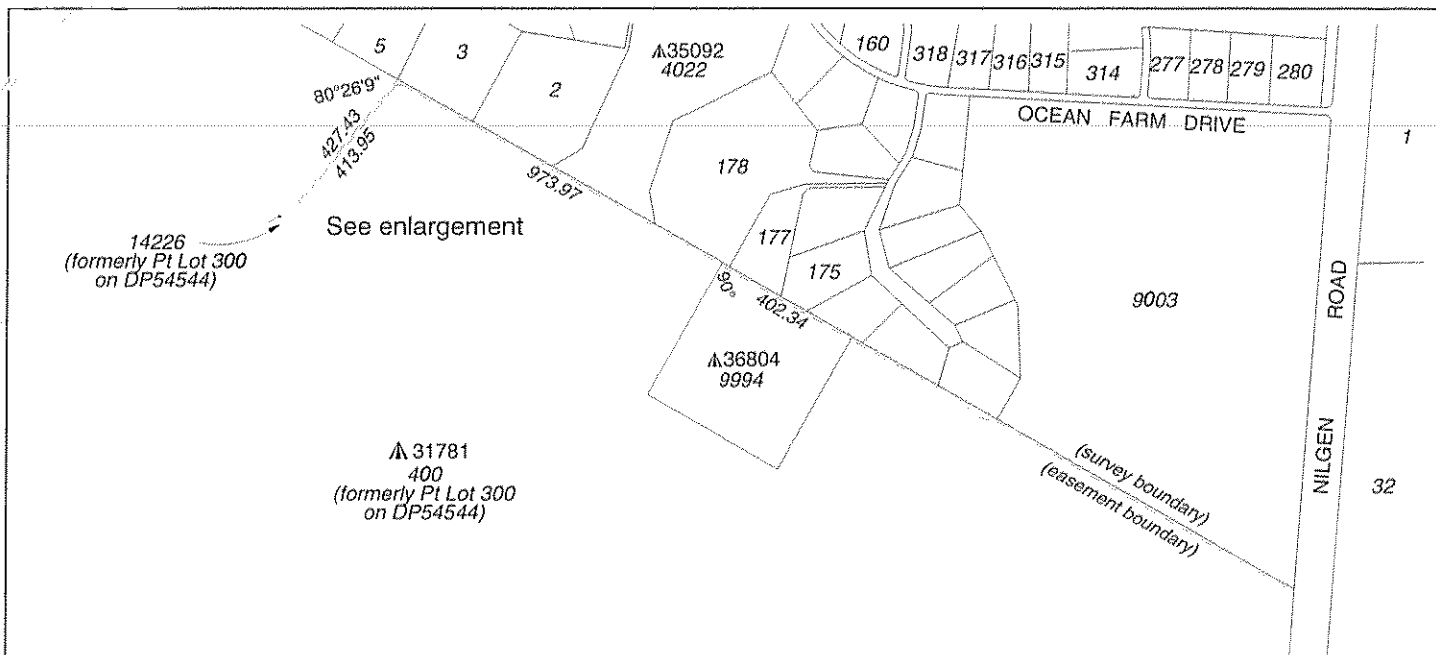
**Item 8**

**Contact at Lessee (clause 11.1)**



Name: **Telstra Corporation Limited**  
**Director, Telstra Property**  
ABN 33 051 775 556  
Address: c/- United Group Services  
Level 13, 215 Adelaide Street  
BRISBANE QLD 4000  
Attention: Telstra Client Manager  
Telephone number: 07 3239 4000  
Facsimile number: 07 3239 4010

AND

Name: **Telstra Corporation Limited**  
Address: Level 41, 242 Exhibition Street  
MELBOURNE VIC 3000  
Attention: Director, Telstra Property  
Facsimile: 03 9632 3215

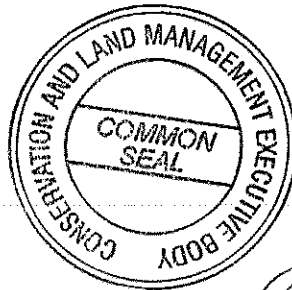


## LEASE 2281/100 - Telstra Telecommunications

|               |                                   |          |   |   |
|---------------|-----------------------------------|----------|---|---|
| LESSEE        | TELSTRA CORPORATION LIMITED       |          |   | SCALE 1 : 20 000  |
| LGA           | SHIRE OF GINGIN                   | AREA     | Abt 35.75m <sup>2</sup>                                   |   |
| LAND DISTRICT | SWAN                              | DRAWN    | Based on Deposited Plan 64486 and Telstra DWG NO. W104000 | <br>Department of<br>Environment and<br>Conservation<br><br>Our environment, our future |
| DEC DISTRICT  | MOORA                             | CHECKED  | RD 28-8-09  |   |
| PLAN          | DEC COG Plan 1936-2 (Walyengarra) | FILE No. | 2009/001709-1   |   |

AS WITNESS the execution of this Deed the day and year first hereinbefore written.

THE COMMON SEAL OF THE )  
CONSERVATION AND LAND )  
MANAGEMENT EXECUTIVE BODY )



..... was hereunto affixed by .....

*Kymn*  
.....  
Chief Executive Officer

.....  
Witness signature

*CAMPBELL LOUNGSON*  
.....  
Name (Print)

EXECUTED by the Parties as a Deed on the                      Day of                      2009

**Deed and Agreement**

SIGNED by            ANTHONY SEPTIMUS O'DONNELL  
                                 LEASING MANAGER  
of TELSTRA CORPORATION            )  
LIMITED as attorney for TELSTRA    )  
CORPORATION LIMITED under        )  
power of attorney registered no.    )  
J289811 in the presence of:        )

*Abdul Haq*  
.....  
Signature of witness

*ABDUL HAQ*  
.....  
Full Name of witness (block letters)

*CUSTOMER CARE COORDINATOR*  
.....  
Occupation of witness

.....  
Address of witness            Level 10,  
   400 George St  
   SYDNEY NSW 2000

*Anthony O'Donnell*  
.....  
By executing this deed the attorney  
states that the attorney has received  
no notice of revocation of the power  
of attorney