

ORDINARY COUNCIL MEETING

WEDNESDAY, 27 MAY 2020

ATTACHMENT BOOKLET 1

Attachment No. 1

Site Sharing Licence Agreement – Haystack Mountain

NSW Government Telecommunications Authority (**Licensor**)
Tenterfield Shire Council (**Licensee**)

Site Sharing Licence Agreement

Agreement for Licensee to use
Telecommunications Site at:

Haystack Mountain (ACMA Site ID
280038)

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Site Sharing Licence Agreement

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Site Sharing Licence Agreement

Parties

NSW Government Telecommunications Authority ("Licensor")

ABN 85 430 594 829

Address: Level 10, McKell Building

2-24 Rawson Place, Sydney NSW 2000

Telephone: (02) 8276 8836

Email: telco.sites@customerservice.nsw.gov.au

Attention: Assets and Colocation Officer

Tenterfield Shire Council ("Licensee")

ABN

Address:

Telephone:

Email:

Attention:

Information Table

Items

Item 1	Commencement Date (clause 1.1) 01 st July 2018
Item 2	Term of Licence 5 years
Item 3	Options 2 x further 5-year terms
Item 4	Licence Fee \$2,781.01 (exclusive of GST), escalation CPI
Item 5	Payment Date The Commencement Date and each anniversary of that date.
Item 6	Review Date (clause 1.1) Annually on the anniversary of the Commencement Date.
Item 7	Termination Date (clause 1.1) 30 th June 2023
Item 8	Licensee's Equipment (clause 1.1)

See Annexure "B".

Item 9 Land

An area of approximately 288.1m² within Yabbra National Park, Parish of Claribell, Country of Bulla, Local Government Area of Kyogle, being the land identified on the plan annexed and marked 'A'

Item 10 Owner

National Parks and Wildlife Services

Item 11 Permitted Use

The installation, operation and maintenance of the Licensee's Equipment in accordance with the terms of this Licence and the relevant legislation standard and guidelines.

Item 12 Authorised Officers

Licensor: Attention: Assets & Colocations Officer
NSW Government Telecommunications Authority
Level 10, McKell Building
2-24 Rawson Place Sydney NSW 2000
Email: telco.sites@customerservice.nsw.gov.au
Telephone: 02 8276 8836

Licensee: Attention:
Tenterfield Shire Council
[address]
Email:
Telephone:

Item 13 Electricity Contribution Fee N/A

Background

- A. The Licensor has entered into the Lease with the Owner and/or Head Lessor.
- B. The Licensor has installed the Facilities on the Land.
- C. The Licensee wishes to license parts of the Telco Authority Area being the Licensed Area for the purpose of installing, maintaining and operating the Licensee's Equipment on the Facilities, which the Licensor agrees to permit on the terms contained in this agreement.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires, the following expressions have the following meanings:

"Access Protocol" means the procedures for accessing the Licensed Area as notified by the Licensor to the Licensee in writing from time to time.

"Access Schedule" means Annexure C of this Licence.

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

"Approvals" means consents, approvals, licences and any renewals of them.

"Asset Protection Zone" means that area of the Land surrounding the Licensed Area which the Licensor clears to prevent bushfire attack.

"Authorised Officer" means any of those persons identified at Item 12 of the Information Table.

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

"Commencement Date" means the date of the Term referred to in Item 1 of the Information Table or Item 3 of the Information Table should an Option be in effect.

"Consequential Loss" means:

- (a) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
- (b) any penalties or fines imposed by a regulator.

"Construction Drawings" means the plans and drawings forming Annexure "D" to this Licence. [***or if drawings not finalised at time of execution***]: means the plans and drawings prepared by the Licensee's design consultant identifying the Licensee's Equipment to be installed on the Facilities as approved by the Licensor acting reasonably.

"Costs" mean any costs, duties, fees, charges and expenses.

"CPI" means All Groups Consumer Price Index published by the Australian Bureau of Statistics for the Jurisdiction or if the Australian Bureau of Statistics stops publishing the CPI, then CPI means the index recommended by the Property Council of Australia as the index most appropriately replaces the CPI.

"Facilities" means the improvements constructed by the Licensor on the Land and owned by the Licensor.

"Fixed Percentage" means 3% per annum.

"Government Agency" means any New South Wales government agency, authority or State Owned Corporation.

"GST" means a goods and services tax or like tax payable by the Licensor in respect of a supply under this agreement.

"GST Law" means *A New Tax System (Goods & Services Act) 1999* (Commonwealth) as in force for the time being.

"Information Table" means that part of this Licence Agreement described as Information Table.

"Item" means an item in the Information Table.

"Jurisdiction" means the State of New South Wales.

"Land" means that land described in Item 9 of the Information Table and includes any building or structure on the Land.

"Law" means any law whether common law or any law under any statute, ordinance, regulation or code.

"Lease" means the lease or licence entered into between the Licensor and the Owner and/or Head Lessor pursuant to which the Licensor occupies the Telco Authority Area.

"Licensee" means the Licensee described on the front page of this agreement and its successors and assigns or, if the Licensee is a natural person, its executors, administrators and assigns and in either case its employees, agents, contractors, consultants and invitees.

"Licensee's Equipment" means the radio communications and telecommunication, transmission and receiving and ancillary equipment of the Licensee which is described in Item 8 of the Information Table and shown in Annexure "B".

"Licence Fee" means the amount payable by the Licensee in accordance with clause 3.1 as specified in Item 4 of the Information Table.

"Licensed Area" means that part of the Telco Authority Area identified in the Licensed Area Plan.

"Licensed Area Plan" means that plan contained in Annexure "A".

"Licensor" means the party identified in the Information Table and its assigns, employees, agents, representatives or contractors.

"Option" means the further term(s) detailed at Item 3 (if any) of the Information Table.

"Owner" means the registered proprietor of the Land identified at Item 10 of the Information Table.

"Permitted Use" means the use prescribed at Item 11 of the Information Table.

"Relevant Authority" means, in respect of a particular context or circumstances, any government or any governmental, semi-governmental, quasi-governmental, administrative or judicial body, department, commission, authority, tribunal or entity having jurisdiction and responsibility in respect of that context or those circumstances and which may include the Licensor.

"Services" means the services, if any, running through or servicing the Licensed Area including but not limited to air conditioning, electricity (electrical or fibre cabling), power, gas, oil, water, sewerage, telecommunications, fire hydrant, service sprinkler and public address and includes all pipes, wires, cables, ducts and other conduits in connection with them.

"State" means the State or Territory of the Commonwealth in which the Land is situated.

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

"Tax Invoice" has the meaning given by the GST Law.

"Taxable Supply" has the meaning given by the GST Law, excluding the reference to section 84-5 of the GST Law.

"Telco Authority Area" means that part of the Land upon which the Facilities are installed *and* if leased or licensed which the Licensor leases or licenses from the Owner and/or Head Lessor pursuant to the Lease.

"Term" means the term of this Licence set out at Item 2 of the Information Table.

"Termination Date" means the termination date of the Term set out at Item 7 of the Information Table or Item 3 of the Information Table should an Option be in effect.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) words denoting the singular number shall include the plural and vice versa;
- (b) words denoting any gender shall include all genders;
- (c) words denoting individuals shall include corporations and vice versa;
- (d) references to any statute, regulation, by-law or ordinance includes amendments, re-enactments or consolidations of any of them;

- (e) references to clauses, annexures, information tables and schedules are references to clauses, annexures, information tables and schedules of this Licence;
- (f) where an Annexure contains covenants or obligations then the Licensee or the Licensor, as the case may be, must perform or observe those covenants or obligations under this Licence;
- (g) a reference to any party or to a Relevant Authority or to any other person includes their successors and permitted assigns;
- (h) a reference to anything (including any amount) is a reference to the whole and each part of it; and
- (i) for the avoidance of doubt the word Licence, Agreement and Licence Agreement have one and the same meaning.

1.3 Headings

Headings are for ease of reference only and shall not affect the construction of this Agreement.

1.4 Governing Law

This Agreement shall be governed by, and construed in accordance with, the law of New South Wales and the parties submit to the jurisdiction of the Courts of New South Wales.

1.5 Modifications to Agreement

No modifications to this Agreement shall be effective unless in writing signed by the parties.

1.6 Performance on Next Working Day

Where any time limit pursuant to this Agreement falls on a non-business day then that time limit shall be deemed to have expired on the next Business Day.

1.7 Counterparts

This Licence may consist of counterparts and the counterparts taken together constitute one and the same instrument.

1.8 Recitals

The Recitals to this document form part of this Licence.

2. Grant of Licence

2.1 Personal licence

- (a) In consideration of the Licensee paying to the Licensor the Licence Fee, unless otherwise agreed, the Licensor grants to the Licensee and the Licensee accepts a non-transferable non-exclusive licence which is personal to the Licensee to enter and use the Licensed Area during the Term strictly in accordance with the terms of this agreement for the Permitted Use.

- (b) The Licensee expressly acknowledges that:
 - (1) the Licensee acquires no estate or interest in the Licensed Area, the Telco Authority Area or the Land under this agreement; and
 - (2) the Licensor does not grant any rights to the Licensee in relation to equipment of the Licensee installed by or for the Licensee outside of the Licensed Area.

2.2 Reservation of rights to Licensor

Notwithstanding clause 2.1 the Licensor reserves the right to:

- (a) pass and re-pass with or without plant and equipment;
- (b) install, operate, maintain, repair and replace cabling of all descriptions; and
- (c) operate the Facilities,

through, over and upon the Telco Authority Area (including but not limited to the Licensed Area) at all times for the purpose of allowing the Licensor to utilise the Facilities *and if there is a lease* in accordance with the Lease.

In exercising its rights under this clause 2.2 the Licensor must use reasonable care not to interfere with the Licensee's Equipment.

2.3 Compliance with Lease

- (a) Notwithstanding any other provision of this agreement, the Licensee acknowledges that at all times the Licensor is required to comply with the terms of the Lease. The Licensee shall do all acts and things and execute all such documents as are necessary to ensure that the Licensor in relation to this agreement, complies with the requirements of the Lease, including without limitation, the obtaining at the expense of the Licensee of any required consent from but not limited to the Owner and/or Head Lessor and any mortgagee of the Owner and/or Head Lessor.
- (b) The Licensee expressly acknowledges and agrees that this agreement will be subject to receipt by the Licensor from the Licensee of all necessary consents. If all necessary consents are not provided to the Licensor, then the Licensor shall have no further liability to the Licensee in relation to this agreement and this agreement shall immediately terminate. The Licensee expressly acknowledges and agrees that it shall have no claim whatsoever against the Licensor in the event that all necessary consents are not forthcoming.

2.4 Holding over

Unless a renewal is triggered under clause 11 of this Licence, the Licensee may with the consent of the Licensor hold over after the Termination Date as a yearly licensee for yearly terms, terminable by either party on three months' notice expiring at any time. Such holding over will be on the same terms and conditions as this agreement so far as they apply to a yearly licence.

3. Fee

3.1 Payment of Licence Fee

Unless otherwise agreed by the parties, the Licence Fee and all outgoings attributable to the Licensed Area for the term of this Licence will be paid on the Payment Date as set out in Item 5 of the Information Table.

3.2 Interest

The Licensee must pay interest to the Licensor on any money which is or becomes due and payable under this licence from when it falls due to be paid until the date it is actually paid at the rate of 10% per annum. Such interest will accrue and be calculated on a daily basis.

3.3 GST

All payments to be made by the Licensee under this agreement (including but not limited to the Licence Fee) are calculated without regard to GST. If a payment by the Licensee to the Licensor under this agreement is for a supply by the Licensor under this agreement on which the Licensor must pay GST the Licensee must pay the amount increased by the GST.

3.4 Review of Licence Fee

- (a) If a date or dates are included in Item 6 of the Information Table, the Licence Fee must be increased in accordance with this clause.
- (b) On each date specified in Item 6 of the Information Table, the Licence Fee shall increase by the [*Insert Fixed Percentage or CPI*].

3.5 EFT

After the Commencement Date, the Licensee must pay the Licence Fee and all outgoings attributable to the Licensed Area by Electronic Funds Transfer (EFT) to the account nominated by the Licensor.

4. The Licensor's covenants

4.1 Grant of access

The Licensor consents, subject to clause 5 and any rights, obligations or restrictions contained in the Lease, to the Licensee and persons authorised by the Licensee having access to the Licensed Area and exercising its rights under this agreement.

4.2 No interference with Licensee's use

Subject to any rights reserved to the Owner in the Lease and clause 2.2, the Licensor will not interfere with the Licensee's reasonable use and enjoyment of the Licensed Area during the Term.

4.3 State of repair of Facilities

The Licensor will use all reasonable endeavours to keep the Facilities in a reasonable state of repair.

4.4 Lease compliance [use only if lease between NSWTA and owner in place]

The Licensor will use reasonable endeavours to comply with its obligations under the Lease.

4.5 Third parties not to interfere

The Licensor will use reasonable endeavours to ensure that future third party occupiers of the Telco Authority Area do not materially interfere with the Licensee's use of the Licensed Area in accordance with this agreement.

5. Licensee's covenants

5.1 Access Protocols

- (a) The Licensee must only access the Licensed Area after giving the Licensor prior written notice in accordance with the Access Protocols.
- (b) The Licensee may be required to provide the Licensor with a minimum period of notice prior to accessing the Licensed Area as determined by the Licensor and notified to the Licensee from time to time.
- (c) When accessing the Licensed Area the Licensee must strictly comply with the Access Protocols.
- (d) The Licensee acknowledges that the Licensor may impose as a condition of access on any occasion an obligation that access only occur in the company of a representative of the Licensor.

5.2 Initial installation

The Licensee must install the Licensee's Equipment strictly in accordance with the Construction Drawings.

5.3 Structural Integrity and Compliance

Despite clause 5.2:

- (a) Prior to the Lessee's installation of the Licensee's Equipment on the Facilities, the Licensee must provide the Licensor with an engineer's report certifying that the Facilities can accommodate the installation of the Licensee's Equipment and the Licensee's proposed installation of the Licensee's Equipment on the Facilities will not compromise the structural integrity of the Facilities.
- (b) If at any time after the Lessee's installation of the Licensee's Equipment on the Facilities the Licensor (acting reasonably) forms the view that the structural integrity of the Facilities has been compromised as a result of the said installation, the Licensor may then request that the Licensee provide the Licensor with an up-dated engineer's report.
- (c) If an up-dated engineer's report has been commissioned pursuant to clause 5.3(b) and that report identifies that the structural integrity of the Facilities has been compromised by the Licensee's Equipment, the Licensor may require the Licensee to do all things reasonably necessary to rectify the structural inadequacies of the Facilities including without limitation perform strengthening works to the Facilities or remove the offending Licensee's Equipment from the Facilities at the direction of and in consultation with the Licensor.

5.4 Replacement of Equipment and Additional Equipment

- (a) The Licensee may only replace the Licensee's Equipment with equipment which is 'like for like' to the Licensee's Equipment it is to replace.
- (b) The Licensee may only add equipment in addition to the Licensee's Equipment with the prior written consent of the Licensor, which consent may be given with such conditions or withheld at the Licensor's unfettered discretion, including but not limited to an increase in the Licence Fee. Additional equipment installed with the consent of the Licensor becomes the Licensee's Equipment for the purposes of this agreement.

5.5 No interference with Owner or Licensor

The Licensee must not, and must ensure the Licensee's Equipment does not, at any time during the Term interfere with:

- (a) the Owner's or Licensor's use and enjoyment of the Land or any other person using the Land as authorised by the Owner or Licensor;
- (b) the Licensor's use and enjoyment of the Land and the Telco Authority Area or any party authorised by the Licensor to use the Telco Authority Area including without limitation interrupting or impeding the use or operation of the Facilities. In the event of such interference which is not remedied forthwith after written notice from the Licensor to the Licensee, the Licensor shall be entitled in addition to any other remedy to immediately disconnect the Licensee's Equipment.

5.6 Use of Licensee's Equipment

The Licensee shall use the Licensed Area for the purposes only of installing, constructing, using and maintaining the Licensee's Equipment for the Licensee's own use and, using suitably qualified personnel, may in accordance with the terms of this agreement access the Telco Authority Area and the Licensed Area for these purposes.

5.7 Maintaining Licensee's Equipment

The Licensee must maintain the Licensed Area and the Licensee's Equipment in good repair, order and condition during the Term, fair wear and tear excepted.

5.8 Compliance with Statute

The Licensee must comply promptly with any Statute or direction of any federal, state or local government authority or agency having jurisdiction or authority in respect of its activities in relation to the Land, the Telco Authority Area, the Licensed Area and the Licensee's Equipment.

5.9 Signage

The Licensee must not erect on the Telco Authority Area or the Licensed Area any signage without the prior written consent of the Licensor.

5.10 Security

The Licensee will keep all means of access to the Telco Authority Area securely fastened when accessing or leaving the Telco Authority Area, including gated areas that provide access to the Telco Authority Area.

5.11 Fire Safety

The Licensee will comply with all requirements of the Licensor and any other Relevant Authority in relation to fire safety. The Licensee agrees to:

- (a) take all reasonable precautions to minimise the risk of bushfire;
- (b) provide or make readily available for use during installation, operation or maintenance activities any devices and appliances designed to prevent or retard the spread of fire; and
- (c) contribute towards the Licensor's maintenance of an Asset Protection Zone on the Land as and when required.

5.12 OH&S Compliance

The Licensee must at all times comply with any requirement of the Licensor in relation to the Telco Authority Area including without limitation requirements concerning occupational health and safety and radio frequency emissions.

5.13 Information to be supplied to Licensor

The Licensee must provide to the Licensor all such information in relation to the Licensee's use or proposed use of the Licensed Area as the Licensor may reasonably require.

5.14 Compliance with Lease *[use only if lease on foot]*

In addition to the obligations contained in clause 5.1, the Licensee must comply with any and all restrictions on access to the Telco Authority Area contained in the Lease and must not otherwise in exercising its rights under this agreement cause the Licensor to be in breach of any of the Licensor's obligations contained in the Lease.

5.15 Assignment of Lease *[clause to be amended if no lease]*

The Licensor may at any time during the Term assign its interest in the Lease and its title to the Facilities to a third party in which event the Licensee must enter into an agreement reasonably required by the Licensor binding the Licensee and that third party to the terms of this agreement.

5.16 Power down of Licensee's Equipment

The Licensor may:

- (a) for routine maintenance, on 24 hours' prior notice to the Licensee, require the Licensee to turn off the power supply to the Licensee's Equipment; or
- (b) in an emergency, immediately turn off the power supply to the Licensee's Equipment, provided that the Licensor notifies the Licensee as soon as reasonably practicable after turning off the power supply and uses reasonable endeavours to ensure there is no unnecessary power outage of the Licensee's Equipment.

5.17 Licensee's warranty

The Licensee warrants that it is not and will not at any stage of the Term or Option be a 'carrier' or have the benefit of a 'nominated carrier declaration' (as those terms are defined under the Act).

5.18 Licensee's Acknowledgments

The Licensee acknowledges and agrees that:

- (a) The Licensor has made no promise, representation or warranty in relation to:
 - (1) the quality of the transmission or reception of the Licensee's Equipment;
 - (2) the suitability of the Licensed Area, the Telco Authority Area or the Facilities for the Permitted Use;
 - (3) any frequency used or ought to be used by the Licensee;
 - (4) any third party desiring or agreeing to use the Licensee's Equipment;
 - (5) any additional space being made available to the Licensee in or near the Telco Authority Area;
 - (6) the suitability or compatibility of the Licensee's Equipment to the Licensed Area, the Telco Authority Area or any third party equipment or service;
 - (7) the availability, efficacy or reliability of any power or any backup power supply for the Telco Authority Area or the Licensed Area; and
 - (8) the quality, standard or structural integrity of the Facilities.
- (b) Other third party equipment may be installed on the Facilities and which may be added to, amended, renewed, replaced or relocated from time to time during the Term ("Third Party Equipment"); and
- (c) The Third Party Equipment does not prevent the Licensee's Equipment from operating effectively; and
- (d) The Licensee has no right or claim in respect of or arising out of any interference caused by the location or operation of the Third Party Equipment to the Licensee's Equipment.

5.19 Keys

The Licensor must provide keys for any locks on the gates of the Telco Authority Area and the Licensee must:

- (a) Not permit the keys to come into the possession at any time of any person other than the Licensee, its servants or agents;
- (b) Return to the Licensor on termination of this licence all such keys; and
- (c) Pay for the cost of replacement of any keys, including the cost of replacing any lock.

6. Liability and indemnities

6.1 Occupancy at Licensee's risk

The Licensee acknowledges that the Licensee occupies the Licensed Area at the Licensee's own risk and that the Licensor is released from and does not take any responsibility for any loss or damage to the Licensed Area, the Licensee's Equipment, any other equipment, the Licensee or any person when entering, leaving or being on the Land or the Telco Authority Area in connection with the Licensee's business or use of the Licensed Area, and the Licensor has no liability for any such loss or damage (including but not limited to Consequential Loss) howsoever caused.

6.2 Licensee's indemnities

The Licensee indemnifies the Licensor against all expenses, losses, damages and costs (including but not limited to Consequential Loss), on a solicitor and own client basis, that the Licensor may sustain or incur, including but not limited to third party claims, as a result whether directly or indirectly, of any breach of this agreement by the Licensee or any act or omission of the Licensee or any employee, agent, contractor or invitee of the Licensee in relation to the Licensee exercising its rights or performing its obligations pursuant to this agreement.

6.3 Termination of Lease *[if there is a lease on foot]*

The Licensee expressly acknowledges and agrees that it shall have no claim against the Licensor in the event that this agreement is terminated due to a termination of the Lease.

7. Insurance

7.1 Public risk insurance

The Licensee must on the Commencement Date insure with reputable insurers for a sum of not less than \$20,000,000 for any single event or the same amount if higher as the Licensor is required to insure from time to time pursuant to the Lease against any loss or damage which could be a public risk or liability in respect of the the Telco Authority Area and personnel accessing the Land and the Telco Authority Area, and any other insurance required by the Licensor to insure pursuant to the Lease, and promptly provide evidence of such insurance policies to the Licensor at the Licensor's request from time to time.

7.2 Additional insurances

The Licensee must promptly obtain such other insurance in relation to this agreement as the Licensor may reasonably require, and promptly provide evidence of such insurance policies to the Licensor at the Licensor's request from time to time.

7.3 Workers' compensation insurance

The Licensee must ensure that all of its employees, officers, contractors or agents having access to the Telco Authority Area are covered by adequate workers' compensation insurance.

8. Termination

8.1 Events of termination

If:

- (a) the Telco Authority Area is damaged or destroyed or if there is an interruption to access to the Telco Authority Area and subsequently the Licensed Area so as to render the Licensed Area or any part of the Licensed Area wholly or substantially unfit for the occupation or use by the Licensee or the Licensor, or inaccessible by any means of access; or
- (b) the Licensee breaches the Access Protocols; or
- (c) The Licensee is unable to give the warranty in clause 5.17; or
- (d) the Licensee commits a material breach of any of its obligations other than the Access Protocols and has not remedied that breach within seven days of being required to do so in a notice from the Licensor; or
- (e) any application for a required consent or permit for the use of the Licensed Area is rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (f) the Licensed Area is rendered unfit for the Licensee's use by reason of the emergence of significant radio communication interference; or
- (g) the Lease is terminated; or [*use only if there is a lease on foot*]
- (h) the Licensee suspends or ceases its business activities, is deemed to be in liquidation or insolvent, has appointed a receiver or trustee in respect of any of its property, or conducts any other act that shows, or tends to show that it is insolvent,

this agreement may be terminated immediately by written notice, by the Licensee in the cases of subclauses (a), (c), (e), (f) and (g) and by the Licensor in the case of subclauses (a), (b), (c), (d), (e), (f), (g) and (h).

8.2 Termination without cause

Either party may terminate this agreement by giving the other three months' prior written notice of termination.

8.3 Accrued rights

Subject to clause 2.3, termination of this agreement does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to termination.

8.4 Yielding up

The Licensee must at the expiration or sooner termination of the Term, yield up the Licensed Area in good repair, in clean condition, fair wear and tear excepted.

8.5 Removal and make good

The Licensee must at or prior to the Termination Date, or termination pursuant to clauses 6.3, 8.1 or 8.2 or such other date as the Licensor and the Licensee agree in

writing, while complying with the other provisions of this agreement including but not limited to clauses 5.1, 5.5, 5.8 and 5.14 remove from the Licensed Area all of the Licensee's Equipment and other fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Land and the Telco Authority Area and must make good any damage to the Land and the Telco Authority Area caused by such removal, to the reasonable satisfaction of the Licensor.

9. Electricity

- (a) The Licensee must make its own arrangements at its own cost for the Licensee's Equipment and the Licensed Area to be separately metered for electricity purposes (including establishing a power main, power feed, power meter or meters and associated power infrastructure) ("**Licensee's Power Supply**").
- (b) The Licensee must promptly pay all accounts for the Licensee's Power Supply.
- (c) If the Relevant Authority does not provide a separate power feed in respect of the Licensee's Equipment or the Licensed Area, the Licensor must provide reasonable assistance where possible to the Licensee in liaising with any third party that already has power on or in the Telco Authority Area to share any existing power supply.
- (d) If despite clause 9(a) the Licensee's Power Supply is not separately metered and the Licensee's electricity (including the establishing of a power main, power feed, power meter or meters and associated power infrastructure but not including back-up power supply) is provided by the Licensor ("**Licensor's Power Supply**"), then the Licensee must pay the Electricity Contribution Fee to the Licensor as set out in Item 13 of this Licence.
- (e) Despite any other provision of this Agreement:
 - (1) if back-up power is required by the Licensee, then the Licensee must arrange for its own back-up power supply; and
 - (2) subject to clause 9(f), the parties agree that if there is a loss of electricity, the Licensee's Power Supply or Licensor's Power Supply to the Telco Authority Area, Licensed Area or the Licensee's Equipment, then:
 - (A) the Licensor shall not be liable for any resulting losses, damages and costs (including but not limited to Consequential Loss) incurred by the Licensee;
 - (B) the Licensee shall not be entitled to end this Agreement and shall have no right of abatement or set off of the Licence Fee or other money; and
 - (C) the Licensee shall not make any claim for compensation or damages against the Licensor.
- (f) If the Licensor is unable to exclude liability under clause 9(e)(ii) due to the operation of any Law, then the Licensor's liability is, at the Licensor's option, limited to either:

- (1) refunding the price of the electricity, the Licensee's Power Supply, Licensor's Power Supply or Electricity Contribution Fee in relation to which the liability occurred; or
- (2) providing that electricity, the Licensee's Power Supply or Licensor's Power Supply again.

10. General

10.1 Notices

Any notice to be given under this agreement 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 addresses set out on page 1 of this Licence. Any notice given in accordance with this agreement will be deemed to have been duly served, in the case of posting, at the expiration of two Business Days after the date of posting, and in the case of facsimile, on the first Business Day after the date of transmission (providing the sending party receives a facsimile machine verification report indicating that the notice has been transmitted). A party may, at any time, change its address, postal address, or facsimile number by giving written notice to the other party.

10.2 Costs

- (a) It is agreed that each party shall bear responsibility for its own legal costs associated with this Licence; and
- (b) the Licensee will be responsible for any costs, charges and expenses which the Licensor may reasonably suffer or incur in consequence of and incidental to the enforcing the Licensor's rights under this agreement.

10.3 Dispute resolution

The parties record their intention that, if any dispute or difference arises out of or in relation to this agreement, the parties will attempt first to resolve the dispute in a spirit of good faith and on a commercially realistic basis by negotiation or mediation.

10.4 Variation to Agreement

Any variation to any of the terms of this agreement including the Information Table and annexures must be signed by each of the Licensor and the Licensee or its authorised representatives before it is valid. No other confirmation, invoice or other document issued by or on behalf of the Licensee in relation to the subject matter will vary this agreement.

10.5 Survival

Any indemnity under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

10.6 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

10.7 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

10.8 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

10.9 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this agreement continue in force.

10.10 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

10.11 Relationship

Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

10.12 Non-exercise of Telco Act rights

The Parties agree that, to the extent permitted by law the Licensee must not during the Term exercise against the Licensor any rights it may have under Schedule 3 of the Act in relation to the Telco Authority Area or the Licensed Area.

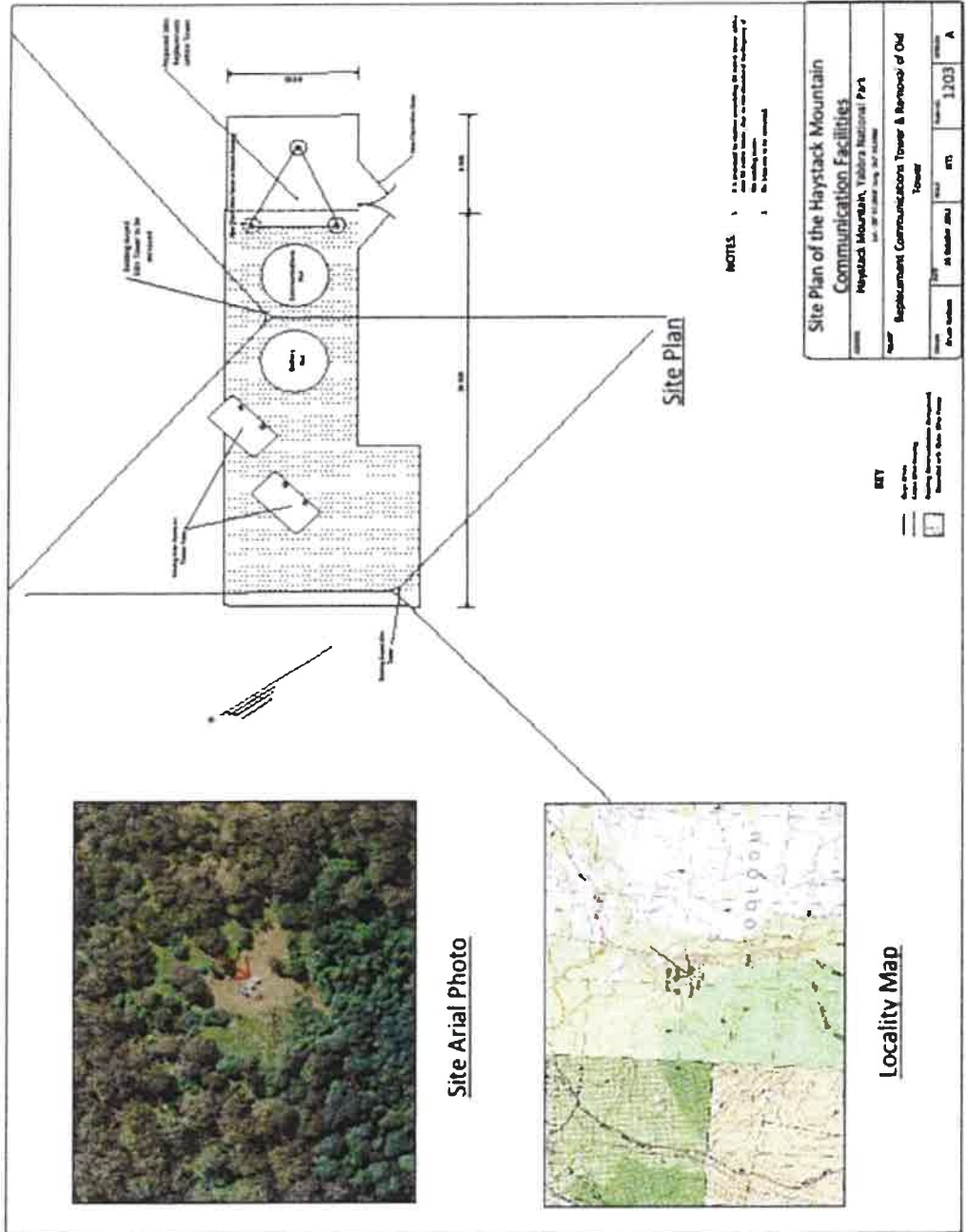
11. Option to renew

- (a) This Licence will be renewed for the next of the Options set out in Item 3 of the Information Table (if applicable) unless either the Licensor or the Licensee serves on the other written notice at least three (3) months' prior to the Termination Date of their intention not to renew the Licence.
- (b) Should this Licence be renewed, the parties agree it shall be on terms identical to this Licence but for:
 - (1) Items 1 and 7 shall be considered amended to reflect the true Commencement Date and Termination Date;
 - (2) Items 2 and 3 shall be considered amended so as to reflect the true number of Options remaining;
 - (3) Item 4 shall be considered amended to reflect the true Licence Fee payable at the Commencement Date of the new term as set out in the amended Item 2; and

- (c) The parties acknowledge and agree that upon the exercise of the final Option, this clause 11 shall be deleted from this Licence.

Annexure "A"

Licensed Area Plan



Annexure "B"

Equipment

Permitted Antenna/s:			Description of Antenna Support Structure:									
System (e.g. Paging, Two Way, Broadcasting)	Destination (e.g. Trunk; Local Area)	Antenna Manufacturer	Antenna Model	Ht (m)	Face/Cnr /Sector	Wind Load (Kn) @ 160km/h	Br g	Pol	Feeder Type	Lgth (m)	Ant. No.	Feeder No.
Two Way	Local	RFI	SMD1	30m	West	0.186		Verticle	LDF 4-50	38m		
Link	Mt Mackenzie	RFI	YB-09	25m	West	0.091		Horizontal	LDF 4-50	30m		

Equipment Space:		Equipment within Equipment Building					
Type: Tx's, Rx's and Batteries etc	Make/Model	Chargeable Area (sq/m)	Width (mm)	Depth (mm)	Frequency	Transmit Power	Power Consumption (w)
Radio Rack	Tait	4RU	490	340			
Base RX	Tait/T825-15		In Rack		80.825		6
Base TX	Tait/T826-15		In Rack		78.325	25W	100W 25% Duty
Link Diplexer	Deltec Mobile		In Rack				
Link RX	Tait/T855-10		In Rack		414.10		6
Link TX	Tait/T856-10		In Rack		404.65	2W	24W 25% Duty
Base Diplexer	Polar FF4- 5N1	3RU	250	250			

Annexure "C"

Access Schedule

Annexure "D"

Construction Drawings

Executed on

2020

Licensor

EXECUTED for and on behalf of **NSW
Government Telecommunications Authority**
ABN 85 430 594 829 by its delegate or
authorised representative (but not so as to
incur personal liability) in the presence of:

Signature:

Signature:

Name:

Name:

Address:

Authority:

PLEASE PRINT

PLEASE PRINT

Witness

Signatory

Licensee

EXECUTED by **Tenterfield Shire
Council**
ACN in accordance with section 127 of
the *Corporations Act 2001*:

Signature:

Signature:

Name:

Name:

PLEASE PRINT

PLEASE PRINT

Director

Director/Secretary *

* Delete as appropriate

SIGNED by _____ in the
presence of:

.....
Signature of witness

.....
Signature

.....
Name of witness [PLEASE PRINT]

.....
Address of witness [PLEASE PRINT]