



AMPLITEL PTY LIMITED
(PART OF THE TELSTRA GROUP)
LEASE PROPOSAL

The Yorke Peninsula Council is seeking public feedback on a proposal to renew the lease for Amplitel Pty Limited for the telecommunication tower located in the Warooka oval area.

Under the Local Government Act 1999, Council is required to formally undertake community consultation for a lease or licence over community land when the term is greater than five (5) years.

Lease Proposal

Land Only Lease

Lessee	Amplitel Pty Limited as trustee for the Towers Business Operating Trust.
Premises	Part of the land situated at Lot 95 Oval Avenue, Warooka SA (marked below as site access). Certificate of Title Volume 6148 Folio 398
Term	Twenty (20) years, commencing on 1 October 2024 and terminating on 30 September 2044
Rent	\$6,321.39 per annum (exclusive of GST)
Payment of Rent	Yearly in advance by way of electronic funds transfer commencing on the Rent Commencement Date and thereafter on each anniversary of the Commencement Date
Review of Rent	The rent is to be increased by 3% on each anniversary of the Commencement Date during the Term

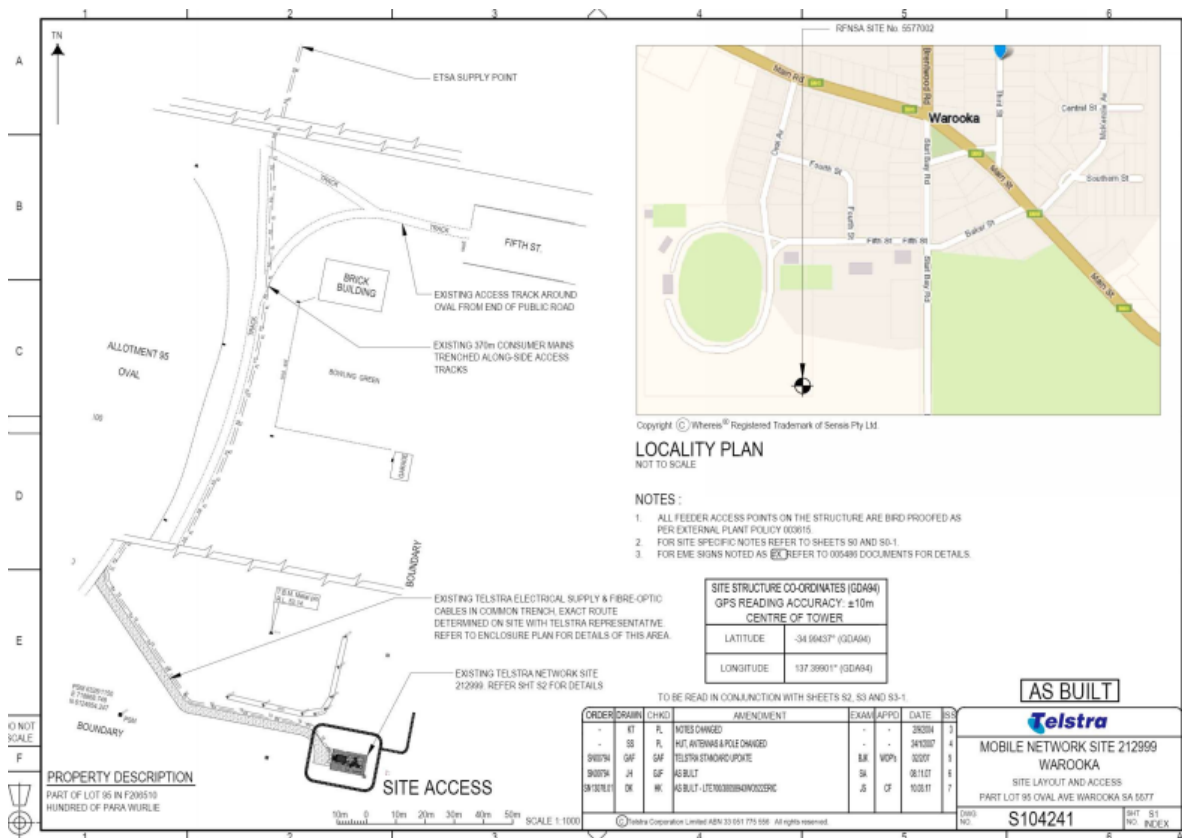
Annexure A – Draft lease

Project Background

The Telstra telecommunications tower located at the Warooka oval was established in 2004 and has provided telecommunications to our region for the past 19 (nineteen) years.

The current lease is due to expire on 30 September 2024. To ensure the continuation of this valuable service to our region, Amplitel Pty Limited has requested a new lease with Council for a period of twenty (20) years.

Site Location



HAVE YOUR SAY

The Yorke Peninsula Council welcomes your feedback on the Proposed Amplitel Pty Limited (Warooka) Lease.

To provide your feedback:

- By email – admin@yorke.sa.gov.au
- By Post – PO Box 57, Maitland SA 5573

All feedback must be returned by 5pm on Wednesday 26 July 2023.

Please indicate in the submission if you wish to appear before Council in this matter.

Next Step

Following the public consultation period, submissions received may be presented to a meeting of the Council for consideration.

More Information

Got a question about the lease proposal?

Contact Yorke Peninsula Council at admin@yorke.sa.gov.au or Ph 8832 0000.

Annexure A

FORM L1 (Version 3)
GUIDANCE NOTES AVAILABLE

LANDS TITLES REGISTRATION OFFICE SOUTH AUSTRALIA **LEASE**

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
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AGENT CODE
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LODGED BY:
TG Legal + Technology Lawyers
19 Gouger Street Adelaide 5000
CR:MJL: 5339848

CORRECTION TO:
TG Legal + Technology

SUPPORTING DOCUMENTATION LODGED WITH INSTRUMENT (COPIES ONLY)

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REGISTRAR-GENERAL	

LEASE

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION

Portion of the land comprised in Certificate of Title Volume 5883 Folio 759 being the portion marked 'T' in GP 325/2004.

ESTATE & INTEREST

Fee Simple

LESSOR (Full name and address)

Yorke Peninsula Council ABN 82 179 825 615 of PO Box 57, Maitland South Australia 5573.

LESSEE (Full name, address and mode of holding)

Amplitel Pty Limited ACN 648 133 073 of c/- JLL, 242 Exhibition Street, Melbourne Victoria 3000

TERM

COMMENCING ON 1 October 2024

AND

EXPIRING AT MIDNIGHT ON 30 September 2044

RENT AND MANNER OF PAYMENT (or other consideration)

The Rent is set out in Item 8 of the Reference Schedule and shall be paid yearly in advance on each anniversary of the Commencement Date

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as listed herein:

(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)



LAND LEASE

(South Australia)

Property: Lot 95 Oval Avenue
(Warooka (SA))

Yorke Peninsula Council
ABN 82 179 825 615

Amplitel Pty Limited
ACN 648 133 073

Reference Schedule

Item 1	Lessor:	Name: Yorke Peninsula Council ABN 82 179 825 615 Address: PO Box 57 MAITLAND SA 5573 Tel: 08 8832 0000 Email: admin@yorke.sa.gov.au
Item 2	Lessee:	Name: Amplitel Pty Limited as trustee for the Towers Business Operating Trust ACN: 648 133 073 ABN: 75 357 171 746 Address: c/- JLL 242 Exhibition Street MELBOURNE VIC 3000 Email: leaseadmin@amplitel.com
Item 3	Premises:	That part of the Land marked T in GP 325 of 2004 (a copy of which appears in 0) and situated at Lot 95 Oval Avenue, Warroka SA 5577. For Lessee reference purposes only: JDE: 31747300 Tenure ID: 62865 Node Manager Address ID: 212999 RFNSA Number: 5577002 AMS Ref: SA003203
Item 4	Land:	Certificate of Title Volume 6148Folio 398
Item 5	Term:	Twenty (20) years, commencing on the Commencement Date
Item 6	Commencement Date:	1 October 2024
Item 7	Terminating Date:	30 September 2044
Item 8	Rent:	\$6,321.39 per annum (exclusive of GST), subject to clause 3.1
Item 9	Payment of Rent:	Yearly in advance by way of electronic funds transfer commencing on the Rent Commencement Date and thereafter on each anniversary of the Commencement Date
Item 10	Permitted Use:	Use, inspection, construction, installation, replacement, operation, maintenance, alteration, repair, upgrade, access to and from and removal of the Facility for telecommunications, communications and any other lawful purposes on the Premises and the Land in accordance with this Lease
Item 11	Review of Rent:	The Rent is to be increased on each Review Date by 3% per annum during the Term
Item 12	Break Dates:	Each of the following dates: (a) the date that is 15 years before the Terminating Date; (b) the date that is 10 years before the Terminating Date; and (c) the date that is 5 years before the Terminating Date.
Item 13	Further Terms:	Not Applicable.

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Operative provisions

1 Interpretation

1.1 Definitions

The following words have these meaning in this Lease unless the contrary intention is shown:

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

Break Dates means the date or dates set out at Item 12.

Business Day means a day that is not a Saturday, Sunday or public holiday in the State.

Carrier has the same meaning as is contained in the Act and includes a party acting in reliance upon a nominated carrier declaration made under Part 3 of the Act.

Commencement Date means the date specified in Item 6.

Consumer Price Index means the All Groups CPI: Australia Consumer Price Index as currently published by the Australian Bureau of Statistics.

Current CPI means the Consumer Price Index number for the quarter ending immediately before the relevant Review Date.

Emergency means circumstances where access must be provided without delay to protect the Facility, the health or safety of persons, the environment, property or maintenance of an adequate level of service.

Facility means any equipment, equipment housing, tower/pole/mast (or similar), antennas, associated ancillary equipment and/or any other fixtures, fittings, structures and cabling as altered or upgraded in accordance with the terms of this Lease belonging to or brought onto the Premises by the Lessee, any Related Body Corporate of the Lessee and any subtenant or licensee of the Lessee (as the case may be).

Financial Year means the 12 months period ending on 30 June in each year.

Item means an item in the Reference Schedule.

Land means the Land described in Item 4.

Lease means this lease and any equitable lease or common law tenancy evidenced by this lease.

Lessee means the party named in Item 2.

Lessor means the party named in Item 1.

Liability Cap means:

- (a) for the Financial Year ending 30 June 2022, \$20 million; and
- (b) for each subsequent Financial Year in the Term, the amount of the Liability Cap for the previous Financial Year multiplied by the Current CPI and divided by the Previous CPI.

Network means the passive infrastructure of the Lessee (or any Related Body Corporate of the Lessee) for use in connection with a communications network.

Permitted Mortgage means a mortgage of the Land granted to an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth).

Permitted Mortgagee means the mortgagee from time to time under a Permitted Mortgage.

Permitted Use means the use specified in Item 10.

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

Previous CPI means the Consumer Price Index number for the quarter ending immediately before the last Review Date (or, if there has not been one, the Commencement Date).

PPS Security Interest means a security interest that is subject to the *Personal Property Securities Act 2009* (Cth).

Reference Schedule means the Reference Schedule to this Lease.

Related Body Corporate means a related body corporate or a body corporate of which the Lessee is either an associated entity or a related body corporate of an associated entity, as each of those terms are defined in the *Corporations Act 2001* (Cth).

Rent means the amount specified in Item 8, as varied on any Review Date under this Lease.

Rent Commencement Date means the earlier of:

- (a) the date the Lessee substantially commences initial installation of the Facility on the Premises;
- (b) the date the Lessee identifies in a notice to the Lessor of the Lessee's intention to commence initial installation of the Facility on the Premises; or
- (c) the fifth anniversary of the Commencement Date.

Requirements means applicable legislation, by-laws, policies, industry standards or codes, community obligations and technical requirements.

Review Date means each anniversary of the Commencement Date during the Term

Security Interest means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation or that gives a creditor priority over unsecured creditors in relation to any property.

State means the State or Territory of Australia in which the Premises is situated.

Term means the term of this Lease as specified in Item 5 which begins on the Commencement Date and ends on the Terminating Date.

Terminating Date means the date specified in Item 7, except where this Lease is terminated early in which case the date of earlier termination is the Terminating Date.

1.2 Rules for interpreting this Lease

Unless the context otherwise requires:

- (a) A singular word includes the plural, and vice versa.
- (b) If a word is defined, another part of speech using contextual variations of that word has a corresponding meaning.
- (c) Words of inclusion or example are not words of limitation.
- (d) Headings are for convenience only, and do not affect interpretation.
- (e) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Lease.
- (f) If anything in this Lease is unenforceable, illegal or void then it is severed and the rest of this Lease remains in force.
- (g) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes an executor, an administrator, a permitted substitute or a permitted assign of that party and where the party is a corporation, includes the corporation, its successors and assigns;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (h) Unless the context otherwise requires, the terms installation and maintenance where they are used in this Lease have the same meanings and include the same activities as are provided under the Act.
 - (i) Where a party consists of two or more persons or a term is used in this Lease to refer to more than one party an obligation of those persons is joint and several and a right of those persons is held by each of them severally.
 - (j) Any right given to the Lessor or the Lessee (as the case may be) may where the context so permits be exercised by that party's employees, agents, contractors, subtenants, licensees or others authorised (expressly or implicitly) by that party.
 - (k) Any obligation on the Lessor or the Lessee (as the case may be) will where the context so permits extend to the actions of that party or that party's authorised employees, agents, contractors, subtenants, licensees, invitees or others claiming under or through that party.
 - (l) Unless this Lease expressly states otherwise, any party responding to a request for consent or approval must not unreasonably withhold or delay its response or impose any conditions inconsistent with the terms of this Lease. If withholding consent or approval, the responding party must give written reasons with its response.
 - (m) Sections 124 and 125 of the *Real Property Act 1886* (SA) do not apply to this Lease.

2 Term of Lease

2.1 Term

The Lessor leases the Premises to the Lessee for the Term and for the Permitted Use.

2.2 Holding over

If the Lessee occupies the Premises after the Terminating Date without demand for possession by the Lessor, then the Lessee occupies the Premises under a yearly tenancy on the same terms as this Lease, so far as they can be applied to a yearly tenancy. Either party may terminate the yearly tenancy by giving no less than 1 year's notice to the other party.

2.3 Break Rights

The Lessee may terminate this Lease on any of the Break Dates by giving the Lessor no less than 3 months' notice in advance.

3 Payments

3.1 Rent and Rent review

- (a) The Lessee must pay the Rent in accordance with Item 9 to an account in Australia nominated by the Lessor. The Lessor may nominate another account in Australia into which the Rent must be paid upon giving at least 20 Business Days' notice to the Lessee.
- (b) The Rent is to be reviewed on each Review Date in accordance with Item 11.

3.2 Rates and taxes

The Rent is a gross amount and the Lessee is not required to pay any rates, taxes or outgoings which are charged to, assessed against or relate to the Land (including the Premises), subject to charges (if any) which this Lease expressly requires the Lessee to pay. The Lessor must pay all rates, taxes and outgoings on or before the payment date which are charged to, assessed against or relate to the Land (including the Premises).

3.3 Costs of Lease

The Lessee will contribute up to \$1,500.00 (plus any GST) towards the Lessor's reasonable legal fees for the preparation, negotiation and execution of this Lease. If stamp duty or registration fees are payable on this Lease, the Lessee will pay the applicable stamp duty or registration fees.

4 Equipment

- (a) The Lessor grants a licence to the Lessee, its subtenants and licensees to install, maintain, repair, renew and use cabling on the Land to and from the Facility as is necessary for the Permitted Use.
- (b) Subject to the express terms of this Lease, the Facility remains at all times the property of the Lessee, its subtenants and licensees (as the case may be), even if it becomes attached to the Land.

5 Use

5.1 Use of Premises and Land

- (a) The Lessee may only use the Premises for the Permitted Use.
- (b) The Lessor grants a licence to the Lessee, its subtenants and licensees to use so much of the Land adjacent to or adjoining the Facility as is reasonably required for the Permitted Use. After using the adjacent or adjoining Land, the Lessee must restore the surface to that part of the Land used to as near as practicably possible its state prior to use by the Lessee, its subtenants and licensees.
- (c) The Lessee is not required to carry out any capital or structural works to the Land unless such works are required by the Lessee for the installation or maintenance of the Facility or the works are as a result of the Lessee's negligence or a breach of this Lease.
- (d) The Lessee, its subtenants and licensees may install signage around the Premises and the Facility for the purposes of complying with applicable laws.
- (e) The Lessor grants to the Lessee, its subtenants and licensees the right to use so much of the adjoining or adjacent land as is reasonably required for the purpose of installing and maintaining guy anchors (if needed) to support the Lessee's structure on the Premises and running guy wires from those guy anchors on the adjoining or adjacent land to the Lessee's structure on the Premises. The Lessor must not use or interfere with the Lessee's guy anchors or guy wires. The provisions of clause 9.3 apply to the exercise by the Lessee of its rights under this clause.

5.2 Condition of Premises

Subject to clause 5.1(c), the Lessee will keep the Premises in good repair and condition (having regard to the condition of the Premises as at the Commencement Date) excluding fair wear and tear and any damage caused by fire, flood, lightning, storm, war or act of God.

5.3 Permits and approvals

The Lessor:

- (a) authorises the Lessee, at the Lessee's cost, to make applications to any relevant government authority or agency for any necessary permits, consents and approvals for the development, construction and use of the Facility and to exercise and procure (in the Lessee's discretion) every right of appeal arising from a determination or failure to determine such application; and

- (b) must sign all documentation and provide all assistance reasonably required by the Lessee or any person nominated by the Lessee to obtain the permits, consents and approvals referred to in clause 5.3(a).

6 Electricity and other services

- (a) The Lessor must permit the Lessee, at the Lessee's cost, to install electricity and other services on the Land to and from the Facility. The Lessee may use, install, repair, maintain, replace and remove any services to the Facility at any time.
- (b) The supply of electricity must be made through a dedicated usage meter (either by separate meter or check meter), installed by the Lessee at its own cost, so that the Lessee is directly accountable for any electricity that it uses on the Premises.
- (c) Where the Lessee installs separate electricity metering, the Lessee must pay to the supplier all charges for the separately metered electricity used by the Lessee. Where the Lessee installs a check meter, the Lessee will reimburse the Lessor the actual cost of the electricity it uses on the Premises as recorded by the check meter within 30 Business Days of receipt of a tax invoice from the Lessor.
- (d) The Lessor agrees that the Lessee may transfer ownership of some or all of the electricity cables to a third party electricity supplier for the supply of electricity to the Facility.
- (e) Where reasonably requested by the Lessee, the Lessor must grant an easement for electricity purposes over part of the Land on the easement terms that may be required by the electricity supplier.
- (f) The Lessor agrees that the electricity supplier may enter the Land from the Commencement Date for the purposes of installing, repairing, maintaining, upgrading, replacing and removing any electricity infrastructure.

7 Access

7.1 Access

The Lessor grants a licence to the Lessee, its subtenants and licensees over the Land to have access to and from the Premises (including the Facility) at all times.

7.2 Security

- (a) Subject to clause 7.2(b), the Lessee will comply with reasonable security arrangements and access protocols as previously notified to it by the Lessor. The Lessor will notify the Lessee of the Lessor's contact person for security purposes (including name, postal address, email address and phone number).
- (b) Where the Lessee does not have direct access to the Land, Premises and the Facility and there is an Emergency, the Lessor must arrange for the Lessee, its subtenants and licensees to have access to the Land, Premises and the Facility within 2 hours of notification by the Lessee to the Lessor or the Lessor's contact person nominated under clause 7.2(a). The Lessee may give this notice in person or by telephone.
- (c) The Lessee will reimburse to the Lessor the reasonable security expenses incurred by the Lessor in providing access during an Emergency within 20 Business Days of receipt of a tax invoice from the Lessor.

7.3 Access track and/or power connection

If the Lessee installs at its cost any access track or power connection, then any other person (except the Lessor) who wishes to utilise the access track or power connection must share in the cost of any upgrade and maintenance of the access track or power connection as apportioned by the Lessee (and in consultation with the Lessor acting reasonably), taking into account the extent of the use of the access track or the power connection by other users.

8 Assignment and subletting

- (a) The Lessee must not assign this Lease or sublet the whole of the Premises without the consent of the Lessor, except to:
 - (i) a Related Body Corporate of the Lessee;
 - (ii) a Carrier; or
 - (iii) any entity (or a Related Body Corporate of that entity) that is acquiring the Network, in which case the consent of the Lessor is not required to the assignment or sublease.
- (b) The Lessee may grant a sublease of part of the Premises or a licence of the whole Premises or any part of the Premises to any person at any time.
- (c) In the event of an assignment of this Lease by the Lessee, the Lessee and the Lessor release each other from all obligations and liabilities under this Lease from the date of assignment of this Lease, but without prejudice to any prior claim or remedy which either party may have against the other party.
- (d) For the avoidance of doubt, and for the purposes of this clause 8, a reference to:
 - (i) this 'Lease' includes any licence rights granted to the Lessee in this Lease and any rights which are appurtenant or ancillary to this Lease; and
 - (ii) the 'Premises' includes any areas over which the Lessee holds licence, appurtenant or ancillary rights.

9 Insurance and indemnity

9.1 Property Insurance

The Lessee agrees to maintain all risks property insurance with a reputable insurer at all times in relation to the Premises.

9.2 Public Liability Insurance

- (a) The Lessee agrees to maintain public liability insurance with a reputable insurer for at least \$20 million at all times in relation to the Premises and the Lessee will include the Lessor as an insured to the extent of the Lessee's liability under this Lease.
- (b) If requested in writing by the Lessor (no more than once in a 12 month period), the Lessee will provide the Lessor with a letter confirming the Lessee's insurance as specified in this clause 9.2.

9.3 Indemnity and liability

- (a) The Lessee will indemnify the Lessor for any liability, loss, damage, cost or expense incurred or suffered by the Lessor which is caused or contributed (to the extent of the contribution) by the Lessee's negligence or breach of this Lease.
- (b) The liability of the Lessee under this Lease (including under the indemnity provided by the Lessee under clause 9.3(a)) will not exceed the Liability Cap in any Financial Year.
- (c) The liability of the Lessee under this clause 9.3 must be reduced proportionately to the extent that the Lessor's negligence or breach of this Lease caused or contributed to the liability.
- (d) In defending or responding to any claim under this clause 9.3, the Lessor must act reasonably and consult in good faith with the Lessee.
- (e) The Lessor must not settle any claim under this clause 9.3 without obtaining the prior consent of the Lessee. The Lessor must take reasonable steps to mitigate any liability, loss, damage, cost or expense including taking reasonable court action to defend any claim, action or demand made against the Lessor.

10 Lessor's covenants

10.1 Quiet enjoyment

The Lessee is entitled to quiet enjoyment of the Premises and to undertake the Permitted Use on the Land without any interruption by the Lessor or any person lawfully claiming through the Lessor or in any other manner.

10.2 Condition of Land

The Lessor must repair, maintain and keep in good and substantial repair the Land (including all fixtures and fittings of the Lessor, if any), subject always to the obligations of the Lessee under this Lease.

10.3 No damage

The Lessor must not damage, tamper with or interfere with the Facility or its operation.

10.4 Safety and security procedures

The Lessor must comply with the Lessee's safety and security procedures and signage in respect of the Premises and the Facility.

10.5 Other occupiers

- (a) Where the Lessor proposes to grant rights of occupancy on the Land to other occupiers and those rights include the right to operate radio communications and/or telecommunications equipment on the Land, then the Lessor must first promptly give notice and obtain the Lessee's consent to the proposal (such consent not to be unreasonably withheld).
- (b) If the Lessee establishes that changes to other occupiers' facilities after the initial installation of the facility by the other occupier has caused interference with the Facility, the Lessor must, immediately upon receipt of notice from the Lessee, arrange for the other occupier to modify its facility so that it no longer interferes with the Facility.

10.6 Consents

If the Land is subject to a mortgage, the Lessor must obtain consent to this Lease from the mortgagee and the Lessee must pay the mortgagee's reasonable consent costs.

10.7 Contamination

The Lessor warrants to the best of its knowledge that, as at the Commencement Date, the Premises do not contain contamination or substances hazardous to health or safety.

10.8 Events affecting Land

- (a) The Lessor must promptly notify the Lessee if:
 - (i) the Lessor sells or otherwise disposes of its interest in the Land;
 - (ii) the Lessor is aware of a proposal for development occurring on adjoining land;
 - (iii) the Lessor changes its address for notices;
 - (iv) a Permitted Mortgage becomes enforceable; or
 - (v) a Permitted Mortgagee becomes:
 - (A) entitled to the receipt of Rent and other payments under this Lease;
 - (B) entitled to exercise any of the rights of the Lessor under this Lease; or
 - (C) obliged to perform any of the obligations of the Lessor under this Lease.
- (b) The Lessor must not:

- (i) grant a lease over the whole or any part of the Premises which is intended to run concurrently with this Lease;
- (ii) issue a direction to the Lessee to pay the whole or any part of the Rent or other payments under this Lease (other than for charges which this Lease expressly requires the Lessee to pay or for electricity under clause 6) to a person other than the Lessor;
- (iii) assign, transfer or grant any interest in this Lease or the Lessor's rights under this Lease, other than by way of a Permitted Mortgage;
- (iv) appoint a person:
 - (A) other than an employee or officer of the Lessor, under power of attorney, as an authorised representative or attorney (other than pursuant to a Permitted Mortgage);
 - (B) other than a licensed real estate agent, as agent of the Lessor; or
 - (C) other than a professional adviser, such as an accountant or legal adviser,
 to exercise any rights of the Lessor under this Lease or to negotiate on behalf of the Lessor the terms of any lease, licence or other occupancy arrangement of the Premises to the Lessee to commence after the Terminating Date; or
- (v) create or allow a Security Interest, other than a Permitted Mortgage, in the Land, this Lease or the Lessor's rights under this Lease,

without the prior written consent of the Lessee (which may be granted or refused by the Lessee in its absolute discretion).

- (c) If the Lessor breaches clause 10.8(b), then:
 - (i) the Lessee will be entitled to a reduction in the Rent of 50% from the date of the Lessor's breach until the Terminating Date and the parties agree to promptly execute a variation of this Lease to reflect the reduced Rent which, if required, must be in registrable form. The Lessee must at the Lessor's cost attend to the preparation and, if required, registration of the variation of this Lease and the Lessor must immediately produce the certificate of title for the Land to enable the variation of this Lease to be registered (if applicable);
 - (ii) the Lessor must compensate the Lessee for any loss, damage or disadvantage which the Lessee may suffer or incur as a result of the Lessor's failure or delay in seeking the consent of the Lessee; and/or
 - (iii) at any time within 2 years after becoming aware of the breach, the Lessee may terminate this Lease by giving to the Lessor not less than 6 months' notice to the Lessor at any time.
- (d) The Lessor acknowledges and agrees that:
 - (i) the Lessee will suffer loss and damages if the Lessor fails to obtain the Lessee's prior consent under clause 10.8(b); and
 - (ii) the reduction in the Rent under clause 10.8(c)(i) represents the amount reasonably required to protect the Lessee's legitimate business interests should the Lessor fail to obtain the Lessee's prior consent under clause 10.8(b).

10.9 Lessor requirements to effect registration

The Lessor must do all things reasonably necessary for the registration of this Lease, including (without limitation), executing this document in accordance with the requirements of the *Real Property Act 1886* (SA) and the *Real Property (Electronic Conveyancing) Amendment Act 2016* (SA) (**SA Legislation**) and where relevant:

- (a) provide to the Lessee:
 - (i) an original copy of the Authorised Person Certification as defined in and required by the Registrar-General's Verification of Identity Requirements issued by the Department of Planning Transport and Infrastructure (Department); and

- (ii) sufficient evidence of the Lessor's authority to enter into the Lease which complies with the Registrar-General's Verification of Authority Guidelines issued by the Department;
prior to or at the time of execution of the Lease by the Lessor; and
- (b) engage a legal practitioner or registered conveyancer.

11 Default and termination

11.1 Default and re-entry

- (a) If the Lessee fails to perform its obligations under this Lease and the Lessee does not, within 20 Business Days in the case of non-payment of Rent and 40 Business Days in the case of all other breaches from the date of receipt of notice from the Lessor, either remedy the default or if the default cannot be remedied, pay reasonable compensation to the Lessor for the loss or damage suffered by the Lessor as a consequence of the default, then the Lessor may re-enter upon the Premises.
- (b) This Lease determines on the Lessor's re-entry but without prejudice to any prior claim or remedy which either party may have against the other party.

11.2 Early surrender

- (a) Before the Facility is initially installed, the Lessee may surrender this Lease by giving the Lessor no less than 20 Business Days' notice where the Lessee or its subtenants or licensees are unable to comply with or satisfy any Requirements.
- (b) Despite any other provision of this Lease, if the Permitted Use is compromised (including physical or radio interference), the Premises are no longer required, the communications network of any of the Lessee's subtenants or licensees ceases to operate or the Lessee's subtenants or licensees vacate then the Lessee may surrender this Lease on giving to the Lessor no less than 6 months' notice at any time.
- (c) If the Lessee exercises its right to surrender this Lease under clauses 11.2(a) or 11.2(b), the Lessee must, at its cost, reinstate the Premises in accordance with clause 11.3 and the surrender of this Lease is without prejudice to any prior claim or remedy which either party may have against the other.
- (d) If this Lease is surrendered by the Lessee prior to the Terminating Date pursuant to this clause 11.2, the Lessor must, within 20 Business Days of the date of surrender, refund to the Lessee any Rent paid in advance for that portion of the Term after the date of surrender.

11.3 Reinstatement and Make Good

Within 4 months after the Terminating Date, the Lessee will remove that part of the Facility located above ground level and make good at its cost any damage to the Land or Premises caused by that removal. The Lessee will continue to pay Rent to the Lessor during this 4 month period (or any lesser period of time as the Lessee requires to meet its obligations under this clause 11.3) at the same rate of Rent (on a pro-rata basis) payable immediately before the Terminating Date.

12 GST

12.1 Recovery of GST

If one party (**supplying party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the GST-exclusive consideration (**receiving party**) must also pay an amount (**GST amount**) equal to the GST payable in respect of that supply.

12.2 Time for payment of GST amount

Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the GST-exclusive consideration or the first part of the GST-exclusive consideration for the supply (as the case may be).

12.3 Indemnity and reimbursement payments

If one party must indemnify or reimburse another party (**payee**) for any loss or expense incurred by the payee, the required payment does not include any amount which the payee (or an entity that is in the same GST group as the payee) is entitled to claim as an input tax credit or would have been entitled to claim as an input tax credit had the other party registered for GST in the event that it was required or entitled to do so, but will be increased under clause 12.2 if the payment is consideration for a taxable supply.

12.4 Adjustment events

If an adjustment event arises in respect of a taxable supply made by a supplying party, the GST amount payable by the receiving party under clause 12.2 will be recalculated to reflect the adjustment event and a payment will be made by the receiving party to the supplying party, or by the supplying party to the receiving party, as the case requires.

12.5 Lease to be a tax invoice

The parties agree that this Lease is intended to be a tax invoice which satisfies the requirements of section 29-70(1) of the GST Act.

12.6 Change in the GST law

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

12.7 When RCTI clauses apply

Clause 12.8 shall only become effective upon notice being provided by the Lessee, in its absolute discretion, to the Lessor.

12.8 RCTI

For the purpose of satisfying the requirements of the GST legislation and any additional requirements as determined by the Commissioner of Taxation from time to time, the Lessor and the Lessee agree that:

- (a) the Lessee can issue recipient created tax invoices (and adjustment notes) in respect of the supply by the Lessor of the Lease of the Premises to the Lessee;
- (b) the Lessor must not issue a tax invoice (or adjustment notes) in respect of any supply by the Lessor to the Lessee under this Lease unless the Lessee notifies the Lessor that the Lessee will not be issuing a recipient created tax invoice for that supply;
- (c) the Lessee is registered for GST purposes. The Lessee must notify the Lessor if the Lessee ceases to be registered for GST purposes or ceases to satisfy the requirements for issuing recipient created tax invoices as set out in the GST legislation or as determined by the Commissioner of Taxation from time to time;
- (d) the Lessor is registered for GST purposes and has notified the Lessee of its ABN. The Lessor must notify the Lessee if the Lessor ceases to be registered for GST purposes or if it intends selling its business or otherwise ceases to be entitled to enter into a recipient created tax invoice arrangement; and
- (e) the Lessee must issue the recipient created tax invoice to the Lessor and must retain a copy. The Lessee must issue the recipient created tax invoice within 28 days from the date the value of the relevant supply is determined.

12.9 When RCTI clauses cease to apply

Clause 12.8 shall be effective from the date on which the Lessee issues a notice to the Lessor under clause 12.7 and continues until terminated by either party at any time by giving not less than 30 days' prior written notice to the other party.

12.10 GST definitions

In this Lease:

- (a) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
- (b) consideration includes non monetary consideration, in respect of which the parties must agree on a market value, acting reasonably;
- (c) in addition to the meaning given in the GST Act, the term 'GST' includes a notional liability for GST; and
- (d) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

13 Warranties

13.1 Lessee as trustee

- (a) The parties acknowledge and agree that:
 - (i) where the Lessee is a responsible entity or trustee of a trust, the Lessee enters into this Lease in that capacity and is bound by this Lease only in that capacity and in no other capacity;
 - (ii) the recourse of the Lessor to the Lessee in respect of any obligations and liabilities of the Lessee under or in connection with this Lease (whether that liability arises under a specific provision of this Lease, for breach of contract, tort (including negligence) or otherwise) is limited to the extent to which the liability can be satisfied out of the assets of the trust out of which the Lessee is actually indemnified in respect of such obligations and liabilities;
 - (iii) the parties may not sue the Lessee in any capacity other than as responsible entity or trustee of the trust, including seeking the appointment of a receiver (except in relation to property of the Lessee), a liquidator, an administrator or any similar person to the Lessee or prove in any liquidation, administration or arrangement of or affecting the Lessee (except in relation to property of the Lessee); and
 - (iv) the provisions of this clause 13.1(a) do not apply to any obligation or liability of the Lessee in its capacity as trustee of the trust to the extent that it is not satisfied because under the trust deed of the trust or by operation of law there is a reduction in the extent of the Lessee's indemnification out of the assets of the trust as a result of fraud, negligence or breach of trust on the part of the Lessee.
- (b) As at the Commencement Date, the Lessee warrants to the Lessor that:
 - (i) it has power under terms of the relevant trust deed to execute this Lease and enter into every transaction contemplated by this Lease;
 - (ii) it is the only responsible entity or trustee of the relevant trust;
 - (iii) no action has been taken to remove it as trustee of the relevant trust or to appoint an additional responsible entity or trustee of the relevant trust;
 - (iv) it has a right to be indemnified out of all the property of the relevant trust in relation to money and any liabilities of any nature owing under, or the payment of which is contemplated by or may arise under, this Lease; and
 - (v) no action has been taken to terminate the relevant trust or to determine a vesting date under the relevant trust deed.

13.2 Lessor as trustee

If the Lessor enters into this Lease as a responsible entity or trustee of a trust, as at the Commencement Date, the Lessor warrants to the Lessee that:

- (a) it has power under terms of the relevant trust deed to execute this Lease and enter into every transaction contemplated by this Lease;

- (b) it is the only responsible entity or trustee of the relevant trust;
- (c) no action has been taken to remove it as trustee of the relevant trust or to appoint an additional responsible entity or trustee of the relevant trust;
- (d) it has a right to be indemnified out of all the property of the relevant trust in relation to money and any liabilities of any nature owing under, or the payment of which is contemplated by or may arise under, this Lease; and
- (e) no action has been taken to terminate the relevant trust or to determine a vesting date under the relevant trust deed.

14 Miscellaneous

14.1 Application of Laws

- (a) Nothing in this Lease affects, restricts, limits or derogates from the rights, powers and immunities under and by virtue of the Act or any other applicable legislation and/or regulations of the Commonwealth.
- (b) The Lessor agrees that it does not require written notice under clause 17(1) Division 5 Part 1 of Schedule 3 of the Act from the Lessee or any subtenant or licensee of the Lessee for access to the Facility and any activities related to the Permitted Use.
- (c) The Lessee must comply with all applicable laws in respect of the Lessee's use of the Premises and any requirements, notices or orders of a government authority or agency having jurisdiction in respect of the Lessee's use of the Premises.
- (d) The Lessor must comply with all applicable laws in relation to the Land and the Lessor's property on the Land.

14.2 Notices

- (a) Subject to clause 14.2(b), a notice, consent or other communication (**Notice**) under this Lease is only valid if it is in writing and addressed to the recipient (as per the address in the Reference Schedule, or as notified to the other party in writing from time to time) and either delivered by hand or sent by pre paid mail (by airmail, if the recipient is overseas) to the recipient's address or sent by email to the recipient's email address or email addresses. Where more than one email address is specified, the Notice must be sent to all specified email addresses.
- (b) Notice may be given orally where expressly permitted by this Lease. A Notice given orally is deemed to be received at the time it is given.
- (c) A Notice is deemed received by email if delivered:
 - (i) by 5.00pm on a Business Day – at the time (local time in the place of receipt) specified in the delivery confirmation or receipt generated by the sender's email; or
 - (ii) after 5.00pm on a Business Day or on a day that is not a Business Day – on the next Business Day after the time (local time in the place of receipt) specified in the delivery confirmation or receipt generated by the sender's email.
- (d) Any Notice sent by mail is deemed to have been received within 7 Business Days after posting to a location within Australia or 10 Business Days after posting to a location outside Australia.
- (e) Any Notice delivered by hand is deemed to have been received at the time it is given.

15 [^]Electronic execution

- (a) The parties agree that a party may sign this document electronically. For clarity, all parties may sign this document electronically.
- (b) If one or more parties electronically sign this document, by doing so they will:

- (i) bind themselves to this document; and
 - (ii) such electronic signing will satisfy requirements under the *Corporations Act 2001* (Cth) and *Real Property Act 1886* (SA) and *Electronic Transactions Act 2000* (SA) (if applicable); and
 - (iii) satisfy any other requirements for this document to be in writing and signed by those parties.
- (c) If one or more parties intend to sign this document physically, they may do so at any time, so long as the final copy contains the signatures (which may be electronic signatures) of all parties to the document.
- (d) A fully executed original of this document must include the signatures of all parties to this document in accordance with clause 15(e).
- (e) For this clause 15, a **signature** means the execution of this document by a party that complies with all applicable Laws where:
- (i) if electronic, a document containing such signatures may be printed for subsequent wet-ink execution by another party; or
 - (ii) if wet-ink, it may be signed in any number of sets of copies for subsequent electronic or wet-ink execution by another party.

Executed as a deed

Executed by Lessee

Signed, sealed and delivered by

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

as attorney for **Amplitel Pty Limited** under power of attorney registered no. **13600321** in the presence of an independent adult witness who either knows the attorney personally or who has been given satisfactory proof as to their identity:

Signature of witness

Full name of witness (block letters)

Postal address of witness

Business hours telephone number of witness

Executed by Lessor

The common seal of Yorke Peninsula Council
ABN 82 179 825 615 was affixed in accordance
with its Constitution in the presence of:

Authorised signatory

Authorised signatory

Print name

Print name

Office

Office

Schedule 1– Premises Plan

TG Drafting note: JLL to provide registered surveyed plan

OPERATIVE CLAUSE **Delete the inapplicable*

The Lessor LEASES TO THE LESSEE the land described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed *herein / ~~*in Standard Terms and Conditions No. _____~~ and to the powers and covenants implied by the *Real Property Act 1886* (except to the extent that the same are modified or negated).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

Not applicable

CONSENTS OF MORTGAGEES

[Insert]

DATED

CERTIFICATION **Delete the inapplicable*

Lessor(s)

- *The Certifier has taken reasonable steps to verify the identity of the lessor or his, her or its administrator or attorney.
- *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Certifier has retained the evidence to support this Registry Instrument or Document.
- *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

for:

on behalf of the **Lessor**

Lessee(s)

- *The Certifier has taken reasonable steps to verify the identity of the lessee or his, her or its administrator or attorney.
- *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Certifier has retained the evidence to support this Registry Instrument or Document.
- *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

.....
Name of Certifying Party

Solicitor

for: TG Legal + Technology

on behalf of the **Lessee**
