

Dated

20

SHIRE OF JERRAMUNGUP

(ABN 45 742 432 975)

-Lessor-

-and-

**ELECTRICITY NETWORKS CORPORATION
Trading as WESTERN POWER**

(ABN 18 540 492 861)

-Lessee-

H A R D S T A N D – L E A S E

(LOT 289 No 9 NEWTON STREET, JERRAMUNGUP)

[Reserve 37080]

PARTIES

SHIRE OF JERRAMUNGUP (ABN 45 742 432 975), of 8 Vasey Street, Jerramungup, Western Australia, 6337. “**the Lessor**”

- and –

ELECTRICITY NETWORKS CORPORATION (ABN 18 540 492 861), a statutory body corporate established by paragraph 4(1)(b) of the *Electricity Corporations Act 2005 (WA)*, of Level 4 / 363 Wellington Street, Perth, Western Australia, 6000. “**the Lessee**”

BACKGROUND

- A. The Lessor is the management body of the land described in **Item 1** of the Schedule (the Land), under the Management Order.
- B. Under the Management Order the Lessor has the power to lease the Land for any term not exceeding 21 years, subject to the approval of the Minister for Lands first being obtained.
- C. The Lessee has requested that the Lessor grant it a lease of that portion of the Land described in **Item 1** of the Schedule (Premises), and the Lessor has agreed subject to the Parties entering into this agreement.

LEASE

1. GRANT OF LEASE

- (a) Subject to the consent of the Minister for Lands as provided in Clause 2 we lease the Premises to you and you take a lease of the Premises from us on the basis that you acknowledge that:
 - (i) you have relied on your own enquiries and investigations concerning the Lease; and
 - (ii) we have not made and you have not relied on any representations, warranties or undertakings by us or anybody who seems to act on our behalf;

- (b) the Lease incorporates the provisions set out in the Standard Conditions of Lease attached;
- (c) the schedules form part of the Lease; and
- (d) you will always do, on time, everything you must do under the Lease.

2. CONSENT OF THE MINISTER FOR LANDS

This Lease is conditional on the Minister for Lands consenting to it and endorsing that consent where provided on this Lease.

3. DATE OF LEASE

The date of the Lease is the date on which it is signed by us both stipulated in item 11 of schedule 1.

SCHEDULE 1

LEASE DETAILS

Item 1: Land

Reserve 37080 being Lot 289 on Deposited Plan 184269 being the whole of the land in Certificate of Title Volume LR3042 Folio 287

Item 2: Lessor (we, us, our)

Name:	Shire of Jerramungup
ABN:	45 742 432 975
Address:	8 Vasey Street, Jerramungup
Telephone:	(08) 9835 1022
Contact:	Brent Bailey (Chief Executive Officer)

Item 3: Lessee (you, your)

Name:	Electricity Networks Corporation
ABN:	18 540 492 861
Address:	Level 4 / 363 Wellington Street, Perth
Fax:	(08) 9326 6730
Telephone:	(08) 9326 4814
Contact:	Martin Wong (Property Specialist)

Item 4: Premises

Reserve 37080 being Lot 289 on Deposited Plan 184269 being the whole of the land in Certificate of Title Volume LR3042 Folio 287, shown in yellow on the Plan in the attached plan.

Item 5: Term

Five (5) years commencing 1 March 2017 and expiring on 28 February 2022

Item 6: Options

Five (5) years commencing 1 March 2022 and expiring on 28 February 2027

Item 7: Rent

Eight Thousand and One Hundred Dollars (\$8,100) exclusive of GST payable monthly in advance, commencing on the Commencement Date.

Item 8: Rent Review Dates

Each anniversary of the Commencement Date during the Term and the Further Terms to CPI, except for every 5th anniversary which shall be based on market rent.

Item 9: Permitted Use

Storage Yard (Poles)

Item 10: Public Liability Insurance

\$20,000,000 (Twenty Million Dollars)

Item 11:

Date of Lease

Standard Conditions of Lease

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1 UNDERSTANDING THIS LEASE

1.1 Definitions

In this Lease:

we, us our means the person/s named and described in item 2 of schedule 1 and, where applicable, includes our officers, employees, contractors, authorised agents, successors and assigns;

you, your means the person/s named and described in item 3 of schedule 1 and, where applicable, includes your officers, employees, contractors, servants, invitees, agents, successors, permitted assigns and anybody else you allow on the Premises ;

Adjustment Note means the same as in the GST Law;

Assign means to assign, sublet, license, grant a franchise or concession of, part with possession of, share or transfer;

Authority means a government (including federal, state or local) or government department, statutory authority or other body, governmental, semi-governmental or judicial person or a person charged with the administration of any law;

Building Work means the construction, erection, assembly or placement of a building or incidental structure or fence on the Premises.

Business Day means a day on which banks are open for general banking business in Perth, Western Australia;

Business Hours means the period from 7.30 am to 6.00 pm inclusive on any Business Day;

Claim means a claim, demand, action, damage, loss, liability, cost (including legal costs on a full indemnity basis) or expense;

Common Areas means all those areas of the hardstand that we make available for everyone to use are not leased or licensed for your sole use or the sole use of any other person;

CPI means the Perth Consumer Price Index (All Groups) published by the Commonwealth Statistician, or any similar index which replaces it;

Encumbrance means a mortgage, charge, lease,, pledge or other form of security and includes an agreement to give any of these;

End Date means the date in items 5 of schedule 1 or if the Option is exercised the date in item 6 of schedule 1;

Financial Year means 1 July to 30 June in each year;

GST means the same as in the GST Law;

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Indirect Damage means any one or more of the following damages suffered by a person:

- (i) any consequential loss, consequential damage or special damages however caused or suffered by the person, including any:
 - (i) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings; or
 - (ii) loss due to business interruptions; or
 - (iii) increased costs; or
 - (iv) punitive or exemplary damages,whether or not the consequential loss or damage or special damage was foreseeable; or
- (ii) in respect of contractual damages, damages which would fall with the second limb of the rule in *Hadley v Baxendale* [1854] 9 EX 341; or
- (iii) any liability of the person to any other person, or any claim, demand, action or proceeding brought against the person by any other person, and the costs and expenses connected with the claim.

Input Tax Credit means the same as in the GST Law;

Interest Rate means a rate of interest per annum equal to the Overdraft Reference Rate (or its replacement) published by the Commonwealth Bank of Australia from time to time;

Land means the land in item 1 of schedule 1 and any other land which we use or control in connection with that land or the Premises;

Lease means this lease, the Standard Conditions the schedules, plan and all annexures to the Lease and includes any equitable or common law tenancy evidenced by this Lease;

Lessee means the person described in item 3 of schedule 1;

New Lease means the lease that comes into existence if you exercise the Option (if any);

New Person means anybody who takes or is treated as taking the benefit of an assignment;

New Rent means the Rent you must pay after a Review Date;

Notice means a notice in writing that either of us gives to the other;

Operating Expenses means the Operating Expenses described in Schedule 2

Option (if applicable) means the option to renew the Lease set out in clause 3.1;

Option Notice (if applicable) means a Notice you must give us to tell us that you want to exercise the Option;

Option Term (if applicable) means the term in item 6 of schedule 1;

Our Property means all our property in or on the Land or Premises or property in which we have an interest;

PCA means the Property Council of Australia Limited (Western Australian Division);

Permitted Use means the use described in item 9 of schedule 1;

Premises means the premises described in item 4 of schedule 1 and includes our Property in the premises; and

Recipient means the entity to which a Supply is made;

Rent means the rent in item 7 of schedule 1, as varied under the Lease;

Rent Day means the Start Date and then the first day of each month during the Term;

Review Date means each of the dates in item 8 of schedule 1;

Schedule means a schedule to the Lease;

Standard Conditions means these Standard Conditions of Lease;

Start Date means the date in item 5 of schedule 1 and item 6 of schedule 1 for the Option Term;

Substantial Part means one-third or more of the Premises as determined by us or a significant part of the balance of the Premises as renders the reinstatement of the Premises uneconomic or undesirable or the continued occupation of the Premises impracticable in our absolute discretion;

Supply means the same as in the GST Law;

Tax Invoice means the same as in the GST Law;

Taxable Supply means a Supply under this Lease;

Term means the term in item 5 of schedule 1 and where the context allows includes the Option Term in item 6 of schedule 1 and any monthly tenancy we consent to under the Lease;

Valuer means a property Valuer who is licensed under the Land Valuer's Licensing Act 1978 and who has at least 5 years' experience in assessing the current market rent of premises which are comparable to the Premises;

Your Property means all your property in or on the Premises or in which you have an interest.

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (i) headings are for convenience only and do not affect interpretation;
- (ii) a reference to a person includes that person's assigns, successors, executors and administrators (as the case may be);
- (iii) a reference to an individual includes any other entity recognised at law;
- (iv) an agreement on the part of two or more persons binds them together and each of them separately;
- (v) a reference to the Lease or any other document includes a reference to them as amended, novated, supplemented, varied or replaced from time to time;
- (vi) words in the singular include the plural (and vice versa) and words which mean a gender include the other gender and the neuter;
- (vii) a reference to a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure of the Lease and forms part of the Lease;
- (viii) references to currency are references to Australian currency;
- (ix) a reference to any legislation includes all statutory modifications, re-enactments and provisions substituted for it, as well as ordinances, by-laws, regulations and other statutory instruments issued under it;
- (x) a reference to a month means a calendar month; and
- (xi) includes and including mean includes, but is not limited to or including, but not limited to, as the case may be.

2 LENGTH OF THE LEASE

2.1 When it starts and ends

The Lease begins at one minute past midnight on the Start Date and ends at midnight on the End Date.

2.2 What happens when the Lease ends

At least 3 months before the End Date, we will tell you by Notice if:

- (i) we will renew the Lease and, if so, on what terms and conditions;
- (ii) we will not renew the Lease, but will let you occupy the Premises on a monthly tenancy subject to the Rent being reviewed at the commencement date of the monthly tenancy to be the highest of the Rent you had to pay immediately before that date increased by FOUR PER CENT (4%) PER ANNUM; or
- (iii) you must leave and give us vacant possession of the Premises on the End Date and comply with clause 14.

2.3 **What to do if you want to renew the Lease**

If we give you a Notice under clause 2.2(i), you must tell us by a Notice which we receive at least 2 months before the End Date if you:

- (i) agree to renew the Lease on the terms and conditions referred to in clause 2.2(i); or
- (ii) would like to renew the Lease but on different terms and conditions.

2.4 **End of the Lease**

If you do not give us your Notice under clause 2.3 or we do not agree to your terms and conditions, the Lease ends on the End Date.

2.5 **Monthly tenancy**

- (i) If we give you a Notice under clause 2.2(ii), you must tell us by a Notice which we receive at least 3 months before the End Date if you agree to occupy the Premises on a monthly tenancy.
- (ii) If you agree to the monthly tenancy:
 - (i) you may continue to occupy the Premises on the terms of the Lease at the End Date but either of us may end the monthly tenancy at any time by giving one month's Notice to the other person; and
 - (ii) the Lease is treated as if it includes any changes necessary to make it applicable to a monthly tenancy.
- (iii) If, for any reason, we do not give you a Notice under clause 2.2(ii), clause 2.5(ii) applies but we may give you a Notice under clause 2.2(ii) at any time.

(Please note, the Notice in clause 2.5(ii) (i) can end at any time during a month. It does not have to be for a calendar month.)

3 OPTION FOR A NEW LEASE

3.1 When we will give you a New Lease

If:

- (i) item 6 of schedule 1 applies; and
- (ii) you do everything you must do under clause 3.2,

we will give you the New Lease for the Option Term.

3.2 What you must do before we give you a New Lease

We must only give you the New Lease if:

- (i) you tell us that you want to exercise the Option by giving us an Option Notice which we receive at least 3 but not more than 6 months before the End Date; and
- (ii) you are not in breach of any of your obligations under the Lease (including paying all money due to us).

3.3 Terms of New Lease

If we give you the New Lease it will be on the same terms and conditions as the Lease (including any changes we agreed to make to the Lease during the Term if we agree those variations apply to the New Lease).

4 WHAT YOU MUST PAY US

4.1 You must pay on time

- (i) You must pay us, on time, without deduction or set off, the Rent, and any other money which is due to us.
- (ii) At the end of each month, we will send you a statement (in the form of a tax invoice) telling you how much you must pay.

4.2 We may charge interest

- (i) If you are late paying us any money you owe we may charge you interest on it at the Interest Rate.
- (ii) We calculate interest on unpaid money daily from the day after it was due until and including the day you pay it in full.
- (iii) At the end of every month, we add the amount of the interest to the unpaid money and charge interest (at the Interest Rate) on the full amount then due.

4.3 **Mistakes and adjustments**

- (i) If either you or we prove that we have made a mistake charging or calculating any money we say is due, we will correct the mistake and make any necessary adjustments to your account as soon as possible.
- (ii) When we calculate any money you owe, we will make any proportional adjustments necessary to ensure that we only charge you for the actual period of time for which the money is due.

5 **RENT**

5.1 **Paying Rent**

You must pay the Rent in equal monthly instalments, in advance, on or before the first day of each month. We will tell you, by Notice, how we want you to pay the Rent and other monies due to us. You may if you wish pay the Rent by one payment in full prior to the end of the first month of each year of the term of this Lease.

5.2 **Adjustment in Rent**

- (i) We will review the Rent on each Review Date and the New Rent will be the highest of:
 - (i) the Rent you had to pay immediately before the relevant Review Date; and
 - (ii) the Rent, as determined under clause 6.
- (ii) You must pay the New Rent from each Review Date.

6 **RENT REVIEWS**

6.1 **CPI %**

On each CPI, the New Rent will be the Rent you had to pay immediately prior to that CPI.

- (a) the percentage movement (if any) in the CPI from the quarter ending immediately prior to the later of the Start Date and the last Review Date to the quarter ending immediately prior to that CPI; and

6.2 **Market Review Date**

- (a) At any time not less than 30 working days prior to each Market Review Date, we can give you a written notice of our assessment of the Market Rent payable from that Market Review Date;
- (b) You can accept or reject our determination of Market Rent by written notice in that behalf given within 14 working days of its receipt of our assessment.

- (c) If you accept our assessment within the time allowed, then our assessment shall be the Rent payable from that Market Review Date to the next Review Date.
- (d) If you reject or don't accept our assessment within the time allowed, the Market Rent shall be determined by the nominee of the President of the Institute of Valuers and Land Economists (WA Division) acting as an expert and not as an arbitrator (**Expert**).
- (e) The Expert shall allow both parties to make written submissions and otherwise may otherwise inform himself as he thinks fit. The Expert shall publish his determination and written reasons within 28 working days of his appointment.
- (f) The Expert's determination shall be final and binding on you and us both, except in case of fraud, mistake or miscarriage.
- (g) The parties will bear the Experts costs equally between them.
- (h) On the Market Review Date which is the 10th anniversary of the Start Date, the Rent payable from that Market Review Date as determined above shall not be capped.
- (i) On the Market Review Date which is the 15th anniversary of the Start Date, the Rent payable from that Market Review Date as determined above shall be capped at the Rent you had to pay immediately prior to that Market Review Date increased by 10% per annum.
- (j) In this clause, the "**Market Rent**" is to be the best open market rental obtainable for the Premises determined taking into consideration:
 - (1) the current rent of comparable premises being land used as temporary car park; and
 - (2) that lessee has constructed improvements; and
 - (3) the terms of this Lease; and
 - (4) all other relevant valuation principles; and
 - (5) any concessions, incentives and other inducements given to the lessee in relation to the granting of this Lease or to tenants of comparable premises;but excluding from consideration:
 - (6) any poor condition of the Premises which is a result of the lessee's breach.

7 USE OF PREMISES AND YOUR GENERAL OBLIGATIONS

7.1 Permitted Use

- (i) You must only use the Premises for the Permitted Use. We do not warrant that the Premises are suitable for that Permitted Use.
- (ii) You must use the Premises professionally, competently and to a standard reasonably satisfactory to us.

7.2 Your general obligations

You must always, at your cost and on time:

- (i) pay for any damage (including any structural damage) you cause (directly or indirectly) to be repaired;
- (ii) keep the Premises securely locked when they are unoccupied;
- (iii) remove all refuse from the Premises,
- (iv) keep and maintain the Property free from and all noxious weeds or environmental or other pests during the Term;
- (v) not pollute or contaminate the Property or permit contamination or pollution to spread from the Property and must indemnify the Lessor against all:-
 - (i) fines, costs and orders and directions to remediate or rectify pollution or contamination; and
 - (ii) loss or damage arising from pollution or contamination, including third party claims made against Western Power.
- (vi) obtain our approval before undertaking any clearing of vegetation on the Premises.
- (vii) comply with all Written Law applicable to the Premises and the Permitted Use;
- (viii) notify us if you receive any notices relating to the Premises from an Authority;;
- (ix) Carry out the clearing of Firebreaks around the Premises each and every year of the term at the time and to the standard required by the City of Nedlands and / or any other Authority.
- (x) Comply with our all our Transmission Line Easement Encroachment Conditions guidelines.

7.3 **What you must not do**

You must not:

- (i) lodge any caveat for registration against the Land (other than a subject to claim caveat to protect your interest under the Lease);
- (ii) obstruct any access ways;
- (iii) unless you first get our written consent:
 - (i) use the Lease or any of your Property as security;
 - (ii) hold an auction, liquidation or fire sale at the Premises;
 - (iii) use any heating, cooling or lighting in the Premises which we do not consent to;
 - (iv) alter, install or interfere with any of our Property or any services to the Premises or overload any service;
 - (v) put up any sign, notice or advertisement; or
 - (vi) carry out any Building Work on the Premises except as permitted under the terms of this Lease;
 - (vii) change the ground levels of the Premises.
- (iv) solicit business in, the Premises or the Land.

8 **MAINTENANCE, REPAIRS AND BUILDING WORK**

8.1 **You must maintain the Premises and your Property**

You must, at your cost:

- (i) keep the Premises:
 - (i) clean and tidy; and
 - (ii) in good condition,;
- (ii) pay for the cost of repairing any damage you cause (directly or indirectly) to the Premises, or your Property..
- (iii) maintain the Fences on the Premises.

8.2 **You may not do Building Work in the Premises**

You must:

- (i) get our written consent before you carry out any Building Work on the Premises , and

- (ii) if you do anything under clause 10.2(i), comply with:
 - (i) all our reasonable instructions; and
 - (ii) all laws and requirements of any Authority concerning the Building Work..

8.3 We may enter and carry out repairs and maintenance

- (i) We may enter the Premises:
 - (i) at any reasonable time and with reasonable notice, to inspect them and carry out any repairs and maintenance; and
 - (ii) at any time, without notice and to do anything, if there is an emergency..
- (ii) If you do not do anything that you must do under the Lease, on time (including any repairs or maintenance), we may do it. If we do, you must, on demand, pay all our costs.

9 THE PREMISES ARE RESUMED

If an Authority resumes all or part of the Premises and you cannot then use the Premises, you or we may end the Lease by giving 7 days' Notice to the other. If this happens, we are not liable to pay you any compensation.

10 OUR RIGHTS AND OBLIGATIONS

10.1 Quiet enjoyment

You may occupy the Premises without interruption or disturbance by us, except where you are in breach of, or we are allowed to do so under, the Lease.

10.2 Giving our consent

If we need to give our consent or approval for anything under this Lease:

- (i) it must be in writing; and
- (ii) our consent must not be unreasonably withheld.

10.3 Our special rights

We may assign any of our rights under the Lease.

10.4 We do not have to pay compensation

- (i) We are not liable to pay you any compensation and you may not end the Lease or claim compensation if we do not comply with clauses 12.2 except where we have acted negligently.

- (ii) Clause 12.5(i) does not limit our liability to compensate you for your losses arising from our negligence but only to the extent which we are liable to you under the law of negligence in the absence of clause 12.5(i).

11 ASSIGNMENTS AND SUBLETTING

11.1 You must not Assign the Premises

You must not Assign or sublease the Premises or any of your interest in them or the Lease unless you first get our written consent which will not be unreasonably withheld.

11.2 When we will consent to an Assignment

We will not unreasonably withhold our consent to allow you to Assign the whole of the Premises or the whole of your interest in them or the Lease or sublease the whole or any part of the Premises if:

- (i) you are not in breach of any of your obligations under the Lease (including paying all money due to us);
- (ii) you prove to our satisfaction that the New Person is a fit and proper person, is financially secure and has the experience to profitably run a business;
- (iii) you and the New Person give us all documents and security we require, in each case:
 - (i) in form and substance satisfactory to us;
 - (ii) prepared by us at your cost;
 - (iii) duly signed by each person (including any guarantor or other provider of security for the New Person) who is a party to any of those documents or securities; and
 - (iv) stamped by us at your cost;
- (iv) at the time you give us the documents and security referred to in this clause 13.2, you pay us (or reimburse us for) all the costs and expenses we are entitled to recover under this Lease.
- (v) The Minister for Lands consent to the assignment.

11.3 No Encumbrances

- (v) You must not encumber the Premises, the Lease, any of your Property or any of your interest in them unless you first get our written consent and the written consent of the Minister for Lands.
- (vi) We will not unreasonably withhold our consent if:

- (i) you prove to our satisfaction that you must give the Encumbrance to enable you to get finance to buy any of your Property;
- (ii) we do not have to waive any of our rights in relation to your Property; and
- (iii) you pay our reasonable legal and other cost and expenses (on a full indemnity basis) concerning our consent.

12 THE END OF THE LEASE

12.1 You must leave the Premises

On the End Date or on the date of earlier termination of the Lease you must:

- (i) leave and give us vacant possession of the Premises, with the Premises to be left in a clean and tidy condition (fair wear and tear excepted) (which is to our satisfaction) and to also attend to the following matters:
 - (i) all plant and equipment removed;
 - (ii) all damage repaired and all surfaces in good condition;
- (ii) remove all your Property;
- (iii) make good any damage you cause to the Premises by the removal of your Property and the reinstatement of the Premises in accordance with clause 14.1(i);
- (iv) give back to us any keys for the Premises.

12.2 We may dispose of your Property

- (i) If you do not remove all your Property by the End Date or the date of earlier termination of the Lease, we may keep it or dispose of it as if it was our Property.
- (ii) You must pay us, on demand, for any costs we incur in removing or storing any of your Property or making good the Premises.

12.3 Early Termination

- (i) Notwithstanding any other provision of this Lease, you may terminate this Lease by giving us written notice. The termination is to take effect on the date specified in the notice. That date must be at least ninety (90) days after the notice is given. If no date is specified in the notice, the termination is to take effect ninety (90) days after the notice is given.
- (ii) On the termination date, this Lease will terminate and you will give up vacant possession of the Premises to us in accordance with this clause 14 of the Lease.

- (iii) You remain liable for its obligations under this Lease until the End Date, and in case of obligations which are expressed to survive the termination of this Lease, until they have been met.

13 INSURANCE AND RISK

13.1 You must insure

- (i) You must always have current insurance in relation to the Premises, which is:
 - (i) in form and substance reasonably satisfactory to us;
 - (ii) noting our interests; and
 - (iii) with a reputable insurance company we approve, in writing; and
 - (iv) insurance in item 10 of schedule 1, including:
 - (A) public liability insurance for the amount in item 10(a) of schedule 1; and
 - (B) any other insurance (including the amount and cover) we reasonably consider desirable or necessary in relation to the Premises or which, in our reasonable opinion, a prudent lessee of good financial standing would take out.
- (ii) If we tell you to do so, by Notice, you must increase the amount of any insurance referred to in this clause 13.1 to an amount we reasonably consider desirable or necessary.
- (iii) You must, on the Start Date and no later than 30 days after each anniversary of the Start Date, give us evidence that all your insurance is current for the next year.

13.2 You must not affect our insurance

You must not do anything which does or could be reasonably expected to:

- (i) increase any of our insurance premiums; or
- (ii) invalidate or affect any of our rights under any of our insurance policies for the Premises, or enable any of them to be cancelled.

14 RELEASES AND INDEMNITIES

14.1 Lessee's risk

You occupy and use the Premises at your own risk.

14.2 **You release and indemnify us and you release and indemnify the Minister for Lands**

- (i) To the fullest extent allowed by law you release us and to the fullest extent allowed by law you release the Minister for Lands from all Claims you have or may have against us and from all Claims you have or may have against the Minister for Lands which arise from or in connection with:
- (i) any damage, loss, injury or death that happens in;
 - (ii) the condition of; or
 - (iii) any service provided to,
- the Premises or anything on the Premises; or
- (iv) any right or direction we exercise under this Lease; at your request or
 - (v) your use or occupation of the Premises or the Land
- except to the extent caused by our negligence (but subject to clause 16.4) or wilful misconduct.
- (ii) To the fullest extent allowed by law you indemnify us against all Claims which we incur and to the fullest extent allowed by law you indemnify the Minister for Lands against all Claims which the Minister for Lands incur which are made against us and which are made against the Minister for Lands which arise from or in connection with:
- (i) any act, neglect, default or omission by you or your sub-tenants or by any other person or persons using or upon the Premises with your consent or approval (express or implied);
 - (ii) your use or occupation of the Premises or the Land;
 - (iii) any right or discretion we exercise under this Lease at your request,
 - (iv) any default by you under this Lease; or
 - (v) so far as that occurrence affects you or your sub-tenants or any other person or persons using or upon the Premises , with your consent or approval (express or implied), any service supplied to the Premises, the Land, or not working properly, being unavailable or being interrupted, or the misuse of any such service,
- except to the extent caused by our negligence (but subject to clause 16.4) or wilful misconduct.

14.3 **Continuing indemnity**

Each indemnity you give in this Lease is:

- (i) a continuing obligation and remains in full force and effect after this Lease ends; and
- (ii) your separate and independent obligation.

14.4 No liability for Indirect Damage

No party will be liable to the other for Indirect Damage arising as a consequence of any breach of contract, negligence or any other tort. For the avoidance of doubt, nothing in this clause prevents a party from being liable to the other for general damages for breach of contract to the extent that those general damages are not Indirect Damage.

15 BREACH

15.1 When you breach the Lease

You breach the Lease if you do not perform or comply, on time, with every term and condition of the Lease (whether express or implied and including paying the Rent and any other money you must pay under this Lease), or if:

- (i) you are, become or are presumed to be insolvent under any law;
- (ii) you repudiate or make an anticipatory breach of any of your obligations under this Lease;
- (iii) you enter into or resolve to enter into any arrangement, composition or compromise with, or assignment for the benefit of, your creditors or any class of them;
- (iv) a receiver, receiver and manager, trustee, administrator, controller or similar official is appointed or that appointment is threatened:
 - (i) to you; or
 - (ii) over any of your assets; or
- (v) you are a company, and an application or order is made or a resolution is passed or any steps are taken to pass a resolution for your winding up or dissolution.

15.2 What we may do if you breach the Lease

- (i) If you breach the Lease we will give you a Notice requiring you to remedy the breach within:
 - (i) 10 Business Days after the date we give you the Notice, if it relates to:
 - (A) the payment of any money you owe; or
 - (B) an essential term of this Lease; or
 - (ii) 21 days after the date of the Notice, if it relates to anything else.

- (ii) If you do not remedy the breach within the period referred to in the Notice, we may:
 - (i) immediately re-enter and take possession of the Premises;
 - (ii) end this Lease by Notice;
 - (iii) recover from you any loss we suffer because of your breach; or
 - (iv) exercise any of our other legal or equitable rights.

15.3 Indemnity for breach

Subject to clause 16.4, you indemnify us from and against all Claims we incur because:

- (i) you breach any term or condition of this Lease; or
- (ii) we end this Lease under clause 14.3;

including any loss we suffer because you do not continue to perform your obligations under this Lease until the End Date. We will mitigate our loss.

15.4 Appointment of attorney

If you are in breach of this Lease and unable or unwilling to act you irrevocably appoint us (and each of our officers, separately) as your attorney and if you breach this Lease, the attorney may, in its name or yours:

- (i) do anything which you ought to do under this Lease;
- (ii) exercise any of your rights, powers, authorities, discretions or remedies under this Lease ; and
- (iii) execute a transfer or surrender of this Lease.

15.5 Essential terms

All your obligations:

- (i) to pay money; and
- (ii) under clauses 9, 10, 13,14, and 15;

are essential terms of this Lease.

15.6 If we breach the Lease

If we breach the Lease you must give us a Notice requiring us to remedy the breach within a reasonable time (being not less than 21 Business Days) after the date we receive the Notice.

16 GENERAL

16.1 Benefit of your obligations

If somebody else becomes entitled to receive the Rent and other money you must pay under this Lease, that person may exercise all of our rights under this Lease.

16.2 Notices

- (i) All notices and approvals under this Lease must be in writing, signed by or on behalf of the person giving it and addressed to the person to whom it is to be given.
- (ii) We may serve a Notice on you by:
 - (i) giving it to you, personally;
 - (ii) leaving it at, posting it to (by pre-paid mail) or faxing it to your registered office or last known (to us) business address.
- (iii) You may serve a Notice on us by leaving it at, posting it to (by pre-paid mail) or faxing it to our registered office.
- (iv) A Notice is treated as having been given and received:
 - (i) on the day it is delivered, if it is delivered before 5.00 pm on a Business Day, or otherwise on the next Business Day;
 - (ii) on the third Business Day after it is posted, if sent by pre-paid mail; or
 - (iii) on the day it is faxed if a correct and complete transmission report is received, which shows that the fax was completed before 5.00 pm on a Business Day, or otherwise on the next Business Day,

and, where a party comprises more than one person, if it is given in accordance with clause 18.2(i) and (ii), inclusive, to everybody who comprises that party.

- (v) For the purpose of this clause the address and fax number of a person are those stated in the schedule or any other address which that person gives each other person, by Notice.

16.3 Waiver

- (i) The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

- (ii) Our acceptance of any Rent or other money under this Lease does not operate as a waiver of our rights under this Lease.
- (iii) Any custom or practice that develops between us during the Term does not operate as a waiver of or lessen our right to require you to do anything you have to do under this Lease or to exercise any of our powers under it.

16.4 **Severability**

Any provision in this Lease which is invalid or unenforceable must be read down, if possible, so as to be valid and enforceable, and is severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Lease.

16.5 **Business Days**

If the day on which any act must be done is not a Business Day, that act must be done on the next Business Day.

16.6 **Counterparts**

This Lease may be executed in any number of counterparts and all those counterparts taken together constitute the same instrument.

16.7 **Further Assurance**

Each party must sign and deliver all documents and do all other acts reasonably required of it to carry out and give full effect to this Lease and the rights and obligations of the parties under it, and must cause their respective agents to do the same.

16.8 **Entire Agreement**

This Lease is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions in this Lease. All representations, communications and prior agreements in relation to the subject matter are merged in, and superseded by, this Lease.

16.9 **Exclusion of moratorium**

To the extent not excluded by law, a provision of any legislation which directly or indirectly:

- (i) lessens or affects in your favour any obligation under this Lease; or
- (ii) stays, postpones or otherwise prevents or prejudicially affects the exercise of any right under this Lease ,

is excluded from this Lease.

16.10 Disputes

Unless otherwise required under this Lease, you and we must negotiate in good faith to resolve any dispute within 14 days after it arises.

16.11 Property Law Act excluded

Sections 80 and 82 of the Property Law Act 1969 are expressly excluded from this Lease.

16.12 No Partnership

We are not your partner, a joint ventures or a member of a joint enterprise with you as a result of this Lease.

16.13 Confidentiality

- (i) You acknowledge that we are subject to written laws that may require us to disclose the terms of this lease and it's administration and we cannot guarantee to keep its terms confidential.
- (ii) You agree that all provisions of this Lease are and will remain confidential unless we agree otherwise. This clause does not prevent you from disclosing the terms of this Lease to your professional advisers.
- (iii) You agree that we may disclose the terms of this Lease :
 - (i) to our professional adviser;
 - (ii) to prospective purchasers of the Premises subject to those prospective purchasers signing appropriate confidentiality agreements.

16.14 Governing Law

This Lease is governed by the laws of Western Australia.

17 GST

17.1 Payment of GST

- (i) A Recipient of a Taxable Supply made under this Lease must pay to the Supplier, in addition to the consideration for the Taxable Supply, any GST paid or payable by the Supplier in respect of the Taxable Supply.
- (ii) The Recipient must pay GST to the Supplier:
 - (i) on the same day as the due date for the consideration in respect of the relevant Taxable Supply; or
 - (ii) if there is no due date, within 7 days of receiving a written request or a Tax Invoice from the Supplier.

- (iii) The Recipient need not pay the additional amount in clause 19.1(i) until the supplier gives the Recipient a Tax Invoice.

17.2 Reimbursement

A party's obligation to reimburse another party for an amount paid or payable to a third party (eg a party's obligation to pay another party's legal costs) includes the amount paid or payable to the third party on account of GST except to the extent that the party being reimbursed is entitled to claim in Input Tax Credit for that amount.

17.3 Indemnities

- (i) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (ii) If a party has an indemnity for a cost which includes an amount paid by the indemnified party on account of GST, the indemnity is for the cost including the amount paid by the indemnified party on account of GST where that party can obtain an Input Tax Credit in relation to that amount.
- (iii) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

17.4 Adjustments

If the additional amount payable under clause 19.1 differs from the amount of GST payable by the Supplier on the Supply:

- (i) the Supplier must promptly issue an Adjustment Note to the Recipient; and
- (ii) an amount equal to the difference must be paid by the Supplier to the Recipient or by the Recipient to the Supplier as appropriate. We must include in a Tax Invoice under clause 19.1 the particulars required by the GST Law to enable you to obtain a credit for the amount of GST payable on the Taxable Supply.

18 NON - MERGER

The terms and conditions of this Lease or any act, matter or thing done under, by virtue or in connection with this Lease or any other agreement between you and us will not operate as a merger of any of the rights and remedies of you and us, in or under this Lease or in or under any other agreement all of which will continue in full force and effect.

21. TRUSTEE

- (a) If the Lessee enters into this Lease as trustee of a trust ("**the Trust**") that Lessee does so both for itself and as trustee of the Trust, and in the Lease each reference to the Lessee has effect as a reference in each capacity.
- (b) That Lessee warrants to the Lessor that:

- (a) the lessee is the only trustee of the Trust;
- (b) no action has been taken or proposed to remove that lessee as trustee of the Trust;
- (c) the lessee has power under the relevant trust deed ("**the trust deed**") to enter into the Lease and that the lessee has entered into the Lease for the benefit of the beneficiaries of the Trust;
- (d) the lessee has a right to be fully indemnified out of the assets of the Trust in respect of obligations incurred under the Lease;
- (e) the assets of the trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which that lessee has a right to be indemnified out of those assets;
- (f) the lessee is not in default under the trust deed;
- (g) no action has been taken or is proposed to terminate the Trust;
- (h) the lessee has complied with the lessee's obligations in connection with the Trust; and
- (i) the lessor's rights under the Lease rank in priority to the interests of the beneficiaries of the Trust.

(c) That the Lessee:

is to at the lessors request, exercise the lessee's right of indemnity from the assets of the Trust and the beneficiaries of the Trust in respect of obligations incurred by it under the Lease;

- (j) is to comply with the lessee's obligations as trustee of the Trust;
- (k) is not, without the consent of the Lessor, to do anything which:
 - (A) effects the retirement, removal or replacement of the Lessee as trustee of the Trust;
 - (B) could restrict that lessee's right of indemnity from the assets of the Trust in respect of obligations incurred by the lessee under the Lease;
 - (C) could restrict the ability of the Lessee to comply with that lessee's obligations under the Lease;
 - (D) effects a variation of the trust deed, the termination of the trust or the resettlement of the Trust.

PLAN



EXECUTION CLAUSE:

Executed as a deed on the _____ day of _____ **20 17**
by:

The **COMMON SEAL** of the **SHIRE OF JERRAMUNGUP** was hereunto affixed by authority of a resolution of the Council in the presence of:

President

(Print Full Name)

Chief Executive Officer

(Print Full Name)

EXECUTED for and on behalf of **ELECTRICITY NETWORKS CORPORATION ABN 18 540 492 861** in accordance with sub-section 135(4) of the Electricity Corporations Act and an authority effective from 01/10/2015:

.....
Signature of authorised officer

.....
Full name (please print)

.....
Position title (please print)

The Consent of the Minister for Lands

The Minister for Lands consents to the Lease.

Signed by the Minister for Lands (Dated)

(Normal signing clause for Minister for Lands to be used)

