

# REVISED DRAFT

SHIRE OF TRAYNING

and

FES MINISTERIAL BODY

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**LICENCE  
COMMUNICATIONS SITE  
PART LOT 66 TWINE STREET, TRAYNING**

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**Parties**

**Shire of Trayning (formerly known as Shire of Trayning-Kununoppin-Yelbeni, formerly known as Trayning-Kununoppin-Yelbeni Road Board and formerly known as Kununoppin-Trayning Road Board)** of Railway Street, Trayning, Western Australia, 6488 (“**the Licensor**”)

and

**FES Ministerial Body** a body corporate pursuant to the Fire and Emergency Services Act 1998 (WA) of 20 Stockton Bend, Cockburn Central, Western Australia, 6164 (“**FES**”)

**INTRODUCTION**

- A. The Licensor is the registered proprietor of the Land specified in Item 1 of the Schedule (“**Land**”).
- B. FES requires a licence to use the areas on the communications tower on the Land and the equipment hut on the Land, (such areas shown for identification purposes only on the photos attached to this Licence marked “A” and “B”) with the communications tower and equipment hut situated on those parts of the Land shown for identification purposes only on the photo attached to this Licence marked “C” (“**Licensed Premises**”) for the use of a communications facility.
- C. The Parties enter into this Deed to set out the terms and conditions upon which the licence is granted.

**The parties agree****1 Definitions and Interpretation****1.1 Definitions**

In this deed:

**FES** includes FES’ employees, agents, contractors and any persons having a right to use, access, possess or occupy the Licensed Premises.

**FES’s fixtures** without limiting the generality of such term, shall include reference to all masts, antennae, batteries, radios, cables (telephone or any other type), pipes, wires, conduits, fencing, solar panels, erections and other improvements constructed, erected or installed by FES at the Licensed Premises, and all other appliances, apparatus and things of whatsoever nature brought onto the Land or the Licensed Premises by FES.

**Business Day** means any day except a Saturday, Sunday or public holiday in Western Australia.

**Licence Fee** means the annual licence fee payable during the Term (if demanded by the Licensor) being the amount specified in Item 4 of the Schedule.

**Licensor’s Property** without limiting the generality of such term, shall include the communications tower, the equipment hut and all associated infrastructure and equipment constructed, erected or installed by the Licensor on the Land.

## 1.2 Interpretation

In this deed:

- (i) Reference to the parties includes their personal representatives, successors and lawful assigns;
- (ii) Where a reference to a party includes more than one person the rights and obligations of those persons shall be joint and several;
- (iii) Headings have been inserted for guidance only and shall be deemed not to form part of the context;
- (iv) Where a day on or by which any timing is to be done is not a Business Day, that timing must be done on or by the next succeeding day which is a Business Day; and
- (v) The schedule to this Licence ("**Schedule**") and any annexures or appendices to this licence are incorporated in and form part of this Deed.

## 2 Grant of Licence

- 2.1. The Licensor HEREBY GRANTS to FES a licence to use the Licensed Premises for a term (subject to the provisions of this licence) commencing on the commencement date specified in Item 2 of the Schedule ("**Commencement Date**") and expiring on the expiry date specified in Item 2 of the Schedule ("**Expiry Date**") and includes where appropriate any renewal or extension thereof ("**the Term**").
- 2.2. The Licensor further grants to FES the non-exclusive licence to use the driveways and access ways on the Land and all other means necessary for FES to be able to access the Licensed Premises at all times of the day or night (24 hours a day, 7 days a week) during the Term and any further term.
- 2.3. The Licensor covenants and agrees that subject to FES observing and performing the covenants contained in this Licence, FES shall peaceably hold and enjoy the Licensed Premises throughout the Term and any further term without any interruption from the Licensor or any person claiming by, through or under the Licensor.
- 2.4 The Licensor at its cost must maintain the Licensor's Property in good repair, order and safe condition at all times.
- 2.5 Deliberately omitted.
- 2.6 The Licensor must use its best endeavors to prevent damage to, or interference of, the Licensor's Property by any third party or anyone else (including a trespasser).

## 3 Payment of Fee

- 3.1 FES COVENANTS AND AGREES with the Licensor that it shall pay to the Licensor the Licence Fee (if demanded) in advance on the Commencement Date and thereafter on the same date in each and every succeeding year of the Term and any further term.

- 3.2 For the avoidance of doubt, the Licensor acknowledges and agrees that the Licence Fee is a gross fee inclusive of all costs, charges, expenses, fees and levies and that FES is not obliged to pay any other monies to the Licensor or any other person in addition to the Licence Fee.
- 3.3 The Licence Fee is not subject to review at any time during the Term or any further term.

#### **4 Restrictions**

FES ACKNOWLEDGES that:

- 4.1 This Licence does not confer any estate or interest in the Land.
- 4.2 Other than the rights granted under this Licence, the grant of this Licence does not create or confer upon FES any tenancy or any other estate or interest in the Licensed Premises.
- 4.3 The rights of FES lie in contract only.

#### **5 Repairs and Maintenance**

FES will use its reasonable endeavours during the Term to keep the Licensed Premises in good order and condition.

#### **6 Permitted Use**

FES shall during the Term use the Licensed Premises as a communications facility for the purpose of fire and emergency services and all other ancillary uses.

#### **7 Insurance**

FES shall during the Term maintain insurance cover of the nature effected with the Western Australian Government Treasury Managed Fund (RiskCover) with respect to the Licensed Premises.

#### **8 Services**

The cost to install any services (including but not limited to electricity and telephone) to the Licensed Premises deemed necessary by FES shall be borne by FES (if applicable).

FES shall pay for any charges for services consumed by FES at the Licensed Premises as invoiced direct to FES by the relevant supplier.

#### **9 Indemnity**

- 9.1 The Licensor HEREBY INDEMNIFIES FES in respect of all loss, damages, claims, costs and liability arising out of or in connection with FES's use and occupation of the Licensed Premises caused or contributed to by the Licensor or the Licensor's employees, agents or contractors or anyone else the Licensor is responsible for.
- 9.2 FES is responsible for and indemnifies the Licensor against any liability resulting from:
- 9.2.1 any loss or damage to property or any injury to or death of any person occurring at the Licensed Premises caused by FES in the course of its occupation of the Licensed Premises or its negligent use of the Licensed Premises; or

9.2.2 any reasonable action taken by the Licensor to remedy a default by FES.

The indemnity in this clause 9.2 does not apply to the extent that the liability is caused or contributed to by the Licensor or the Licensor's agents, contractors or employees or anyone else the Licensor is responsible for.

## **10 FES's Rights**

FES by its officers, servants, workmen, agents and contractors shall have the right at all times of the day or night (24 hours a day, 7 days a week) during the Term and any further term to install, alter, add to, erect, construct, dismantle, repair, replace, renew, remove and maintain any of FES's fixtures at the Licensed Premises.

## **11 Obligations in Respect of Licensed Premises**

The Licensor must not transfer or otherwise dispose of the Land or all or any part of the Licensed Premises to a third party unless:

- 11.1 That transfer or disposition is subject to the operation of this Licence and the rights of FES under this Licence;
- 11.2 The Licensor gives FES reasonable prior notice of such intended transfer or disposition; and
- 11.3 The Licensor ensures that the proposed transferee signs a deed of covenant to be prepared by FES solicitors at the Licensor's expense made between the Licensor, FES and the transferee legally binding the transferee to comply with and observe all obligations imposed or contained in this Licence.

## **12 Yielding Up**

FES may at or prior to the expiration of the Licence remove and carry away from the Licensed Premises, FES's fixtures but FES shall in such removal do no damage to the Licensed Premises or the Land and shall forthwith make good any damage which FES may occasion thereto. FES shall leave the Licensed Premises in a clean and tidy state. For the avoidance of doubt, the Licensor acknowledges and agrees that other than as stated in this clause 12, FES have no other yielding up/make good obligations.

## **13 FES's Fixtures**

- 13.1 FES's fixtures shall be and remain the property of FES notwithstanding that any part or parts may be or become affixed to the Licensed Premises or the Land.
- 13.2 FES (acting reasonably) may make any alterations or additions to the Licensed Premises necessary to accommodate FES's fixtures.

## **14 Licensor's Warranties**

- 14.1 The Licensor warrants that access to and the use and operation of the Licensed Premises will not be obstructed, interrupted or impeded by the Licensor, the Licensor's employees, agents or contractors or any other person the Licensor is responsible for at any time during the Term or any further term.
- 14.2 The Licensor must not itself knowingly nor will it knowingly permit any third party to alter, damage or in any way interfere with any part of the Licensed Premises, FES's fixtures or FES's communications facility and indemnifies FES against any costs, losses or expenses arising from any such alterations, damage or interference.

- 14.3 The Licensor must use its best endeavors to procure the modification of any radio frequency used by any other communications carrier on the Land upon receipt of notice from FES that the relevant communications carrier's radio frequency interferes, obstructs, interrupts or impedes FES' radio frequency.

## **15 Holding Over**

If the Licensor permits FES to continue to occupy the Licensed Premises beyond the Expiry Date or after the expiry of any further term otherwise than pursuant to the grant of a further licence under clause 16, FES shall do so as a yearly licensee only, at an annual Licence Fee equal to the annual Licence Fee payable by FES to the Licensor immediately before the holding over tenancy commenced payable annually in advance (if demanded by the Licensor) with the first annual payment to be made on the day following the Expiry Date or the expiry of the relevant further term. The holding over tenancy otherwise continues on the same terms and conditions as this Licence. The licence so created may be terminated at any time by either party by six (6) months notice in writing given to the other party to expire on any date.

## **16 Renewal of Licence**

16.1 This Licence will be automatically renewed for the relevant further term specified in Item 3 of the Schedule unless FES gives the Licensor notice in writing at least 2 months prior to the expiration of the relevant term that the Licence is not to be renewed.

16.2 The renewed licence must commence on the day after expiry of the relevant term and be on the same terms and conditions contained in this Licence but not including any provision for renewal after the last of the further terms hereby granted.

## **17 Termination**

17.1 Notwithstanding any other provision contained in this Licence to the contrary, FES may in its absolute discretion at any time immediately terminate this Licence by notice to the Licensor without any compensation or termination payment being paid to the Licensor.

17.2 Termination of this Licence does not affect the rights or liabilities of the parties in relation to any course of action accruing prior to termination.

17.3 Upon the termination of this Licence, FES must leave the Licensed Premises in a clean and tidy state. For the avoidance of doubt, the Licensor acknowledges and agrees that FES have no other yielding up/ make good obligations.

## **18 Notices**

18.1 Any notice to be given under this Licence by one of the parties to the other must be in writing.

18.2 A notice is given for all purposes to the Licensor by delivery in person or by pre-paid post addressed to:

Shire of Trayning  
Railway Street  
Trayning WA 6488  
Attention: Chief Executive Officer

18.3 A notice is given for all purposes to FES by pre-paid post addressed to:

DFES  
20 Stockton Bend  
Cockburn Central WA 6164  
Attention: Land and Buildings

18.4 Any notice given in accordance with this Licence will be deemed to be duly served in the case of delivery in person, when left at the relevant address and in the case of posting, at the expiration of three Business Days after the date of posting.

18.5 If a notice is delivered after 5pm, it is to be treated as having been given at the beginning of the next Business Day at 9.00am.

## 19 Permits / Consents

FES must obtain and keep all relevant consents to and permits for the use of the Licensed Premises as a communications facility or for access to the Licensed Premises from any statutory, public or other relevant authority (if applicable).

## 20 Goods and Services Tax

20.1 In this clause:

20.1.1 **GST** means any tax calculated by reference to the value of goods or services provided, calculated and levied at the point of sale or supply of the goods or services and includes GST as that term is used in the GST Act;

20.1.2 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation and regulations under the legislation, as amended from time to time;

20.1.3 **Payment** includes every amount (other than GST) payable by FES to the Licensor under or in connection with this Licence, whether as a licence fee or as any other kind of payment; and

20.1.4 except for terms defined in this Licence, terms used in this clause have the same meaning as in the GST Act.

20.2 Each payment is exclusive of GST.

20.3 Each payment must be increased by the GST applying to the payment or imposed on the Taxable Supply in respect of which the Payment is made.

20.4 FES must pay the GST referred to in clause 20.3 at the time Payment in respect of which the GST applies is due under this Licence. Payment of GST by FES is subject to the Licensor giving to FES a valid tax invoice.

## 21 Governing Law

This Licence is governed and construed in accordance with the laws from time to time in force in Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

## **22 Entire Agreement and Variation**

22.1 This Licence constitutes the entire agreement between the parties with respect to its subject matter.

22.2 This Licence must not be changed or modified in any way subsequent to its execution except in writing signed by the Licensor and FES.

## **23 WAPC Consent**

If for any reason this Licence requires the consent of the Western Australian Planning Commission, then it will be subject to that consent being given.

## **24 Caveat**

The Licensor charges the Land with the performance of its obligations under this Licence and authorises and consents to FES registering a subject to claim caveat over the Land to secure its interest.

## **25 Termination – Damage**

Notwithstanding any other provision contained in this Licence to the contrary, FES may immediately terminate this Licence by written notice to the Licensor if:

- i. The Licensed Premises are damaged to the extent that they are no longer suitable or are otherwise rendered unfit for the use of the Licensed Premises as a communications facility;
- ii. Any application for a required consent or permit for the use of the Licensed Premises is rejected or cancelled, lapses or is otherwise terminated and no further replacement consent or permit can reasonably be obtained.

## **26 Costs**

Each party shall bear its own costs (including legal costs) of and incidental to the preparation, negotiation and completion of this Licence.

## **27 FES Payments**

27.1 Notwithstanding any other provision contained in this Licence to the contrary, the Licensor acknowledges and agrees that any payment under this Licence by FES is subject to and conditional upon FES receiving a valid tax invoice (incorporating 30 day payment terms) from the Licensor.

27.2 The Licensor acknowledges and agrees that the Licensor may not issue a tax invoice for the Licence Fee (if demanded) later than 3 months after the start of the relevant year of the Term or any further term (time being of the essence). A tax invoice given other than within the time period referred to in this clause 27.2 has no force or effect.



## **28 Force Majeure**

The parties acknowledge and agree that neither party will be considered to be in default of performance of any of its obligations under this Licence if such performance is prevented or delayed by Force Majeure. “**Force Majeure**” is to be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil unrest, strike, lockout, epidemic or pandemic, government ordered restriction or cessation of activity, accident, fire, natural disaster, wind or flood or any requirement of law, or an act of God.

## **29 General**

As far as possible all provisions of this Licence must be construed so as not to be invalid, illegal or unenforceable in any respect. If any provision or part of it cannot be read down, that provision or part is taken to be severable and the remaining provisions of this Licence will not be affected.

## Schedule

**Item 1            Land**

Lot 66 on Deposited Plan 223167 being the whole of the land comprised in Certificate of Title Volume 947 Folio 85.

**Item 2            The Term**

10 years

Commencement Date: 1 October 2024

Expiry Date: 30 September 2034

**Item 3            Further Terms**

Two (2) further terms of five (5) years commencing on 1 October 2034 and on 1 October 2039 respectively.

**Item 4            Licence Fee**

\$1.00 per annum (exclusive of GST) if demanded by the Licensor [gross fee refer clause 3.2].

**EXECUTED as a Deed**

The Common Seal of the Shire of Trayning was hereunto affixed in the presence of:

\_\_\_\_\_

Shire President

\_\_\_\_\_

Print Full Name

\_\_\_\_\_

CEO

\_\_\_\_\_

Print Full Name

Signed by **Ryan Bulluss** Executive Manager – Land and Buildings as sub delegate of the Minister under Sections 15 and 16 of the Fire and Emergency Services Act 1998 in the presence of:

\_\_\_\_\_

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Print name of Witness

\_\_\_\_\_

Address of Witness

\_\_\_\_\_

Occupation of Witness