

Electric Vehicle Charging Site Lease

Shire of Nannup (Lessor)

The Trustee for KarChargers Family Trust (Lessee)

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Reference Schedule

Parties

First party

Name	Shire of Nannup (Lessor)
ABN	43 038 160 786
Address	15 Adam Street, Nannup, WA 6275
Email	nannup@nannup.wa.gov.au

Second party

Name	The Trustee for KarChargers Family Trust (Lessee)
ABN	27 838 769 316
Address	10 Loftus Road, Pennant Hills, NSW 2120
Email	sanjaysaini@karchargers.omc.au

Items

- | | |
|---------------|---|
| <i>Item 1</i> | Land (clause 1)

Volume 1140 Folio 390 Nannup WA 6275 |
| <i>Item 2</i> | Premises (clause 1)

That part of the Land identified as D006753 9 in the Plan. |
| <i>Item 3</i> | Term (clause 1)

Fifteen years |
| <i>Item 4</i> | Commencing Date (clause 1)

1 st August 2025 |
| <i>Item 5</i> | Terminating Date (clause 1)

31 st July 2040 |
| <i>Item 6</i> | Rent (clause 1)

Rent means the Rent specified in Schedule 4. |
| <i>Item 7</i> | Permitted Use

Constructing, maintaining and operating an electric vehicle parking and charging station and any incidental or complementary uses including but not |

limited to installing, storing, operating, repairing, maintaining, altering, and replacing electrical services consistent with the evolving nature of an electric vehicle charging station

Item 8 **Further Terms**

Two further terms of [five] years each

Item 9 **Review Date**

NA

Item 10 **Review Percentage**

0 %

Item 11 **Rent Commencement Date**

1st August 2025

Item 12 **Reporting Period**

The Reporting Periods are as follows:

- 1 January to 31 March;
- 1 April to 30 June;
- 1 July to 30 September; and
- 1 October to 31 December.

Operative part

1 Defined terms and interpretation

1.1 *Defined terms*

In this lease:

Approvals means all necessary approvals, consents, permissions and licences of all relevant Authorities which must be obtained to carry out any works or undertake any activities on or in the Premises.

Authority means any federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in the local government area in which the Premises is located, and concludes at 5 pm on that day.

Charging Fees means the amount payable by the Drivers for the electricity sourced from the Charging Stations.

Charging Station means a charging station operated at the Premises and for which the Lessee has the right to receive the Charging Fees paid by Drivers.

Claims includes:

- (a) all liability, damage and loss;
- (b) actions, applications, causes of action, arbitrations, claims, demands, orders, judgments; and
- (c) debts, damages, penalties, payments and costs (including legal costs calculated on a solicitor and own client basis),

and all costs and expenses incurred in connection with it.

Commencing Date means the commencing date specified in Item 4.

Confidential Information means all information, in any form or medium (including copies of it and information derived from it), made available or disclosed by or on behalf of one party or its related bodies corporate to the other party or its related bodies corporate or an employee, agent or adviser in connection with this Lease, including information of a technical, financial or commercial nature, information relating to the Lessee's software or intellectual property rights in software, and information that in any way relates to the business of the disclosing party.

Consequential Loss means loss which is not direct loss (being loss arising naturally from the breach according to the usual course of things, regardless of whether the parties considered the effect of the breach at the time they made the contract), and includes any special, exemplary or punitive damages, incidental, indirect or consequential damages, losses or expenses, and any loss of use, revenue, profits, reputation, goodwill, business opportunity or anticipated saving or increased cost of working capital.

Council means the Lessor.

Driver means a user of any Charging Station.

Equipment means any and all equipment, ancillary installations and necessary or desirable equipment required to operate and maintain an electric vehicle charging station or to carry out the Permitted Use now and in the future, including but not limited to vehicle chargers, charge posts, lighting, switchgear, signage, security, canopies, fencing or other visual barriers, energy capture and storage systems (including solar) and all associated civil works installed by the Lessee.

Further Terms means each further term described in Item 8 (if any) or, if there is more than one further term described in Item 8, the first of those further terms.

GST means any form of goods and services tax payable under the GST Law.

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

Item means an item appearing in the Reference Schedule.

Land means the land described in Item 1 of the Reference Schedule.

Law means the common law and the requirements of all federal, State, territorial or local government legislation, rules, regulations, proclamations, ordinances, ministerial determinations and rulings or consents issued by any Authority.

Lessee means the party specified as the Lessee in the party details in the Reference Schedule and its successors and assigns.

Lessee's Associates means each of the Lessee's employees, officers, agents, financiers, contractors and consultants.

Lessor means the party specified as the Lessor in the party details in the Reference Schedule and its successors and assigns.

Permitted Use means the use described in Item 7.

Plan means the plan in Schedule 1.

Premises means the property described in Item 2.

Reference Schedule means the part of this lease described as the Reference Schedule.

Rent means the yearly rent specified in Item 6.

Rent Commencement Date means the rent commencement date specified in Item 11.

Rent Day means the Rent Commencement Date and the first day of every month after.

Reporting period means each of the periods specified in Item 12 each year during the Term.

Review Date means each date in Item 9.

Review Percentage means the percentage in Item 10.

Services means all utilities and services to the Land or the Premises.

Signage Area means the areas denoted in Schedule 2.

State means the state in which the Premises is located.

Term means the period specified in Item 3 starting on the Commencing Date and ending on the Terminating Date.

Terminating Date means the terminating date specified in Item 5.

WHS means work, health and safety.

WHS Law means the *Work Health and Safety Act 2011* (Cth) and the *Occupational Safety and Health Act 1984* (WA).

Work includes fitout, maintenance, repair, replacement, redecoration, alteration, improvements or additions.

1.2 Interpretation

In this lease, except where the context otherwise requires:

- (a) another grammatical form of a defined word or expression has a corresponding meaning;
- (b) a reference to a clause, paragraph, schedule, Reference Schedule or annexure is to a clause or paragraph of, or schedule or Reference Schedule or annexure to, this lease, and a reference to this lease includes any schedule or annexure;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to **\$** or **dollar** is to Australian currency;

- (e) a reference to a party includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (i) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (j) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this lease or any part of it; and
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 *Headings*

Headings are for ease of reference only and do not affect interpretation.

1.4 *Governing law and jurisdiction*

This lease is governed by the law of the State and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that state and all courts of appeal from those courts.

2 *Grant of Lease*

2.1 *Grant*

Subject to the terms of this lease, the Lessor leases the Premises to the Lessee and the Lessee accepts the lease for the Term.

2.2 *Holding over*

- (a) If the Lessee continues to occupy the Premises after the Terminating Date, it does so under a monthly tenancy.
- (b) Either party may terminate the monthly tenancy at any time by providing three month's written notice to the other.

2.3 *Terms of holding over*

The monthly tenancy will be on the same terms and conditions as this Lease except:

- (a) for those changes which are necessary to make this Lease appropriate for a monthly tenancy; and

- (b) the Rent will be equal to the amount payable immediately preceding the Terminating Date.

2.4 Signage Area

The Lessor grants to the Lessee an exclusive licence of the Signage Area for the purpose of installing signage pursuant to the terms of this Lease.

2.5 Adjoining Land

- (a) The Lessor grants to the Lessee the right to temporarily use so much of the Land immediately adjoining and adjacent to the Premises or any installation of the Lessee as is agreed by the parties in advance for the installation, erection, construction, dismantling, storing, operation, repair, maintenance, alteration and renewal of the Equipment.
- (b) The Lessor grants to the Lessee a non-exclusive licence of the balance of the Land for the purpose of the Lessee's access to the Premises for the permitted use and to undertake any Lessee Works.
- (c) When exercising its rights pursuant to this clause 2.4 the Lessee must comply with all timeframes and obligations agreed to by the parties, any policies and procedures notified to the Lessee, and any other directions given by the Lessor acting reasonably while the Lessee is accessing the adjacent land. Further, the Lessee must at all times use reasonable endeavours to cause minimal disruption and inconvenience to the Lessor and its occupants as far as is practicable.
- (d) If the Lessee causes any damage to the surface of the Land the Lessee will restore the surface of the Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor.

3 Rent

3.1 Lessee to pay

The Lessee must pay to the Lessor the Rent:

- (a) during the Term (and any holding over) without demand by the Lessor;
- (b) annually, with the first instalment to be paid on the Rent Commencement Date; and
- (c) to the Lessor or as the Lessor may in writing otherwise direct by way of electronic funds transfer.

3.2 Rent Reviews

The Rent must be reviewed on each Review Date whereby the Rent must increase by the Review Percentage.

4 Costs, charges and expenses

4.1 Legal costs and disbursements

- (a) Each party will pay its own costs (including all legal costs) in relation to the negotiation, preparation, execution, delivery and registration and completion of this Lease or the lease for any Further Term.
- (b) The Lessor is liable for any costs arising out of any other consent required by it to enter into this Lease.

- (c) The Lessee will pay the Lessor's reasonable costs in relation to the variation, assignment, sublease, proposed assignment or sublease, surrender and termination of this lease.

4.2 *Services*

If a separate usage meter is installed for the exclusive use of the Lessee, the Lessee must pay all costs for the:

- (a) connection of;
 - (b) consumption of; and
 - (c) installation of separate metering in the Premises for,
- all Services in connection with the Premises.

If the Lessee chooses not to install a separate usage meter for the Lessee's exclusive use, the Lessee must pay the Lessor a predetermined amount per kWh used by the Equipment for each Reporting Period during the Term (**Energy Tariff**).

The rate of the Energy Tariff shall be as agreed between the parties in writing. Either party may provide written notice to the other party proposing an update to the rate of the Energy Tariff. Upon receipt of this written notice, the parties will promptly endeavour to reach written agreement regarding the updated rate of the Energy Tariff. The parties agree that the rate of the Energy Tariff rate can only be revised once every six months.

If required, the Lessee must make payment of the Energy Tariff via bank transfer for each Reporting Period during the Term promptly after:

- (a) the 15th day of the month immediately after the end of each Reporting Period during the Term; and
- (b) the last day of the Term.

4.3 *Registration fees*

The Lessee must pay the registration fees in connection with this Lease.

5 **GST**

5.1 *Definitions*

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

5.2 *Consideration is GST-exclusive*

Unless otherwise specified, all amounts payable under this lease are exclusive of GST and must be calculated without regard to GST.

5.3 *GST payable on taxable supply*

- (a) If a supply made under this lease is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.

- (c) If there is an adjustment to a taxable supply made under this Lease then the Supplier must provide an adjustment note to the Recipient.
- (d) The amount of a party's entitlement under this Lease to recovery or compensation for any of its costs is reduced by the input tax credits to which that party is entitled in respect of those costs.

6 Insurance

- (a) The Lessee must keep current during the Term and any holding over period:
 - (i) insurance for the Equipment;
 - (ii) public liability insurance in connection with the Equipment and the Premises covering each claim for at least \$20 million (or any other amount the Lessor reasonably requires) with no limit on the number of claims that can be made; and
 - (iii) other insurances which are required by Law.
- (b) The Lessee must provide the Lessor with a certificate of currency when the Lessor asks (but not more than once in any calendar year).
- (c) The Lessee must note the interest of the Lessor on its insurance policies.

7 Risk

7.1 Lessee's risk

The Lessee occupies the Premises at its own risk.

7.2 Release

The Lessee releases the Lessor and its related bodies corporate from liability the Lessor may have to the Lessee or any other third party for any property damage, death or injury or other loss occurring in the Premises or on any areas licensed, or which is otherwise caused or contributed to by the Lessor, during the Term.

7.3 No Consequential Loss

- (a) Subject to subclause 7.3(b), neither party is under any circumstances liable for any Consequential Loss suffered by the other party, its subcontractors or any third party or for any loss or damage to any equipment, plant, tools, machinery or other property of the Lessee, its subcontractors or any other third party used for the Permitted Use or otherwise while in and around the Premises.
- (b) Subclause 7.3(a) does not limit the Lessor's liability for lost profit under subclause 16.7.

8 Lessee's Works

8.1 Lessee's Works

- (a) The Lessee may undertake works to install and operate the Equipment on the Premises, subject to first obtaining all necessary Approvals from the relevant Authority.
- (b) After the initial installation of the Equipment, the Lessee must obtain prior to commencing any further structural or non-structural Works:
 - (i) the Lessor's consent which must not be unreasonably withheld; and

- (ii) all necessary consents and Approvals required by Law,
- (c) The Lessor must provide all assistance and sign all consents reasonably required by the Lessee to allow the Lessee to undertake the Lessee's Works, including by, while the Lessor acts in its capacity of Lessor, consenting to any development applications.
- (d) The Lessee acknowledges and agrees that:
 - (i) during the undertaking of the Lessee's Works on the Premises the Lessee must at all times identify and exercise all necessary precautions and take all steps to ensure the health and safety of all persons on the Premises who may be affected by the Lessee's Works; and
 - (ii) it must comply with WHS Laws in relation to the undertaking of the Lessee's Works.
- (e) The Lessor and Lessee agree that any Equipment, whether in the nature of chattels or fixtures and irrespective of the degree of annexation to the Land, remain the Lessee's property at all times, subject to clause 15.2(c).

8.2 *Signage*

- (a) The Lessee may at the Lessee's cost, install, repair, maintain, alter, replace and renew:
 - (i) signage, branding and/or advertising on the Premises and Signage Areas;
 - (ii) directional and way finding signage on the Land; and
 - (iii) pylon or other prominent signage elsewhere on the Land, but only with the consent of the Lessor,

but subject always to the Lessor's prior review and approval (which must not be unreasonably withheld or delayed).
- (b) In the event that the Lessee installs any signage without the Lessor's prior written consent, the Lessee agrees to promptly and its own cost remove it at the Lessor's request.

9 *Electricity infrastructure*

9.1 *Electricity Supply and Meters*

For the purpose of carrying out the Permitted Use the Lessor must at the Lessee's cost:

- (a) permit the Lessee to connect the Premises to an electricity supply suitable for the Permitted Use (including making provision for and allowing connection to emergency back up power) and to install on the Land any necessary or desirable electrical equipment and/or earthing apparatus as is necessary for the safe continuous use of the Equipment on the Premises.
- (b) permit the installation of a dedicated usage meter at any point during the Term so that the Lessee is directly accountable to the relevant Authority for payment of electricity; and
- (c) cause to be registered on the Land an easement for electricity purposes, if required by and if so, in favour of, the relevant electricity Authority.

9.2 *Cabling*

- (a) For the purpose of the operation of the Equipment, the Lessee may install, erect, construct, dismantle, store, operate, repair, maintain, alter and renew and use above or below ground cabling, wiring, piping, earthing straps and conduits to and from the Premises (and between them if there are separate leased areas) and where necessary to construct supports for that cabling, subject to first obtaining all necessary Approvals from the relevant Authority.
- (b) In exercising its rights under this clause 9.2, the Lessee must:
 - (i) consult with the Lessor as to the proposed location of the cabling and comply with any reasonable directions given by the Lessor;
 - (ii) not cause any lasting material damage to the Land or material interference with the Lessor;
 - (iii) not cause any damage, interruption or detrimental impact to the operation of the adjoining and adjacent properties; and
 - (iv) restore the surface of the Land as so used as nearly as practicably possible to its state prior to use by the Lessee to the reasonable satisfaction of the Lessor.

10 *Lessee's rights and obligations*

10.1 *Quiet enjoyment*

- (a) The Lessor must allow the Lessee to use and occupy the Premises without interruption by the Lessor or any person claiming through the Lessor or any person under the Lessor's control.
- (b) The Lessor must use its best endeavours to protect the Lessee's right of quiet enjoyment from interruption by a third party.

10.2 *Permitted Use*

The Lessee must use the Premises only for the Permitted Use.

10.3 *Naming, signage and telecommunications equipment*

During the Term the Lessee has the right to:

- (a) display any signs in the Signage Area; and
- (b) install telecommunications equipment on the Premises reasonably necessary for the Permitted Use.

10.4 *Access and Operating Hours*

- (a) The Lessee and the Lessee's Associates must be permitted to access the Premises 24 hours a day, seven days a week.
- (b) Despite any other clause in this lease the Lessee is not required to ensure the Equipment is operational 24 hours a day, seven days a week but must use reasonable endeavours to ensure that the Equipment is in good working order.

10.5 *Prohibitions*

The Lessee must not:

- (a) do anything dangerous, noxious, offensive or illegal on the Premises or the Building; or
- (b) create any nuisance which adversely affects owners or occupiers of neighbouring land.

11 *Lessor's rights and obligations*

11.1 *To enter the Premises*

- (a) The Lessor or the Lessor's authorised representative may, at any reasonable time, enter the Premises, together with all necessary equipment and workmen at any reasonable time on giving reasonable written notice to inspect the Premises or show prospective purchasers, mortgagees or lessees (within the last 3 months of the Term) through the Premises subject to the Lessor not materially disturbing the Lessee's use and enjoyment of the Premises.
- (b) If the Lessor reasonably decides there is an emergency, the Lessor may enter the Premises at any time without notice.

11.2 *Change of Lessor*

If the Lessor assigns its interest in the Land the Lessor must at its cost ensure that the assignee enters into a deed poll agreeing to comply with the provisions of the Lease in favour of the Lessee irrespective of whether or not they touch and concern the Land. If another person (new lessor) becomes entitled to receive the Rent to be paid by the Lessee, then the Lessor must (prior to the transfer or assignment occurring):

11.3 *Unimpeded access*

The Lessor must:

- (a) not take, or allow anyone to take, any action which impedes or alters access or visibility by the visitors to the Premises or causes disruption to the Lessee's trading in the Premises;
- (b) take all reasonable steps within the Lessor's control to prevent or stop any disruption to the Lessee's business.

12 *Resumption, Damage or Destruction*

12.1 *Resumption*

If at any time the Premises are resumed (a "**Resumption**"), the Lessee may determine this Lease by giving not less than 1 months' notice to the Lessor. At the end of that notice this Lease will be at an end.

12.2 *Liability*

Any determination of the Lease under clause 12.1 will be without prejudice to:

- (a) the rights of either party in respect of any preceding breach or non-observance of this Lease; or
- (b) any compensation payable in by any relevant Authority in respect of the Resumption, which must be dealt with pursuant to clause 12.3; or

- (c) any Rent or other monies paid in advance by the Lessee, in which case the Lessee is entitled to recover from the Lessor the appropriate pro-rata proportion of the prepaid Rent.

12.3 Compensation

- (a) This clause applies in the event that compensation may be payable to the Lessor and/or Lessee by an Authority as a result of the Resumption.
- (b) The Lessor and the Lessee must make an application to the Authority for compensation, keep each other informed of any correspondence, notice or response received by a party from the Authority and respond promptly to and engage with the Authority as may be requested by the Authority.
- (c) If an Authority determines compensation is payable to the Lessor and Lessee as a lump sum it will be payable to the Lessor and the Lessee in the shares agreed between the parties.

12.4 Damage and destruction

If the Premises or any improvements on the Premises are destroyed or damaged so that, in the reasonable opinion of the Lessee, the whole of the Premises or a substantial part of it is unfit for the Permitted Use, the Lessee must give notice to the Lessor within 90 days after that that the Lessee:

- (a) intends to reinstall the Equipment; or
- (b) considers the damage is such that its repair is impracticable or undesirable.

12.5 Termination

- (a) If the Lessee elects not to reinstate the Equipment then:
 - (i) the Lease terminates; and
 - (ii) the Lessee must comply with clause 15.2.
- (b) The parties agree that no compensation, claim or costs is payable by either party for termination under this clause.

12.6 Abatement of Rent

If the Premises are damaged and the Premises cannot be used or are inaccessible, the Lessee is not liable to pay Rent for the period that the Premises cannot be used or are inaccessible.

12.7 No obligation to restore

Nothing in clause 12.4 obliges the Lessee to restore or reinstate the Premises or any improvements.

13 Assigning, subletting, charging

13.1 Assigning

- (a) The Lessee must obtain the Lessor's consent, which is not to be unreasonably withheld or delayed, before the Lessee assigns its interest in the Premises, other than:
 - (i) as part of a restructure of the Lessee; or

- (ii) in the case of an assignment of the Lease to a related body corporate (as that term is used in the Corporations Act 2001 (Cth),

in which case consent is not required.

- (b) Upon assignment of this Lease by the Lessee, the Lessor releases the Lessee from all liability under this Lease from the date of the assignment.
- (c) For the avoidance of doubt, any change in the:
 - (i) shareholding of the Lessee; or
 - (ii) shareholding in the trustee or unitholding in the underlying trust of the Lessee;

is not considered an assignment of the Lease.

13.2 Subletting

The Lessee is permitted to sublet or grant licences over all or part of the Premises without the consent of the Lessor.

13.3 Charging

The Lessee may, without the Lessor's consent:

- (a) mortgage, charge or otherwise encumber its interest in the Premises or the Equipment; and
- (b) declare itself a trustee of any legal or equitable estate or interest in the Premises or this Lease.

14 Automatic Renewal

14.1 Automatic Renewal

Subject to the Lessee or Lessor not exercising a right to terminate this Lease pursuant to clause 16, then on the expiration of the Term, the Lease shall automatically, and without the need for any notice from the Lessee, be renewed for the Further Term, unless the Lessee or Lessor provide written notice to the other party at least 3 months prior to the expiration of the current Term indicating that the Lease will end at the expiry of the current Term.

14.2 Not used

14.3 Automatic Renewal of lease

- (a) Upon the automatic renewal of the Lease pursuant to clause 14, the Lessor grants a new lease to the Lessee of the Premises for the Further Term on and subject to the same terms as those contained in this lease, except:
 - (i) the Further Term will be deleted from Item 8 and replaced with "nil" (or, if there is more than one, the number of Further Terms shown in Item 8 will be reduced by one); and
 - (ii) amendments may be made to reflect any alterations to this lease agreed by the parties during the Term, to accommodate any change that needs to

be made because of any Law and to make this lease applicable to the Further Term, including by:

- (A) replacing Items in the reference schedule with the applicable information; and
- (B) varying any clauses in the Lease.

- (b) The parties are bound by the new lease for the Further Term from the time the Lease is renewed under clause 14, even if a party has not executed or delivered the new lease.

15 Yielding up

15.1 *Removal of property*

On the earlier of the Terminating Date or termination of this lease, the Lessee must yield up the Premises in good repair and clean condition fair wear and tear excepted having regard to their condition at the Commencement Date.

15.2 *Removal of Equipment*

- (a) The Lessee must:
 - (i) within 3 months after the end of the Term (unless there is in place after the Lease a further lease between the Lessor and the Lessee) or such earlier termination date pursuant to a provision of the Lease; or
 - (ii) by such other date as the Lessor and the Lessee agree in writing,
 - (iii) remove from the Premises the Equipment and all above ground fixtures, fittings, plant, machinery, cables and other equipment brought by it onto the Premises or the Land and cap, decommission and render inoperative all cabling, wiring, piping, earthing straps and conduits installed by the Lessee under clause 9.2.
- (b) In removing above ground fixtures the Lessee must restore the surface of the Land as so nearly as practicably possible to the state immediately prior to the removal, fair wear and tear excepted.
- (c) The Lessee may remove all underground concrete structure, cabling, wiring, piping, earthing straps and conduits installed by the Lessee under clause 9.2. If the Lessee elects not to do so, the Lessee transfers the ownership of these items to the Lessor on and from the end of the Term.

16 Default

16.1 *Events of default by Lessee*

Each of the following is a default by the Lessee under this lease:

- (a) if the Lessee does not pay the Rent within 30 days of the due date for payment, and such default continues for 14 days after written notification to the Lessee by the Lessor;
- (b) if the Lessee does not pay any other amount that is due and payable within 30 days of its due date, and such default continues for 14 days after notification to the Lessee by the Lessor; and

- (c) if the Lessee does not comply with any other essential term of this Lease and such default continues for 14 days after notification to the Lessee by the Lessor.

16.2 *Lessor's termination after default*

If:

- (a) the Lessee defaults under clause 16.1; and
- (b) fails to remedy that default after receiving a written notice from the Lessor notifying the Lessee of the default and what the Lessee is required to do to remedy the default,

then the Lessor may terminate this Lease by serving written notice of termination on the Lessee and may do any one or more of the following:

- (c) re-entering and taking possession of the Premises, using reasonable force to secure possession if necessary;
- (d) instituting proceedings for possession of the Premises against the Lessee; and/or
- (e) seek compensation from the Lessee for loss and damage pursuant to clause 16.3.

16.3 *Lessor's entitlement to damages*

- (a) If the Lessee:
 - (i) repudiates this lease; or
 - (ii) breaches an essential term of this lease,the Lessee must compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation or breach.
- (b) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this lease.
- (c) The Lessor must mitigate its loss in respect of any Claim against the Lessee.

16.4 *Default by the Lessor*

The Lessor defaults under this Lease if the Lessor:

- (a) fails to perform or observe a provision of this Lease and that failure:
 - (i) is not capable of remedy; or
 - (ii) is capable of remedy but continues for not less than 30 days after the Lessee gives notice to the Lessor to remedy that failure; or
- (b) is a corporation and an administrator or controller is appointed or a resolution is passed or proceedings are commenced for the winding up of the Lessor.

16.5 *What the Lessee may do if the Lessor defaults*

If:

- (a) the Lessor defaults and does not remedy the default in accordance with clause 16.4; or
- (b) the default is not capable of remedy,

the Lessee may do either one or both of the following without affecting any pre-existing rights of a party:

- (c) by notice to the Lessor, terminate this Lease; and
- (d) exercise any of its other legal rights.

16.6 Sale of Premises

The parties agree that the Lessor may by written notice to the Lessee, terminate this Lease upon the sale of the Premises to a third party.

16.7 Compensation upon Termination

- (a) If:
 - (i) the Lessee terminates this Lease under subclause 16.5 (c); or
 - (ii) the Lessor terminates this Lease under clause 16.2 or clause 16.6,then the Lessee shall be entitled to payment of the following amounts:
 - (iii) the costs incurred by the Lessee as a result of complying with its obligations under clause 15, including removing any equipment; and
 - (iv) a Termination Fee for Lost Profit, calculated in accordance with the Termination Fee Schedule in Schedule 3,(together, the **Termination Fee**).
- (b) The Lessee must provide the Lessor with an invoice for the Termination Fee.
- (c) The Lessor must pay the Lessee the amount of any Termination Fee specified in the invoice provided under subclause 16.7(b) within 14 days of the date of issue of the invoice.

17 Confidentiality

- (a) Subject to this clause 16.7(c), each party must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential.
- (b) Each party will take all steps reasonably necessary to maintain confidentiality of Confidential Information.
- (c) A party (**Recipient**) may reveal Confidential Information of another party (**Provider**):
 - (i) if required to do so by Law;
 - (ii) [to elected members of the Council and their officers and employees];
 - (iii) if the Confidential Information is in or enters the public domain for reasons other than a breach of this Lease;
 - (iv) if the Confidential Information is disclosed to the Recipient by a third party legally entitled to disclose that information and who is not under an obligation of confidentiality to the Provider; and
 - (v) to its professional advisers to obtain professional advice.

18 Notices and other communications

18.1 *Service of notices*

A notice, demand, consent, approval or communication under this Lease must be:

- (a) in writing and signed by an authorised person; and
- (b) hand delivered or sent by prepaid post or email to the recipient's address for notices specified in the Notice details of the Reference Schedule, as varied by any notice given by the recipient to the sender.

18.2 *Effective on receipt*

A notice given in accordance with clause 18.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the fifth Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email, when the sender's email system generates a message confirming successful transmission of the entire notice unless the sender receives a notice of non-delivery or delayed delivery,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

19 Miscellaneous

19.1 *Alterations*

This Lease may be amended only in writing signed by each party.

19.2 *Duty*

Subject to any express provision to the contrary in this Lease any duty (including fines, penalties and interest except to the extent arising as a result of the Lessor's default or delay) in connection with this lease or any transaction contemplated by this lease, must be paid by the Lessee.

19.3 *Severability*

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

19.4 *Waiver*

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

19.5 *Exclusion of statutory provisions*

- (a) Sections 92 to 95 inclusive of the *Transfer of Land Act 1893* (WA) do not apply to this Lease.

- (b) Sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to this Lease.

20 Trustee Limitation of Liability

- (a) In this clause:
 - (i) **Trustee Liability** means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this document or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this Document or its performance;
 - (ii) **Trust** means The Trustee for KarChargers Family Trust; and
 - (iii) **Trustee** means the Lessee.
- (b) The Lessee enters into this Lease in its capacity as trustee of the Trust and in no other capacity.
- (c) The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.
- (d) A Trustee Liability may be enforced against the Trustee only to the extent to which:
 - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Trust; and
 - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Trust assets have been allocated to meet the indemnity and any other valid claims).
- (e) Subject to 20(e)(v), no person will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust,
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Trust;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.
 - (v) The restrictions in 20(d) and 20(e) do not apply to any Trustee Liability to the extent to which there is, whether under the trust deed of the Trust or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the

property of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.

- (f) Each other party to this Lease agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause 20(e)(v) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Trust or by any other act or omission of that party.
- (g) No attorney, agent or other person appointed in accordance with this Lease has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause 20(e)(v).
- (h) This limitation of the Trustee's Liability applies despite any other provisions of this Lease and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease or its performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under this Lease (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in paragraphs 20(a) to 20(h).
- (j) Clauses 20(a) to 20(j) inclusive, contained above, will survive the termination or expiry of this Lease.

21 Dispute Resolution

21.1 Mediation

The parties must take the steps set out in this clause to resolve any dispute or claim between them arising out of or relating to this Lease (other than those specifically noted as being required to be resolved by particular means) before either may commence court proceedings other than an urgent interlocutory application.

21.2 Rules

- (a) The parties must consult with each other with a view to agreeing upon a mediator to resolve any dispute or claim.
- (b) If the parties are unable to agree upon a mediator within 14 days after the dispute or claim arises then either party may refer the dispute or claim to the president of the Law Society in the State to appoint an expert to facilitate a mediation of the dispute or claim.
- (c) The mediation must take place within 21 days after the president appoints the expert or other period the parties may in writing agree.

21.3 Costs

Each party must pay its own costs in connection with the mediation and the parties must share the costs of the mediator and mediation process equally.

21.4 No merger

This clause will continue to apply to the parties even after expiry or termination of this Lease.

21.5 *No resolution*

If the parties are unable to resolve the dispute or claim by way of mediation under this clause, then the parties are free to take any action permitted by this Lease or at law to resolve the dispute or claim.

Schedule 1 Plan

Schedule 2 Signage Area

Schedule 3 Termination Fee Schedule

If:

- (a) the Lessee terminates this Lease in accordance with subclause 16.5; or
- (b) the Lessor terminates this Lease in accordance with subclause 16.2 or 16.6,

The Lessee will be entitled to be paid a Termination Fee for Lost Profit.

The Termination Fee for Lost Profit will be calculated by calculating the Lost Revenue of the Charging Fees that the Lessee would have otherwise earned for the Term.

1. **Lost Revenue:**

Lost Revenue will be calculated by using the following formulas:

- (a) the aggregate of the monthly amounts paid by each Driver for the Charging Fees, after deducting any refunds owing to Drivers, for the duration of the Term prior to the termination **(Total Value)**
- (b) **Monthly Average** = **(Total Value)** / (Number of months in the Term prior to the termination)
- (c) **Time Remaining** = (12 (months) x (15 + y) (years), where y = 0 if the Term has not been extended, or y = 5, if there has been one extension of the Term, or y = 10, if there have been 2 extensions of the Term) - (Number of Months in the Term prior to the termination)
- (d) **Lost Revenue** = **Monthly Average x Time Remaining = \$[X] (Termination Fee for Lost Profit)**

Schedule 4 Percentage Rent

- 1.1 The Lessee must pay rent calculated as a percentage of the Charging Fees from the use of the Charging Stations for each year of the Term, being an amount equal to \$0.0 per kWh billed to each Driver for the Charging Fees, after deducting any refunds owing to Drivers (**Percentage Rent**).
- 1.2 Upon the automatic renewal of the Lease pursuant to clause 14, the Lessee must pay Percentage Rent calculated in accordance with paragraph 1.1 of this schedule 4 as if the Further Term were a continuation of all terms from the original Lease.
- 1.3 The Lessee must provide the Lessor with a report on its income from the Charging Fees for each Reporting Period during the Term.

Executed as a deed

EXECUTED by THE TRUSTEE FOR KARCHARGERS FAMILY TRUST ABN 27 838 769 316	
..... Signature of Trustee	 Signature of Witness
Sanjay Saini..... Name of Trustee	Geeta Saini..... Name of Witness

EXECUTED by SHIRE OF NANNUP ABN 42 038 160 786	
..... Signature of Trustee	 Signature of Witness
..... Name of Trustee	 Name of Witness